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**Date:** Tuesday, December 16, 2014 at 8:46 PM  
**To:** Eric Brunner-Williams <[ebw@abenaki.wabanaki.net](mailto:ebw@abenaki.wabanaki.net)>, "[ccwg-accountability4@icann.org](mailto:ccwg-accountability4@icann.org)" <[ccwg-accountability4@icann.org](mailto:ccwg-accountability4@icann.org)>  
**Subject:** Re: [Area 4] A reading of the Business Constituency's ten "Stress Tests"

Dear Eric, Dear Colleagues,

I think as a first phase we should try and expand our list of candidates contingencies before focusing to higher impact / most relevant ones. The BC ones may need some adjustment to be considered "contingencies" but I think they are a relevant contribution. Malcolm Huttly's scenarios are useful as well.

As discussed during the call today, I'd like to offer additional possibilities where we could find contingency ideas. First of all, while reading the latest SSAC advisory (SAC069) I noticed the following recommendation :

[Recommendation 3: Each of the communities should investigate and clarify the process for handling the possibility of governmental sanctions and restrictions \(e.g., the protocol for obtaining OFAC2 licenses where U.S. sanctions might interfere with the ability to execute proper instructions to IANA\) following the stewardship transition.](#)

We could turn that into the following contingency : "New regulation passed prevents Icann from servicing some parts of the community, for example for specific countries or regions of the worlds".

More generally, inspiration for contingencies can be found in generic risk management standards. All of them start with identifying a list of threats that are relevant to the organisation. Unfortunately my documentation on the matter is all in French and I'm struggling to find references in English but to illustrate the kind of threats that are usually explored I can provide the following non exhaustive list :

- Anti-Trust action (or class action) against Icann
- New regulation or legislation (see above)
- domain industry financial crisis, leading to sudden drop in revenues for Icann
- conflict with a significant financial contributor leading to this stakeholder refusing to pay fees
- new technology competing with DNS leading to sudden drop in domain name numbers
- Governance crisis within Icann leading to inability to reach decisions for a long period of time (6 months to 18 months)
- Major corruption or fraud within Icann
- Chairman, CEO or major officer acting in a manner inconsistent with the organisation's mission
- Major personal data leak due to failure of Icann's security
- Financial crisis affecting Icann's reserves in a manner that threatens its continuity

I hope this helps, please feel free to elaborate or reject.

Best,  
Mathieu

Le 16/12/2014 04:05, Eric Brunner-Williams a écrit :  
Dear Colleagues,

During the December 9th CCWG-Accountability conference call Steve DelBianco (BC) mentioned a document prepared by the Business Constituency entitled "Stress Tests". The URL for this document is at [1] below. In this note I'll discuss the BC's ten suggested scenarios, and I urge you all to read through the original document.

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BC #1. Cancellation of the AoC.

I am not a lawyer, but my wife is, and restating the hypothetical as "what constrains the conduct of the successor contractor in the absence of the existing contractual conditions" seems to avoid the question of accountability altogether.

I suggest this item be deferred until clarified.

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BC #2. Flight to avoid jurisdiction.

I am not a lawyer, but my wife is, and restating the hypothetical as "in what jurisdictions would Verisign, GoDaddy, ... be unable to determine likely contested issue outcomes" yields a very unlikely set of possible answers.

I suggest this item should be discarded as a distraction.

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BC #3. Insolvency.

The is a business continuity question, for which a number of equivalent, and more likely, scenarios exist.

I think this item can be improved by asking what Continuity issues are reflected in the Corporation's plan of record, and whether distinct accountability issues exist.

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BC #4. Applicant Support Revisited.

The ICANN BoC indicated at the Nairobi meeting that "diversity" necessitated activity --

realized in that period by the (Cross Community) Applicant Support Working Group (ASG), which inter alia, included the possibility that the support provided to some applicants could come directly from ICANN, in the form of reduced regulatory burdens, reduced application fees, reduced recurring costs, etc. Recommendations by the ASWG to this effect were opposed during the public comments periods by the BC, hence my summary that this revisits the BC's position of record on the ASWG sets of recommendations.

I suggest that this item can be improved by asking what happens if ICANN attempts to regulate some activity which is outside of the usual three buckets of names, protocol parameters, and addresses, and without implicitly privileging early adopters. Then a meaningful accountability question can be posed and a credible scenario constructed.

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BC #5. Ignoring SSAC

The accountability issue here isn't obvious to me. The bylaws create several Advisory Councils, and when they function they can provide the Board with advice opposed to some decision the AC anticipates the Board may make. No accountability necessarily arises when the Board (frequently) does not follow the advice offered by an AC. The BC comments refer to "new accountability mechanisms" in the context of gTLD delegation.

I suggest that this item can be improved by asking what accountability issues exist with respect to new gTLD (re)delegation. See also BC #7 and BC #8, infra.

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BC #6. GAC votes

The accountability issue here isn't obvious to me. The bylaws create several Advisory Councils, each of which may have distinct internal processes resulting in the issuance of advice. A change in any AC's internal process does not necessarily create an accountability issue.

I suggest this item should be discarded.

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BC #7. .xxx redux

This appears to revisit the .xxx issue, within the hypothetical framework of BC #6 -- a GAC vote rather than a lack of GAC consensus and overt (and covert) expressions of displeasure by Governments.

As this is an instance of #6, I suggest this item should be discarded as with BC #6.

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BC #8. Contested gTLD Relegation

This revisits BC #2, supra, the hypothetical case assumes some novel jurisdiction in which Verisign and others which maintain and publish the IANA root zone. As this is an instance of #2, I suggest this item should be discarded as with BC #2.

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BC #9. Enjoined Delegation

This revisits BC #2, supra, the hypothetical case assumes some novel jurisdiction in which "ICANN and the IANA" are "empowered" to litigate a registry contract.

As this is an instance of #2, I suggest this item should be discarded as with BC #2.

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BC #10. Contested ccTLD Redelelegation

The policy for ccTLD redelegation has been, with the exception of .iq, where the incumbent delegee was in the custody of the United States, agreement by all parties. Until this policy is formally changed this does not appear to exercise an accountability issue beyond the existing practice of accounting for ccTLD change requests.

I suggest this item should be discarded.

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After several readings of the BC's document I'm unable to discern significant likely scenarios for which accountability issues exist. It is quite possible that I'm reading this with insufficient information, or unfairly due to long familiarity with the BC's positions of record on diversity and access, or unfairly due to a personal impression that several of the "scenarios" are quite unlikely, or ambiguous to the point of non-meaning, or both.

To its credit, the BC has attempted to find scenarios of general utility, and offers these suggestions, so that "we [c]ould consider ... scenarios that could arise."

Any colleague who arrives at a different reading I hope will articulate his or her reading on any or all of BC #1 through BC #10, as mine is only one view of a document offered for collegial review.

Eric Brunner-Williams  
Eugene, Oregon

[1] <http://www.bizconst.org/StressTests/>

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