Topic Cluster 1: ICANN Corporate Governance Fundamentals

- **Timing of review of decision**
  ICANN Board role is to confirm the process went as expected.

- **Complete re-hearing vs. administrative review.** Complete re-hearing to
  be interpreted as Full review of the decision. Review must be a
  substantive review (not how it was done)

- **Scope (Binding and replacing previous decision or handing back to
  previous decision-maker, taking into account decision of panel))**

- **Is the scope still open? Binding decision of IANA or Board?**

Topic: Corporate Governance Fundamentals
 ICANN board cannot defer decision making to other bodies. Fiduciary duty was
discussed by several lawyers during IANA transition.
Issue: empower an entity outside of ICANN/PTI to perform the IANA function is
not possible.

This is an important point. Was not considered before. Should we inform
Council we ran into an issue: we cannot develop a binding policy.

Question: Defer decision-making to other bodies? Understanding form
discussion is that there may be an issue. However does this imply that ICANN
Board is also prevented to subject itself to mediation?
Response: the board can and does subject itself to challenges of its decisions.
Outcome of the challenge is important. IRP for instance. Board to be held
accountable for every decision it makes. However, the outcome of that
challenge cannot dictate to the Board what it must do to remedy. Board is
expected to act accountably. There is the ability to build in meaningful review
or appeal mechanisms. But they need to be supportable and allowable within
the corporate governance structure.
Risk: The community could take an IRP declaration and walk in court. The court
can compell actions, but the arbitration panel cannot compell actions.
This is an important point to be dealt with. To what extent are external reviews
feasible, within the sketched parameters?
Request to provide a document in a digestible form, on what is feasible, to
focus the discussions by the WG.

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Topic: Is the scope still open? Binding decision of IANA or Board?

(Slide 4 ppt, Page 6 and Page 4 of summary document)

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 RFC said that decision should be binding. We do not need to include in our developed policy an appeal mechanism on our review mechanism. Binding means to ICANN and ccNSO members. They do not have a legal recourse in this. Therefore jurisdiction is not our problem.

The mechanism: will you have some form of law or jurisdiction. Under what legal framework are RFC panels proceeding? Placeholder. Early stages of the discussion

Topic: Timing of review of decision

ICANN Board role is to confirm the process went as expected. Is there value in a review? Did IANA do what it was supposed to do? Why insert a step before the Board decision. Changing Board role to accepting review?

Topic: Is the scope still open? Binding decision of IANA or Board?

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Topic: Scope (Binding and replacing previous decision or handing back to previous decision-maker, taking into account decision of panel)) still to be determined

Question: How have the ICANN review panels solved problems? To be asked to Sam Eisner. Avoid Forum shopping.

At end of process understand if concerns Stewardship Transition are still valid.
mconcerns still valid (2014, and discussion relevant meeting RM). To be
included as stress test.

Topic: Complete re-hearing vs. administrative review
Complete re-hearing to be interpreted as Full review of the decision.
Review must be a substantive review (not how it was done)
Majority of participants on the call feel that one point a full rehearing of facts
etc should be feasible

Question: Does that mean that in the procedure new facts/figures can be
brought in, that were not judged before by PTI?
 There is no review mechanism for matters related to cctld transfers and
delegation. Carve out. Accountability mechanisms. Internal review. IANA might
think again, appeals to the icann board. But: those are not independent, and
we need that.