

Brian Cute: Okay good morning, this is Brian Cute. This is the meeting of the Accountability and Transparency review team for ICANN and first I would like to thank Mr. Xang for his gracious invitation to host the team meetings here in Beijing and also for the warm welcome you have given us and the fantastic work that you and Mr. Glow and your team have provided in supporting us logistically and otherwise, we thank you very much and we look forward to productive and successful meetings in Beijing, thank you.

To open the meeting, we want to begin with welcoming folks that are listening on the phone and listening online, I want to confirm that there are two team members, Warren Adelman and Louis Lee that are hearing us. Warren and Louis, are you there? Do they have the ability to come in? Okay. You might be muted, could you just register in with us? Do you show them as dialed in? Okay. Well I would like to get to approving the agenda but let's see if we can get Warren and Louis on before we get to that. Ah, Warren Adelman and Louis Lee, are you there?

Warren Adelman: Yes.

Brian Cute: Good morning Warren. Louis?

Louis Lee: I am here, this is Louis.

Brian Cute: Okay and we can hear you both very clearly. So we want to open the meeting now and move to approving the agenda. Did anyone not receive the agenda? Okay. Any suggested adds or changes to the agenda? Hearing

none the agenda is approved and let's move to discussing the RT roadmap for the next two days. We have the Berkman center online. We will be joining them in discussion shortly and going over some of the work in progress that they presented to the review team.

What I would like to accomplished within the next two days and I think we should focus on is we have Berkman's work in progress, which we will be able to discuss with them. We have Working Group Teams 1-4 work in progress and the Working Group teams have done some very good work during the last couple of weeks developing their analysis and data gathering.

First of all we need to have a very dynamic exchange with Berkman. I think Berkman is interested with what the work teams have done with their work, what their orientation is, the direction that they are going as we are interested in hearing from them. Berkman upon hearing from the working groups will be able to as part of their research, integrate the proposals that they are developing and come back to us with recommendations of their own as to how the working groups can finish their work.

So we have a calendar where we have to have recommendations out for public by October 15th. We have a midterm report from Berkman that is due by September 8th and we have effectively a month and a half of very intense work to do. So let's make these next two days as effective as possible in progressing the work.

Finally, before we leave I think we should have a discussion about what potential recommendations we already see because the working groups I believe have already developed the work to a point where we can begin speaking about proposed recommendations and how to get those into final form. So those are my objectives for the next couple of days. Is there anything anyone would like to add to that? Okay, do we have the Berkman team on the line?

Caroline Nolan: Hi Brian, yes this is Caroline and I am here with [inaudible 4:19] Hitchcock and Julie Moin, both of whom are research associates here at Berkman. We are waiting for Catherine who will be here in about half an hour.

Brian Cate: Okay she is going to join in half an hour. Okay then let's first go to the documents you sent over. Caroline, you sent two more this morning that I just distributed or last evening that I just distributed to the review team. Could you just, at a high level walk through those documents because people haven't had a chance to read them?

Caroline Nolan: Sure, I'm sorry about the delay on that. The first is the preliminary on RT bibliography. As we know, in the beginning of the document it is still a work in progress so this is an opportunity to show you the input of some of the literature in a report, logs and other materials that were utilized in our research.

The second was based on a recommendation that came out of the last call, I believe that the review team had requested that we analyze the survey that you had shared with us that we have a couple of colleagues who are

associates at Law School for [inaudible 5:29] review provided that [inaudible 5:33] we would be happy talk to them in more detail, but these are just some familiar thoughts about how you might wish to enhance the survey and the structure of the instructions.

Brian Cute: Of the two documents, one was the bibliography and the other was toward the questionnaire. Was that document on the questionnaire effectively an extension on the discussion we are going to have this morning in terms of finalizing the questionnaires before you send them out to staff and community members?

Caroline Nolan: Sure, actually this one is in direct response to the direct questions that your team has shared for the survey tool. I believe you had given the first draft of the questionnaire and so I [inaudible 6:23].

Brian Cute: Okay so that is specific to the survey tool?

Caroline Nolan: Absolutely, yes.

Brian Cute: Okay thank you. Well Urs Gaser who is the Managing Director of the project with Berkman would like to make the presentation in terms of the progress report and the road mapping for Berkman so I think until he joins in about 20 minutes what we could do with our time is to have a discussion about our calendar and I was going to save this until the end but we might as well start addressing that now.

In my opening remarks I referred to the fact that we have a mid-October deadline for putting recommendations out for comment. We have a

midterm report from Berkman that is due on September 8th, but I think you will see based on our conversation with Berkman this morning, the midterm report itself will not have a lot of substance as Berkman has just commenced their work on the 5th of August.

So what we have to manage in terms of the work is having sufficient substantive exchange between the working groups and Berkman in my view, I am looking at September 24th or their abouts to give the review team sufficient time prior to Boston to put some final proposed recommendations together that have a strong data gathering, fact finding analytical basis underneath them.

So, what we need to talk about with Berkman is how do we ensure given the fact that they have questionnaires that they need to potential interviewees, receive those responses, follow up with interviews with those individuals, and go through that data gathering process which is going to be time consuming, but provide to the team a sufficient substantive inputs by the third week of September.

So that we as a Review Team can come into Boston with recommendations that we then review with Berkman and make sure that the footing and the basis for those recommendations is well founded. So that's my view of the challenge we have ahead of us. I'm sure with Berkman we will be able to discuss how we can address that. Any discussion? Does that sound reasonable?

Catherine: I think that sounds great.

Brian Cute: Okay. Caroline, you've had a couple of courtesy calls and without stepping on what Urs wants to report, can you just give us a brief update on those courtesy calls? Let the team know who you spoke to.

Catherine: Sure, sure, I'm happy to. So, the questionnaire that we shared in our progress report and the questionnaires that we generated based on our initial fact finding ATRT studies and as part of our studies page 4, the interview process, we had courtesy calls with a couple of ICANN staff members primarily with Denis Michelle, John Jeffries, and Amy Saco.

We were able to speak a couple of times. We shared our legal thoughts on how we planned to proceed with the questionnaires and introduced ourselves to them and outlined the proposal. We did reach out to Ron Spectrum as well and Peter Thrush as well.

Brian Cute: Thank you. So part of the early process for the review team can help Berkman is in developing the questionnaire they have to identify to whom they are going to provide questionnaires and who they are going to interview. They are going through that process of developing that list. Obviously the interviews have to touch a broad range of parties.

We have to make sure that there is a balance of interests in terms of the universe of interviewees so that the review team today and tomorrow can assist Berkman in perhaps making some suggestions, looking at the list of potential targets and giving them feedback as to whom they should be reaching out to. That was part of the discussion that they had with ICANN staff and the courtesy interviews as well. Yes?

Larry Strickling: This is Larry. I know we will get into this in much greater detail in a few minutes, but are the interviews intended to be in person or just handing people a questionnaire to fill out because the drafts seem to suggest it is to be filled out by the interviewee in the form of written questions?

Brian Cate: Caroline can answer that, I think it's a questionnaire followed up by a phone call. I think that's it but Caroline can you clarify? So again, since it's a two step process Larry, we have some time pressures here and we really need to make sure that Berkman's work gets done.

I have communicated with ICANN staff, with Rod, by letter for the team, the importance of getting this interview process completed in a timely fashion and Rod has committed to help us make sure that that happens, at least from the staff level.

Now we've got, I've connected with Diane from the Board because there may be some Board interviewees as well and then there are some community members who will be interviewed but everyone needs to move very rapidly to get this data into Berkman.

Larry Strickling: As of now, does Berkman plan to send anybody to Marina Del Ray to visit with people on the ground there?

Brian Cate: Caroline?

Caroline Nolan: That is currently not part of our plan, but we hope that with the questionnaire, we can move aggressively on the timeline with the

combination of questionnaires and follow up calls and changes will help us move forward in the interview process.

Brian Cute:

So, on the agenda as you see the dynamic will be Berkman reporting in this progress report. We will be discussing with them their work. Then we are going to move to working groups reporting into the review team, but importantly this is the working group's opportunity as had been requested to have a direct interaction with Berkman.

So I encourage the Working Group members and Working Group leads, this is really the opportunity to present the work that you have done so far and to signal to Berkman where you think the direction of York is headed, what the possible recommendations might be and have Berkman assist the working groups in developing those recommendations.

Because of time management, we are going to do Working Group1 this morning after Berkman has done its report and Berkman will join us again tomorrow morning and working groups 2, 3 and 4 in sequence will make reports into the team and have direct interaction with Berkman.

Also, Mr. Xang mentioned to me that he has some colleagues who have expressed interest in joining the meeting and that we may have some attendees here who are not only interested in attending the meeting, but maybe interested in interacting with the review team and may in fact want to ask us some questions.

We can follow the normal protocol of having the questions come through Mr. Xang as far as I'm concerned in the spirit of openness, but we can

have questions passed directly to the team as well from the attendees should they come so they are more than welcome.

We are looking forward to their participation. Yes, thank you very much, welcome. Since we have another 10 minutes before Urs joins if any of you have watched late night television, I am trying to fill here. This is called “fill time.” Commercial, I mean in terms of the calendar, I have laid out what I think our challenges and what we need to accomplish.

We could move to some other items that we are putting off until the end of the agenda if you would like. I do know we are going to as part of the interaction with ICANN staff and John Jeffrey in particular, as Berkman presented the case studies and the specific case study questionnaires, John raised some concerns that he has about the XXX questionnaire, some specific concerns as general counsel given the status of the application and given the possible implications of responses to the questionnaires and how that information could influence that process down the road.

Given the fact that the application is still in play and we are not certain what the result is going to be from that standpoint as general counsel he raised some concerns. I told him that we as a team would be happy to discuss that with him.

I walked him through the manner in which we’ve been trying to structure our work so as to avoid implications on ongoing processes so as to avoid recommendations impacting decisions that have been taken that we’ve put a time boundary on Berkman’s work of June 17th so that they are not to research any farther than June 17th in an attempt to put some boundaries

around the work that minimize or eliminate any impact on decisions that have been made, ongoing processes and decisions that are to be made.

There were still concerns. He has articulated them to me and I think we will invite an opportunity to discuss with him tomorrow those issues. So that is another item for the agenda. We are going to do the best we can to finish up promptly tomorrow afternoon and we look forward to our time with Mr. Xang and dinner tonight and seeing a little bit of Beijing a little bit while we're here. Other than that, I don't have any more fill, William?

William Currie: Brian if I can just contribute to the fill, the issue of the timeline in terms of Working Group2. We might have to ask for an exception on a couple of key points because there are two processes that are running at the moment. One is the Board GAC joined Working Group review of the role of the GAC and the second is that the GAC has itself an issue to the ad hoc committee to review its own operating principles.

There is a possibility that these might have to report into the Cartagena meeting and would fairly pertinent to the Working Group2 assessment of the role of the GAC so I think that we would probably have to ask for some exemption to the cut off date of the Brussels meeting in order to include some reference to those processes.

Brian Cute: Thank you Willy. My view is that we need to structure the work as best we can, as we see fit. We are going to talk to John and hear his concerns. I think its important tomorrow in particular when we talk to John that we have as full a conversation on these points as possible. We can get to a place where John continues to have concerns as general council for the

organization, but the team moves forward with the work as structured and as discussed with John.

When I talked to him privately, he felt there was as much value having this discussion on the table even if we get to a point where he says, look I'm concerned about x and we say we understand and we need to proceed along y, that's an okay result. But, what we want to have is a very clear discussion about the framing of the work; understanding and what his concerns are and move the process in the direction where the recommendations in my view have the effect that we have intended to have them all along.

I think, my sense as a review team has a very clear vision of how these recommendations should be taken in by ICANN and what effect they should have and should not have. But we just need to have a very clear discussion tomorrow and then we will move forward with the work. Any other items? Go ahead Peter.

Peter Dengate Thrush: This is Peter. Just checking, does everybody have a copy of John's letter to you? I know I got it, but I'm not sure if the team did and I think that is the most helpful thing is to share with general counsel's reasoning. Yeah.

Brian Cote: Yeah, we will do that. On an administrative issue on document management and Chris this was something you had asked about on the last call. I had talked to Denise Michelle. We went through the document requests we had put forward to staff in our main meeting and I put together an initial spreadsheet to track those and what documents have

come in and what is still outstanding. I saw a question in regards to one document related to the JPA, which was the last document.

There were some other documents where there was a question about a status update or an updated version of the document so I sent that to Denise. Also I was asked a question about the confidentiality. At the time when Denise provided those documents in response to use, they were kept off the public list because there were concerns about confidentiality about some of them and I have asked her whether that has been resolved or not because there has been ample time for that to have been resolved.

And I can't make the call but some of the documents did not appear to me to be those which would be harmful in the public domain, but we need clarification from ICANN staff whether those documents need to remain confidential or not. Those questions have been posed to Denise and as soon as I get an answer, I will let you know what that is.

Okay. I have a question from the community and it is from Karen McCarthy. Karen asks: Is it possible to publicly discuss the reasons that the ATRT cannot discuss dot triple X or is it important to keep the concerns confidential as well. It's not a question of not discussing triple X. If I am misunderstanding this Karen, please follow up. I am happy to clarify. The review team must be specific.

The Berkman Center is undertaking a case study on dot triple X as well as two other case studies and in doing their research, the review team has created some parameters with a recognition that there are some live issues

in regard to the dot triple X contract which has been posted in the ultimate resolution of dot triple X.

We put out a clarifying statement after our initial announcement of the Berkman appointment which made clear that the Berkman work was going to focus on two elements, one, the independent review panel and two, the GAC interaction with the Board. We wanted to be clear that Berkman was not going to be looking at the dot triple X application.

There is a firm understanding that there is not going to be a review or re-adjudication of that application process and that is something we wanted to be clear to the community. But, there will be discussion as the review team goes forward and Berkman does its case study to revisit and the discussion with John Jeffrey.

If that is what you are referring to is, what are his concerns as general counsel about the impacts of data collection or the impacts of potential work product that comes out of Berkman's case study and that is what we are going to be focused on. If that didn't answer your question, by all means please follow up online.

Cheryl Langdon-Orr: If I may Brian, Cheryl here.

Brian Cate: Yes Cheryl.

Cheryl Langdon-Orr: Karen was also in the Skype channel and one of the questions which may not have come across to you particularly in the notes you were just passed was the matter of was the team now going to have the leather

shade with this, with all of this? Is that a document that is going to be made public on the ATRT site or is to be kept confidential so he wanted that clarification as well.

Brian Cute: I will get that clarification to you. Any other items? We've got about 5 minutes until Urs joins.

Catherine: I think Brian; I think that he is in the process of getting online right now. I apologize for the delay. But he should be with us momentarily.

Brian Cute: Great.

Urs Gaser: Yes I'm here.

Brian Cute: Good morning Urs. Can you hear us?

Urs Gaser: Yes, absolutely, can you hear me as well?

Brian Cute: Yes we can very clearly. So Urs, we are at the juncture of the meeting where we are looking forward to hearing from you to report in on the progress of Berkman to date and then having a vigorous exchange with you all. So the floor is yours.

Urs Gaser: Hopefully I will have a chance to [inaudible 25:05] later today. [inaudible 25:11] the initial radio selected article on quality work, this [inaudible 25:17] is not completed yet, it is still a work in progress plus as a deliverable that we shared with you this morning as a bibliography which

confirms our effort and hopefully will be helpful to the review team members and we appreciate any feedback you may have.

[Inaudible 25:40] we think we need to share information as we move along at each stage of the process. In regards to the second [inaudible 25:58] ICANN report following is active. First we followed the fact finding process for the three papers that I mentioned before.

I did contact the [inaudible 26:11] to collect and read you the material that included all of the ICANN procedures and rules of the previous independent reports and review reports, all with comments and the like. In addition, I have prepared a report of the technical phase which will be initiated eventually after the poll. We have to come up with some new questionnaires.

We have to create them and hopefully the answers to these questionnaires [inaudible 26:43] including ICANN members, review members, staff members and so forth will further deepen our factual understanding of the case. Finally we have drafted the theory of public presentation case example, not to be confused with the case study as is the smaller case example focusing on the ways in which public input permissions were implemented and [inaudible 27:17] in detail when we go along the various documents that we circulated last week.

Currently, these case samples I should add are fact appropriate hopefully and do not go through the analysis we want to share fact first and I share also based on these facts working. I hope that we can formulate the case on our case methodology before we move forward and enter or evaluate

each of our research in respect to our formal presentation on the case example.

Now as a result of the initial [inaudible 28:04] 20+ days we share with you today the following documents that were already mentioned. The initial draft and then the research programs for discussion purposes only and for most importantly your feedback. Explicitly I call for the feedback for all members we need feedback on this call or from the Internet.

We are here to listen and appreciate the community is open, during this call or after this call, through email or other forms of communication. Please contact us for any feedback or input and alternatively with any issues or concerns that may come up. So the [inaudible 29:03] that we shared today, our first introductory protocol and questionnaire focusing on the [inaudible 29:11].

The draft that I mentioned covering an area of case examples referred to analysis, a set of tentative working hypotheses courtesy at least in part covering some of the three main areas of [inaudible 29:33] and accountability. I am certainly looking forward to working in the context of the Working Group conversation. I think that's the best plan to address the hypotheses and move forward.

I also recognize that we already have some overlap between the [inaudible 29:54] the Working Group members who are routine [inaudible 30:01] and again as I already mentioned, the Working Group the pages of the bibliography. Finally the request from the conferences calls for feedback

on the ATRT survey draft, the last two documents were circulated this morning.

Then these documents are a work in progress and we see them at this stage primarily as improvement materials to stimulate conversation today. Let me make a few final comments. First of all again, we appreciate your feedback on all the documents that I mentioned before either today on this call, tomorrow on the conference call, or by email. In addition, it is important to us that we have a discussion today about the tone of our research in order to ensure that you are all on the same page.

I would appreciate that the [inaudible 31:07] that you would forward that for the case examples as well. I think with full materials, this conversation may be easier than a few weeks ago because with better understanding of direction we have been moving or intend to move with this great opportunity eventually toward direction. I hope we show a radical [inaudible 31:37] of what we can do and should do [inaudible 31:43] and make sure that [inaudible 31:45] same explanation.

We also would appreciate the opportunity to talk about bad timing as well as the way in which we have to picture the way we can work together with the working groups, that can be something that we all can do right. Certain traditional flavor and we can [inaudible 32:17] teaching predominantly right now in management. There were a few particular cases that we may want to address we may have already addressed with an update from the team.

Among them is this joint team cutoff date as far as the case studies are concerned as the approach to the AAA legal entities and I think that we will also hear from ICANN and the general council on this particular issue. Again very much a period of collaboration and mutual research, so with that I thank you and [inaudible 33:10] there are so many remarks at this stage in this context from our perspective. I am certainly looking forward to answer questions on the issues that I mentioned. Thank you very much for your attention.

Brian Cute:

Thank you very much Urs. So I think what we need to do next is because we have another hour here to work with is give the team the opportunity to come back here with specific questions or suggestions with regards to the work in progress you just described.

The questionnaires, the documents weren't in our hands until yesterday so there may not be a lot of questions but the good news is we have tomorrow as well and some more time for the team to digest as well. Two notes, and then I will open it up to the review team.

There is a second presentation bit that you have. Have you referenced it Caroline? No one will talk about the study you are doing about public input and the three different areas you have chosen to study that. We are very interested in hearing that from her within this hour so let's manage our time. But also we need to make a clarification.

I think there is some misunderstanding that Berkman is focused only on the three case studies and that is not the case. Berkman is to support the

review team and the four working groups in developing the recommendations across the four working groups.

So if we could just clarify that point as Caroline makes her presentation. Let's talk about how your work ties into each of your working groups as we go forward. With those two points, I will open it up to the review team to provide feedback to Urs on his presentation and work in progress. Larry?

Larry Strickling: This is Larry Strickling. In the actual contract, we identified a number of people who will be participating in this project. On the part of Berkman, I guess several are on this call, I guess I would like to know at this point, what has each of them been able to contribute to the effort and to the extent it hasn't been much so far, how do you see that changing between now and over the course of the Fall?

But, in particular, I know John Palfrey I know was on the call so I would be interested in knowing what John's contribution has been to date and what he is planning to do as well as I know John Coates is not on the call, but was someone added to the team expressly because someone felt there was a gap in the proposal by not including a corporate governance expert.

And I am interested in understanding what his engagement has been so far and what you are planning for him as well as the other principles like Herb Berhert, and Jack Goldsmith, and Rob Ferris.

Urs Gaser: Thanks Larry, I appreciate the question. I am happy to report that all of the above team members mentioned are heavily involved in our efforts, in our

activities for efficiency purposes. I tend to take the lead on [inaudible 36:13] and coordination with the working group.

This may lead to the impression that all of the people you mentioned before may not be involved, this is not the case. Everyone is doing work and provides input in various ways. If you [inaudible 36:38] you mentioned John Palvey and he certainly can comment on this if you would like later on. He has been deeply long in the [inaudible 36:49] that we are doing.

He has been heavily involved, working with our team, supervising our team on the public station and work that is on the way. We are working on federal [inaudible 37:03] yet that will form our final report. Though John has taken [inaudible 37:11] among other things. John has been extremely helpful especially working with the triple X case to help us to understand the issue and has helped us to understand the promises and some of the challenges associated with the pending trial review.

[Inaudible 37:50] standing next to me here has taken the lead on transparency on the transparency review at the end [inaudible 38:59], he has supervised the [inaudible 38:04] a expert. He has collectively improved [inaudible 38:11] He works collectively with our entire team in the physical today that needs to be coordinated, guided, and supervised and drafted and previewed and feedback given, [inaudible 38:53] way too late for feedback.

John Coates lastly you were correct he is not on this call as he [inaudible 39:02] with the work team with the subject matter who will be focusing on

corporate policy issues. I would like to share our approach to the corporate policy issues while we haven't included corporate governance related issues explicitly in documentation.

We are certainly working on that particular set of issues as well. Of course we understand that this is a priority to the team. We think that we will have more to say and share by the end of the month for corporate policy issues and concerns. John Coates will advise us of these matters as he promised we have other colleagues joining up as part of the corporate policy work group, which is our team.

And I am confident that we will be able to share a first draft deliverable on this particularly interesting set of issues and ideas at the moment. I hope this roughly answers the question, but I am happy to follow up. Or John feel free to weigh in on this if I am deficient. Caroline, as well if I missed something. I am sure.

Unidentified:

At this time, I notice that status including me and the Berkman Center. I think that there is an all hands on deck manner for the last 20 days as it will be for the next 35 or so and as we continue the work and that there has been talk about at the Berkman Center, a lot of other things bringing up that are worth mentioning within the framework.

There are big areas potentially within my own personal work that are open to public participation. [inaudible 41:17] system have been involved in the whole research with the hypotheses and the initial work on the ANO and a great deal about what many people have said about the patience of ICANN in the last 7 or 8 years and this is a procedure that we have to remember

and hopefully they will be very helpful in creating the project and I am happy to be part of it.

Brian Cute: Thank you, anyone else from Berkman? I want to know something Urs, you talk about John Crouse and how he is in feedback for the end of September. One of the important things for us and you are going to be hearing this morning and tomorrow in each of our working groups is the work that we have done so far.

And the fact finding even some recommendations that are now in view or potential recommendations that are now in view, is sharing that with your team and getting some feedback from your team as the working groups, work in parallel with what Berkman is doing. So hoping that you know John and others will be available to provide feedback to the working groups in the short term so that they can in parallel bring some very concrete suggestive recommendations to Boston when we meet in early October.

Unidentified: I am all for information sharing and working together and the more that we can communicate our feedback toward the next [inaudible 43:12] so I appreciate that.

Brian Cute: Thank you, Erickk?

Erickk Iriarte: I want to know where is the scope of the research if you only [inaudible 43:36] or a vision that is the same vision or is acting in the past years. [Inaudible 43:48] around the world makes a difference. I really want to know.

Unidentified: You said that's decoration [inaudible 44:05]?

Urs Gaser: Thanks for this question. This is a very important question. As you can tell from my accent, that [inaudible 44:18] I have multi language challenges that you are facing, you are quite right. We have started with selected articles, pulling the articles published in English. You will understand the capacity is limited in the timeframe.

We will not be able I can tell that right away, we will not be able to engage in a multi language literature review comprehended by [inaudible 44:54]. Of course we are happy to include and incorporate materials in other languages besides English, we certainly do that all the time. We have an international approach, we have an international team for our research to comprehend, also it could be wrong.

We clearly reach out to various colleagues in other countries. I agree that something replaces for a multi-lingual literature review, but I [inaudible 45:43] I hope you get my commitment to [inaudible 45:47] that includes just a few points not only [inaudible 45:54] and other terms for of course the interest prevented by the people in the interview and by inviting geographic people of different countries. So it is not a perfect answer, but it ensures what we are committed to and care about.

Brian Cate: Yes, please Erickk. I have a request online that everyone speak a little more slowly and clearly.

Erickk Iriarte: Okay in effect I am speaking in English and that is somewhat difficult for me, but. I just saw the document that said this morning about the bibliography and sorry I would like to repeat that I don't see any document outside of the common spaces. I don't see any document from outside the Brazilian government that sends some reviews about the international government.

I don't see any document about Chinese area, or Asia, or Latin AmErica. So I don't agree with you. I don't know, maybe you don't have the time, but almost the principle document [inaudible 47:08] would be very useful, no?

Urs Gaser: So let me clarify. First of all again that the spirit of sharing this is a work in progress, it is a preliminary, it is not comprehensive. These are articles that are generally informative as we say. It is [inaudible 47:34] work. We haven't focused in particular of submissions by governments. This is only one small part of our efforts to inform ourselves and to incorporate feedback. Of course we review public submissions, including submissions by governments.

We have had 20 days, there is certainly a lot more work that we want to do including ensuring diversity of opinions and improving on the geographical scope. The only thing I said is don't expect us to come up with a comprehensive review in 10 languages even to do one in one language is highly ambitious and for us is by the over fees our working tools, our instruments, and only one particular instrument in the suite of sources of information is being considered. Thank you.

Brian Cute: Thank you Urs. I have a question from Mr. Xang.

Mr. Xang: I would like to join teaching to elongate an issue proposed by the Chinese Internet Committee along the popular comments if it is possible, if it would please you.

Brian Cute: Okay.

Urs Gaser: I'm sorry could you repeat the question if it was addressed to me?

Mr. Xang: I would like to [inaudible 49:04] to the language issues posted to the [inaudible 49:08] was speaking to the Chinese Internet Committee along with the popular comments. Is that possible? I would like you to pay attention about it.

Brian Cute: I would like to echo that as well. Let's not just, obviously Urs it's not just a matter of the articles that Harvard is going to study by way of background and scope but the recommendations of this team are clearly going to touch on multilingual and the importance of open and full communication in the context of public comment in other contexts.

So clearly our recommendations are going to touch on this so that the foundation of this which I am sure you will appreciate in the Fall. Cheryl.

Cheryl Langdon-Orr: Thank you Brian. An aside, but it is an example of what Mr. Xang is saying. The greatly appreciated effort to have the translation from Chinese to English done of the single piece of public commentary we

managed to get in from China. I find with far too much happening, it is not timely.

We are making it possible for people to contribute in languages which are natural and more easy for them to work in but when we get to the corporate end of that spectrum, it is not being dealt with in an equitable manner, in a stately manner and I find it kind of amusing that the link can even have a version 2, that link takes us back to the Chinese version, not the long awaited for English translation, oops.

That's just what we need to improve. It's next steps we need to recognize. Small steps are started, one more to continue.

Brian Cute:

Okay, we have about 45 minutes left; we need to hear from Caroline Nolan. But before we hear from Caroline, does anyone have any substantive questions about the progress report because I want to also reserve time for us tomorrow because again the review team has not had the time for us to look at this document in full. Let's get to substantive questions on the work and then we will reserve time for tomorrow to follow up. I have Willy first and then Chris.

Willy Currie:

Thanks Brian, Willy Currie here. I just want to raise a few general comments about the public participation section and I think we will get into this in more detail tomorrow when the Working Group interacts with you, the role of the GAC. To draw your attention to the processes by which the Board and the GAC itself are discussing what the meaning of GAC participation is in policy processes and the nature of GAC advice.

And it seems that at the top level there is a tension around the extent to which GAC advice comes in at the end of the policy process as opposed to at the beginning and during policy processes and I think it would be useful to explore this a bit more fully in the new GTOD policy process around the dropped applicant guidebook and to track the various forms of intervention the GAC has made on different versions of the DAG in different forms where the communication has been letters to the GAC chair or principles, documents related to new GTODs.

Because I think that will open up a particularly useful line of inquiry around what constitutes public participation and what is the role of the GAC in making input into public policy dimensions into something like the new GTOD process. So I just wanted to signal it and I am sure we will signal it in more detail tomorrow. Thank you.

Brian Cute: Thank you Willy, I have Chris, and then Larry, and Cheryl.

Chris Disspain: Thanks Brian. I just wanted to, I have a couple of comments but I am wondering if they would be more appropriate for tomorrow. Are we going to have an opportunity as a group to discuss this document today?

Brian Cute: Whatever we have today and then we will reserve some time tomorrow.

Chris Disspain: Yeah, then discuss it with Berkman again?

Brian Cute: Yes. Larry.

Larry Strickling: I was interested more in the construction of the hypotheses at the end of the document and what those represent and how you see those evolving over time and I will give you my substantive comment first, the overarching one, which you may have answered earlier, the one about the separate that will be done on corporate governance.

Obviously, the hypotheses are structured focus first on transparency in terms of the input coming into ICANN. There are some hypotheses coming into ICANN as to how you define accountability which I think is worthy of a separate discussion, but just taking for what you have seems to be confined to post Board decision review and what seems to be missing, to me what seems to be a large gap in the existence of a hypothesis is the actual hypothesis making a decision.

That may well be what is coming, but I would be interested first in hearing a general discussion about how these were put together, what you see the role as them being and perhaps any response to my more substantive question, specific question as to the quality of decision making. Urs?

Caroline Nolan: Can you respond to this, I wasn't listening?

Urs Gaser: He wants to know how they were put together.

Caroline Nolan: Oh, sure.

Brian Cute: You're audible. Can you hear us Berkman?

Urs Gaser: Yes I think that John Pamfrey may want to weigh in.

Brian Cude: Okay thank you.

John Currie: [Inaudible 56:04] and make sure we don't overlap. Larry I think your initial comment is hugely is [inaudible 56:12]. There is a gap that we haven't yet filled. I think that the approach for these hypotheses which they, and I am very happy if it works for others to jump in about it as well.

But from my perspective, a matter of saying here are the basic ideas that we on the basis of our background knowledge and to be honest, a bunch of meeting that we have had with Cartegena team kind of put some things on the table much as scientists would as in the beginning of a research project and knowing that we have a very short window in which to gather data and to test them.

What we wanted at this stage was not to put something before the public community and the ATRT and the others which is faulty or that goes too far or is over claiming but rather a series of statements that would suggest direction and where we are headed and get comments. Your notation in terms of the GAP decision making process is precisely something that is useful for us to hear at this stage.

Where we go from here at this stage is methodological perspective is to be testing those hypotheses. We have as you know, a large group of people working with us and each of us individually trying to understand this series of case studies and as we go through the case studies we need to have something against which we are pushing so that the case studies

don't go in every possible direction, rather they are testing these hypotheses.

So that is the function of them. So you could think of them as heuristic tools but really they are two fold, one in terms of getting some feedback from you who are paying close attention at this stage and then secondly as a tool for ourselves against which to be doing the rest of the work. But I think that Professor Bookherdt's from the University of St. may weigh in next.

Howard Bookherdt: Hello everybody, my name is Howard Bookherdt, I am the president of the research center of information log at the University of San Gollen and I want to introduce myself to everybody who is present in this conference. Adding to Urs and John's comments, sort of giving a perspective on the question we have just been asked, the hypotheses in as far as the regard to transparency, concentrate on mechanisms of transparency and within our, in the context of our further work we will become a little bit more explicit on the objects of transparency.

Let me give you an example. One of the problems too to simply learn about the internal decision making process of what I would like to call the ICANN administration is the interpretation of the deliberative process exemption which is very strong in ICANN's defining documents on transparency.

So obviously working on how this kind of exemption can be perhaps restructured can lead us directly to the question, how internal decision making processes leading up to abort decisions will eventually become

more transparent, but as I said for the time being we are a little bit tentative of that and we have been concentrating on processes of transparency in this context rather than naming the objects directly at this point, thank you.

Brian Cate: Thank you. Willy?

Willy Currie: Willy Currie. I would just like to pick up on Larry's point about the hypothesis about the accountability at the moment reflecting how the formal review process is undertaken.

It may be that one of the ways into looking at the Accountability process is to see to what extent ICANN reviews its processes on an ongoing basis and this in a sense is one of the, if one reads 9.1 Information of Commitments part of the commitment is that I should be continually assessing and improving ICANN Board of directors and assessing the role and effectiveness of the GAC input, continually assessing the way in which ICANN's decisions in terms of the public.

So it may be that the hypothesis should be expanded to look at what mechanisms ICANN has in place to review and see if any of its community organizations or processes are functioning effectively and seeing accountability as not just after the fact matter, but something that needs to be built or is being built in, in various ways on an ongoing basis, thank you Willy.

Urs Gaser: This is Urs. This is extremely helpful and exactly the kind of feedback we had hoped to get. I agree on the substance and we are happy to be fine in that and in the processes. Mostly we are looking forward to a question

what the Working Group has in mind on this particular issue and how we could organize ourselves when it comes to this particular accountability issue whether it would be possible if Berkman focus on particular aspect while the Working Group on the review team will cover other areas so that we could be complimentary and share the results of our deep ties or whether you think it will be a better option that Berkman involves in all various aspects as you just outlined.

Cheryl Langdon-Orr: Thank you Brian, Cheryl here. I think the former of the two suggestions would be preferable. I think there needs to be complimentary work teams and what Berkman has been complimented to do. For example, following up on Willy's earlier points to some extent what he was saying was to follow up referring to Larry's comments as well.

The time the input of GAC advice for example and the measure of when the most effective time for public input in a policy development process is, is something that seems flux at the moment. I think the review team work group is in a better position to have knowledge of and understanding. I know Warren is on the line and it is something that our workgroup #3 is particularly clean at looking at.

A whole new PDP process is in policy development, guidelines coming out of GNSO. We've got new models being quite literally inked right now. We've crossed community work groups and for the first time, on recommendation 6 from the morality team and public order issue, we've got the two ACs and the GNSO forming a tri-Apartheid, these are models that have never been seen before. I think perhaps that explanation of what is valid what might be worthy of taking it to the next step, belongs to the

remit of the work team and possible next steps where Berkman can give us the recommendation of who we are and where we could go in an academic sense, that would be a useful foundation.

Brian Cute: Thank you Cheryl. I have Olivier and just one note. Warren and Louis we know you are on the line, we know that you are out there, please pose any questions you may have of a substantive nature. I want to make sure that you are able to access as well. Are you there?

Warren Adelman: Yeah I'm here Brian, this is Warren and you know as I listen to that I absolutely think it's something that falls within the work that WG #4 is doing. I can't speak for Louis, I'm not sure if he is still looking out the window in Maui.

Brian Cute: Thank you Warren.

Louis Lee: I'm here.

Brian Cute: Olivier please.

Olivier Muron: Yes good morning. I just want to make a short comment because we are going to discuss about the work later on this morning. Larry raised the question about the decision making and I wanted to know if the question of the Board composition and [inaudible 5:33] that this question is viewed as very important by the community and I was wondering if your thought about that will be included in the corp-wide governance work that you mentioned.

Brian Cute: Urs that was a question on skills for the Board members coming out of Working Group1, which we will get into more detail later. Let me just add to that, John Coates in particular his area of expertise was what we saw as being particularly useful on this front so we are looking forward to your support.

Urs Gaser: Absolutely, absolutely as discussed before this is the work that we will be focusing on over the next few weeks and we are delighted to work with the Working Group #1 on these issues.

Brian Cute: Thank you, okay we have just under half an hour so I think we should transition to hearing from Caroline Nolan unless there are other substantive questions from the team. Transition to Caroline Nolan's presentation on what Berkman's been doing on the public input, public common front.

And as Chris suggested we, as a team, we will have a discussion about this progress report and then return to question and answers tomorrow morning, with that any other substantive questions? Okay Urs, if you have any other substantive questions. Okay Urs if you want to have Caroline present.

Caroline Nolan: Sure. Thank you so much Brian and thank you all. I just want to quickly respond to some of the earlier comments. Number one, on our earlier discussion the annotate bibliography, we would certainly welcome recommendations for papers and other materials as we have noted this is just a preliminary pass and we would love to engage with the Working Group in particular regarding additional recommendations and number

two, I would just like to know that it is very useful to hear from all of you in an ongoing way.

I really thank you for all of your comments regarding the GAC, I know we will be able to talk about this in more detail tomorrow, but I also wanted to note that Cheryl your comments regarding working groups 3 work on exploring new models. It is particularly useful to our community and public participation work so we very much look forward to working with you on that front as well.

As Urs noted in his opening remarks, the public participation cover note and three examples are a starting point for exploring some of the cross sectional issues that we had noted in our original proposal and really as an opportunity to test the approach to fact finding so this is purely fact based so we realize that there are gaps in some of our research.

We definitely welcome your input on where we can enhance it but again it was an opportunity to enter into a discussion with you about our mode of data collection, some of the inputs that we're looking at as far as ICANN public participation processes. The manor in which we chose to do this was four many case examples.

Again, we have done as Urs described, our preliminary fact findings, a survey of the literature, blogs and other things. We have also have our own work, Berkman's previous work on public participation and then also looking to input the review team and with those in mind we began to look at four small examples, try to present a preliminary description of the different modes and means of public inputs and each of those processes.

The timetable where possible in the policy development process and ideally we tried to orient towards the case studies. Again, with regard to we hope and plan to work to all of the working groups was an initial opportunity to start to test out some of these research aspects and fact finding elements.

So the first three examples are associated with the GTLD case. We did an outline of the DAG, the expression of interest proposal and we also looked at some of the public participation process associated with the IRT. We tried to look at a variety of different inputs including public channels, written transcripts, some of the public comments and their summarization and again started to put together a general framework certainly for feedback, but as an opportunity to start to get a working approach in place.

As this memo outlines in the second section, it just quickly noted the purpose of the document. Some of the inputs that I just described and then the third section, we outlined some of their research questions and hypotheses that we are working on related to public input processes. Again, this is just a starting point for understanding the different mechanisms at play and the various activities that comprise ICANN's approach to public participation.

As a starting point we have outlined those issues in terms of process so again this is looking at how public inputs are structured across different policy decisions. We have looked at each of the case examples and not gone into the second step of analyzing them across other inputs in another

case study. But within these we looked at the call for public input, so we tried to determine what channels and processes were available.

To your earlier point, looking at what translations was available and in which moment, timing so at which point in the process did those comments and other types of comments occur. Information and data related to the decisions themselves. So what was available to the public?

As far as our second stage within looking at individual and community input, we looked at synthesis and communication so the role of the staff and others in clarifying both the process pieces what forms were available at what time and at what point in the decision making process and try to get a sense of where those fed into the Board.

Some of these questions are open questions and are not reflected in the write ups that we did which were purely based on facts that we were able to find online but we expect in the interview process they will become more clear and there will become a good opportunity to get at some of the gaps and open questions that we have.

The final piece within the general process area was focused on practice and this was more of a generalized understanding of consistency and methodology for channels of public input and consistency of protocol, what types of decisions might require public input and then again, this notion of volume and timing were public comments occurring simultaneously with other comments?

There are questions here again which will become much clearer when we move into our interview process regarding how taxing or how complex it may have been for individuals who were interested in feeding into a process.

The final question within that zone is on cost. The second broad bucket that we began looking at and again certainly relates to Willy's comments and Cheryl's questions as well looking at direct versus indirect input so trying to parse out participation and the first order as the individual but also participation within supporting organizations and advisory committees in terms of their capacity to respond to and bubble up individual inputs and finally in the third stage, input them into the Board processes.

Within the scope of that inquiry, there is a focus on consistency across different bodies again we are very much again in the opening stages of that process, but we are trying to [inaudible 13:50] is brought into the deliberations of the various supporting organizations and advisory committees and then in the second part of the representation question, we think about how those organization feeds into the work of the Board and this is looking at how different constituencies weigh in on a certain policy decision. I

n particular, what is the role and influence of the GAC as previously. I think in a final note, bringing us back to a previous conversation regarding the geographic and cultural diversity that we are trying to have an understanding of geographic and cultural diversity. Looking at how

representative the bodies of the ICANN community and also to what extent are those inputs part of the decision making process.

Brian Cute: Is that it Caroline?

Caroline Nolan: Yes I think I will hold off on going into the particular examples. You have them in the pack and I would be happy to answer any questions along those lines. Again these are initial fact finding and an opportunity to look at the different inputs that we are thinking about as far as analyzing these different smaller cases, which alternately will feed into the broader case examples.

Brian Cute: Okay and thank you and also thank you for that closing note on multilingualism as we have underscored as being very important in terms of the work product. Could you just speak briefly, obviously public comment and input maps most directly to Working Group3 in our Working Group structure. Could you just speak briefly?

My understanding is that this review of three different modules of input is going to be mapped to some of the other working groups as well to the extent that there are connections there. Can you speak to that please?

Caroline Nolan: Sure absolutely. Again, I look forward to having a formal discussion with team 3 an explanation of the models that Cheryl mentioned. I think that will be a great opportunity for us to ensure that our research is coming together with your activities in process. I think clearly that there is a role here for overlap with Team 1.

So looking at Board performance and in particular how different bodies feed into the decision making process and I think having a holistic understanding of public participation as both individual input as individuals but also within supporting organizations and how those organizations may represent the public interest to the Board and how that works.

There is clearly overlap as well with Team #2 and Willy's comments too on the GAC were particularly useful for us in this stage of our process, but certainly the GAC I think responds to and receives public input and in turn conveys that to the Board and I think that having a clearer understanding of what the expectations are with regards to both the decision making process and also their representation of the community.

Brian Cute: Thank you, any questions for Caroline? Cheryl.

Cheryl Langdon-Orr: Not so much a question Caroline as a comment and that is to draw your attention to something that work team 3 has at least got in its work team plan. We have not actually got on to the work of doing and that's exploring how various forms of input into these processes and the Board's decisions can be predicatively valued and weighed.

For example, should Cheryl lend all writing from her rural office in Australia's voice in a public comment? Have the same weight to Cheryl Langdon giving a piece of advice based on 5 global region input based on 125 individual at large structures based on the outreach to thousands and thousands of Internet users. But, at the moment it appears years? Over to you.

Brian Cute: Any other questions? Warren, Louis feel free to jump in. Fabio?

Fabio Colasanti: I think the answer to these questions and concerns if I remember well working on accountability that the Beckman group has already identified. It is the question of giving it feedback. Because I don't think that when it comes to public comment, that you necessarily need to have a waiting, and numbering, how many people have expressed a certain view, but you have to give an assessment of that view.

There might be a very rudimentary remark that comes from one person writing from a rural office that is perhaps very relevant and should be taken into account that might be another one which has been posted by millions of people but bumps against a legal or technical obstacle. That's it. So the real answer to your question is the extent to which ICANN the Board will be able to respond to the next plan and the extent to which they take public opinion into account. That is something we will have to return to.

Brian Cute: Thank you for that intervention Fabio. Any other questions? Cheryl.

Cheryl Langdon-Orr: Just as a follow up from what Fabio was just saying. It's interesting being involved in a number of work groups right now as Brian and I certainly are and, you too Warren? We are in the process of doing that feedback from public comment. There is a great deal of time, energy and focus on responding and reacting on our reports back after public comment that shows that consideration of opinion has been given.

So that is something that is already changing and has changed in a very short period of time. The most detailed reactions to public comments are seen in the example of the GNSO council has in front of it at the moment. It is the PPSC work on the policy development guidelines where I think it is one of the very earliest examples of the most thorough reaction to all input from the public comment.

So we have been getting some benchmarks and standards that we might be able to look at again, next steps in the future. But there are still the issues of when you have an advisory committee or a major constituency of a support organization. Where is its voice compared to Mrs. Jones?

Brian Cute:

Thank you. If there are no other questions, I am going to move that we exonerate our break and take a 15 minute break and move to Working Group one's presentation and interaction with Berkman. Are there other questions? Again, thank you for the presentation, it's fully appreciated at our end and this is an in progress, work in progress and that you just begun a mere 20 days ago. Thank you for the report this morning from all of you on the Berkman end. We have one more. Cheryl please.

Cheryl Langdon-Orr:

Thank you Brian. This is not directly related to the presentations from Berkman, but it is another point from Karen that was put into the Skype chat earlier today and I promised I would read it to the record and I will. Can I raise one Meta point says Karen? The ATRT is very short of time and under these circumstances and will ICANN staff suggestions be given time and prominence? Is it not the case that the staff effectively has vetoed the ATRT which is to discuss? That is Karen's question I guess we have noted it.

Brian Cute: No, the answer is no. There is no effective veto and this review team is painfully aware of the time constraints that we are operating under and that Berkman is operating under and we are working as best we can to make sure that the work that comes out on the far end, has a solid analytical basis and it can be embraced by the community. That's the response. Any other questions? Alright let's move to a coffee break and Berkman if you can hang on at that end and Warren and Louis, Louis count the waves until we comes back, we will be back in 15 minutes.

Louis Lee: Okay thank you, enjoy the coffee. I'll have a Mai tai.

Brian Cute: Okay we are recommencing. Berkman are you there?

Warren Adelman: Yes.

Caroline Nolan: Yes.

Brian Cute: Okay thank you. We are not going to move to the portion of the agenda where the working groups begin reporting to the review team and into Berkman and their individual work. We are going to have Olivier Muron who is the lead of work group 1 give a report and he will be assisted by Chris Disspain.

What we would like to accomplish here Urs and your team is number one, have you hear the concrete data gathering and early analysis that has been done on some of the issues that are maps to the particular working groups with an eye toward giving Berkman some substance that it can then take

and do its own research and come back to the working groups on an individualized basis with suggestions for finalizing the work, recommendations for getting to the final work product.

For this Working Group1 and for all the working groups tomorrow, I would request that to the extent that in your early work you see possible recommendations recognizing that we are still in early phases but if your work has made visible specific possible recommendations, let's put that on the table and begin to discuss how we could progress them to a final state, with that Olivier?

Olivier Muron:

Thank you Brian. We are Working Group1, this group of Working Group1 is [inaudible 25:09] performance I would assess and improve the performance including governance, selection, composition, exhibition and decision making. The composition of Working Group1 is Fabio Colasanti, Mr. John M. Curie, and Chris Spain, and Chris and I are co-chairing this group. As far as the work progresses we are the first for analysis and feedback from the community.

The question posed to Marina Del Rey, the face-to-face meetings in Brussels, on the phone was open on July 9th and we still have comments coming in this phone. So, so far two topics [inaudible 25:55] and the group decided to focus on this issue in the deliberations. Number one is composition skills of the Board of the nominating committee. So analysis of the input showed [inaudible 26:15] on this topic.

So very surprisingly they took all the things they were presented with and non-commercial in the private sector is also represented. Some suggested

to have a membership and the membership electing the Board, they are not very clear but the member will be decided. I mean who would be the members of this, in this model. There were quite a few comments during the meeting committee and process and the complex transparencies.

There were quite a lot of comments on this case included in the Board and this seems to have the diversity of the Board. So clearly the composition of the Board is a key element in the time I mean I can contribute to the transparency and that is the first topic we decided to work on and we will work on this topic of skills from the Board advanced committee.

We had a talk with Miss Jennings on that and also some comments from [inaudible 27:29] and something good to report of skills. The second topics that really come out from the ratings and the meetings we have is the question that was already mentioned this morning one time on the transparency of the Board decision process and the explanation of this decision to the community so there are many comments for us to pick.

The decision can be better justified and explained to the community. We will also provide an explanation of a decision explaining what they [inaudible 28:06] into consideration or not. We will raise this question on this second topic also. So that is to summarize. We decided on two topics now Chris will tell you more but first brainstorming and ideas about what the proposition could be on these two topics. Chris?

Chris Disspain: Thanks Olivier. I was hoping we might be able to get the document up on the screen, but the screen is not turned on so. This is currently not plugged into anything else. I've got it here; I am plugged into the projector. It's not

turned on. It's on, are you sure? Alright, let's see. No, I didn't think it was on. Nope. It doesn't seem to want to work. F7 yes, it is function F7, nothing.

Look, I'm not going to worry about it; I am not going to waste any time. Brian, if you've got that note, you can send it out to the group? I will just take everyone through the document. So I will take you through briefly the document. What we did is we produced a very brief document.

Okay Alice can you post it in the Adobe room? Excellent idea. No, nothing. So what we did was we drafted a document which had two purposes. One was to try to get our thoughts clear amongst ourselves, but secondly we decided to send this document out to our friends at Berkman in the discussions that we began to have in this session to begin to have some input and feedback in our initial thoughts and to also tell us if they had any suggestions themselves about ways in which the two aspects might be dealt with.

So what we were looking at first of all is the composition of the ICANN Board and the role of the nominating committee. Now we had a discussion about whether this actually is relevant to transparency and accountability and decided that it was. The director is elected to the Board by the various supporting organizations and accountability, I'm sorry and Acs may possess a range of skills that they bring to the Board, but their primary qualification for participation on the Board is as far as the So is concerned who has elected them, is their ability to represent the interests of their constituency.

So, if they bring some other specialized skills to the Board as well, that's excellent, but the overarching process should not assume that they will do that. But it is acknowledged of course that it is extremely important to ensure that the Board possesses an appropriate mix of skills and some examples of that Board of skills might be those such as public policy experience, corporate governance experience, legal experience, finance experience, and audit experience.

So the ICANN Board's ability to diligently execute responsibilities in these areas is directly proportionate to how accountable it will be to its stakeholders. If the Board is lacking in finance skills, then it is very difficult for the Board to be accountable to the stakeholders on financial issues because there is no finance skill on the Board.

Unidentified: Or put in very simple terms you could be a typist it could seem to be confusing how you do your job, this is one topic which is accountability, which is how well you report what you are doing and you can be completely incompetent, but you are doing a completely brilliant job of reporting it. I don't understand the link that you are making.

Chris Disspain: Well there are two aspects to it aren't there. There is accountability purely in the sense of reporting and there is accountability in your responsibilities to your members if you will as a Board. If you are accountable, if all you are doing is looking at your accountability from a reporting type of view, it is very simple; you have lots of [inaudible 33:23] reports.

If what you are trying to do is be accountable in the sense that you are performing your role as a Board, so put very simply, and I stress that this

would be in an ideal world, just using this as an example, having at least one Board member with a skill set to be able to question ICANN's legal team from a position of authority because they are qualified as a lawyer goes a long way, well one it goes the way a Board should have.

But secondly, it goes towards how the Board is to the community. Because the Board is able to say to the community, we have tested this and we have tested this from a position of having some knowledge about it. That is what I am talking about. Does that in any way answer your question?

Unidentified: Yes, that is helpful. I think you need to be clear then when you are talking about performance. I would separate those out and what you are talking about is performance from the Board and accountability there is an accountability element in there, but the accountability mostly is in the sense of explaining the reporting rather than explaining and getting it right. I think you are focusing more on the performance issues. I think that is valid, but I think you shouldn't run those together, I think it would be helpful to separate them out.

Chris Disspain: I take your point but I would argue that the reporting exercise goes towards transparency whereas the possessing the correct skills set across the Board goes to accountability because the Board is there to be accountable to someone or something and in order to do that, it needs to have the skills for that accountability to exist. But I take your point.

Brian Cute: A question from Larry, Chris.

Larry Strickling: Now that we have it up on the screen, second paragraph you talk about the primary qualification for participation is the ability for certain directors to represent the interests for the constituency, are you all looking at that specific question as well in terms of even though you may have been.

In other words, are we looking at Board members like members of a parliament who are representing communities or are we looking at it more in the context of a corporate Board where you have a fiduciary to the corporation, not to the individual constituencies that make it up because that would be part of this inquiry to consider as well.

Chris Disspain: Thanks Larry and the answer to that is that is an answer for us to consider. This document is very much supposed to be a starting point and no more than that. But it works on a principle that I think we are the grade which is that there is to some extent a difference between those members of the Board who are elected by their SO or their AC and those who are appointed to the Board.

Those elected by their SO and AC go through a process of election and there may be all sorts of reasons why a particular individual or individuals end up on the Board. To take a really specific example, the CTLD community last time around appointed Michael Silva from South Africa to the Board as one of our representatives and we did that for several reasons. One of the reasons we did it was because we had received a message that it would be useful if the person going to the Board had some Board experience and Michael has Board experience.

We also appointed him because he has legal experience and he is a CC person. The point is, is that is actually an election process so effectively there could have been 24 or 25 names for that one seat and the person who wins that election is the result of a large vote amongst their 110 current members. So we have very little control over that mechanism other than from a managerial point of view of saying this is what we think should happen, but it is up to you the members to decide.

On the point of the nominating committees to the Board, there is scope there we think for there to be defined, some defined areas of skill that the nominating committee is tasked to find. They would be told just again as an example that it would be fantastic to have on the Board a person with finance experience who is able to engage in deep and meaningful conversations with the finance people of ICANN from a level of authority.

Brian Cute:

If I can follow up as part of the discussion of the working group, the general concept of the working group, there is a set of skills that is to be defined that, that would be aspirationally something that would apply across the entire Board.

The objective here is to address the skills set across the Board, but with recognition that between the two mechanisms the political mechanism on the one hand and the non-comm maybe the mechanism through which this could be applied more quickly so there was some discussion around that point to put a final point on it.

Unidentified:

I think I understand the, and I support the idea of having a broad basis of skills on the Board. What I am a little concerned about is the idea that

depending on who elected you, you have a different duty as a Board member, is that where we are headed here.

Chris Disspain: No absolutely not. It's the duties of a Board members, I am talking about it solely in the context of what skills you might be expected to bring. In other words, as a Board member, a broad statement, an elected Board member should be expected to bring nothing other than his role as being elected by the community.

Expected to bring, he may bring, he or she may bring a whole bunch of other things, but there shouldn't be an expectation that you are going to be able to fill your skill set by using the elected directors. You should be, the expectation should be fill your skill set by using the appointed directors. I mean [inaudible 39:45] brings a skill set to the Board obviously, but that is in my view secondary. It is a plus, but it is not expected.

Brian Cate: Peter.

Peter Dengate Thrush: I have a huge problem with this because it is in direct breach of the bylaws and I wonder if it is just a semantic issue or if there is a more fundamental disconnect in what Chris is saying. The bylaws say absolutely explicitly the directors shall stay as individuals [inaudible 40:18]. It is 6 of 7 in the Director's [inaudible 40:23]. The directors should stay as individuals and GD director and unless there is reason to believe on the basis of ICANN and not as representatives of the [inaudible 40:31] I suggest that the primary -

Brian Cute: No, I can fix that right away, you are quite right and the way that it is represented is a problem and it is actually, it should in fact say something like the second sentence, a more specialized expertise should not be assumed so in fact it is the use of the word represent.

We have been talking about this already. It's the expertise they bring to the Boards. So the primary expertise they bring is of their own community. So I agree with you about that, that we need to change that. That is what is intended, it's intended to speak to the level of expertise, not their representational level.

Unidentified: I agree and the point that I tried to make is that the intention is that we make recommendations which would apply uniformly across the Board irrespective of whether you come from representative of a bucket or a non-comm bucket. So I think it is a matter of semantics and I think it can be fixed. I didn't think there is any intention to suggest there should be purely political Board of directors who are elected and represent there constituencies only Peter. That is not the intent at all.

Peter Dengate Thrush: How will that second paragraph be changed?

Brian Cute: At this stage I have no idea. It is not intended to be anything but a draft discussion document; this is a document that is intended to start drafting recommendations. This is just a discussion document, but your point about the use of the word represent is quite correct so I will change that in the draft that we are using so that it is clearer for the purposes for our discussion.

So just were working on this, this is just a discussion document; it is nothing more or less than that. It doesn't seek to make recommendations or anything like that at this stage.

Larry Strickling: Sorry to keep persisting at this stage but on Peter's point, is part of the Working Group1 review, will you will be evaluating the extent to which you think section 7 is actually representing the way votes are done on the Board. Is that part of your inquiry?

Peter Dengate Thrush: I think that we would be looking at what has been suggested in many inputs about the way in which the nominating committee is working because after all, the nominating committee exists there to address this issue and the question is, does it work?

What does it mean to have independent directors, independence from whom? Appointed how? I think that we are still at the very general level at the moment of the discussion. Yes I am not sure that that answers your question. Are you asking about whether we will consider if the performance of the Board in its decision making and voting appears to be at one with the bylaw that says that they must.

I am not sure that that is actually within our [inaudible 43:32] really. I mean that would be a legal analysis wouldn't it? Rather the decision making, I am not sure the ghost of accountability or transparency, I am happy to look at it.

Larry Strickling: I think it arguably goes with accountability and I'm not sitting here saying you should or you shouldn't do it but I was just asking because of the confusion that seemed to exist here a minute ago.

Fabio Colasanti: Can I make a comment on this? This is also for the benefit of the group who is listening to us. The skill that at the moment I feel might be lacking in the Board is this feeling of accountability. This would be the community at large.

This has not come just from inputs that we have received but was also my personal experience of the meeting that we had with the Board in Brussels where a number of the members of the Board were even questioning the possibility, the plausibility, the opportunity of explaining in detail the decision that had been taken and you will remember the interaction that we had.

So if there is a skill that might be missing there is a question mark, is having a sufficient large number of directors who feel this responsibility that is the community at large.

Brian Cute: Thank you Fabio. I will make a live edit to the document if you don't mind me taking the machine for a second and Chris if you want to finish up on your verbal points and then we can go to Berkman.

Chris Disspain: I am just going to put up a suggested change to it. If we can scroll down to the second part of this document, whoever has the control of the documents on the screen? Alright, she is amending it now, oh cool. Thanks, that's great. The very lack of representatives is the whole debate

for example, at large getting a director. The Working Group reports it not to the point of director because it would deprive the at large.

Brian Cate: Absolutely.

Chris Disspain: Of getting a voice on the Board because when you have an at large appointed director, and you remove the at large liaison, there can no longer be a champion in the at large interests, and you have to start championing the ICANN budget, the ICANN all the other issues.

Brian Cate: Peter, I can't make the change yet Peter. But I can read your suggested edit. So what Chris just suggested a paragraph could be modified to read directors elected to the Board by the various SOs and SCs. ACs may possess a range of skills but their primary qualification for participation is the skills and knowledge of the community from which they come.

If that is more agreeable, we can change the document accordingly. Okay, very good, we will make that change and Chris again finish up if you will and then we will invite Berkman.

Peter Dengate Thrush: So just very briefly, the transparency that goes into decision making and an explanation of decisions to the community. We are going to develop recommendations for clear mechanisms and procedures to ensure accountability and transparency so it includes issues, how issues are identified, requiring a Board decision and then considered by the Board, consultation occurs, how the [inaudible 47:40] is assessed, how the decisions are communicated to the community and so on.

I think in this particular area we are looking for input obviously from the ATRT as a whole, but also from Berkman on practical suggestions for improving the transparency of the Board's decision making.

Chris Disspain:

It is very easy to and one of the things that came out of the call that Libby and I had with Dennis Jennings which as scheduled for 20 minutes and went for an hour and a half because Olivier wouldn't shut up. There are step by step improvements being made all the time to transparency and I think it's very important that we acknowledge that as a starting point with this.

One of the starting points with this, one of the concerns about doing the independent research we will talk about later is it based on the assumption that ICANN is already an open and transparent organization or is it? But if you ask a question, can transparency be improved? You will always get the answer yes so you have to always look at the status and how you can improve on it.

At the moment what we have is for example a new process which I know Karen has commented on of having Board papers revealed of what's refused and what's not. SO that is a movement in the right direction. So there is nothing in that of any substance towards recommendations, but it would be very helpful if people could give us there info and feedback.

There are some suggestions about overarching statements about; there should be a preliminary statement about the issue that the Board is considering predictable reasonable periods for community consultation and so on. Those last set of bullet points are an attempt to start making

covering the issues that need to be covered and Fabio you did those as I recall so if you want to say anything. I think they stand on their own. I am conscious that we need to get the discussion going so I will shut up now.

Brian Cute: Thank you very much Chris. On the Berkman end, do you have the Working Group1 paper in front of you that Chris and Libby have been citing?

Urs Gaser: Yes.

Brian Cute: Okay so the floor is yours. We are interested to hear what your comments are or feedback, suggestions for the working group. Oh, excuse me I do have one question from the review team before we go there. Erickk please.

Erickk Iriarte: This is a comment from the conversation related to the bylaws the comments to the articles correspondence in the bylaws.

Brian Cute: Integrate sites to the bylaws, citations to the bylaws? I think that makes good sense as we, again this is a discussion document that we are developing. We can certainly edit it to include those changes.

Erickk Iriarte: Especially that the skills are appearing in a specific article all the people that will be selected to the Board is criteria for selection of director is [inaudible 51:05]

Brian Cute: Okay and if I can make one point to, I have an aside here. The review team could make recommendations to the Board that as a matter of implementation might require a change to the bylaws. That is understood

that that could be a product of our work and implementation by the Board. With regards to the specific Board provision Peter cited I the discussion that we had, I am not passing any judgment on that particular provision, but that is something that could result. Berkman on your end, feedback?

Urs Gaser:

Thanks so much, this is Urs. So this has been extremely helpful to understand where your priorities are with regard to the questions that you placed, I think from our first set of conversations we had with various colleagues the issue of Board composition which seems to have two aspects.

One is the skill aspect and the other one is the question of representation of interests and obviously they are related and this has come up in various of our informal conversations and interviews. Related to that, it has been mentioned only briefly the question of critical mass so we had several stakeholders indicating to have one good or independent skills in x or y Board member on Board.

But actually that you have to worry about having a critical mass of Board members that, or feel responsible to the community at large so that was kind of another aspect that was highlighted in several conversations we have had.

Brian Cute:

Urs, I think Chris wanted to intervene there.

Chris Disspain:

Sorry, just before we go off on this representation thing I think we need to put a stop on that right now. I do not think that it is this working group's role to look at representation. It is a misuse of a word in the document and

it's governed completely by the bylaw and corporate law which is abundantly plain and clear that when you are on a Board, you are representing an organization.

There really shouldn't be any argument one way or another about that and I'm conscious that we have a very big job to do and we really shouldn't be spending time looking at issues that are not relevant. So I just want to make my view very clear that we are supposed to be talking about the skill set of the Board not the representational aspects.

Brian Cute: Thank you Chris.

Urs Gaser: I just tried to report back from the conversation. We had to get a sense of what we heard in the conversations, but I am thankful for this clarification. I think Herbert may have some comments on some specific issues.

Herbert: Thank you Urs, again this is about our internal discussions and it is about showing [inaudible 54:43]. I think the issue of representation does interplay with the accountability and legitimacy. This being said, it is of course within corporate law and within all these institutions that the members of the Board contribute to the objectives of the organization in this case to ICANN from the background of the constituency they represent without being bound by this mandate from the group they are representing and that they have to act to the best of their capabilities.

The problem that is somehow connected to this and also with the capability or expertise question is that you come across and again this has something to do with accountability and transparency in this case that the

expertise you are looking for and so to speak the memory of the institution and the knowledge of the institution that survives the transition of the individual members might or will wander down to the level of the staff. You know you see this in governments; you see this in corporate institutions.

So again we are not reaching a conclusion here or making a recommendation, these are just some of the issues which we are discussing. Then it has been mentioned that what has been called a particular expertise and this is to be accountable to the whole of the community. I think this is something that might eventually be stressed a bit if it is not already perceived as being sufficiently stressed in the bylaws.

It might be expressed in the whole setup and the whole structure that the Board has to communicate that this becomes so to speak an ingredient obligation of each of the Board as such. One way to tackle the second issue and this is the transparency of the Board decision making process...

Brian Cute: Sorry Herbert, before you go on, I think Fabio had a question related to the first issue.

Fabio Colasanti: The comment that was made about the concerns about preoccupations with skill sets spilling over to the staff is legitimate, but I have the impression that at the moment that most of the concerns expressed by the community go more in the other direction. In other words, the social situation we seem to be facing is that for the organization ICANN working

very well, but driven by the numbers of concrete concerns that very often tend to be the concerns of the organization of the corporation as such.

Then the reason, the Board that is supposed to represent the community at large and the question that is very often asked is whether there is a balance between the staff, the organization as such and the Board and you should expect a set of conflicts, a set intention with the Board constantly reminding the organization of what its goals are.

The concerns that have been expressed by the community go more in the direction of not so much the Board influencing too much the organization. But going in the other direction, very often people talk about the Board being captured by the organization, but is structured by the staff. This is not something new that was discussed in the past as well.

This raises issues such as should the members of the Board be paid? Should additional mechanisms be introduced to give them more weight relative to the organization? When I discuss this, I have in mind the model with which I am familiar of the European commission but very often we hear comments about the staff capturing the commissioners.

The commissioners are quite aware, therefore they have organized over time, a structure of their own to resist undue influence from the staff. We are having a situation where the members of a staff of the European Commission in our analogy with the members of the Board, each have their own private office.

Certainly I am not addressing anything like this for the Board of ICANN. But the problem is, how do you give more autonomous expertise access to information to the members of the Board so that they might be able to resist, to have another view with what has been given by the staff.

This is the main concern. At the moment, there is a fear, justified or not, I am not in a position to judge that both might be captured by the organization just mentioned the fact that a lot of people say that the Board is showered with documents, with hundreds of pages that they have little time to read and understand and that sometimes they feel that they are forced to rubber stamp decisions that they do not quite understand. Thanks.

Brian Cate: Thank you for that intervention Fabio. Larry.

Larry Strickling: I just wanted to add to that and I do hope that the issue the Fabio raised is somehow put into this analysis again I don't come to know whether it senses what the facts are but I do think that a lot of exporter but I can just tell you that the process that gets followed has a tremendous impact on the ability of entirely well meaning Board members to carry out the fiduciary duty.

And I in my own personal contact was onboard for not a profit Board where in a decision of more mentors impact on organization we were brought together without any prior discussion or briefing given at 90 minutes briefing and told you can ask any question you want but at the end of the 90 minutes we are going to, the process was entirely created as a

weight of force vote without adequate investigation or discussion of the issue.

So I do think the question of the quality of materials Board members get beforehand the time that they have to evaluate them and discuss them among themselves. Those are all the issues I think are the art of the part I think before you get the end tie up with no sense that the outcome in this case is going to be one way or the other.

But it does seem that as you are trying to explore quality of decision making that the process it is employed. In addition to making all that public which is already raised and is happening on a separate track but just been on how well, what do Board members feel about the materials that they were given that the time they have their decisions their ability to really understand what they are being asked to vote on I think it is ought to be part of this evaluation.

Brian Cute: Thank you Larry, Chris.

Chris Disspain: Thanks Larry and Fabio, I agree and with that specific issue that you have raised in those terms I agree Larry I agree the next time it will be a part of it. I also think to pick up on Fabio's point. We are looking into reason why we said that it comes onto the skill set banners because as I said earlier if you have got one person on the Board who is able to take all those opinion an expert opinion from staff then you have at least got some interaction that may help you over come even at your own perception that there is captured from staff.

And then I also agree with you, Fabio and I also agree with you I think this particular instance I can again thrown up but doesn't matter but the case what we are able to talk about staff after capture rather than Board down capture.

Brian Cute: Thank you Chris, Herbert those clarifications and interventions if you could?

Herbert: I would like to ask the question which we had helped in playing around with here is what do you think about the idea if you would prescribe Board decisions to contain and have a certain format and to contain a set of information like for instauration of the discussions inputs, documents, of course main reasoning plus even distribution of votes and individual vote decision by setting these external obligations on the decision making document with that help to change and to improve the issues you have discussed.

Or would it even directly or by you know creating some criticism from outside that this documents reveals that this discussion has not had sufficient time to be discussed things like that. But you are thinking along these lines. Thank you.

Brian Cute: Thank you for the question. Chris.

Chris Disspain: I think some of the points that you have raised are already in outline covered by the bullets points the last set of bullets points on page 2 of the document which is the very much a brush attempt to at canvassing the

possibilities of such things as how is the Board brief? What was the document? Can we see the document and so on?

I think it is important to, I also think it is not important to not to do these things as you look into an idea world. The reality of the situation is this, if I disagree with the Board decision doesn't have transparent and calculi it is I disagree with it and I am going to be upset and I will complain it is a wrong decision and if I can find the way justifying that the process that hasn't been done properly then I will.

So we need to be conscious of the fact that the purpose of making the decision making process more accountable and transparent is to deal specifically with that we will be able to say well at least I know the process and I may not like the decision but at least I know the process and I know what the Board went through and there is a risk in that of course the risk is that the more you tell people the more opportunity they have to object the decision you make.

Brian Cute: Thank you very much Chris, Fabio.

Fabio Colasanti: The idea is that perhaps there should be some guide lines of the Board that each decision should be preceded by few variations that explain the process and that essentially address the issues about that the bullet points that Chris has explained. In other words whenever they take a decision they should have that convincingly say this was the issue.

This issue was put of public consultation in whatever way and their might be cases where there are oblique reason that say the public consultation

has to be showed we have to hurry up. But this should be explained and then they should be analyzing what were the possible options what kinds of impact this would have had on certain consequences on certain groups to which extent these groups were heard and were asked for their opinion, what kind of general opinions not individual opinions were given to which extent to the Board felt that it could share some of their concerns or not and so on.

So essentially goes on the idea is to require from the Board a very detailed explanation of the process and the explanation of the way in which they have received and reached the decision and perhaps it would be useful to have a certain reference document that would contain by expanding those bullet points or the minimum issues or the issues that has to be addressed in this introductory statement preceding every decision.

Brian Cute: Thank you Fabio. Herbert was that helpful?

Herbert: Extremely helpful thank you.

Brian Cute: Ok other reactions from Berkman side to working regimens discussion paper.

Berkman: My question would be what would be most helpful to receive from our site as I said we plan overcome these issues over the next few weeks what type of input would be most helpful?

Brian Cute: Chris.

Chris Disspain: Thank you I think basically it is just the force. What we want is if we have to come back to us and say we understand the context that you all are looking at, assuming that you do, and here are some thoughts that you might want to consider this as a group. I don't think there are some sports that you might want to consider as a group.

I don't think we are considering to you to do the work I think we are more interested in new components as models might be out there that we could take a look at and may be try and craft it to work for the icon environment that's what we are think. We are expertise I think your knowledge base I think that we are looking into on this particular issue.

Brian Cute: Anything, Larry?

Larry Strickling: I am not a member of this working group. I just want to give one suggestion if Berkman has not already examined the Board of survey that was done last summer I think 2001 is the last one I think I remember the one we surveyed the Board member and also I think you asked there was separate evaluation done for the chairman that may get at some of the issues that we are talking about how Board member experience the process of decision making.

Certainly I would suggest looking at that whether from that there might some questions to be added to your individual conduct of Board members that they get some of these issues extension you already have a full set of data from that earlier and report.

Brian Cute: Thanks Larry, Peter.

Peter Dengate Thrush: This two of those is the survey done of the Board along the line by the Boston consultant in grid and then is the Board self evaluation done last year which is underway the results may be published I think in time but I think of these two are the surveys that you can look at.

Brian Cute: Thank you. Anything else from Berkman?

Berkman: Not at this point thanks.

Brian Cute: Ok, we have come to the end of working men's presentation in terms of the discussion paper at this point of time perhaps we could talk a bit about road mapping and inputs and schedule. I will sign off, think you are on earlier on the day when we get started but this probably is good, I need to just look at the calendar.

We have as you know the midterm report coming from Berkman on September 8th but the recognition on the review team given you start date and given for another road that may be not be substance as we hoped originally as these working groups continue to work we are going to need your specific feedback as requested by Chris along the way in an interactive sense.

And again we have the calls every other week that we can use as a vehicle to have those interactions and certainly workmen ships will be reviewed by email and provide the input back to the working groups. But my sense is that the working groups should evolve their work to a point where we

come into Boston on 11th, 12th and 13th as in case of October to meet with you with very concrete propose recommendations.

And to achieve that they are going to need feedback whatever you can give them between now and my rough figure is the third week of September. This is my own date I am having to discuss that will think that the substance of input from Berkman for all the working group we are just working with working group we would need by third week of September, the working groups then have another 2 weeks to hurdle amongst themselves and craft.

Draft recommendations which again will be put up for public comments right after the meeting in Boston. Does that sound to you like a reasonable time frame with reasonable way to structure the interactions?

Herbert:

Well I am certainly ambitious, of course I agree on suggestion that we should interact frequently and basically provide comments on both sides of our drafts and very much in spirit of the system for few weeks perhaps identify more specific in that. The question that interaction raises are now is how do you envision this track this work team of providing feedback to work group who are working on as it relates to a set of recommendation that report that we are supposed to prepare.

In other words are we changing the model likely which would be perfectly fine with me, that we are in the more supporting role of working group versus preparing our own independent feed book in the scope or is it a combination of two things, thanks.

Chris Disspain: Well, I think we have been proceeding on a work strain that has a parallel path, you have groups looking at 9.1 in the inspective sections and beginning to develop a path for recommendations work analysis we have specific case studies that it has to undertake.

But those case studies are designed to map back to the respective sections of 9.1 or map back specifically to the work group areas of work so I believe there is a direct tie in you have right to raise the issue we end up with disconnected recommendations lets address that now. I don't think we should, I don't think we will but if you see a possibility for that let's address it, Fabio.

Fabio Colasanti: Let me make another comment on to address the comment that has come from Berkman's is undersigned, "I think it is a combination of the two but what do we need is as Chris reported we need to tap the knowledge base the Berkman and his group in the end of September which might completely mean answering to the best of your knowledge emails that would be coming from the working groups exchanges like this.

And we might be asking you questions about many different issues and I hope you will be able to give us some inputs. This doesn't in my view has been a personal capacity restricted in any way the content of the final report that you might want to make I can very well imagine that we might send you an email asking for your advice on a certain issue.

You might reply, that this is a silly issue but we still want to go ahead you point out two or three technical inconsistency in this silly issue, then it is to us if we want to grow that into recommendations and it is entirely up to

you not to include this silly idea in you final report. So we have both two tracks there is a preparation of your report which will be your responsibility but in the mean time we will need as much technical support from you as you give.

Brian Cute: Thank you Fabio, Chris.

Chris Disspain: I agree with Fabio, just to add a practical point I talk to each individual working group that I would talk to different group, one was talking about suggesting that it might be sensible to have someone from Berkman of their choice on their working group meeting list and have them attend, when we have calls have them on the call in an advisory capacity to ask the questions etcetera.

Willy Currie: Yeah, I agree that it is a sensible recommendation and each of the work groups has already had calls so Urs you and your team are able to plug into the working group that will make good sense. We had talked earlier about making sure that communication was we didn't want to have separation of discussion between Berkman and the work teams outside the entire view team to avoid creating work streams that would bump into each that would be a better phrase.

But I think in this instance of the time frame if Berkman wants to join the working group that would make practical sense. Let me step back and take bigger, a higher level snap shot this is a tight time table but again we have the draft recommendations going on for public comment mid October we the review team in Berkman still have more time you have your final

report to deliver I think 21st of October but we as review team are still going to have another month and a half before go to Cartagena.

We need to take the public comment into consideration into final recommendation but we will have additional time to factor in report as Fabio has characterized it and complete the work, Fabio.

Fabio Colasanti: An additional question, the remit of the document group is concluded to be delivered on you said on 21st of October but we should be having an agreement if possible that if at the end of November, beginning of December just before Cartagena we were confronted with one or two public inputs with totally new ideas that may be make some sense.

We will certainly want to discuss with among ourselves and we would very well much appreciate the ability the Berkman school to discuss that with use if we were to is the case, that we will be a difficult question about let's not rule it out.

Brian Cute: Thank you Fabio, Urs.

Urs Gaser: So these are all I find suggestions I am alternatively speaking supportive for this all the options that you have identified and could imagine the following work flow. First of all I agree the more communication the better, so the someone on the Berkman team joins the working group course if possible in terms of scheduling I think that would be needful.

I think this will not be the place where Berkman feedback will be provided but it will be just the purpose will be just to provide same page that you

are understanding what the working group is working on very much in and in the spirit of synchronizing the efforts and ensuring information flow across Berkman and the working groups.

The second element that I would be comfortable is that we would provide comments on next situation of the document that you sent out over the weekend perhaps in the third week of September or shortly before that so that you would have an opportunity to comment on the working group to revise discussion document.

And then third I think looking at the schedule we need and have to focus on our to producing again the backdrop of these interactions are all report otherwise I think we will put ourselves in a bad position acknowledging what you said that Aster Berkins submits it is only report that we have some more time to engage with the working groups and the review team again and discuss some of working groups recommendations in the light of the public comments. So that's what I would propose.

Brian Cute: Ok, that's sounds reasonable. Any other questions on working group one? Yes, Willy.

Willy Currie: Thanks Brian, I guess what I want to raise is something similar two we are look at into to an extent as a subjecting say the role of gag might be reviewing. It seems like there might be a parallel with working group one in terms of issue of to what extent ICANN commitments to continuously assess and improve the Board performance through ongoing evaluation with a specific examination of the Boston consulting groups to work.

The Board self evaluation shouldn't be done at that kind of metal level so that is not just the issue of composition of foremen's and decision making that also has an extent to the ICANN itself is getting feedback on the Boards, foreman ongoing basis.

Brian Cute: Thank you Willy, Urs any comment?

Urs Gaser: No, thanks.

Brian Cute: Ok, any other comment on working group one? Ok I think we will come to an end of that we have some of the agenda until noon. So if there is any other business we can go on to fill time to go on other business so we can break for lunch. Yeah we will start working group two, can I jump ok. You have got 15 minutes and let's start working group twos' report to the team in Berkman and we will go and take a break and come back after lunch, so Willy.

Willy Currie: Yes there is one problem with that we do have a set of questions which will be useful Berkman to have site of before we engage they should have them.

Brian Cute: Urs you have the working group 2 documents that were sent to you, correct? Those you have it right?

Willy Currie: Yes there was a question on email so I am not sure of who forwarded, I have got them on stick so that could be projected and perhaps emailed to Berkman.

Brian Cute: Urs, you have email in front of you?

Urs Gaser: Well I have several emails in front of me; I have to go through the most recent version of the documentary for the interview so if someone could resend that would be great.

Brian Cute: I am going to do that right now. This is how you email, text. Ok sure. Ok, let's go with that. But he still needs that isn't it? This is just the report let me get that to Urs by emailing. If you want to start go ahead. Urs I will be sending an email momentarily.

Urs Gaser: Thank you.

Chris Disspain: So the process that we have been going through in working group two if we can carry through if we have a draft work plan that has a number of steps which I will cover briefly and you can just find the document and the initial steps are those of analyzing the inputs from the public common questions from the community as well as the meetings in Brazils.

Examples of the GAC public policy advising ICANN to making a preliminary assessment and from this input we are preparing a deep seated question that we needed to answer to fully assess the role and the fitness of the GAC and its interaction with the Board as well as how effective GAC is on assessment of the role of the GAC and its interaction with the Board is.

And the reassessment of GEC and where we are at the moment is we have done the issues raised in the public comment questions and the two

meetings in Brazils were one was with the wood GAC joint working group and the meeting the between the review team and GAC of a part of the kind of take on the meetings in Brazils was to identify the issue and the process important and in terms of when which GAC could then be interacted with policy which we discussed briefly this morning and secondly the .XXX decision.

What I think is also important to note is that out of the meeting with the joint working group became apparent that the issue what constitutes advise, what constitutes GAC's advise to the Board is receiving a considerable month of attention between the Board and the GAC and that is a live issue that is running in parallel with our own process.

And we have site of a drafted reports I am not sure if Berkman has a copy of draft report of the joint working group but we found was extremely useful document sometimes of getting some insight into the kind of things the joint working group is considering and that together with the fairly solid transcript of the meeting between the review team and the GAC has given a sense that there are number of issues there which needs to be looked in more detail.

The joint working group draft report for example has a number of what they are coding options regarding the issue of GAC advice to the Board which will find the final report of the JWG which may or may not take place by the time of ICANN meeting in the CartICANN. I just list some of the options the JWG itself is looking at around the issue of advise to create a transparent register of consistent record to make apparent win where the

when- how the Board has taken into account or responded to the particular advice from the GAC.

Secondly, Board could consider submitting written regular lists of advice to the GAC clearly identified as such those of which can be a useful component of the proposed register. In the event of the GAC thirdly presides to former working group to review the operating principles to review on the word of JWG and at Brazils the Edward committee was in fact established with a task to report on its proposed review on the GACs operating principles by the time of CorsICANNa.

And fourthly to identify the consequent methods to return GAC advise. So that is all part of a draft report what is known as objective one and what is interesting about it is it provides some kind of assessment of what constitutes GAC advise the different types of advice for review letters from the GAC chair to the Board of ICANN the communicate that GAC produces at each meetings, documents related to principles which the GAC regards as important around any particular policy process such as the GTO deep process or the IDNCC dually process, and what they call issue documents.

So in a way we see a considerable of work going into this and a effort going into this which we certainly need to think about. And as I said this morning perhaps these processes will unfold by the time of CartICANNa so that we would have a final report from going to working group and some kind of GAC prospective on reviewing and revising its operating principles.

So from these sources of meetings of Brazils and public comments received we have a preliminary set of questions which are not comprehensive or may will be others may not be formulated in the best way but I think it may be if I can just run through them, the first question is the Berkman how these documents.

Brian Cute: First they have sent you the questions they have all my email.

Berkman: Yes received thanks.

Brian Cute: yeah, great thanks.

Willy Currie: So the first question which is kind of fundamental question is the advice which the GAC makes coherent and one can see that the GAC currently considers almost anything to be advices. One of the referents that came through in Brazens meeting was that advices of advice of us and yet at the same time the bilious describes certain steps that need to be taken so it really seems to be some kind of attention between the requirements of bilious even if there is no actual definition of what constitutes advice in those bilious.

But that seems to be an area where the working group and perhaps workmen will be looking in at the public participation put us in a role advising committees which is something we need to think about. I certainly think that we would need to query this notion that this advice is advise is advice and look at that more closely.

And the second point that is coming through is GAC advice adequately adopted by the Board? And that is kind of provision on labeling on things to be known. So there is a question there about why is this and secondly what can be done to improve this state of this affairs, it is likely that there will be something coming through from the working group but perhaps that is something that we would also need to think about independently.

Brian Cate: Thank you Willy, Peter.

Peter Dengate Thrush: This is interesting clarity helping might like to say to whom that answer is? You will get a very different answer beginning how you are tested, how adequately summit still work and rather than why thinking on go on line, what is it today that you think is adequacy? In what areas, if before you start trying to wake up why they exist. So little bit more definitional work I think it would be for me.

Willy Currie: Yes, I agree on that. You know for example in the Brazils meeting on the question of the extent to which the Board formally notifies the GAC about the public policy matter that should be addressed there was one which said well, the non-voting will fulfill the function.

So it is not necessarily so that the Board needs to formally request from the GAC and input on a public policy matter so they are different views that will take you point on. The third question is perhaps a bit of an abstract question which is why has the GAC never initiated to develop a PDP on public policy even though it is important in biologist to do so.

And is this perhaps a part of seeing the GAC is being reactive to policy issues arising rather than being proactive in taking points particularly with public policy principles of that stick and then fourth question is part of the discussion with the GAC revolved around issues that can perhaps be characterized as issues of sovereignty in the sense that there seem to be higher degree of sensitivity as to when the GAC could operate on the basis of consensus.

And when different governance because of different prospective would indicate a view points in the absence of consciences and the team which will also be a factor in the issue of the timeliness of GAC advice policy and preventions the extent to which the kind of complexity of the particular positions of government with redo it to sovereignty raise art in practice end of the time the policy process is underway.

And there is a question of what examples of either problematic of positive interactions between the GAC and the Board what kind of constituencies would we like ourselves to explore in more detail and I think the more detailed reprocess I think would highlight and number of those dimensions that will. On the positive side that seems to be the GAC seem to say that the ID and CC until deep process has been particularly successful so it may be that would provide an interesting contrast to sit and you detail the process.

Well let us not form within Berkman case study on new detail of the process perhaps contrast to sit within the public participation investigation Berkman is doing that they could also get a sense of what was different but the ID and CC 2 be process. The next question is really to do with the

GAC made apparent that these process in which they are starting to engage who have been engaging with other ICANN constituencies directly on public policy issues.

And in a way this relates to a recognition GAC and within ICANN I think sure was leading to this earlier that advise on public policy that comes at the end of the process development is not necessarily going to be that useful. So there may be other ways of formulating those questions but the one where several steps are GAC is engaging horizontally with other ICANN constituencies directly on public policy issues all these are put it in common constitutional.

Are they constitutional in terms of bylaws where GAC's advice seems to be directly in relation to the Board? All can - may be constituted as an effective practical evolutionary contribution to ICANN's policy process. GAC itself makes use of language of the evolution of the GAC. So, all these should we see these as a productive evolutionary development of the GAC's role in relation to public policy advice and participation.

And related to that there is depending on how well one constitutes to the GAC to empower to make its advice available to other ICANN constituencies horizontally even vertically through the Board. In the drafts reports of the JWG and this seems to be an example site of where the GAC has made some advice on the new detail process to the Board and the Board has referred to the GNS and there seem to be some concern about that process.

It wasn't quite clear there might something to look at in more detail it wasn't quite clear as to where the GAC expecting a form of response from the Board was a lack of a direct mechanism to discuss the matter with GNS. So there seems to be some kind of lack of knowledge about that particular moment.

The next question is looking at the picture as a whole do we think changes to the bylaws will be needed to improve GACs effectiveness as a public policies and that really depends on how we make an assessment of the previous questions and the extent to which we see this as an evolutionary process of development of something that need to be capitalized by changes to the bylaws.

Then the last question we have is does the work of the joint working group in reviewing the role of the GAC meets ICANNs commitment on the affirmation to ensure that the outcome this decision making will reflect and the public interest will be accountable to the stake holders by facing the role and making the right direction in the Board by making recommendation for improvement.

Now it's what view do we take on Board GAC as joint working group on the ongoing review mechanism of GAC performance. So those are kind of questions that we interact with and they are all not necessarily comprehensive and may be others that we should be looking at.

Brian Cute:

Thank you very much Willy, Urs I know that you are with us here with us in china. So that were some of the questions workmen team deep into the night or early into the morning so let's take about 10 minutes a feedback

from you and then we will break for lunch and thank you all for participation today, Urs.

Urs Gaser:

Before the lunch I appreciate your comments and that was extremely helpful this document is very, very helpful and I would like to propose actually that we look at the four at a three questionnaire that you drafted obviously most important to the chief questionnaire and goes to the question that we have on the head of participation and all of GAC in particular and compare that with questions with it with the issues within the working group documents.

And try to ensure that we have some compatibility and intractability among the question that you have identified and the ones we are going to ask of the various stake holders and this could then feedback to the working groups work we could share in aggregate with the form according to the interviews protocol the results of the questions.

The results that we will get back from the question, so that might be an actual item that something we can do almost immediately we visit the questionnaire that's something that I wanted to flag again we would definitely need your comments and feedback on the questionnaire by tomorrow as latest because we want to send out the questionnaires and get the interviews done.

So it would be appreciated more generally if you could review other questionnaire and yourselves additional questions and so forth. Again here we can do the home work ourselves looking at these set of questions you have identified. so that will be pragmatic response for the next step and I

think we will know more once we get some of the answers back to the questionnaire.

Brian Cute: Ok thank you Urs and we are going to adjust our agenda this afternoon so the team has a chance to discuss in detail your proposed questionnaire and have that concrete reaction for you tomorrow. Mr. Chang.

Mr. Xang: These sounds speaking but I want to add one more for Mr. William questions. As mentioned in the email, GAC has been asked to the things as the GAC and the governments in person not want appropriately. So especially for touring I can impart Colman's process, I think these things are issues we should further explore. I will add one more. Thank you very much.

Brian Cute: So that's appropriate way given for the inputs. Was that on Willy's list or should we emphasize that and Underline that. Thank you.

Peter Dengate Thrush: Hi, this is Pete, I just wanted to clarify I am not understood the point just need to know isn't that included in one and particularly in two?

Willy Currie: Number two is GAC advised adequately by the Board so in terms of weight.

Chris Disspain: I think there is distinction by words again. I think there is distinction between saying adequately doubt that could simply mean there is a process which there is doubt and is given special weight with different questions; I think we need to look at that.

Brian Cute: Thank you Chris, Manal Ismail.

Manal Ismail: Yes I think the wait has more to do with if there is some conflict with other as user Acers view so how this is going?

Brian Cute: Thank you, other thoughts, Peter.

Peter Dengate Thrush: Well I was just going to make some sufficient comment was that time be helpful. So we need to do in appropriate order or something specially not something to hold it.

Chris Disspain: Yes I think we should try and reformulate the second question from the points that must that Peter has made about.

Willy Currie: Yeah, and if you would send that pattern it is good and again it would be easy to send that documents for making modifications as we go forward. Let's recirculate the updated versions as we go forward.

Brian Cute: Any other questions on working group 2? Or we will hang up too. Ok I think we are ready to break for lunch Urs and everyone on the Berkman team thank you very much for your participation this morning. We will be joining again tomorrow morning and looking forward to interaction as well. Thank you.

Berkman team: Thank you.

Brian Cute: Any closing calls before we break for lunch? I say we stick to an hour till 1:15 and we are going shorten the after modules in this an hour for each

working group but then it has been shorten that to 45 minutes for each to present interviews team and have some discussion and then we will move to a discussion of the Berkman progress report. So we will see you after lunch. Ok for every one online we will be recommencing at 1:15 PM local time in Beijing.

Mr. Xang: Dear members, attention please, ok; do you finish the general information form? Do you have this form? Generation form, we will have some job of service according to your form. Ok I am sorry, I think these general information forms that last page you should fill something of some surveys according to the form ok. I think I will get them back 5 minutes later ok. Thank you.

Willy Currie: What is there on the second page of general information form?

Brian Cute: Ok, we will be commencing in a moment or two.

Willy Currie: Ok, thank you. This is Willy.

Brian Cute: Ok welcome back to ATRT meeting we are going to continue with the working group reports, working progress, the Berkman team has left the call and they are going to rejoining us tomorrow morning so this is more importantly to the review team progress made we are going to turn it over to the lead of working group three which is Cheryl Linda and Alice, is that document is up in there, ok. Ok Cheryl whenever you are ready. There you go.

Cheryl Langdon-Orr: Thank you very much Brian. It is not going to take us terrible long to go through the update report I would like to try a little bit of interactive discussions on a couple of issues which the rest of the team provide we will go with Lauren and Lewis go along let's have my changed. Ok good, chime in whenever you are ready boys.

Okay my name is Warren myself, Olivier, Louie and Erick our purpose which we have discussed in previous meeting in terms of our work plan we have put together a couple of dates in very general terms for today's report and the only substantives work that we have done since our last meeting review teams has been the work team relevant to the information opinion from recently closed public comments and question organize and easy to look at what was affecting our particular group in this document which is provided by me.

Which I am not going to read through now all the results will be up shortly on the ATRT site and the work team site and thanks to Fiona Alexander there was a highlight and public comment index which was easy to go down and look at what particular parts of the public comments effected work group three row and that was 24 out of 28 so what we do have an awful law interest in the matters that the work group three needs to do with and when we look at the day 3 analysis which is at the end of the document which I will roll down to at the moment.

There are some substantial issues raised by the community but we do have one observation this is I would like to bring it up again with Berkman majority of what the public comments that were told we are talking about is the old news, tapping works its we once had a problem. IRT was this

has been understandable, natural, important data that what we need to do is have some now and there has been continuing improvement because we have seen even between when we were just beginning our work in DR.

And now there is some awful law that I think I need to capture and I would like to work out with Berkman which of us we are doing lots about the data. The next lion share of the work which I have again mentioned previously is data mining into the 1000 information Canada brazils, seeing us is three of the members of work team are running there on teams they are kind of busy running their own teams none of us have the time and energy to have the inclination to data mine or of the Russell's transcripts and nuts.

That's an issue raised in the beginning it is an issue arising again now. I would like to discuss at the meeting. The other matters of outreach mechanisms which I think we would like to do slightly in conversation with Berkman this morning need to be looked at with the room at this stage outreach other than direct mechanism past to the chase ISEs and associates are merited I think the rest of the team hasn't discussed it yet.

But I am beginning at this point to question around of relevance into that directly outreach because we are getting more data which again will be backward looking not forward if we out reach more specifically to the chase of ACs and look at, for example, what is happening in the pre processes and the new processes they are underway with the policy development in the GNSO look at some of the new models which we discussed, mentioned this morning in terms of the cross community.

And joint discussion work review between the ACs and the SOs that needs to me but I haven't discussed with the rest of the team with more profitable venture this point in time if that's going to happen then again you need to work out what I have remaining is existing between and going on Berkman is going to come and see what we want to do in this area.

And that really covers the section on the other PDP process with hyperlinked in the master documents because it is actually rather difficult to aggregate where all of these it lives in spice of GNSO, live in spaces in work teams, lives in spaces all over the place.

But there is a lot of work being done but not a bright deal of I am not glad enough, Cherie I can't believe they are telling me I have other colleague, I was tempted to move through this. Ok I will be nice and slow part of the work which we haven't done at all and I would like to discuss with this into tomorrow part of the meeting and look at during our September part time while we are looking at the PDP processes is looking at how consensus lessons for consensus is dealt with.

That's really the substrata of the other activity and section 4 review part of the input processes of the considers how concerns the accuracy and how consequential review and analysis report in public inputting sector and now that to me is what we have from Berkman from yesterday and today is something they are focusing on a lot now.

All I have done for our report to this meeting is take piece of what Berkman has sent us and saved we need to look at these and by stone I will talk with them tomorrow and work out how much of the work is

relevant to us and how much building to us and how much quality we are doing repetitiously there and the same obviously in the 14 review of the analysis are comes with plan quarter of November and a lion share of review reporting a meet coming on that for the post of meeting.

If I just take you quickly down to some of the sections just so particularly online know the parts of the Berkman papers that are particularly relevant to work group number 3 what was discussed this morning with Caroline and the public participation pages 22-25 of that documentation things that work group 3 need to look at and analyze and interact with and we did not had time to do that yet.

Scanning down further pages 51-53 of the document the working hypothesis are very interesting and have key relevance to our work in particular and I would suggest that when to have next meetings in work group 3 we will need to be focusing on that and unless we have time to do with the group as a whole in here because it does effect the work group 1, work group 2, work group 3 quite a lot it is something perhaps all the idea to night profitable discussed and moving even slower than my voice down to the public comments index that Fiona kind of put together all were done.

Here is highlighted how many do coming under really annoying. Coming to number 3 but also taking out the once that were particularly irrelevant to us we haven't made them disappear what we have done is take them to a great out section what we haven't done is lifting questions as I move now take control of computer back, come on here we go, the summary of the public comments which are greater detail the questions that are

relevant to work group 3 are questions 1 and at the moment just capture those in one group questions 3, questions 4, 8, 10 and 11.

And part of 9th for what we need to do now is again recognize most of these things of backward looking not forward interest and we need to somehow prioritize those or establish all these things that are already being done with by the changes that we have seen in raising times or is it something we can draw recommendation from and that point I think I am pretty close to asking the rest of the team if they want to say anything. Very close next to me, what you would like to say about this, absolutely nothing from Erickk, Louis, Louis.

Louis Lee: Ok sorry I was on mute.

Cheryl Langdon-Orr: Thank you Louis, go ahead.

Louis Lee: No that was excellent summary of what our own groups are working with and other than that I don't have much to add.

Cheryl Langdon-Orr: Ok you know where in I got to ask when.

Louis Lee: Oh! You know it is I think we obviously address the issue going through process commentary and how that is going to be achieved, at least we can part them out there and if there is a way to add them if the members of the team can do it but other than that you have given a good out page here.

Cheryl Langdon-Orr: I am seeing Olivier in the room do you concur, he is shaking your head means no, or that means yes? Okay really been suspicious about

those points to deal with the Brussels data because at the moment I can't see that the team has got the Brian width personal band width particularly with the other work groups that they are involved with to do an analysis little on the data mining.

Louis Lee:

Well it is a good question we don't have additional head count it is a matter of find the way, whether it is dealing up with the documents among the team members I understand that the people are multitask and working group we could talk to Berkman about reviewing as part of their work.

As well I don't think that has been raise but we could certainly raise it with them we will make it a point. Is the work group team 3 is going on a scheduled call any time soon? Because it will be alternate between Berkman as we discussed in the morning information and raise up way. Yeah Larry.

Larry Strickling:

What's the interval that has to be looked at? Is this just people's notes of what was discussed over there or.

Cheryl Langdon-Orr:

If I am allowed I would love to get hold on people's notes but again interested in transcript and actual records of what was said in the records but the MP3s are the actual transcripts but I do think any way ones notes from team would be very useful as well. And there are clauses which I have raised when I was raised for the record in here some glaring missions in what constitutes the idea we have got in the public comments.

For example Brazils at large community put in the Ilex statements on accountability and transparency which was a result of their meeting in

Mexico which was the Board of the community consultations and statements out of that and they actually was sent to this list going to PA anywhere in the record.

Louis Lee: To the ATRT list?

Cheryl Langdon-Orr: Yep.

Louis Lee: They are not on the list.

Cheryl Langdon-Orr: They will be not on the list but in our record of documents. They are not part of what we did in Brazils he is kind of shame.

Louis Lee: Can we rectify that? Ok, let me ask you to comment as well I was hoping that each work in the team could spread to the extent that they see possible recommendation coming into view from early work that they have done. Have you as a team has about possible recommendations?

Cheryl Langdon-Orr: Now we have not. Would you like some possible one from that prospective?

Louis Lee: Certainly.

Cheryl Langdon-Orr: Thank you. One of the things that I think is has been seeing as I trust by us all is the difference between people and the outside of what we are doing perception on what is going those on and what actually goes on. In other words there is a great deal of well that's fantastic that this is happening information passed to us at the main array meeting.

and I believe what we are seeing is retrospective gone on this is probably going to be the recommendations these not the things are not being transparent certainly not the things not being permissible but the communities is not aware as they showed and the recommendations probably needs to focus on how we can fix that. Thank you Larry.

Peter Dengate Thrush: Thanks, I would find helpful if you could when you are doing the next round of this link each of that through the actual objectives on the information all of these seem to be dealing with one or other version of public input that I am not so sure how the rest relate to the objectives which is you are looking at how I can assess those PDPs except those I am not saying that I can seal except for me.

Cheryl Langdon-Orr: Sure Peter.

Peter Dengate Thrush: With one to five, water by linked to task sheet if you like.

Cheryl Langdon-Orr: The primary task community stake holder engagement including effectiveness and quality of ICANN support for the policy development process the quality of PDP output and the extent to which ICANN PDP develop consensus including stake holder groups. The level and quality of public input into a ICANN processes and the extent to which such input is reflected in ICANN decision making basis from the IOC that we drew out five points out from that we will hyper link back to those no problem at all.

Brian Cute: Any other questions? Larry.

Mr. Xang: Yes, I don't know I would resolve or is the part of the problem. The problem is not the community development participate the real problem is the input that may be request to the community who participate is not correct appointment sometimes we open this question on PDPs different issues to try to development some policies.

And I say nothing but when I say nothing in the poor little space in the policy space make some comments sometimes they don't know how good in the political level or they don't want to put in the political level to don't know who said what and why?

Part of the what group that control leading working group 3 mean to find how to increase the participation of the people may be it could be anonymous one of the option or another option could be more close relations to try to involve the participation of the people. Is that clear form right now we don't have participation because the people don't want to participate or because we don't know how to ask them to participate.

Brian Cute: Thank you, Cheryl.

Cheryl Langdon-Orr: You just following unfamiliar this is one of the points that I think we can very clear with our discussion this morning and the participants just recently we got in Berkman and going back to pages 22 to 25 it may resource the research questions and hypothesis when they are looking for example, how much can these could confluence in a negative sense it is a good.

How much effective it might be the number of public calls comments coming out on time, when they are looking at mechanism and timing of some of these things, if that stuff is coming into the Berkman regimen based on I will give feedback them tomorrow and that is certainly stuff that we would make some recommendations out of.

Larry Strickling: Can you specify some of the improvement that you are for to and assignments that you have seen since we have started ourselves so that we can understand those and whether those will plant recommendations would have played into recommendations and the improvements that you have been well done.

Cheryl Langdon-Orr: Yes I will probably pass back to Erick again and let's see Louie want to jump in as well. Well we talked this morning about the linguistic issue the multi language issues the mechanisms by which in many cases even that calls the public comments but also inputs early on into some of the policy development processes, a limited very much for benefiting English speaking community members to be involved.

We have also got the interesting situation where ICANN have my great steps forward in getting translation of all documents and executive summaries looking at the recommendations at the public participation committee all good plans and as we go on everything will get better but we are in this sort of flux state of at the moment but we are not quite out of the objective. So we have English coming out and so frequently attentions have to be given because other languages have not come out.

Now when for example some of the constituencies and parts of the community that want to engage and put in their commentary to their processes in their bottom of multi stake world environment that we are living sometimes that involves a longer period of time to do. For example a briefing calls community.

The Latin American Caribbean region wants to have a Spanish language discussion on that particular topic. They might want to engage with particular ICANN expertise on that what's happening now is compressed time frame or when there is large numbers of these are at the community at the same time you simple have to cut your losses and just choose one or two which you can afford the bend to do and that's certainly at the top of my head the main issues that need to be looked at, Larry.

Erick Iriarte Ahon: That's is the one I want to participate, these are not possible if you translate the documents and ICANN working on it and give that plenty to talk share those information and the people don't make any input can we go there I don't think there is anything in the point may be only a talk when they are interesting in some aspect or some issues.

Another peer for assembling a new data I am just talking in the lunch would be that all these for Latin America may be 2 or may be 1 new ETLD will be there. So how many comments make the Latin American people knew ETLD process in general? Zero, I don't know one but almost from other region that are more interested and leave that, that is more interesting the problem is not the language they participate in English and other language translate.

So it is a very confusing situation the problem is not in relation, the problem is not the English problem is need signing the time, may be don't know how made that the community participate may be we need to establish another process in different way no necessary to request for comments, may be, will be make direct surveys or interviews directly to a special person, suppose he will.

Maybe we need to understand that is not a problem of translation may be not at this moment, ICANN work on that. So if they resolve it what is the real problem with that behind?

Brian Cute: Thank you, Cheryl.

Cheryl Langdon-Orr: Just to pick up some of that he is saying and again because we are in this sort of next moment kind of pathway we are moving on to some new models and we haven't had the experience yet to see how that work out but as a new open working group system for example GNSO PDP process comes in, the question is if you have had large numbers of community members actively involved including GAC.

And all, what I see is in some people in their individual capacities involved in the development process from early on should we putting much as expectation on the definitely word coming in from our public comment period so you will be seeking specific advice, for example from the ICA and ESOs on some matters can we measure this source of input simply by how many people do or don't response to a PC call.

But we haven't run one processes far enough yet to know that is going to work or not. Do you look at the what is the size of the vertical integration work rates? 90 something, it is enormous number and that's logistically interesting thing but each one of those people and the constituencies they also have to put in same words in public comment? We need to explore that and ask that and concede us as possibilities.

Brian Cate: Fabio.

Fabio Colasanti: Another thing that I am sure what is the regimen that we should be stressing when we discuss public comments is also the sort of public comments that ICANN is requesting. Ideally if time were to allow you should have a double process of public consultation. For those who are familiar with the UK system you have first phase of consultation that corresponds to more or less to results called the green paper.

What is the issue? Does the issue requests an intervention? Is there anything to be done? What are the great concerns or great difficulties? And very often you don't get many comments on this or you get just blank statements which are not particularly helpful. Then once you have identified yes something needs to be done there should be a second consultation with the Brits called a white paper, when you say this is the solution that I think we should be applying and that's where you are bound to get lot of comments on that.

Now the question that we should be looking at is also what kind of public consultation we have seen now, because on the green type paper type of consultation I sympathize with Erick, lots of people will not either wants

to know what is that. But if you tell them exactly what is the sort of decision that you have in mind then you are bound to get more concrete inputs.

Brian Cute: I have got all of them, Freda.

Manaa: Thank you Brian, very quick here on what Erick and Cheryl mentioned I think it is both ways from one side it is the language barrier too many public comments at the same item and the size of the documents as well and from another side is the clarity of the issue and the interest. So it is and we cannot really judge the interest until we are sure that people understand the issue and could comment if they want.

And it is very interesting what Fabio said also because and I think this was one of the good things that made the IGNCC process success. I think it is interesting to start with the questions that should be answered or what is the issue and then we will work on we will work on the answers and then it might be interesting to get the community also involved in listing what that issue between each other and then work on the solution together may be, thanks.

Brian Cute: Thank you Manal Ismail, Peter.

Peter Dengate Thrush: I am more than ever lost what you are all wanting to do is design public participation processes that this is a review team that participating to review what ICANN is doing about these things. So I don't understand how any of those have Fabio has conversation which might or someone

else might run a big data public consultation process. That's interesting but I don't want to see that as relevant to the time.

Tasks sign off for liking just to maintain rhythmic information to public info, first question is does ICANN have mechanism robust mechanism for public input. Now I must need to understand more about public mechanism looking at the mechanisms. But we don't seem to we are not looking at asking the first question spinning out of time designing this the job for us is not designing data mechanism for public input.

It is to say does ICANN have them and then in the next exercises how is to review what ICANN is doing under its commitments and its commitments are to continuously to improve its processes. Again looking at how you might improve the processes different exercises how you are looking at ICANN is doing that.

So again to know what is improving the process which may look like you can have this kind of I think we need to bring it back to the task of the review team the process to review ICANN progress or lack of on these particular areas and all of these exercise seems to be saying what made it super duper public input prices look like which I think is running a small part of this.

So that's why I am getting a bit lost I am forward to broad way to answering these questions in the review team first and then explain them clearly how because I am not got it wrong how you see these other exercises linked to the task for review process, thanks.

Brian Cate: Thanks Peter, Fabio.

Fabio Colasanti: Peter, I find it relevant to what we are doing, because we have a situation where on the one hand I can feel that it has already a pretty robust system that the public participation and clearly the put on documents. On the other hand is this lack of satisfaction for some parts of the community because they don't seem to see what happens with that inputs whether they have even read at all.

When you put again this question to ICANN sometimes they also get the answer or at least I have got from some people well but public input that we have got was not particularly relevant or so vague or so generic that we didn't feel even it deserved an answer. We might have a look at what sort of public consultation ICANN contact for information through three cases that Berkman is looking at and how that you answer to trying to questions were asked.

Because again especially when it comes to these if initial public consultation is very vague I can understand then the people were not answering were not given any particular input that would not even request for afterwards. If the questions that were put forward that after I don't know where more precise we are anticipating with possible outcomes then the situation is entirely different and I couldn't find it where it is reasonable to look forward ask may be to come up with recommendation about the way in which ICANN should become that with proper consultation.

It is not the question about discussion new things in mentioned before the reference about the UK in green papers and white papers and this goes for ages, this is not something new because it has been done over and over again.

Brian Cute: Thank you Fabio, Manal Ismail and then Erick.

Manal Ismail: I see Peter's point but may we jumped a little bit may be an earlier question like Cheryl mentioned should be how could we measure the common period itself, I mean when do ICANN decide that need an extension or when do we feel satisfied with the current comments received. What are the criteria?

Does it have to do with the, we are making sure we received comments from all stake holders? Does it have to do with the number of comments received? Does it have to do with the quality of the comments received relevance? May be then we can see if there are really weak points with the current processes there or not.

Brian Cute: Erick.

Erick Iriarte: Yeah, I know it would be the I think if the question is, the first question to resolve is ICANN have some mechanism to participation that also is very easy. Yes, the next question is are useful these mechanisms the people use? Why the people don't use or why use?

So it is clear we are bond from the first question months ago so we need to know how is the better way to put ones, or may be one of the

recommendation would be change the system. These will be one of the results, but be clear with that and the answer is yes, ICANN have that mechanism right now are useful, I don't know whether the answer is right or not.

Cheryl Langdon-Orr: If Brian is following up with that what we need to, remember we have to work with the date we got and that's the public comment input mean the interaction we had with the community in Brazil's and they are giving us admittedly a measure of dissatisfaction but it is a measure which is notably backward looking not recognizing the considerable steps forward that ICANN has made and continuous improvement that they are doing.

Now I think that we are not recognizing that quite the opposite we want to make sure at least with any recommendations that average brings forward those enormous steps forward with us the mechanism is well identified but we have got public comments going out and zero responses. So is that a robust mechanism?

Well it works, it is there the opportunity was there the community did not engage with it how do we measure that as success as we are looking at that now I was talking about number of comments that came is of the fact that is being broad community input. They are the options that we could profitably look at.

Brian Cute: One answer is that we do have Berkman putting the question of interviews and that is the vehicle we can collect some of that data. Willy, Chris I am going to wrap up and move to the next working group.

Chris Disspain: yeah, I think following I think the thrust of taking duty or deep process case studies precisely to look at the various dimensions to public input process and the ways in which the Cheryl was saying in the morning about whether you sink new development policy around the ACE and GNSO.

And in this case it should give us that kind of information and from that we will be able to answer Peter's question about whether we are dealing with robust policy and put mechanism not to where the weakness and strengths might be and I find the internet governance project submission through the public comment on issue accountable to public interest in the sense that they high light voice accountability very highly as a form.

I mean they have a particular take on but they over the three forms in the accountability, the exit accountability and voice accountability so that ICANN has put a lot of effort into participation and voice from two constituency and public consoling, they draw certain conclusions about it but I certainly think that what I have been received from the analysis of the new DTO reprocesses exactly how these participation mechanism work practice.

Brian Cute: Thank you really Chris and then final point from Manal Ismail.

Manal Ismail: All are right with that but I just want to make sure that I miss and also I want to make sure that we don't fall in the trap of judging how good public participation mechanisms are simply by the response and because no responses doesn't mean that no inputs. That was what you were saying.

Brian Cute: Thank you Manal.

Manal Ismail: Just to make sure I am clear on what the output should be, I mean theoretically for example if we are talking about the number of PDPs running impart should the crew come up with the recommendation along the lines that ICANN should consider looking into the high number of PDPs running in parallel?

Or should the group come up with a recommendation along the lines that ICANN should make sure not to exceed a certain number of I mean what is the output is it just highlighting something that ICANN should consider or come up with a concrete recommendation? I mean as a group we should same object.

Peter Dengate Thrush: I don't focus on the example you gave but the discussion the current number the number of PDPs on a time is relatively useless, unless you analyze where they have come from, how they have been running, who asked for those? What they are related to?

Unless you put them in a context because the number of poll raiser or response or sponseror to the work the community wants doing so the number on the side is relatively material so same way this should be numbered and should be scheduled I feel the same and then we will talk about that, but in terms of the output we need recommendations as to proven, fit to answering the questions in the review and then public recommendation about the program.

Freda: May be chose the wrong example but in principle what I mean is that are we going to point out the weak points or suggest concrete proposals.

Larry Strickling: Yeah, then the consensus is both. We are not just going to say you have a problem fix it, but we are going to say problem and here are some suggestions or mechanisms that you might consider to improve the situation. But I read Peter's comments earlier to be focused more on the working progress and sequencing the work of the working progress appropriately and starting with the charter of 9.1 and working towards the miserable mechanism that might improve in identified area, Erickk.

Erick Iriarte: yes, but is not only you have a problem this is you are done with some of the effects and in this spacing participation that has laid presentation of the documents and that if you wasted that you will find that great joke. So it is only to say you have problems, you are doing well that time recognize and other things.

Brian Cute: I completely agree and I am sure that this report is included in these areas where the improvements have been made as Cheryl noted. Anything else? Ok, please Fabio that's ok.

Fabio Colasanti: The more and more I think back on these discussions and the more I find analogies between the construction of the ICANN community with the European commission because we have exactly the same problem for instances there is always criticize the European commission puts up too many documents too many lists.

And every now and then Commission rightly reacts exactly like Peter has done and what is it you are complaining about all these documents, here are all the documents that you have requested that you remember that stays have made and all the proposals that were put forward we are all in response to the request that you have made.

So the problem is always there in all organization. now what can one do and what we might we want to do here is if we were to use some of the instruments and again I have been using your opinion when this point was discussed specific request were made to the commission that were coming to the ICANN Board to lump together all the barriers

I request and then to propose a sort of priority list a way of addressing them. I can tell from the start none of this will work at the level of European commission. European commission has always tried to make a list of the priorities but at the end it is a you play with worse to give them pressure five priority instead of plenty but in those five priorities you usually cover everything.

So we might want to have again a goal at finding a way of including some programming some priorities and things like that but this is a common issue and it is a fact that we have also seen as European commission. A certain concept is eager a lot of organizations are telling us come on we can't go on answering all the questions up.

Brian Cute:

Thank you very much. With that we will draw line under this and move to working group 4 as report. Thank you Cheryl and thank you WG3 team. James are you there?

James Bladel: I am your guide I am changing quarter to the document.

Brian Cute: Thank you James if you would.

James Bladel: Actually came out through the president joint committee in 2009 and those who are being reconsidered with relation of community revote and the scanning body, independent review body. I am just trying to see what we are looking at.

Brian Cute: I have got the buds men up but tell me when you want to go James.

James Bladel: Do you have scroll control Larry?

Brian Cute: Yes, I do.

James Bladel: Ok.

Brian Cute: So I know few minutes, Alice. You have control? Yeah Alice has control just tell her when you want to go.

James Bladel: Ok what's that opportunity idea of the frame work for each of the mechanisms we want to review them on a couple of different evaluation criteria and those will be for example they are reasonably transparent make the destination of what is reasonable and transparent as well.

And then we would like to establish whether or not each mechanism would be reasonable successful again requiring some definitional work

that has been stored as a mechanism of a level for those might see to engage it and it is not particular to use in terms of time, expense or resource commitment.

And then thirdly we would want to gauge the efficacy of the mechanism and determine whether or not it sort of a binding outcome that would cause to the Board or the community to pack or compel them to for information. Then criteria change from one we are going to talk about propose mechanism I mean the first example would be they are not those proposed mechanism or compatible with existing mechanism to be replaced or organized the mechanism that are lying in the bylaws.

What is the status of the derision with a when the recommendation are proved if so what is the status recommendation? If they are rejected if so why? I am reading up a separate document now, the best exercise what we would put together in terms of the evaluation criteria for the three existing mechanism without the bylaws and then the two proposed mechanisms that were published last year.

We compile this into an evaluation matrix which we try to flush out exactly what is defined as each one of these mechanism. A lot of work to be done to further qualify or qualify what do we mean by these different criteria? And I take the pain definitely something that is working is going to tackle that. Including the course putting together these different comparison with framework we find that there were some lack in information all in the data of that not the working group has access to there were.

For example, some comments received well in the direct seed back and rustles let us during the couple of common period and the index was provide by Fiona. The best was numerous gaps of what we wanted to leverage to form the evaluation and in that respect we have composed a RSI that would be submitted to ICANN and to the embossment and perhaps we can scroll down to that and well Halls is that part we are talking well. Could start with a start back?

Brian Cute:

James is that up? We have got up in the room on our accessory.

James Bladel:

Ok, there we go. Thank you. If you want to scroll down a little bit more each of the existing mechanisms and the superposed mechanisms will be questions to specific set of data from ICANN staff from the office of Mableton that would help to establish whether or not we have comprehensive data set again evaluation on each topic.

I had an early through them but essentially there is a list for reconsideration required you got to understand exactly how often that you use but the outcome was whether or not the requesters self idea was effective and how those sessions were communicated to the rest of the community and to the requester.

We want to be as transparent as possible and want to make sure that ICANN is giving us as much information as possible but we also want to deal a cycle with some of them may have a competitive in that particularly true with down to the embossment. We are going to scroll to the next section please. The upside of the embossment is understood I think that

some degree of confidentiality is expected or required for first it is the embossment.

But I still think there is a way to get us and useful information here and that might be through the use of an aggregate survey or other performance data that is seen but when they track. So some understanding of the volume and the caters that are based with the office if they are catalogued or characterized by topic or tracked by the source of who is raising that request what is the resulting decision would be the average turnaround time of the request is brought to the embossment and absolute actions is required. Can you scroll down lower a bit more?

And then finally with respect to the two proposed Annabelle mechanisms in 2009, which is confidential moving forward there those addition mechanisms were proposed and that we are looking for information's from ICANN staff from that itself whether they were able to adapt it or implementation how they will match with the existing mechanisms and essentially what happened to them.

That's all for the time line for the road ahead for the working group forward and all of this is preliminary course and probably subject to change from internal report earlier this evening. I think we were looking to do is get a return from this artify from ICANN and early September we are establishing deadline and you want to correct me you can do by December 12th and then we would work forward to. No I didn't have a date of buying. I had discussed and I buy the document they are already so and just waiting for the feedback. Ok thank you.

And next case will be to finishing that definitions, review or score or weight the difference of mechanism versus the defined evaluation criteria meet with the Berkman, telephoned and then bring some draft recommendation to the next meeting and to wrap up that is the status of working group and the document will be prepared.

Brian Cute: Thank you James. First question one, with regard to the recommendations that came out during the institutional conference report is that the first of that query just to know the status update of what is the status and what was considered as now they are being on to or not where there are another letter called conclusions that you were drawing about those two mechanisms in the context of the review.

James Bladel: Good point, we don't really know enough about what happened to the matrix as they were made so I think at this juncture we would see what transpired with those recommendations into internally and what sort of thought was given to that before we sort of incorporate anything there. So I think it is at first just the gathering of the data, the decision that were made or lack of decision.

Brian Cute: Thank you for that. Any questions Larry.

Larry Strickling: Not a question but related to your question right on last two possible mechanism for review, you will require, I think all members of the panel will recall that in one of our discussion probably down the ray ICANN reach the issue of how California lie impacts the type of review mechanism that might be put in place following up on that John Jeffrey did prepare a very short one pager which is summary of ICANN'S view of

California live on that I have supplied it Brian for posting on the ATRT review page and to be made available to everyone here plus the public as well. In that summary would be a factor in evaluating certainly the independent review Board proposal that was one of the two that was on the proposal stage.

Brian Cute: Thank you I will get that posted shortly. Any other questions?

Willy Currie: One minute, is that response recent Larry?

Larry Strickling: Yeah like three days ago.

Willy Currie: Got it.

Brian Cute: Other questions for I can go forward.

Larry Strickling: Brian can you speak to the intersection of both men at work and working group 4 work. Are there any specific issues there with the areas they think can provide useful inputs? Are there any potential collisions in respective work strains that you stay?

James Bladel: I don't think there will be collisions, let me move on and be proactive added of course we would like to thank them on the line. This evening we will just going through that.

Brian Cute: Well actually tomorrow morning we will be having an opportunity.

Warren Adelman: I know integral approach has to got with them you will obviously go through it, alright. The expectation is to have these interactions with them tomorrow and now that they have sort of to get speed and then subsequently have other phone calls with them directly as we start getting information back from them as ICANN tolerating with some of the information.

We have received in Fiona's work and tolerating community inputs on this issue and making sure we are not having collisions. I think we are having an area that is going to intersect and have some overlap absolutely. So we are going to be proactive in making and sure we are sharing this information with them and gauging with where we intersect with them what is the best to get the work process done.

Brian Cute: Great thank you. Any other questions Warren. I see none. Ok, Warren and WG4 thank you very much. We are head of the agenda. Ok so the next thing we have is well we introduce discussing the Berkman progress report and getting into some in depth discussion in detail about that so we can revise like concrete feedback to Berkman tomorrow and the other agenda is road mapping toward recommendations.

So all folks feeding is all ready and in order to discuss the Berkman progress report in some detail. Ok I think Peter you have some suggestion we should attack that paper from back to the front which will start with the working hypothesis and then work our way to the questionnaire and I think we are gonna find we have some specific recommendations with regard to questions that are both in the questionnaire and questions that might brought into the questionnaire. Yes Cheryl.

Cheryl Langdon-Orr: Thanks Brian, just to make sure thing we are resolve this hypo, short period of time ago. We make sure it is up in the dark room and the scrolling follows as well.

Brian Cude: Sure. Can I have the magic items? Ok what types of hypothesis were given here, 51 ok, let's see. Who wants to be here, I guess transparency is the first working hypothesis is really have sub draft working hypothesis have worked on comprehensive transcript of transparency or I would say looks like holistic two active transparency, three passive transparency, four participatory transparency and the transparency exemption and last is for transparency on it. Who wants to take the first one, of course Chris?

Chris Disspain: Just a few comments I don't understand paragraph 4, that's all participatory transparency I didn't understand what it means. It might just to be to me but it makes no sense to me and I have a concern about paragraph 5 which makes a reference to uncompetitive incomparable freedom information regimens, two problems can be identified I am not sure we should comparing to international freedom of emerging. But I am not sure. That is rising, if anybody has a clue what paragraph 4 means I would appreciate some help.

Larry Strickling: Paragraph number 4 is, well Chris.

Chris Disspain: Yes number 4 is participatory transparency.

Larry Strickling: I will take that shot at that I mean I don't know I am just reading the document as you did but it seems it is about and passive transparency they

are simply talking about a one way flow of information from ICANN to the public either initiated by ICANN that's active or in response to request from the public that's passive and then I think participatory is the idea of the input coming from back to ICANN and having all of that made public. I think that's what the three categories are I am not sure I understand the exemptions but I think I understand the first three.

Chris Disspain: Ok, Larry.

Erickk Iriarte: Yes Larry but it is correct that the idea where you put the accountability the feedback control of all the information that put in transparency somebody so is not clear.

Chris Disspain: Please be more specific then about what it is doesn't understand. The last sentence so I get that the participatory transparency is about but then says reverted how the question will flow from the public to ICANN is conceptualized and designed with attention which I think means what mechanisms are there to allow the public to provide a information flow to ICANN more specific that remains to be discussed what is then such information flows or even how to see the informational input from ICANN or fully invites the concept of participation oriented transparency in order to I have no idea what that means.

Peter Dengate Thrush: Again I am guessing but for example if input from GAC if it is persuade into bylaws or actually an obligation part of ICANN to respond to an answer for why it is not if it chooses not to follow why they don't do that? That I think is the second part, that actually saying that these comments have a particular weight attached to them I am supposed to just

move in put in the process so on one hand you can invite the public to make comments and then totally ignore them.

On the other hand if you are really using the comments to help make decisions is the return obligations to report back on the comments as formalized for GAC and should that apply in some factor to general comment. So go see the question of when you see a issue of decision are you going through a commentary of received in the planning why you follow them or didn't follow them I think that gets what they are saying in the second half of that sentence but again I am expecting what it is.

Erickk Iriarte: So something like transparency for participation you are transparent you can't give more information to your community to have participation than the idea of participation is transparent but these terms.

Peter Dengate Thrush: I feel the idea of responding the comment and answering to them more kind of ability question than transparency question but I think reasonable people can disagree on that.

Fabio Colasanti: Again we are in this great zone I agree with Larry still understand how people have certain difficulties for instance explaining what to do is clearly a form of accountability. At the same time quite recently all of us we have been reminded about the initial of transparency about the internal decision making force.

Do you remember the question about paradigm checks? Where the question was asked, where did that come from? And you can see it's accountability it is also transparency at one point into when this was first

introduced into the document there should have been a reference to that has been requested that has been propose we agree with that proposal. So there is another form of transparency which is not mentioned here could be under participatory transparency but it is about the process.

But I agree when I first read the document I was finding that was missing but then again I found it under accountability their there is something about but may be the reason is even in the recommendation will make it to make sure that we explain that if we decide to treat under accountability we recognize that element under transparence as well.

Brian Cute: Chris.

Chris Disspain: Can I thank you, thank you very much Larry. Can I move out to Paragraph Number 5 just for your comment?

Peter Dengate Thrush: Larry raise for not sure how that works with exemptions so again may be assist me when compared to freedom of international assessment regimens two problems can be identified that require for consideration. Problem A: problems posed by individual path of exemptions AJ draft exemptions, problems posed by the exemption to the exemptions as well as the broad confidentiality over ride I do not understand what that means.

Larry Strickling: Absolutely no clue.

Brian Cute: What is that about? Ok, good. Let's keep that question for Berkman tomorrow.

Chris Disspain: May be I can help on part of it but there are clause B I have no clue. But clause A under AmErickan freedom of information law when documents are requested there are substitute closure there are number of exemptions like trade secret other confidential information predecision that allow you not to turn them over night I think they are simple re designing that as a question that has to be addressed in the case of what exemptions are appropriate for ICANN the comments and documents.

Larry Strickling: Of course two we know presumably it is given presumably there are ICANN of subject to US FOI. So then it is not subjected to all, so then am I clear to also.

Chris Disspain: As just analog comparison.

Brian Cute: Olivier.

Olivier Muron: Just small question to peter. You have exemption to all kind of exemption rules at the ICANN? You have something like that.

Peter Dengate Thrush: Now there are some specific rules but then there is no list of exemption that I can think of that I can find out for you. It is a question for the day.

Brian Cute: Is that a question for John as well? And we will speak to him shortly, yeah.

Peter Dengate Thrush: I think it is probably most directly and recently raised by the disclosure of Board document where a lot of materials were expurgated so

there were lions uncertain exemptions whether they were formal or not in terms of not disclosing that information, I think that is the general issue being raised in this paragraph.

Brian Cute: I think we were used to first further that. Any discussion on how these concepts or strength you understand them.

Brian Cute: map into our work and reactions we need to discuss with Berkman to understand more fully or should we move on? Yes?

Peter Dengate Thrush: I think we will have a discussion with them tomorrow, but at some stage we should go back and compare this with the contract that we signed with them and just make sure this is actually again, is this what we asked them to do?

Brian Cute: Okay, thank you Peter. Shall we move on, public participation? Maybe we should do that now, do that now?

Maybe we should have a discussion of Peter's... It seems that this group ought to have a view of that before we just raise it with ICANN and if this is not on the mark then [inaudible 00:36.5].

Brian Cute: Let me pull the contract. Sorry we are here, we are digging up the Harvard services agreement so we can address Peter's question.

Peter Dengate Thrush: Thank you.

Brian Cute: Okay we have it up on the screen. Can you get that on the Adobe too?

Unidentified: Off the screen? What page?

Brian Cute: I'm on page one. Okay so we are looking at the services agreement. So they are providing academic consulting services so forth in the specifications attachment. So exhibit B, which sets forth the manner of the work, which has been constituted in accordance with the AOC. Let's see, initial services, Harvard [inaudible 1:40] at election agreement provide additional services based upon request by ICANN after consulting with the chair.

Let me go to - then underneath, let's see, the services shall focus on ICANN's commitment to the affirmation of current events executed between ICANN and the Department of Commerce on September 30th specifically will address the provisions of paragraph 9.1 of the AOC, which state that and then we have 9.1 recited and then going to, okay.

So that's section one, let's go to Exhibit B. I suggest,

Larry Strickling:

I'm not sure the answer to Peter's question is in the document, I think what Peter is raising is whether these hypotheses are helpful in terms of the analysis that we want conducted here and in that sense, and I should have said this Larry Strickling speaking, I am sympathetic and somewhat share Peter's view that we need to make sure that the hypothesis they are looking at squarely fit within the task that the review team has been given which is assessing the adequacy of what is going on in assessing the efforts taken by ICANN to review and improve those mechanisms.

And again, I am a little concerned myself that some of these are almost hyper-academic in tone and again, maybe part of you know, the design of the ideal model which I agree with Peter is not our task. The question is, is what the processes are that are being used adequate?

Are they doing the job and is ICANN regularly reviewing and assessing those. If we find deficiencies in the current processes, then I think everyone, I think everyone is in agreement, we should identify those and can make suggestions for dealing with inadequacies, but I don't see our role as coming up with the perfect and where I see the hypotheses they are looking at things that might you know, as an academic matter, improve transparency as a hypothetical discussion.

I for one would like to see them much more tied into these hypotheses being based on real world facts and outcomes and I think that's more in line with what Peter was raising as a concern if I have read Peter right. We'll take participatory on what we were just talking about, participatory transparency. If in fact there is a concern that, which again I think is more accountability, but let's take that as a concept.

I think it might be appropriate for this group to conclude that it is a deficiency that ICANN does not adequately explain the reasons for its decisions and make a recommendation in that regard. I'm not sure that it's our task to come up with what the ideal model ought to be that ICANN should impose to replace what it's currently doing as opposed to making specific recommendations to deal with any particular shortcomings that we identify. I don't know, is that helpful?

I am interested in Peter's reaction. He raised this and I'm trying to, I think, articulate what I heard from Peter and indicate I think in large respect I share his view.

Peter Dengate Thrush: Thanks. Peter here. You know that's exactly ... I didn't want an analysis quantitatively against the contracts, I am just making sure as you said that this is actually capturing what we asked them to do. I don't actually mind that it's academic. I think they are, this is Harvard after all, so I don't think that this is necessarily a problem. I think that we should ask them about it tomorrow.

My half hour read of it deduced that they started out where you would expect them to start off, let's define these principles, transparency and accountability. What do we mean? What I would just like to talk about more is how do they see during the case studies is going to help them answer the questions and I think that...

Larry Strickling: I agree with that and I think it is useful to have started at this point. I think that of we actually go into the document now and look at the questions that they have asked in respect to the case studies as well as other things, that actually helps to feed our understanding or misunderstanding of what these hypotheses may or may not actually mean. But I agree with you Peter, I think that we need to make sure that everything knits together properly.

Brian Cute: I agree with Larry's remarks and Peter's remarks. The only thought I have is to extent that any of these transparency concepts are concepts that they

pulled from ICANN's work, so prior work that ICANN has done in improving transparency and accountability then if they directly relate to those concepts that ICANN has attempted to implement, then it's closer to the scope of the work that we want them to do. But let's ask that question tomorrow to clarify. Fabio?

Fabio Colasanti: Well, I'm not sure I quite understood what Larry was saying when he mentioned the, I understood you in this way and I am a bit worried if that's what you meant that we should identifying problem areas, tell the Board of idea, "Listen to me, here you have a problem." But then I understood you are saying you shouldn't be telling them how to solve a problem.

My understanding was that we were also to make recommendations which they may or may not take up. That would be another issue to be reviewed later on. But we should be making concrete proposals where we feel that we have enough consensuses amongst ourselves or enough evidence to make proposals.

Larry Strickling: Absolutely, I think all of us agree with that. Again I think I heard Peter raise which I share is the idea of notwithstanding a value judgment as to whether something is adequate or inadequate, we would take as our task. How should we go about building the best possible transparency regimen for ICANN? That is not our job. I think Peter stated that clearly and I agree with that.

Fabio Colasanti: But then I have another concern about the working hypotheses is that in some parts we all agree that they are slightly academic, but still fine, but if

I compare the working hypotheses with what we have discussed in the past, it seems to me that there are many areas that are not addressed at all and I wonder to which extent it is possible to ask them to extend the work to cover those areas or do we feel that they fall outside of the contract that we have signed with them?

I would like to mention some of them and perhaps we could be discussing them. One is the question that already was referred to, the possibility of setting up an independent review Board of some kind of extended review mechanism. We have now this contribution from the council of ICANN about the limits of the California law.

I remember that whenever the point was mentioned, I had Becky, I think in Marina Del Rey sitting next to me saying, “No, no, no, no. It’s wrong, it’s wrong. It is possible to do something.” We hope that [inaudible 9:40] will be able to do address that and give us some additional information.

Then there are a number of issues that may be peripheral, but should be looked at. In one of the conversations, I don’t remember exactly when and who told us, that there was even a case of the bonus of some senior staff members of ICANN being linked to the achievement of a certain result in terms of decisions by a certain date. It is something that I would say if it is true, it is worrying and it is something that perhaps we should be looking at because that creates an internal conflict.

It says the CEO was in charge of a policy line and has his bonus dependent on the Board adopting a decision by a certain date, he or she will tend to disregard any valid comments that might come up and that

might provoke an additional delay in taking this decision. So purely I find that if this is the case maybe that should be reviewed.

Then, there is an issue that [inaudible 10:52] contributes to this question of perception and I agree with adequate travel that this question of lack of transparency and lack of accountability is probably to a larger extent more of an issue of perception rather than a real issue.

But there is another staff issue and that is that at the moment, among the senior staff of ICANN, you have very few people that come from outside the Anglo-Saxon world. It would help if you had in the senior management team, people from different perceptions, awareness. Then there is one issue that was mentioned to me that is even more complex and probably difficult, budget.

I was sure that the way that the ICANN is set up is there is a mechanism that forces the decision in the sense that increases the revenue. So that for instance, I cannot have a system whereby since it is a nonprofit organization, it is assumed that whenever they make a profit above a certain limit, the profit goes to a certain charity that has already been identified and this in a way creates a mechanism where the management of ICANN does not have an incentive to maximize revenue in these decisions.

Does it really touch transparency and accountability? I'm not sure. When it comes to the product development process, I mentioned before the failed attempt of the European Union to introduce a list of priorities in its work. But, ICANN perhaps has less constraints. Would it not make sense or

perhaps if it has already been done by the Board to have a sort of once a year sort of announcement over the next 18 months, these are the main issues we have been looking at, everything will come next period.

This is something that we might want to consider. Then there is a complex issue that relates to the public development process and national law. This comes up in some of the buys that got used and this [inaudible 13:15] told me one because we have 200 nationals all over the world. But shouldn't there be some kind of interruption there between national law, public development process.

If you have a decision that essentially forces a number of bodies in a number of countries to violate national law, what do you do? I realize that as I said with 200 national laws, probably everything that ICANN might decide, but then again, there should be a discussion of this. Then there is the question that we have discussed already this morning of the Board and it was addressed by Chris, skills and everything, support.

Then again, I don't find much in the Berkman working hypotheses on this. Now too which extent are the points in which I mentioned even fall outside the contract that we've given them? That would be an issue.

Brian Cate: Thank you Fabio. Do we want to spend more time on hypotheses now or have we identified high level questions about the hypotheses or do we want to bring in Berkman tomorrow? Larry.

Larry Strickling: Again drawing on Peter's comment and the discussion so far, I am wondering whether or not it makes sense to ask Berkman to kind of start

over on the hypotheses and to really start them first based on an assessment of the problem areas that have been identified. I have always thought that the role of hypotheses was to evaluate why these problem areas exist. In some cases one hypothesis isn't really a problem.

I mean Chris mentioned this morning, there is always going to be people who are unhappy with a particular decision and certainly we've heard from the CEO of ICANN that he thinks a large part of what is going on currently is simply sour grapes from folks so one hypothesis might just be to test that question, but then beyond that would be if in fact there is really an issue, is it contributable to the way input is collected?

Is it attributable to failure to describe better the basis for decisions and those to me are hypotheses. What I see here on this sheet I am not sure even if you had answers to all of them, how they help us answer our task.

Brian Cate:

So I throw that out there for reaction from others. I think that's why it is really important working with teams and presenting to Berkman tomorrow articulate with as much substance as they can the problem areas they have identified even the potential recommendations that they see coming into focus. That is the kind of input that Berkman really needs to turn this around and go down the right path. Chris?

Chris Disspain:

Berkman is focusing on two areas aren't they. There are the case studies. That area splits up a couple of subareas of things they are looking at in those case studies. They are probably looking at public participation, generally, which dovetails with Cheryl's working group. So it seems to me

that the working hypotheses apply across both areas, transparency and accountability. They don't do they?

Brian Cute: Berkman is supposed to support the review team in its work. That work is structure among four working groups. We've mapped out 9.1 and we've divided it up into four working groups.

Chris Disspain: Sure. So the paragraph on transparency and the paragraph on accountability in respect to the case studies and the paragraph on public participation, which has transparency and accountability aspects to it, sits in respect to working group 3. We are being very simplistic I know.

Brian Cute: It sounds rational and I confirmed it with Berkman, this is their document.

Chris Disspain: So I think I agree with Larry that maybe they need to go back to an assessment of what the current... It is an academic way of doing things, but it strikes me as being odd that you would come up with a series of hypotheses before you have done the work to figure out that there is a problem in the first place. But what are we testing:

Caroline: That's a good question.

Chris Disspain: If I could understand it and if the people in this room who have been involved in ICANN for as long as the people in this room have to understand it, then there is a problem, isn't there? I mean, what are we testing?

Brian Cute: We will address it tomorrow morning.

Willie Currie: If I may Brian, thank you. It struck me that just the work group 3, I will ignore work group 4 for a moment, but just the work group 3, to have a third party come up with these hypotheses was very useful, thank you very much. We can gather it to our chests and make some use of it, but, does it have to form substantive work of Berman? That I'm not so sure about.

Brian Cate: Good point, Willy.

Willy Currie: Yeah I think that trying to capture this issue of the best mechanism is where public input, accountability, and transparency and reflect on a couple of concepts around that. I think as Larry pointed out this morning in the accountability section, they were only looking at the section of review processes after the effect rather than ongoing review processes which we are required to look at in terms of the AOC.

I think that perhaps it's the hypothesis, the working hypothesis that is particularly weak in terms of what Fabio was saying about budget and about incentives from management, about the relationship between strategic priorities and implementation and that perhaps that hypothesis on accountability needs to be beefed up to take into account governance issues on decision making, which have to include every matter that is pertinent to the inputs going into a decision, which include budget and the like.

In terms of public participation, it's not just working group 3, there is a section on 4 on representation, which can address some of the points around working group 2 on the role of the GAC and other SOs and you

know, that seems to be reasonably covered. So I would suggest that perhaps we focus on accountability in terms of identifying more closely what would be useful there.

Brian Cate: Thank you Willy. Fabio?

Fabio Colasanti: Well, the reason a question of apology and clearly you have to set a hypotheses to check whether there is a problem. But I think if we are at the third meeting here and I would say that in the line of what we had heard in Brussels and the public comments that we have received, I would say that the first question to be asked is, is there a problem?

The answer that we would give at this stage is, yes. I grant [inaudible 22:00] that probably the problem is 50% a question of perception, 50% is an objective problem. But even if it is only 50% an objective problem, we have to examine why. It seems to me that we have a number of areas that all contribute somehow and I would regroup them in this way.

I would say that we are in a situation where the areas that we are discussing with respect to this area of dissatisfaction, one would expect from ICANN, the behavior of public administration, we go the length of the process, the openness, the transparency, that you normally associate with public administrations and lack of efficiency. On the other hand, you have that ICANN has the structure of a private corporation and therefore they are inherently a separate number of elements that go in a separate direction.

Now, we are here to defend the ICANN model, but I think that the ICANN model can be just modified a bit to accommodate the results that we want. That means examining a number of issues that we have been discussing.

First of all, why isn't the ICANN not more prone to greater public consultation, interaction with the community and that means issues such as I would say, "the culture of the staff, the composition of the Board" if it is true any payment that act as a negative incentive, any desire to maximize the budget of the organization, any feeling of loyalty more to the corporation as such, then to the community at large reinforced by the legal advice even by the council that says, "no, no, defend the corporation even against legal attacks."

So this is all sort of environmental elements that lead to the body behaving in a less than ideal way. Then there is the other area, given the draw these certain situations so that the body has a certain incentive not to behave in an ideal way and perhaps we might or might not discover that the public consultation is not structured in the best possible way, that the follow up is not exactly what it should be and so on.

But I will say this is my working hypothesis as a member of this group at the moment. I would like to get from Berkman confirmation or denial of some of these elements. We are in the situation where yes, there is a problem. Maybe it is not as big as some people are making it, but there is a problem. Why? In my view, I would say, there are a number of environmental elements and they translate into sort of less than ideal behavior.

Brian Cute: Thank you Fabio. It just occurred to me that one thing that we want to check with them is they have said that they haven't shared all their work with us and we are focused on our conversation right now on issue or problem identification and that being the starting point, I think that is the correct starting point.

Maybe Berkman has engaged in some of their own, we should ask them that and they haven't shared that with us yet because that is something we are going to want to know and something that we are going to want to help shape. We are closer to the process and closer to the community and we have had the feedback that we are working off of and they are effectively looking at it from a distance.

So let's make sure that we ask that question. Have they developed issues or spotted problems on their own and if so, what are they and let's engage in that front. Anything else before we go to questionnaires? Cheryl?

Cheryl Langdon-Orr: You must be psychic. I was going to say dear Mr. Chairman, can we go to questionnaires?

Brian Cute: Certainly. Let's go to questionnaires. Any particular one anybody wants to pick up first? Chris.

Chris Disspain: Okay. I promise not to ask I don't understand questions too often. I started the first one, they are much the same across the Board, but I started the first one which is the, it's on page 5 and it's the new GTLD program. So, this is the draft interview questionnaire and I have some high or

overarching points that I think to discuss. I am unclear as to, all three of these questionnaires are focused on the staff.

It seems to me that there is a difference between one would ask staff and what one would ask the community. I am unclear as to why we are going to staff with some of these questions. Staff, you ask staff the facts, you can ask them for a few opinions. There is the community that will have to give opinions. It's rather the community thinks that things are transparent and accountable, not rather the staff thinks that things are transparent and accountable.

So, I am at a little lost as to know why we seem to have this focus on interviewing staff with all of these questions, and with the questions themselves as we will get to in a moment. I don't have any clue as to who else they are going to talk to and actually frankly some of these questions I think are inappropriate to ask staff members. It puts them on a spot, which if it were me, I would be extremely uncomfortable in answering.

Brian Cute:

Okay so let's take those in order. I don't believe that we should ask the questionnaires that they are exclusively providing questionnaires to staff, that they are providing them to the community, Board members and what not. The question is, have they developed other ones that are tailored for those audiences, so we will ask the question and get an answer. Secondly, do you want to call out some of the specific question that you think are inappropriate?

Chris Disspain:

Yes sure, but can I too ask them who else specifically they are intending to?

Brian Cate: List of targeted interviewees.

Chris Disspain: Yes, I am happy to carry on. I think that for example if you go to page 8, I think again now this is starting to some extent specific to this particular one, the new detail one.

Chris can I interrupt because I've got an earlier one, so that we - I've got one on page 6. That is the very first issue of confidentially, I cannot understand how you can have an examination of openness and transparency and then do it [inaudible 28:49] easily. So I think that is the first thing. It may be a justification for asking confidential questions.

But we went through this for the president's study committee and made it quite clear that people can submit things confidentially, but they can't be taken into account unless people are prepared to say who they are and what their bias is and stand up for their position. So I'd really want a good justification for anybody should be allowed to input under this [inaudible 29:14] confidentially.

Brian Cate: Yes two reactions, one Berkman offered that and this was in the context of a conversation with John Jeffery and his specific concern about triple X, which we are going to talk about and his concern that the data collection effort here. We are going to be talking like a kiwi data collection effort. The data collection effort here.

John has some concerns so this confidentially bit came up in that context, so we will have to flush that out to whether or not that is the right basis for

confidentiality. But one thing that Berkman offered is that they would take the totality of the universe of responses and effectively draw their conclusions, draw the data and anonymize their reported results and thought that it was an appropriate way to proceed, so let's address that.

Larry Strickling: Sure. I am pretty sure that John would not have said poll the staff and do it confidentially so let's hear what he has to say and there may well be a different justification that is different for staff on some issues than there is from the community.

Now that applied it would seem to me if Chris's question is are they going to go to the community, I would have thought, maybe phrase this as a question, I would really want to hear a good justification why members of the community should be making inputs into this process and maintaining confidentiality.

Peter Dengate Thrush: Thank you, noted. Chris.

Chris Disspain: I completely agree with you Peter and I think it is actually the reverse and the other way around. I think for staff it is seriously, I suppose it depends what level you are talking about, but to expect staff to answer some of these questions, not all of them, but some of these questions without guaranteed confidentiality is I think stretching it a fair bit. But certainly in respect to the community I would expect them to be open. But let's be clear, these questionnaires are specifically drafted and designed to answer for staff.

Brian Cate: Yes? Unless there is anything on page 7. Yes Peter? We will get to page 8. At the bottom of page 7, there is an awful omnibus question for dot something or other, “How would you describe GAC’s the [inaudible 21:24] council’s, the at large’s and other stakeholder’s role in the decision making process?” Well that will run to pages, and pages, and pages, one of them being the interactions with the Board.

I mean, I don’t think asking multipart questions like that is useful. So if they really want to know all of those things, I think they should break them up. The last one on the bottom, In your view, were the inputs of these stakeholders adequately considered during the crisis? What does adequate mean and redefine it and how does it taste? Fabio.

Fabio Colasanti: A bit about the issue of confidentiality and this little crisis. What about Berkman trying to do with the questions addressed to the staff? Because we have a situation that is tricky. I can see the reason why they offer confidentiality if they assume that maybe there were some processes that would be less than ideal if I were the CEO of ICANN.

If I were Walt Bextram, I would not be happy at one member of the staff, Daniel Berkman, but yes we were a bit too far from this one. But they are trying to discover that is not known already. In other words, what else do we expect that Berkman will get out of these interviews that we have not heard from one side or another on these three processes?

Brian Cate: Thank you Fabio, Chris.

Chris Disspain: As is quoted on page 7, it may be a useful exercise to just look at page 7 in the context of what Fabio was talking about and say well if these are questions are asked of the staff, are they appropriate questions? If you look at the public participation questions, the first bullet point of the various opportunities around for public input, was there one you thought was particularly effective?

Perfectly fine as I'm concerned to ask a staff member that question. Yes I thought this particular one was great, this particular one was more effective than others. From your perspective, were there any challenges in analyzing the public comments? Well clearly that is a staff question because they are the ones that do the analyzing and commenting so no problem there.

How useful do you find the public comment process in general? In what context? You're a staff member, so what do you mean how useful do I find it, there is no context in that for me. In what ways do you think the input from the public played a meaningful role in the decision making process? Well, you know that's a judgment call you can argue either way and so on.

So when you start to look at the actual questions and realize this is going to staff members, I start to get concerned whether, about whether we are going to the right place necessarily to get the right information that they need in order to write their report and the same thing applies to questions in #4 that Peter referred to about the wide range in question.

In my view it is not appropriate to ask the staff if they think that the stakeholders are adequately considered. I mean is the staff going to say no?

Cheryl Langdon-Orr: And if they do so what?

Brian Cute: Can we go to page 8 right now Peter?

Peter Dengate Thrush: How long are we going to avert these questions? We are raising mental questions about these questionnaires.

Brian Cute: Let's go for the high arching one which is why are they bringing questionnaires to the staff?

Peter Dengate Thrush: We have to answer that question Fabio, it might be helpful if we go through and get sort of like a clutch of them first and then. So transparency on number page 8, #5 it says start at second sentence, "Looking at the new detailed E program, we would like to learn more about your views on how transparency is ensured."

That's great because if you are going to ask the staff, there is an assumption that there is transparency, how is it ensured? Marvelous, just three bullets points that don't have anything whatsoever to do with ensuring transparency. They are actually asking about how transparency could be better. So again if you want to ask the staff about how you want to ensure transparency, then there is an assumption that it exists and you know what it is.

So I have a little bit of concern about that. When you get down to accountability on #6, and I want to stress that what I am about to say is an incredibly cynical view that you could take a view if you are coming at this from a bunker mentality that if you were asked as a staff member, if you were asked questions like, “In your interpretation, what does accountability mean in the context of the new GTLD program and what criteria would you use to measure it?

That you are going to be judged against some unknown benchmark, which no one has yet told you.

Brian Cute:

Let me just take an issue with that perhaps. One of the things that we discussed in Marina Del Ray was, was there any training on AOC? There might actually be some relevance there. You know the AOC is the agreement under which accountability and transparency is being improved in ICANN and one of our questions was, was there training? Was there briefing? I mean that question in a vacuum could reflect the extent to which that has happened in the organization and bails on the possibility of continuing improving the processes.

Chris Disspain:

I accept that and it has just occurred to me actually that maybe what they are doing is assuming that they can rely on the public comment for the main community answers to these sorts of questions. The interpretation of the public comment if you will for the main community answers to these questions and going to the staff for the alternate staff view. But I am not sure that you can rely on the public comment, because the public comment is given in specific contexts as opposed to answers to specific questions, you are going to get different sorts of responses.

Brian Cate: Larry.

Larry Strickling: I think this has been an excellent discussion until up until now and I think it is provoking thoughts in my mind as well and I hope we can keep this going. I would like to suggest that part of the problem that we have with the questionnaire is it flows naturally from the problem we have with our hypotheses and I think a misunderstanding as to what a hypothesis is.

It seems to me that when you are going to the staff or to anybody, I can think just quickly three reasons why you are doing that or three things you are hoping to accomplish. One is, you are going identify issues, possible problem areas. Secondly, you could ask staff for information and facts that will either support or disapprove some hypothesis you have for a problem area.

A third reason that you might go to staff is to gather input to be used in recommendations. It seems that these questionnaires aren't really designed clearly to deal with any of those three or to at least evaluate the appropriateness of going to staff in each of these areas. For example, do we really expect staff to identify problem areas for us?

I think that is not a reasonable expectation on our part and I think it puts staff in a very difficult situation and frankly if you did have a staff member who was just dying to tell us something, the last place they would put it is on a written questionnaire form. I mean it might be something that you could learn in a conversation, but you're not going to get someone to write it down on a form and send it back to you.

So to the extent to where some of these questions are written to identify where there is a problem or not or if there is a problem, I question the value. Secondly, it does seem that you might want to collect facts regarding, that might support or disprove the hypothesis but that brings me back full circle where I started which is we don't truly hypothesize here that are intended to, that are designed to get it, those core questions.

The third one, I guess I have no problem asking staff for their input to help set recommendations but until you have really identified if there truly is a problem and have gathered the facts to support it, it seems premature to be asking for recommendations as to solve something that you haven't yet proven as a problem.

So I fear that, I am not sure where that leaves us in terms of doing questionnaires, but it does seem like all of this needs to be rethought a bit because I think whatever their goal was, they are not going to accomplish it with what I am seeing on these pages.

Brian Cuta:

Thanks Larry. Well taking up your point number 2 which is proving in the fact finding process whether there are problem or not. Obviously one view would be going to staff after having heard from the community and having had certain potential problem areas identified going to staff illuminates and provides contacts and helps prove or disprove that there are in fact problems to a certain degree. I see value there and perhaps it is just a matter of reorienting again getting them focused on what the potential problem is first and redrafting. Chris.

Chris Disspain: So, should I move on for a few more because we are about to get to triple X and that is more difficult.

Brian Cute: Sure.

Chris Disspain: Again I don't want to be picking on every single word, but sometimes things leap out at you. Accountability bullet point 4, "Do you see the delays in the development of the new GTLD program as an indication?" I think do you see the time it has taken perhaps? But the delays, you know that's pejorative and not helpful. The fifth bullet point, I am unclear as to whether that is a question specifically just about the new GTLD process which is what this question is about or whether it's a general question. Because it says, "Can ICANN processes reach consensus?" Well, in what context?

Fabio Colasanti: Yes, thanks Brian. Can I add on the second bullet point at the top of the page, suggests a confusion in terminology. "How does ICANN mediate between the interest of internet users?" Well, the interest of internet users is rated by ICANN by the bit of ICANN that is ALAC and those of industry well those bits are represented by those bits of ICANN that are the registries the registrars and various others. So there isn't another ICANN, there is just the difference between those bits. It's terminologically inaccurate. Do they mean the Board or do they mean the staff? What do they mean? Are there ICANN processes and the answer is yes. That is what the GNSO is set up to do.

Brian Cute: Thank you. Anyone else? Chris.

Chris Disspain: So if we are done with that one, the next one is triple X. If I could take you to the second main paragraph on page 10 it says, “we are focusing the role on the GAC and the ILP.”

Larry Strickling: Sorry for just a minute. This is an example of 9. It is the selection of outside panelists or experts and a proper way to resolve disputes out of string confusion. I don’t see what the point of asking staff about fundamental questions in the process. You know they don’t get an opportunity to comment on them and they may have very strong views, but that is not what they are there for, if the community works out a way.

Brian Cute: Thank you. Chris.

Chris Disspain: I missed that one. Back on to page 10, second paragraph, “focusing on the role of the GAC and the ILP, with no intention of addressing litigation relevant masses.” That is absolutely right, that is exactly what it is meant to be but unfortunately the questions don’t reflect that. I have no idea if you have anything on 11 Peter or 12 but I’ve got some very specifics on 13.

Just to take an example of that, see transparency 6 third bullet point. “Do you think transparency in the triple X top level domain process could have been improved?” That’s not what their supposed to be looking at, they are supposed to be looking at the ILP and the...

Brian Cute: Which one was that?

Chris Disspain: Third bullet point on C6 page 13. We can discuss it in a second because it is the same point 7 accountability bullet point 2 is excruciatingly worrying. This is a question of staff. “How accountable has ICANN been throughout the process of evaluating ICM’s application.” I mean that is just so far outside what they are supposed to be looking at.”

Brian Cute: Point 7 bullet 2. I think it’s probably going to be worthwhile for me to write this up and send this off to Urs before we go to bed tonight so he can have advance notice on this.

Chris Disspain: I was going to say a conversation with him as well might be helpful. Because you can pretty much summarize it all and let them think about it all day until we talk.

Brian Cute: I am continuing to take notes.

Fabio Colasanti: Starting with Larry’s question because that would leave the overall frame.

Brian Cute: The hypothesis question?

Fabio Colasanti: Yes. Exactly what are we trying to achieve with this question?

Chris Disspain: I only have one more set of comments and this is now moving of to the data cert questionnaire and that takes me to page 17 3, which is public participation. “On April the 6th 2010, ICANN hosted a workshop in Washington, this data cert actually started before that. It started in Nairobi and therefore if they can look at it as a case study, they need to go back to

the beginning, not start at an ICANN meeting in Washington D.C. This is factually incorrect.

Peter Dengate Thrush: What is this thing they call a DNS cert case?

Chris Disspain: I am guessing that's the document that was produced as the part of the Security and Stability documentation Peter, but I'm guessing that it's not clear that that's the case. Finally, even more page 18 the box in conclusions, why would you be asking staff what do they think of the substance of the DNS proposal? Why would you be asking if they think an independent organization is necessary? I don't understand what that has to do with staff members. I mean what are they going to say? Well, the CEO thinks that it is, so that's what I think.

Peter Dengate Thrush: Give me the substance questions.

Chris Disspain: I mean I don't know where those have just appeared out of nowhere, I can't conceive of why they would be relevant. I ran out of time at that point.

Brian Cute: Okay Larry.

Larry Strickling: Again this has been a very illuminating discussion and it raised a concern I was addressing. The first question I asked Berkman this morning which is you know whose running this thing? Who is actually contributing to it? We heard that no, no they have engaged the senior people Mike Palfrey and Bird and those folks, but I have to say the work product strikes me as kind of low level staff work without adequate guidance and I am

concerned that, and I just don't know to what extent this thing is really being managed from the top as rigorously as I think it needs to be given the time frames we are under.

Because I think the kinds of questions that have just been raised here in the last half hour are very basic questions that should have been dealt with at the senior levels of Berkman before this was sent to us, which is, how do you think a staff person is going to answer this?

If somebody had just read these questions and pretended to be a staff member, I think one would have realized what Chris has so clearly demonstrated just from the read through he has done, which is that we are not going to get, in all likelihood much that is very useful from these questionnaires and I think you know, higher level attention at the beginning might have saved us some time and expense in all this. If others share that view, I think that ought to be communicated to Urs before tomorrow.

Brian Cute: It will be other thoughts?

Cheryl Langdon-Orr: I'm sorry but I am still confused are those questionnaires going to go only to the staff and community or...?

Brian Cute: It's not clear. They were designed to go to the staff. It's not clear if these were also intended to go to the community or if there are different ones.

Fabio Colasanti: There is a note that they will develop different questionnaires for the different stakeholders and community.

Brian Cute: Thank you. So these are staff targeted questionnaires.

Cheryl Langdon-Orr: Very frankly and excuse my ignorance I skimmed through the questions and bearing in mind that those are for the community, I read them the other way around and I pointed out some questions, which make more sense to be directed to the staff.

Unidentified: Actually what you just said here Cheryl is very important. It picks up on this very first question, the issue that Larry raised that someone with a little more practice should have done a read through on this before we got it. Because there are a whole bunch of questions which many of us would put the pen straight through and that might be useful in a public community survey.

But we have hodgepodge mosaic thing happening here, which even without knowing its intentions are doesn't seem to be meeting any of them. So yeah there are questions here that are highly inappropriate to be asking staff, but perhaps could be useful in a community survey, but this we have been given as the staff questions and that is a very disappointing set of questionnaires to be given at this level and at this time.

Brian Cute: Well, I will endeavor to compile this list, send it off to Urs, and have a conversation with him before we reengage in the morning so that he is fully apprised of our thoughts and our reactions and that he will be ready to come in with his team tomorrow morning to take another crack at this. Olivier.

Olivier Muron: Yes and I am assuming there will be a questionnaire for the community. It will be interesting how they will perform this kind of questionnaire. Are they going to randomly, pick a random sample from the community and ask or are they are going to have face-to-face questions or phone calls first? It is very difficult?

Brian Cute: Yeah I think that point is well taken and I think the question of time has become even more preeminent here and how much are they going to be able to do in three weeks time and can they do a two-phase approach. I think these are open, serious questions. Anything else? Warren, Louis?

Warren Adelman: Yeah I think Larry is right in terms of the work that we have seen so far. But we will get to the bottom of it. I think that this goes back to a question we all discussed earlier you know, is the timeline given some of the delays in the process and the relative complexity of what we're doing, a decent timeline to realistically try to produce a sophisticated work product?

Brian Cute: Fabio.

Fabio Colasanti: Can I read you a comment by Kieren McCarthy from the chat room in the defense of Berkman? I'm reading, they had a ridiculously short period of time to turn around the review of a very complex organization and are now being picked apart by people that have lived and breathed ICANN for 10 years.

Cheryl Langdon-Orr: Indeed, exactly right and it's called being professional. If you can't be professional enough to deal with that sort of criticism and this sort of

analysis of work at this sort of money, then boy have we made some wrong choices?

Chris Disspain: Couple of things. On the point about time, Karen is right in respect to, it is very easy to say well it is very obvious to me, etc... Except that I don't think it has anything to do with ICANN and it's to do with what questions in general terms you ask staff, you would ask your staff members. It is a principle issue, rather than a specific issue to ICANN.

But the other point I wanted to address or ask Brian is given your comments about timing and etc, should we, do you think we should spend a little time discussing a backup plan of timing if Boston doesn't work on those dates because there is no reason to be there. How far can we push staff out, etc...

Brian Cute: Well, yes I think we should discuss this. There are two parallel tracks. There is our track, which is we have to put out draft proposed recommendations by mid-October to stick to our time table, that's our track. Then Berkman has their own track and ideally their track would feed into our track very neatly and in advance of our final produced work in mid-October.

I think it's clear that there's extreme pressure on Berkman's ability to do that. The question is, can we manage those parallel tracks, and we have to stick to ours. Is there a way we can manage Berkman's track in a way that provides us enough substance and inputs, quality substance and inputs and gives them more time to do well focused, complete work, Fabio?

Fabio Colasanti: I think we are all aware of the risks, but for the time being I would be in favor of sticking to the present track and deciding in Boston whether we have enough or whether we are able to produce the draft recommendations or not. But that is the moment when we would have to make a decision.

Brian Cute: I think a risk that we have to acknowledge is that if we put out proposed recommendations for public comment, then we take the public comment period in, then we have a time to digest it and tweak if you will based on public comment or perhaps do major surgery based on public comment and put it back out.

If Berkman's input to us, if their input is extended into November and they come in with something that is substantive that really changes our original assumptions and our draft proposals, we could find ourselves doing very major surgery at the end of the process just a week or two going to Cartagena, it's not a dynamic that sounds attractive. Yes?

Cheryl Langdon-Orr: Brian, if that happens, that happens. But we have to continue down the fixed pathway that we have agreed to, otherwise we don't even have that as a possibility. We've got to get these reports out to a certain stage. We've got to go out to public comment, we have to come back in and that has a time course associated with it.

Now if it mean pre-Cartagena and it is going to be a nightmare, then it is a decision that we make if and when we get there, but we are looking at a crystal ball now, we don't know if anything substantive is going to make us do major surgery is going to happen yet. Right now the fact that half the

questions have gone out of the questionnaire in my view means that the job is a little easier, that's a good thing.

Brian Cute: Thank you Cheryl - Willy and then Larry.

Willy Currie: I think this conversation is a bit premature and you know what we have been doing this afternoon is looking at what we were presented yesterday and doing some analysis of it, which we through you are going to feedback and we will get a response tomorrow so if we are still concerned after the Berkman meeting tomorrow, then we should have this conversation, but I am not sure that we should be having it right now.

Brian Cute: Thank you Willy, Larry.

Larry Strickling: On reflection, I think the problem is that I think too many of us, including myself maybe are sitting back waiting for Berkman to rescue us and I think that actually the problem is the opposite, which is that we haven't given enough guidance to Berkman and I almost wonder we're here.

I think certainly with the good work Willy has done with working group 2, we are you know probably an hour away from having a set of hypotheses for working group 2, which is largely taking the issues that have already been identified and then recasting them in the form of does the failure to do x, has it led to whatever the problem is we want to identify. I think that if Berkman had that in front of them, they could craft a much more precise and specific set of inquiries to make.

Right now I think they are shooting in the dark because we haven't landed with anything more specific as a group. I think we have talked around the issues, it's just having the ability to really sit down and focus on us as a group identifying everything we have heard and it's not going to be complete, it's not going to be fully supported, that's all work that will have to be done, but I almost wonder if in the time that we have here together.

We would be better off focusing on trying to get what we really think the hypotheses are in each of these working groups and then present, starting that iterative process with Berkman. Because I think the idea that there are two workflows here and somehow they come together in the end, I think that that is not going to happen. I just don't see that being a successful process.

Brian Cute:

Thank you Larry. I think in my own coded way, what I was trying to say at the opening was let's give Berkman the concrete inputs that we have now for the exact purposes you just mentioned and I didn't press hard, but I think we should articulate what we think are particular recommendations that we see already and the reason I didn't say that in concrete terms is because I wanted to respect and Peter, you raised the point, you can't as a process jump to recommendations.

They have to be based on data, they have to be based on analysis and we all recognize that. But I think the working group teams' work has already produced clear, potential recommendations and I think we should be very specific with Berkman what we think the issue and problem is and what we think the potential recommendation is where we see and then we can

take that and I think do a much more focused work. We can play with the agenda that is not an issue. Olivier.

Olivier Muron: Yes, what you just said is about the support we are supposed to give to our group but we are also as their guests to them and that is where there is a problem. They are trying to element the work under a case study that is what the questionnaires are for yes?

Cheryl Langdon-Orr: You just said we can play with the agenda, but do remember about the time differences. We can't play with the agenda tomorrow that much and have Berkman included, which I think would be valuable for them to be included. Can we work at the lightest [inaudible 2:05]?

Brian Cute: Well, Urs is in Shanghai.

Cheryl Langdon-Orr: Oh that helps, okay, okay.

Brian Cute: Okay so, not for his entire team, but the manager of the project is in Shanghai?

Cheryl Langdon-Orr: That's a good thing, thanks, right.

Brian Cute: So, other recommendations, I will put together this list. I will communicate this to Urs and, yes, Chris?

Chris Disspain: Can I just, I just want to make sure I am clear as to where we have got to, I know you've got the notes; you are going to communicate with Urs. But I am trying to work out a combination of what Larry was saying and what

Olivier was saying and where that actually puts us. I mean, I don't know what you think Olivier, but from working group one's point of view, I think we are pretty clear on where we are headed but we were assuming that there would be input from the case studies that would help us to, two things.

One, we asked them a direct question saying, have you got a knowledge base we can use to go look at some things that would be useful. Secondly, receiving the case study results would be helpful to us reaching final conclusions.

I don't want to make life difficult for everybody, but we need to remember that this is an open and transparent process and there is a problem sometimes with putting forward what you think you might be heading towards publicly and then being accused of using the input you get as a justification for decisions that were already made and we have to be very careful that we do this properly.

Brian Cote: I couldn't agree more. Larry.

Larry Strickling: I absolutely agree. I think with the way one protects against that is to state these in terms of hypotheses. Again, we have seen the comments from the community; we have met with folks for a week in Brussels who took input. The idea that we can't at least lay out some hypotheses here, I think we ought to be able to do that without doing it in a way that comes across as judgmental or having decided the question but just as a way to focus the work that Berkman carries on from here.

Brian Cute: Thank you. To your point Olivier, there are case studies that were brought forward by the community, so I don't see any possible deviation from that, it is just a matter of getting them properly focused in their work. Any other thoughts? Okay I will take this and get in touch with Urs and get him prepared for the morning discussion.

I get to your point Cheryl; I will ask him how much time he has. So what we had for tomorrow morning was working group 3 and working group 4 making the presentation to Berkman, the work that you have done to date and tie up conclusions and possible recommendations.

Cheryl Langdon-Orr: If I may from the working group 3 point of view and I am sure Warren will pick up on 4. Berkman have what we've got so far we will be interacting with them at a poll. I am happy to sacrifice the working group 3 times for the greater good of getting this right.

Brian Cute: We've got some noise on the line, could you put it on mute please? Warren is that you?

Warren Adelman: It's not Brian, but I appreciate that you assuming that 12:30 in Arizona the background noise that is going on.

Brian Cute: It's the Mai tai coming. So Warren in theory, we would have working group 4 reporting into Berkman so they could hear the work that you've done. Cheryl has offered to pass on that. That is something that could be useful to do if you are prepared to do it.

Warren Adelman: We would be happy to speak with them. If you actually look at some of the things they were writing in the accountability section of their interim report, then they are obviously going down the same path that we were going down and asking for some of the data, which is what I think we should focus on around some of the remediation paths. So, we are fine in talking to them, but I don't want to stop a process of sort of redoing this whole approach with them either if we want to shelf that for later. It is up to you guys.

Brian Cute: Yeah I think we have a bigger discussion to have first. Okay, so we will kick off in the morning reorienting the work, making clear to Berkman, helping them with their hypotheses and start down that path. That is you Louis; could you put it on mute please? Okay, well I think we have reached a natural pause here, we can certainly take a break and have some coffee and then reconvene and then deal with whatever business we have today. So why don't we take a 15 minute coffee break.

We are going to start again. Okay so we about an hour and 15 minutes before we have to break. Picking up where we left the conversation off, what I would like to do in the next hour and 15 minutes and let's make sure we are on the same page is have each of the working groups in turn identify their working hypotheses based on the work they have done so far to the extent that they see potential recommendations on the basis of their work that they have done so far to identify those recognizing that their potential recommendations.

And with all the caveats that we have put in the last hour around that with the view of providing these inputs to Berkman in the morning so that they

can then go and reorient their fact finding work, their questionnaires, their interview documents. Is everyone in agreement with that approach? Okay.

Well, we can either do it as a team with a full team and have the lead of each working group in turn, again report in your working hypotheses and your potential recommendations. I did have one request that working group 2 might be interested in doing it as a working group together as opposed to with the full team. I want to test folks to see if we do this together as a group or the working teams break out and I know there are problems with breaking out because of overlapping memberships.

Fabio Colasanti: I think we should do it together.

Brian Cute: No breakouts?

Cheryl Langdon-Orr: No breakouts do it together. Working team 2 is just going to have to suffer.

Brian Cute: Okay there is your answer. Alright Olivier then you are up. Since we have already had reports from working group 1 and working group 2, please streamline to the extent that you can, identifying the working hypotheses which is effectively issue identification, problem identification and then any recommendations that may be visible.

Olivier Muron: I think that we will define [inaudible 10:05]. I don't know exactly what you mean by working hypotheses. Can you explain what working hypotheses?

Brian Cute: Well first we have issue identification, we have identified a potential problem, let's start there.

Olivier Muron: So if you look at the scope of our group, the first topic is the topic on Board composition, yes Board composition and nominating committee. There were quite a lot of questions or comments I mean on the committee on this topic. So we started to work on the recommendations and that was explained by Chris this morning to have more of a focus on skills and trying to use the non-comm part of the Board to have more balance set of skills in the Board, Chris can you please come?

Chris Disspain: Thanks [inaudible 11:36]. It was unfair to ask you to do that given it was my document. It seems to me that and I'm not necessarily sure what we're talking about with working hypotheses but try this. Yes in the case of Board skill set in the short hand, yes there is an issue.

Our working hypothesis is it is very hard to try and fix that issue by playing around with the elected directors, who go on to another term because they come through bylaws that are different in each SOAC and are put onto to the Board by those. It is however our hypothesis that the skill set of the Board could be improved by making some recommendations in respect to the way that the nominating committee is tasked.

So no changing in the nominating committee, no changing in the way that it is structured, not part of what we are looking at. But we will be looking at how they are tasked to find the directors that they find, that is looking at

things like the skill set of what you would like to have on the Board and so on.

Brian Cate: Fabio please.

Fabio Colasanti: Can I step back and make a [inaudible 12:56] proposal. I was rethinking about, refining what I said before. I think that we could regroup most of our working hypotheses scope and possible recommendations into, in my view three categories molding in two as I indicated before. I would say one relates to the processes, the way in which ICANN as we know it now could work better by simply doing things in a more efficient way.

Two is all of these sort of external constraints on ICANN, the things that might make the Board, the staff less inclined to be accountable and transparent. Then there is a third one that I don't know how to put into either of the two categories and that is the question of the independent review Board to which extent one can.

Again, to review an idea about what we have discussed. In terms of process, we could have, is there a case or having a recommendation on strategic planning on public development process so to a sort of regrouping with too much consultation at the time. Should there be a better procedure for getting decisions through the Board so that they check that they have complied with a set number of steps? Could they improve farther the public consultation process?

Could they be giving a fuller explanation of their positions? Should there be a sort of down to base of the public input that they receive or at least

public policy input of the GAC advise and perhaps more of this? These are the sort of processes. Then in terms of the environment, the conditions you have Board.

Do you have the skills? Do you have the motivation? Should you pay the members of the Board? Do they have enough support? Can they for instance request from the staff independently additional briefing material, additional explanations? Is the issue of staff, should we be discussing what I mentioned before, this issue of should bonuses be linked to achieving certain decisions yes or no? Is it the question of nationality? Is the question of nationalities a relevant one?

Are there other external elements of this type that play a role? Then there is the third separate issue review Board. Can it be set up? What mechanism can we have? My proposal would be if you agree with the regrouping of at least the two categories, we could go through the working groups 1,2,3,4 and see what we have that would feed into these categories.

Brian Cute: I am trying to track here, but you are saying three things, process?

Fabio Colasanti: Yes.

Brian Cute: Second element?

Fabio Colasanti: The second I would call the environment, the extent of constraints, the things that are sort of incentives or negative incentives.

Unidentified: Outside things that lead to less transparency and accountability.

Fabio Colasanti: Exactly.

Unidentified: That's basically what you meant.

Fabio Colasanti: The third one is basically is the independent review Board, which is a complex legal issue.

Brian Cute: You are saying these are three elements that you think we should track through with the working groups pretty much?

Fabio Colasanti: It seems to me that for the first two, we could easily come up with 7, 8, 10 I have just given a few, but there are many more that we could identify.

Brian Cute: I am going to keep those there as a placeholder as we go forward and we can play with them to see if they map well. Go ahead Chris.

Chris Disspain: I am just wondering if we could, I don't know if this will work or not, but if we could try it. Looking at what working group 1 is saying and see if it fits. If that is alright.

Brian Cute: Absolutely and sorry to intervene for just one second though. I want to step back though. I think it's important for us as we report in to identify you said the skill set issue, is there a problem, yes. Let's be clear, we didn't have public comment. We noted that there either wasn't any or it was very scarce about skill set of Board members as a specific problem.

Now we are tasked in 9.1 of the AOC to address explicitly whether the skill set issue is something that can be an improvement, so I think we have a foundation but as we go through this, since we are engaged in hypotheses and possible recommendations we don't want to jump too far. Larry.

Larry Strickling: But again I think the idea of just finding problems and listing them is an important step but it is by no means where we should end up. So take this precise example of the skill set of directors. The hypothesis that has to be answered or the question that has to be answered is and again with reference to 9.1 is will Board governance be improved if the skill sets of Board members taken more into account than it is today as a selection factor?

But it has to tie back into some outcome that is within the scope of the review. So whether in isolation, we might all agree gee it might be nice to have a lawyer or a musician or a poet on the Board, it still comes down to whether or not it will improve Board governance or not. If we can't make that link, then I'm not sure it's an appropriate thing for us to be pursuing.

Brian Cute: Thank you Larry. Chris.

Chris Disspain: Say yes, that's exactly why Olivier and I talked to Dennis the chair of the Board of Governance Committee was to deal with just that question and it was pretty clear from the conversation with Dennis that he is certainly of the view that it would make a difference.

I also note that, I can't remember the context it came up in this morning, but in my head I have the thing saying, we must interview the Board members, we much interview Board members. So, and I think we will get the same response.

Just talking personally and from my conversation with Board members, I know even someone like Michael who came to the Board with a significant understanding of the ICANN process, you know, was looking to have perhaps a lot more assistance perhaps in the very early stages than currently exists.

Skill set is not just about finding the people who have a specific skill set to bring to the Board, it's about when you go to the Board, enhancing that skill set and providing you with the necessary boundaries and skills so that you can operate properly on the Board, it's both of those things I think. But yes I can say that Dennis was very clear that he thought that it was an issue.

Brian Cate: Thank you Chris, Fabio.

Fabio Colasanti: I would reinforce what Larry said. We should be examining the issue of the Board, composition, modus operandi only to the extent that that would improve governance in terms of accountability and transparency. That is already. Personally, I am not convinced that the set of skills is the most important one.

Probably I think the most important one is that is giving the directors sufficient support so that they can be a sort of counterweight to the extent

that it is necessary to the staff. I mentioned before of the analogy of the European commission and the commissioners having private offices. I would never recommend each director to be given a sort of private office or an advisor.

But who knows should not the directors or the chairman have as much staff as 2 or 3 people to whom the directors can ask, “Can you check this for me?, Can you get me additional information on this?” Something like this. But again, the issue is how the composition, the working methods, the remuneration whatever else we can identify on the Board can improve the governance in terms of accountability and transparency.

Brian Cate: Thank you Fabio. Chris.

Chris Disspain: Okay well what I have done is to talk about the first point which is the Board skill set. The question is whether it could fit in Fabio’s proposed model and I think it probably could if we are going to use that. In respect to working hypotheses, however, our working hypotheses is specific to that one is that there is an issue and that we are on the way to looking at some ways of dealing with that.

On the skill set side specifically concentrating on the non-comm role and I will do the second one, which very swiftly is the transparency of the Board’s decision making and explanation of decisions to the community. It is clear from the public’s feedback that people don’t necessarily think that they are getting the amount of explanation that they need.

We acknowledge I think in this working group that there are enormous efforts made to be transparent. The question is for us is could a simple set of processes that are just automatically applied make it more transparent and accountable from the point of view of the decision making and explanation of the decisions to the community. We have some ideas about that. But again, yes it's an issue.

Brian Cute: Erick first and then Peter.

Erick Iriarte: I want to directly link that to the bylaws of ICANN that express exactly the necessary characteristics to be director is article 6 section 4. Sorry, article 6 section 3, criteria for selection on director. Up here, part of the criteria that they use is skill set. So we need to be clear on the link.

Peter Dengate Thrush: I think it goes back to Urs's point that this document needs to have links in it, and that's fine.

Brian Cute: I agree.

Peter Dengate Thrush: I guess I was [inaudible 24:36] that at some point you get some facts to help you to develop these hypotheses because all of these things are being done and I mean, there is an heir of sitting here and making things up to me. If you ask for example, I will tell you that there has been a long running process in relation to public consultation for paying directors and how much of that have you read and understood?

Do you know what that process is up to? So I haven't even mentioned paying directors, Fabio is the one who mentioned it. It is not in this document, it is listed as an example. It is on the Board now.

Chris Disspain: Sorry I apologize; it is not in working group one's document.

Peter Dengate Thrush: I'm talking about what's on the Board which are a whole lot of good ideas which seems to be being thrown around without a whole lot of good research. So, I am just not quite sure what we're doing.

Chris Disspain: There are checklists, there is a public, I'm just not clear what you think we're doing.

Brian Cute: Fabio, those three things at the top above WG-1. Chris's inputs begin at WG-1. The three at the top Fabio was suggesting should we adopt three overarching issues r thoughts to map to the respective working groups hypotheses.

Fabio Colasanti: Well, I still don't understand. For example, in terms of selecting directors, the nominating committee and that shows the skill sets appointed by, there is a crisis, I mean is that understood? The SIs appoint a series of directors and the nominating committee looks at those directors and goes and matches the skill set to determine what the nominating committee thinks is required. So that has nothing to do with the Board, but you need to go and talk with the nominating committee and say, "How do you make these suggestions?"

Chris Disspain: Fabio, we are discussing hypotheses, many of them may not be correct. My point here I would express it in this way. Do the present composition on the skill sets way of working of the Board contributing enough to accountability and transparency to which extent can they be notified to increase accountability and transparency?

Now my own personal view in terms of skill sets as I said before, I am not convinced that much needs to be changed. Should the nominating committee work in a different way? I'm not sure. I would be in favor of giving some support to the directors and paying them to make sure that they would be making the necessary investment into the decision that they take that perhaps if they receive documents one week before the Board.

And they have 300 pages they would say, "Come on, we don't take a decision." Create a great attention I would say between the staff and the directors so as to make the Board more independent of the staff, but there could be other areas or even this could not deserve a recommendation.

Unidentified: I think Fabio's point is very valid on the specific point of paying the directors. There is an existing process to deal with that and unless it would undermine that process I would suspect, so unless we think there is a stomach failure of that process, then for us to be dealing with that specific issue is, is that your point?

Brian Cute: Peter.

Peter Dengate Thrush: I am getting frustrated with people making up hypotheses without the facts I guess and it is just going to be a waste of time. So what I am

trying to get at is how do we stop this so that the hypotheses are fact based instead of whatever they are based on?

There seems to be an analysis based here of the understanding of the nominating committee selects the skill sets, that is the process. It needs to be analyzed and the gaps in that need to be exposed if any. For example to take the school issue. Do you know what resources are available currently to directors?

Some of the things that have been suggested are currently available so hypothesizing that some of these things need to be improved doesn't start from a grip on reality it seems to me instead of saying, "How can I help you with this?" Because you know there is a lot of information that needs to be gathered before this goes much further it seems to me.

Larry Strickling: This is Larry Strickling. I don't disagree Peter with anything you said although I think the goal of this exercise was to getting us to start to focus on the areas that might make a difference, but as Fabio says, the answer to many of these could be no, everything's fine in this regard, but this was stemming from certainly the reaction that I had that what we had so far in this process was so diffuse that we hadn't even gotten down to the point of people identifying what might be worthy of evaluation.

So, at least if somebody can flag this as an issue, it can be dealt with. The facts assembled and you know, certainly with your participation, we are hopefully in a position to knock some of these off fairly promptly if in fact the facts don't support it. Just at least getting people to finally suggest this

is something we are worried about at least now flushes out the issue to the point that we can have the discussion that we're having.

Brian Cate: Fabio and then I'll -

Fabio Colasanti: We should be practicing something that we are suggesting ICANN should be doing. I am sure that when we publish our draft and our final recommendations, we will be asked why we haven't proposed something else. So I am sure that in our report we will have to explain why we haven't said anything say on pay or the directors on the skill sets and everything.

So we should be discussing this and if we come to the conclusion that already things are fine, that the suggested change will not have an effect on accountability and transparency, we should be explaining that in the report.

Fabio Colasanti: Thank you Fabio. Manal?

Manal Ismal: Would it be acceptable for example we don't call them issues or hypotheses, we call them factors because those are the factors that would affect positively or negatively the scope we are looking at? Those factors would guide our data gathering or our fact finding that should follow. I mean, those are the factors that we will ask for supporting materials.

Brian Cate: Thank you Manal. Chris?

Chris Disspain: Okay so let me try this again from the point of view of putting through a hypothesis that may get us to a point because I acknowledge what Peter says. So I am making this up as I go along. It is accepted that there is very little feedback from the public comment about skill set of the Board.

However, anecdotal evidence with discussions with Board members and others by members of the working group team indicates that a number of Board members and others believe that there is an issue of the skills set and that serving that issue will be helpful. There is also again anecdotal evidence to suggest that there are a number of specific areas that are identified as gaps, they don't necessarily exist right now as gaps, but they are specific areas that need to be filled.

Now the nominating committee process is governed by the nominating committee bylaws and I am very well aware of what they say. Unless I have missed something, there is currently no specific skill setting criteria given to the nominating committee. There is a bylaw that talks about people of high moral fiber and whatever else it says and the nominating committee looks at the structure of the Board and certainly from a geographic point of view, attempts to fill holes and from an agenda point of view needs to adjust that if it possibly can.

But there is nothing that specifically says for example, it would be useful if there was somebody with public policy skills or financial skills on the Board and nominating committee, at its very lowest, please keep it in mind when you are going out to look for people. That's as hypothesis – theoretical as I can make it for the purposes of this discussion.

Brian Cute: Thank you Chris. But can I ask you a question Erick? Yes please go ahead.

Erickk Iriarte: You could put in the screen that section 3 of the bylaws is exactly what you said.

Brian Cute: Yes I will put that back and as I am ramming at Peter, what is highlighted in blue the form and structure of those second and third bullet points, do you think that those are well-formed questions? Bearing in mind your concern about fact finding.

Peter Dengate Thrush: I think the starting point would be to go and work through the Boston Consulting Group and the Board review on the team and then talk to the nominating committee about what they do. Because I have a long history of [inaudible 34:30] including a whole series of consultations including with the chair of the Board and various other people.

I think what you should do is find out how they currently fill that and then see if there is still a gap in that process, which is why I said anecdotally because the implication of that is that more work needs to be done. Now it would be relatively simple and straightforward but in fact, that would be our intention to chat with George Sadowski and Tricia Dykes and the other chairs of the non-comm.

Sadly probably we can't chat with Wolfgang at the moment because he wouldn't respond to any questions because NomCom is currently in its usual 9-month secret session. But, yes you are right that no announcement has been made yet. So yes of course we need to backup. Sorry but I

thought the whole idea about hypothesis was that you use a hypothesis and now we will go out and see if we can justify that or not.

Fabio Colasanti: Just one other comment, I see this again the debate between perception and reality and we had quite some negative comments from the NomCom and the oppressivity of the process.

Cheryl Langdon-Orr: Brian if I can if I may can I, Alice can we make sure that we capture the chat from the Adobe room because for example Wolfgang has made a response which is relevant here and it needs to be somehow valuable to us later, thank you.

Brian Cute: Thank you. I want to raise a question and here is my concern, it's time. This exercise is driving toward things we are going to communicate toward Berkman tomorrow to help them orient, reorient their questionnaires and their data gathering tools. I am struggling a little bit peter with this notion that if we put something up on the Board and you say there's processes in place or that's been addressed, this shouldn't be on the Board.

If there is some certainty that this issue has been addressed and we give it to Berkman tomorrow, we are wasting their time and ours. So I am a little troubled right now about putting things on the Board and end up wasting more time because we really can't afford it. At the same time we are talking hypotheses, so Chris please.

Chris Disspain: We could take a really good example of that. You go to the transparency issue about Board decision making right? It's correct to say that a huge

amount of work has been done and is being done in respect to improving the transparency of the Board decision making process in the first set of I don't know what they call it the Board book I guess that was published from the last Board meeting is an example of that. It's correct.

So that is the status quo as of now. It isn't in my view not sufficient to say staff is happening we should look at it. You look at the status quo right now and you say, "That's it? That's what we have?" So is there an issue? Is there something that we should look at? If it so happens that what we end up saying turns out or comes out in our final report and in fact it is already happening, so be it.

All that does is reinforce the thing. But to not do something, to not say something, sorry simply because things might be happening doesn't seem to me to make any sense. So I am very keen to avoid duplicating processes but I also think that we need to act from the status quo. But it would be completely ridiculous for example, to take the final point, the independent review committee; you know some overarching body that reviews ICANNs Board decision.

It would be completely ridiculous to spend three months of this ATRTs time working on that if in fact we all knew that in six months time, it was going to exist anyway because another process was going on in parallel. But I would submit that that is a fairly rare event rather than a common one.

Brian Cute:

So let's continue through and see if we can put some more of these up on the Board. Oh I am sorry, Manal.

Manal Ismail: Just many things quickly I mean if we don't ask about it we don't know if it is happening quickly. So I think we need to have a list of things that we are going to ask whether they are happening or not. We have to have a way to, we have to get deep into details into things that are happening and happening well. But we do have to have them on our list.

They have to be on our list and we have to have a full list. I think we are talking about the same thing, but it is two different ways to look at it whether to have the list and check what is happening or whether to have what's happening and map to a list. But again, I think we are going to have both and map them together. But if we just look at what is happening, maybe the improvement is in something that is not happening.

Peter Dengate Thrush: We are going to do the letter and as I said earlier, I think there seems to be a tendency to start from a design perspective, let's design the base solution. The job of this group is to review what is currently being done. So I think we should start with what's currently being done and then what is wrong with what is being done?

How can we see how to improve that? So all of these things are being done and I am not saying Chris that you don't have, you just have to take a look at what's being done, there is a Board evaluation process, there is a Board training process. So what are they? Then the job has to be how good are they and how might they be improved?

We are going about this the wrong way. Let's start with let's design a process and let's see how it maps to what is currently happening. Start

with the review team should do a review and then they should look to see how that can be improved.

Brian Cate: I agree with that. We also are starting with community inputs and inputs from directors who are identifying issues so that that dynamic is part of who we are. Larry.

Larry Strickling: Willy has done a tremendous amount of work in working group 2 and I have taken what he has done and have tried to put it into a framework that is pertinent to what we are doing now. Could we maybe jump to working group 2, try this and see if what the reaction is and maybe it's more straightforward in working group 2 than in working group 1, I don't know. But here is how I would propose a framework for this analysis.

Again with the idea of identify and assess whether or not a particular issue in fact is contributing to a less than optimum outcome, however you want to define it. So the lead off question for all of these should be and I can give you the positive formulation or the negative formulation. So let me give you both. The one way to state it would be what consideration of public policy aspects of ICANN issues be improved by.

Now I am going to go through these separately if we wanted to make it a more negative where the formulation could be has consideration of public policy aspects of ICANN issues been impaired by a failure to call in. So we can do it either way depending, which gets to the issue of are we simple here to augment what ICANN is already doing or are we here to really define problems.

So I think wordsmithing it we can do it either way. But then I think the subordinate issues and I think the wording of this works under either the positive or the negative approach would be:

Subpoint 1. Defining more specifically what constitutes a GAC opinion under the bylaws. So the question is, if you go back to the beginning, what consideration of public policy aspects of ICANN issues will be improved by more specifically defining what constitutes a GAC opinion? Second, again with the same lead in: Defining more specifically the process by which the Board seeks the opinion of the GAC.

Third, clarifying whether the process by which GAC supplies its opinion is intended to be iterative and if so, how to define an implement such as an iterative process as opposed to a one time consultation. Fourth, defining more specifically how the Board considers and responds to GAC advice. Five, having the GAC engage other constituencies early in the policy process and if so, how to implement such a process.

So, it either is that every one of these is a fact question that can be assessed all with the goal of saying, “Does this factor, has it either impaired the process because we haven’t worked it out or could we improve the process by paying attention to it?”

Again, I am not prejudging the answer to each of those questions, but it now gives us a focus for ourselves and for Berkman in terms of what to look at in respect to the GAC. I was just jotting this down in the last five minutes, so I don’t propose that this is a complete list of issues that Willy supplied, but it is an attempt to put it into a framework that can then lead

to an analysis that at the end of the day we say, “Yeah, we’ve now assessed this and we’ve determined which if any of these where the facts tend to suggest changes are warranted.

The other aspect of this that has to be added then would be some evaluation of the adequacy of the Board’s self-assessment of these process, you know in terms of all the work that has been done and I didn’t write that in the form of a statement but it would need to be part of the analysis as well. But does this help?

I mean this is kind of what I had in mind in terms of getting us really focused in on where the issues are that you know, depending on how we come out, it really then could lead to a recommendation.

Brian Cute: Thank you Larry, I think that is very helpful in terms of framing our work. Manal.

Manal: If you allow me Larry it’s also, I mean when you went through the minutes of our meetings in Brussels, the transcripts of the meeting with the joint workgroup with the GAC. There is basis to what we concluded. It is again fact based on our meetings in Brussels and the input, the public input we got on questions that were specific to the GAC’s scope.

Brian Cute: Thank you Manal. Are people more comfortable with this framing? Okay. I couldn’t type as fast as you were reading Larry, but yeah if you send it on down, I will get that up on the Board. Do you want to try another crack at working group 1 using the overarching question structure Chris and then dropping down.

Chris Disspain: If you want to read out the overarching opening. Were you suggesting that opening sentence was the same for each? This public policy staff refers to the GAC. So for us it's more to do with governance, improving Board governance.

I think the overarching question would be, would Board governance be improved or alternatively has Board governance been impaired by a failure to?

Larry Strickling: Stick with the positive for the moment. So far for us it has been would Board governance be improved by and then a series of questions and then if you look at the things that we have identified the first is by and we're going to work out what the right words are, whether it is improving, skill set, more carefully identifying, etc.

But none of this actually deals I don't think in this particular case actually deals with the point that Peter is saying. You need to do a status check. So just we are clear, any document that this working group 1 finally produced and in my understanding is that we have a goal to produce sort of like a document by some two or three weeks time or something from memory will start with a statement that says that this is what we believe the current situation is and that statement would deal in the case of skill sets, would deal with you know what the nominating committee is charged to do, what the HSO and SCs is charges to do in respect to skill sets.

So, I think if we accept that as a starting point for any document that we produce, then if we take Larry's format what we have to do is work out

what the specific format and there are fewer of them in this one than there are in the GAC one because there are only a small number of targets and those would be.

I don't want to do this on the fly because that can be pretty hard to do but I would have thought that it would have been pretty easy to deliver the essence of it to Berkman tomorrow morning in the same way I am assuming that working group 2 isn't going to be, those questions aren't going to be set in stone because it's still got work to do.

Brian Cute: Well these things aren't set in stone. What do you think of that articulation? Chris, would Board governance be improved by...

Fabio Colasanti: I should have done these when they were meaningful actually. It's not... I need to think about how you would phrase the question, I am completely comfortable if you would like to talk about something else while you are talking about this then I will see if I can work out just as one example, how you can do that.

Brian Cute: Do you want to take some time and muttle? Chris.

Chris Disspain: I guess the next logical question is working group 3 or working group 4 ready to jump into the breach?

Cheryl Langdon-Orr: We'll have a go, Brian, Cheryl here. Noting that James is indicating that this thread is very difficult to follow via audio only and if work team members are finding it difficult when just wonders what the general public at large and just interested parties in the room are drawn to

many. Now, in terms of the framing of the hypothesis in questions for workgroup 3 is to remind everybody what workgroup 3 is focusing on is community and state [inaudible 50:25] engagement.

We focused on the quality of the support for the particular policy development processes, the extent to which these processes develop consensus and in what way or to what extent the inputs of these interactions of community and stakeholder reflected in the ICANN decision making. So again we have come out with what is probably three points.

So I guess to use the new framing terms, we would test these hypotheses that are preferred hypotheses to a null hypothesis for a whole lot of reasons in this type of work, we should start on the positive rather than the negative. We would ask the questions can communities stay colder in engagement in ICANN PDP facilitated by being put instead of all this, all this. Some of those interested in enough I would be looking at and I have not spoken to the working group at all, I am just doing this on the fly.

I hope they all jump in and say if they agree or disagree. But some of the hypotheses that we set out in the Berkman paper such as the mechanisms of flow, some of those could be inserted here to be looked at or tested. So one of the issues that comes immediately to me into my mind would be the management of the amount of PDPs that go one at any one time if as was suggested by

I remember now who it was but someone in today's meeting suggested for example a forecasting in the year 2012, ICANNs processes will be focused

on the following 6 or 7 or 10 predictable topics and therefore we all know that is where we are heading for in an amount of time. That is something we could test as a hypothesis.

Having jumped in there we need to reflect that the questions that Berkman is proposing based on the questionnaires that we have seen the staff reflects that there is a huge lack of understanding on what is the current mechanisms for PDP and where they are being modified particularly in the genus our world at the moment and also how consensus is measured and defined in those processes.

It comes back to that there are a few facts that we need to get Berkman if they are going to besiege that current pathway. If not, I think the workgroup needs to look at that. Now, input from anyone else on the workgroup? Louis? Louis jump in it is necessary.

Louis Lee: Okay I hit my mute.

Brian Cute: We can hear you.

Cheryl Langdon-Orr: We can hear you Louis, I think someone is snoring in the background. Warren any chance of you jumping in then? Louis is moving to another room. So that's a good thing Louis. When you get there let us know.

James: This is James here. Warren had to drop off [inaudible 54:23].

Cheryl Langdon-Orr: Oh Joe that is just tragic. Okay Erickk go ahead.

Erick Iriarte: Especially for the new GTLDs, maybe Berkman could analyze the division community of categorical of the comments; nowhere is coming the comments. For the other issues also could be very useful. Also the language of the comments is it made in a different language? How is that influence a difference in the comments generated?

Brian Cute: So if I were to try to put that in the form of a sub bullet point under can community, stakeholder engagement and PDPs facilitated by...

Fabio Colasanti: Analyzed by categorical division of the participation. Maybe up here that for new ATLDs all the comments appear from Africa. Why the participation appears here is real interesting in this part of the world. Here in America maybe you don't find any comments, but when maybe a new GLTD.

Brian Cute: Cheryl.

Cheryl Langdon-Orr: I am trying to pick up from Larry's and Erick is hitting to it. I guess that would go to looking at some form of measure hypothesis, measure of the effectiveness of quality of the engagement although what we should be looking at is the support for the stakeholder engagement, not the quality of the stakeholder engagement.

We are looking at how ICANN supports stakeholder and community engagement and what I am hearing from you Erick is measuring the actual result of what level of support we have. Just kind of a little convoluted, but maybe it is just me.

Peter Dengate Thrush: I always wondered about that because maybe if we advance in the idea that ICANN give the opportunity through the system of the lay documents and give opportunities to prevent discretions, to prevent comments so if that is correct, what is the resource of that? I do not base it in hypotheses that the system ALAC is wrong. Maybe I can change my initial hypotheses, it could be very...

Brian Cute: Thank you Peter.

Larry Strickling: Can I at the risk of being boring, just repeat that this is a review of ICANN's execution of its commitments. So the very first thing, it worries me that I don't hear any of this and maybe it's all being done, the very first thing or exercise is to actually identify what the commitments are and identify how well they have been executed and then make a judgment against the sort of metrics that we haven't yet heard discussed. Then look at ways of going to improvements and all we keep hearing is discussion about improvements. So I would like to make the same point.

Brian Cute: Chris.

Chris Disspain: Can I? Well because I am ready to talk about this in a second when you want to, but I think I need to speak up on what Peter says.

Peter Dengate Thrush: I agree with what you say, but if you take this specific issue, there are several ways of doing this. Public input either directly to the ATRT on its request for input or public input generally is part of that process and that is evidence that there is an issue because I don't know if there is an

issue or not or if there is a perception of an issue or not. I am more than happy to accept that the input might, you could argue that there is no issue, but there clearly is a communication problem because people think that there is an issue because - so there is the public input, which is part of what the ATRT is using as its reasons for looking at certain things.

And to deal with your second point, if I could go to the transparency and the Board decision making and explanations of decisions to the community point of working group 1 obviously before taking Larry's thing of would Boards governance being proved by prior to that, there needs to be a statement that says currently the Board's decision making process is as follows and you write down what decision making process is and currently the communications of those decisions are within the following way.

There are timelines when minutes get published and all that and all of that needs to get published. This is the current situation. Then you ask the question, would the Board of governance be improved and then there is a section by for example putting in place a decision making framework to be used by the Board now. You could argue that there is one in place and of course that will be clear by the introductory staff that is currently existing.

So the question might be slightly rephrased to be by making some changes to the current decision making framework and then you could... If the answer to that decision is yes, Board governance would be improved, then you would go to the next step which is, "Is it appropriate for us to say what some of the improvements that we think could be made?"

Sometimes it might not be appropriate. Sometimes it might be appropriate. So I think all the stuff that you are talking about is happening. I am not sure that it goes to the discussions that we need to be having today because we're doing today.

Brian Cate: Larry.

Larry Strickling: This is very useful in terms of guiding Berkman tomorrow because take what you just said that first paragraph, whose writing it? Are you writing it? I mean is working group...? I mean if they're not, we were given a presentation of that in Marina Del Rey before Chris, you had the, you had joined us and you didn't get the benefit of that. But are there more facts that need to be gathered on that.

That's where we could channel Berkman to the extent that the working group itself doesn't have the capability of assembling that. The point being we just have to have these folks working on things that are going to be useful to us at the end.

Peter Dengate Thrush: I agree with you, in my head I have made a distinction between things that you might ask staff to do. It would be very simply my view to say to staff, "Could you give us, just give me a paragraph that explains the current Board decision making framework?"

No problem and I would expect that to be pretty easy to do. I am looking at Berkman in a different way, for me Berkman is a different, thinking outside information. So if you wanted to task them something, for something specific on this. Are there some Board decision making

frameworks out there that you could perhaps refer us to that we might find useful?

Brian Cute: I think that is an excellent point and that again tends to undercut that whole questionnaire process because maybe we are pointing them in the wrong place.

Peter Dengate Thrush: Brian can I just respond if the way, I'm really reassured to hear Chris's description of how he sees it. If that is how everyone is doing it, then that is going to meet my concern.

Brian Cute: Fabio.

Fabio Colasanti: I'm am afraid I am going to reopen this issue because I am going back to what Peter said and he has said a number of times and I would like to have an original interpretation for one of the [inaudible 1:02] of the informational commitments. You said that the task of this group is to review how ICANN is implementing the commitments. I don't understand it this way because from my point of view, it wouldn't make sense.

What's the point of having a group starting to work at the beginning of 2010 or a process that has only started 60 days before? I understand the work of this group as reviewing accountability and transparency performance of ICANN over the last 2, 3, 4 years and making recommendations in the light of the improvements that are on their way.

Peter Dengate Thrush: Why don't we go to the Affirmation of commitment and get the answer to those questions, which says: ICANN will organize a review

that's this, a review of its execution of the above commitments. What are the commitments?

The commitments are that ICANN will continually assess and improve the ICANN Board of directors governance so what is ICANN doing to make that commitment that it will continually assess and improve the governance? There is the answer. That is what it says that we have to do. If this was the understanding of the group, then essentially in Marina Del Rey, we should have asked the group, we should have asked the staff of ICANN what have you been doing over the last 2 or 3 months?

No it's not governed by that timeline, it's assumed that ICANN has been doing stuff in the past, the fact load happens to be mentioned in the affirmation of commitment. You go back and see what ICANN does for those things. These are not you commitments, these are a statement supposedly anyway, a statement of existing commitments. That means that we are looking at how ICANN has been performing in this area over the last 2 to 3 years.

Larry Strickling: But I mean to the extent that provides the context that is needed to answer the question which is ICANN commits to continually assisting and improving the Board of governors performance which includes an ongoing evaluation of the Board performance. So our question then is there an ongoing evaluation of Board performance? How is ICANN meeting that commitment? The answer may be very simple yes.

Chris Disspain: Yes, but what you have read Peter is correct is in the affirmation, but I would refer you to the beginning language of 9.1 where ICANN commits

to maintain and improve where both mechanisms for public input, accountability and transparency so as to sure that the outcomes of its decision making will reflect the public interest and be accountable to all stakeholders.

Brian Cute: So that's the premise on which the review team is operating and then you correctly read one of the subparts about continually assessing Board performance, but it's all, those are all subparts of that larger issue. If I think folks will recall that the initial response of ICANN to the affirmation was well we think we are already doing much of this if not all of this which I think then puts into play in a value way, an evaluation of the activities of the 2009 and 2008 certainly as we had discussed in Marina Del Rey. So I think this is all part of the review that we are conducting here and properly so.

Brian Cute: Chris.

Chris Disspain: Maybe just to help Fabio it seems to me that if you just take the subject of paying directors, which you have mentioned on a couple of occasions, I don't believe that that is something that is, I think that that is something that we should be looking at is, does the Board have a processing place or to use Larry's text, would the Board of governance be improved by, it's not about us making a recommendation that the directors should be paid it seems to me, it's about saying, is a processing place that deals with dealing with should directors be paid.

Quite frankly, there is a processing place that deals with that because the Board has been working on it. Now if we think that process is deficient,

then we should be commenting on that process surely, but not the actual philosophy of whether the Board members should be paid or not.

Brian Cute: Thank you Chris, Cheryl.

Cheryl Langdon-Orr: Just on that point and now I can answer a question that Mary writes duly when I mentioned that it was important for us to capture the dispatch because on that particular topic, Wolfgang had made a comment, so now I guess it's an appropriate time for very, very briefly letting you know what that is Larry. Wolfgang says, "Payment of directors is an issue that we experienced in the outreach phase of the 2010 NomCom.

The risk is that you exclude substantial number of qualified people who cannot afford to work one week per month without compensation." As I have said in Brussels meeting, we have to be careful to avoid a situation where the ICANN Board becomes a group of old, rich men and women who have the time and resources and enjoy to do the job so that does go I think to what, some of what we have discussed here today.

It is not effecting the prices and knowing on an ease it is important that it continues on. Is it affecting NomCom? Well that's the chairman.

Brian Cute: Thank you Cheryl. Well, we are at the top of the hour we've got about 15 minutes left before we have to break. It would be nice if we could put a little more substance up on this document so that we have something that we can bring to Berkman in the morning. Warren is not on the call, but is there anybody? Chris are you ready to roll?

Chris Disspain: Just on working group 1.

Brian Cute: Yeah, sure.

Chris Disspain: We decided using Larry's model would Board governance be improved by and we get into some semantics of word using the nominating committee process to recruit directors to fill specific predefined skill sets.

Brian Cute: One more time, using -

Chris Disspain: Using the nominating committee process to recruit directors to fill specific predefined skill sets.

Brian Cute: Yeah, I will get rid of that.

Chris Disspain: And then the second one is using the nominating committee process to recruit directors who are independent from ICANN's supporting organization and advisory committees.

Brian Cute: Who are?

Chris Disspain: Independent from ICANN's supporting organization and advisory committees.

Brian Cute: Okay.

Chris Disspain: Now those are the two issues that are brought to mind on the skill set side of things or rather the Board comes in and the position side of things. In

respect to the transparency and staff I have got to be more words on that, but it's the will Board governance be improved by putting in place a decision making framework subject to changing that to say improving the existing one and putting in place a - what is the expression that I am looking for, a framework to communicate those decisions to the community.

Now again, I acknowledge that one exists already we are just made to, so maybe it is, it may change us to the existing framework. Now those are high level questions it seems to me, take all of the heat out of dealing with specific issue that may arise and cover the two main points. Olivier does that cover the two main points that we have been dealing with, it seems to, to me.

Brian Cute: Thank you Chris. Is there anybody who is willing to take up the mantle for working group 4? Take a crack at it.

Peter Dengate Thrush: I can't really because I wouldn't consider myself to be enough up to speed on it. James, are you on the line still? Here he goes.

Unidentified: James, I saw you on the Adobe chat.

Peter Dengate Thrush: Yeah he should still be there. He's not on audio. He can hear but not speak. That's handy. James is there any chance of you perhaps using Larry's template in the next sort of 12 to 15 hours coming up with some formulations that would work with working group 4 so that maybe we could use them in the morning for our discussions with Berkman?

James Bladel: Yes.

Peter Dengate Thrush: Good. That solves that problem. Thank you James.

Brian Cute: Okay let me then make a step back the reason we launched into this after the break was to assist Berkman in reorienting its questionnaire and reorienting its data collection and efforts. It's what we put together here going to do that job. Larry.

Larry Strickling: I think it's a good start for discussion with them tomorrow. I don't think we are anywhere close to a complete set of the issues here, but I think as a way to get the discussion going with Berkman and to start that iterative process with them, I think we are far head with them then we were two hours ago.

Fabio Colasanti: Yes but the staff doesn't solve the problem I mentioned but the case studies, are they going to get the materials for their case studies and whom are they asking the questions to?

Chris Disspain: Is it possible that in your discussions with them tonight, you might be able to suggest that given there is an order they could do this stuff in that would help us. There is an order in which they could do their work. In other words, what we are saying is the case study results are important to us. Now I don't know, I can't remember how the structure was.

You see if everything is going to be going on in parallel anyway then that is fine, but if there was a way of jiggling around with their work so that the

case studies were dealt with earlier, sooner whichever, that might be helpful. It may not be, I don't know.

Brian Cute: I will ask. Okay anything else that we need to put on the Board. Peter.

Peter Dengate Thrush: Can I just agree with Larry that the starting point of this is that opening sentence because that is what sets the framework and these are commitments to do these things for a purpose and it has to be kept in mind and I've got absolutely no problem with looking back in time, etc. As long as, and I think we all agree that every working group is going to do that we agree we should look at which is, is going to do a review of the execution of the above commitments and my concern is that much of the discussion has been around other things.

Now say Chris has a [inaudible 1:14:30] of what all of the groups are taking in, I am reassured. But if they are not then every group has to make sure that it does what it is supposed to do which is review the performance of the existing commitments.

Brian Cute: That is the currently sentenced that Chris constructed which is, I only have the word currently in the document now but this is currently the Board selection process which consists of X right and then the following Board governance be improved by ... Of course, that would be improved by the implications of the other three.

Peter Dengate Thrush: I agree with what the report needs to say and every report needs to say. The status check is this surely.

Cheryl Langdon-Orr: I mean in the case of workgroup 3, it's the status is rapidly changing; we are in the middle of moving from one place to another. A very, very different place and that needs to be recognized which workgroup 3 has said again and again and again and if Warren was here he would be reminding us of that.

Brian Cute: Thank you Cheryl, anything else? Any other comments before we break for dinner? I want to suggest, sorry for that, I think we are going to want to have a closed session in the morning and allowed at least an hour. So unfortunately folks I suggest that we meet at 8 o'clock for that closed session and then we will start at 9 per the agenda. All agreed? They should have just heard it. You mean they are not coming for both days? Yes Alice if you wait.

Alice: Yes I can trace it.

Brian Cute: If you would let Warren know about that James and Louis did you hear that? Okay very good.

Louis Lee: Yeah I will try to get in earlier for the full session yeah I heard that, I can join.

Brian Cute: Okay. Anything else before we break? Okay let's go have dinner. Thank you all to everyone on the line.

Unidentified: Sort of an announcement about when we move.

Brian Cute: Yes.

Fabio Colasanti: Maybe we can get together as a lobby at 5:45, half an hour later.

Brian Cute: 5:45 okay then we will see you down there then. I don't have a choice.

--End of Recorded Material--