Rapporteur's Report for the Istanbul Meeting

20 March 2015

1.   Introduction

This paper is for the guidance of those participating in the CCWG meeting to be held in Istanbul, Turkey on 23-24 March 2015. It is an attempt by the Rapporteur to collate the following information:

- **Key issues** that have arisen in WP1 that deserve further consideration at or after this meeting;
- The list of **documents participants should review prior to the meeting**, developed as part of WP1's work to date; and
- A brief note on the **process we have followed** in our work, to explain how we have arrived where we have arrived.

Due to time constraints this paper hasn't been reviewed by any other WP1 members and may not represent a consensus position of the WP. I am confident other WP1 members will alert the CCWG to any omissions, errors or misrepresentations in the content below.

2.   Issues for Discussion

To assist those who have not been following WP1's work, here are some key issues to be aware of, or key debates before us, to keep in mind as you review the detail. As noted above, they are issues the Rapporteur suggests participants focus on – other WP1 members may have different views, and this list is **not** established as a WP1 consensus position.

- WP1 has not tried to assess the completeness or adequacy of the set of powers presented in a systemic way – we have operated ground-up from community feedback.

- There is no currently preferred set of mechanisms and/or powers – we have faithfully developed these for CCWG consideration.

- Legal advice is going to be critical in determining what powers can be available to the community, and what mechanisms are required to exercise these powers. As such, decent advice is the vital and essential input in working out how to empower the community.

- In respect of **powers**:
    - In recognising the **Affirmation of Commitments in the bylaws** (aside from codifying the existing AOC reviews), there is:
        - Debate about **where in the bylaws** these should most effectively be included; and

- - **Relationship between this and the proposed Community Compact** that Working Party 2 is progressing
  - How to **guarantee that WorkStream 2 reforms can be implemented whether ICANN Board/management wish this or not** has yet to be resolved. Initial thinking has been done on this so far
  - There has been **no significant disagreement** with any of the powers presented for discussion here, <u>except</u>:
    - The matter of codifying **consensus GAC advice** as the form of GAC advice to which the ICANN Board must pay due regard is the subject of an ongoing conversation between the CCWG and the GAC
  - In respect of **Removing ICANN Directors**, initial discussions were about removing one, some or all directors – but the individual recall option seems to be moving towards a WS2 (post-transition) item
- In respect of the **Mechanisms**:
  - There is a different of views emerging around whether we should only allocate powers to **existing processes or structures**, or whether **new structures/processes are allowed/required**. I regard this as an empirical question in the first instance – if either option can work in law, then there is a debate to be had on other criteria.
  - Designing a mechanism requires defining at least the following:
    - What the "community" is that is being given the power/s
    - Relative power/authority/voting strength of each component of that community
    - By what means the community components are represented within the mechanism (mandated decisions or non-mandated)
    - Any diversity requirements on participation (particular attention drawn to anything related to ICANN regions, given the large differences in # of countries per region)
  - It is **not clear that a Permanent CCWG is actually a possible structure**, given that CCWGs are by definition created by chartering organisations, and could, as such, be un-chartered at some point in the future. It is similar to the Community Council mechanism.
  - The **Statutory Delegates** are best thought of as a group of people/entities with **some** of the powers of **Statutory Members**
  - Both **Statutory Delegates and Members** are constructions under California law, and the law specifies features of these in ways that limit our flexibility in choosing how to implement them

3.   Documents to Review

a.   Background

WP1 has prepared a number of papers, most based on the "template" the co-chairs prepared following the ICANN meetings in Singapore in February. In its work, WP1 has distinguished between **powers** and **mechanisms** as follows:

- **Powers** are things the community should be able to do to maintain and improve ICANN's accountability – possible examples include the ability to remove the Board, or the ability to approve changes to bylaws.
- **Mechanisms** are the structures or processes by which the community exercises its **powers** – possible examples include a permanent cross-community working group, or the creation of class/es of "members" of ICANN.

Due to the structure of the template, and a lack of time to reconcile and simplify the documents there is a confusing mixture of information presented with some "powers" templates including various suggested mechanisms. Generally the "mechanisms" templates are more purely focused on being vehicles for whatever powers would be assigned to them.

I regret this lack of editing and simplification – it means more time reading than is ideal – but I suggest that in reading the templates, you generally pay less attention to process or mechanisms when reading the "Powers" templates.

This material is provided to inform the CCWG's thinking – it doesn't represent recommendations from WP1 as to which of these powers/mechanisms should be implemented, and it is the CCWG's task to determine a complete proposal to the community that is fully coherent and complete.

The documents to read are published on the Wiki at the following URL:

https://community.icann.org/display/acctcrosscomm/WP1+Draft+Documents

b.   Proposed "powers"

The second table on the page linked above is called "Powers". For each of the documents identified in the following list, you should read the most recent one presented unless otherwise noted. Where "a document" is mentioned, the information isn't presented in the template.

- **WP1-1A**: community approves bylaw changes
- **WP1-1B**: community challenges actions against bylaws
- **WP1-1C**: community approves budget / strategic plan
- **[WP1-2A]**: a document about incorporating other AOC elements in bylaws [may not be coded 2A]
- **WP1-2A,B,C,D**: a combined document about AOC accountability elements
- **WP1-3A**: a document about making sure that Work Stream 2 (post-transition) accountability reforms can be implemented

- **WP1-4A**: Defining GAC consensus for ICANN Board purposes
- **WP1-5B1**: Preventing ICANN unilaterally imposing obligations thru a Contract
- **WP1-5B2**: Preventing ICANN unilaterally imposing obligations thru a Golden Bylaw
- **WP1-7A:** Community can remove ICANN Board – please read two versions
    - 11 March version drafted by Jordan Carter (v2)
    - 19 March version drafted by Malcolm Hutty (v 3.2)

This body of work represents the detail for the specific set of powers that WP1 set out in its Scope, Powers and Mechanisms paper[1]. These powers were suggested by the ICANN community and beyond: they have been drawn from the inventory of Accountability suggestions made by the community in a range of consultations in 2014 and collated as part of Work Area 2[2] of the CCWG's earlier work.

WP1 has agreed to forward these powers to the CCWG for consideration. It has not taken a position on which powers should or should not be implemented, and it has not assessed this set of powers for completeness, internal consistency, compatibility, or the ability of this set of powers (or a subset) to deliver the required suite of accountability powers the community requires.

c.   Proposed "mechanisms"

The third table on the page
(https://community.icann.org/display/acctcrosscomm/WP1+Draft+Documents) is called "Mechanisms". For each of the documents identified in the following list, you should read the most recent one.

- **WP1-A**: Existing SO/AC structures [template not thoroughly developed]
- **WP1-B**: Permanent CCWG
- **WP1-C**: Statutory Delegates
- **WP1-D**: Statutory Members
- **WP1-E**: Supervisory Board
- **WP1-F**: Community Veto
- **WP1-G**: Community Council

This body of work represents the detail for the specific set of mechanisms that WP1 set out in its Scope, Powers and Mechanisms paper[3], along with some further options developed. As

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[1] Linked in table 1 at https://community.icann.org/display/acctcrosscomm/WP1+Draft+Documents or available as a Google Doc at https://docs.google.com/document/d/1-17DuxWJJuUk6QAelcz7X4L3KiyQ2XcEqapHVj9ir38/edit?usp=sharing.

[2] Available at https://community.icann.org/pages/viewpage.action?pageId=51413858.

[3] Linked in table 1 at https://community.icann.org/display/acctcrosscomm/WP1+Draft+Documents or available as a Google Doc at https://docs.google.com/document/d/1-17DuxWJJuUk6QAelcz7X4L3KiyQ2XcEqapHVj9ir38/edit?usp=sharing.

with the powers, the community suggestions collated as part of the CCWG's earlier work are the basis for these various mechanisms.

A separate document, circulated by the Rapporteur on 20 March, called "WP1 - Mechanisms Comparison Table v1", helps draw out some key features of the mechanisms to assist participants in understanding and comparing these.

4.   Process to get here

Working Party 1 was formed following the Frankfurt meeting in January 2015. Its first work was to develop a paper defining its Scope, and the Powers and Mechanisms[4] it intended to develop as part of its work. The WP then defined a Work Plan and its Working Methods[5], and a reporting framework for monitoring its work progress[6].

Work proceeded with volunteers either individually or in teams drafting content (in templates or as general documents) and this content then being shared online and on the email list, and reviewed at Working Party calls. Plans to have an editing group never eventuated, and so documents remain largely 'owned' by their identified lead authors.

The work of WP1 has been entirely dependent on the volunteers who have put time into thinking about these issues, writing about them, and discussing them at all hours of day and night in a very short time. I thank them all for their efforts, their skills and expertise in preparing this work for the CCWG's consideration.

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[4] Available at https://docs.google.com/document/d/1-17DuxWJJuUk6QAelcz7X4L3KiyQ2XcEqapHVj9ir38/edit?usp=sharing
[5] Available at https://docs.google.com/document/d/1C7eMTu0k8KOTiRlhlt8vqAGwYc4vbl1EiiVGW6vuVXk/edit?usp=sharing
[6] Available at https://docs.google.com/a/internetnz.net.nz/document/d/1NIrzK3mlGBbIHtdZDoAt_9Y__aPYXAH_d-OIbkg2Z6k/edit but then drawn into and superseded by a broader reporting framework covering all three Working Parties (WP1, WP2 and WP-ST) available on the Wiki (?) & as circulated on the lists by Berry Cobb