

**ICANN**

**Moderator: Brenda Brewer  
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8:00 am CT**

Mathieu Weill: This call where - which was graciously organized to give us an opportunity for an exchange with the advisors of the cross community working group on enhancing ICANN's accountability. So I'm pleased to see that we have Willie Currie on the line as well as Roberto (Unintelligible). I think we may be joined by a couple others who had indicated they would be available, Jan Aart, I think.

Roberto Bissio: I'm here.

((Crosstalk))

Mathieu Weill: Yes, yes, excellent. And...

Nell Minow: Hi, this is Nell. I'm on the call.

((Crosstalk))

Mathieu Weill: Excellent. Thank you, Nell. So it's good to - thank you very much for making yourself available. What I'm - what we're planning to do during this call is to (relate here) a little bit, the domain changes that are currently considered as the interim proposals from the cross community working group and then open the floor to you, as advisors, for obviously questions, remarks, comments so that we can engage in a more structured conversation that only the individual comments.

And obviously comments - formal comments are also welcome. So if you agree with that, I will fix you - so we have Jan and Nell, you're not in the AC room. Is that correct?

Man: Sorry, we are not where?

Woman: I'm sorry.

Mathieu Weill: Nell and Jan, are you able to see the presentation that is in the Adobe Connect room or...

Nell Minow: Yes, I can (see it).

Jan Aart Scholte: I need to enter the room, Mathieu. Sorry. I will just click on and okay. If someone lets me in, then I should be able to see.

Mathieu Weill: Okay, so the presentation that's on the screen is a very short before/after presentation that we came up with. So the situation today is obviously that ICANN's board holds a number of competents and there is - obviously by those existing, there is an independent review mechanism that is existing within ICANN and obviously there is a wider community which interacts with the board.

And, so I don't have control so probably if -- I don't know -- (Alice) can go to the next slide, our proposals for the accountability group start with empowering this community, so providing this community with some powers to reject the budget, reject the strategy plan, reject a change on the bylaws, remove individual directors or even record the whole board obviously at (unintelligible) measure.

So that's the empowered community section of our proposals. Going to the next slide, our proposal does incorporate some of the principles that are currently in the affirmation of commitment between ICANN and the US government and takes these principles and suggests that we put them into the ICANN bylaws so they basically become enforceable whether or not this affirmation of commitment is maintained.

And the other part, which we will change in the principles, is that we would suggest to create fundamental bylaws, sort of the core constitutional dialogues of ICANN and the set of bylaws would have - would require prior approval from the empowered community before being changed. So that's sort of an identification of what constitutes the constitution of ICANN.

And if we go to the next slide, okay, our proposals also spend considerable attention to reinforcing the independent appeal mechanism by transforming it into a standing panel of seven members, ensuring that the decisions of this panel are binding on ICANN, that this panel is more accessible in terms of cost but also in terms of (standing) to be able to introduce a case to the IRP and that the decision will review the merits of the case and not only whether ICANN has acted in compliance with due process.

So with these changes, we think we are covering the four building blocks of ICANN's accountability, strengthening the constitution and the principles, strengthening the legislative power through the independent field mechanism and strengthening the sort of legislative power through the empowered community.

So that's the big, I think, idea behind this, this instead of creating a new layer of accountability above, ICANN is spreading the powers in the balance that is - a classical balance that is well-known on - at the state level between executive, legislative and judicial powers.

So that's the main description of the proposals. To add to this, a couple of points on the current discussions taking place. There's a lot of attention being given to some of the implementation models that we're considering for the community powers.

So far, the reference model is - provides the creation of a group of 29 representatives from the different groups within ICANN, the supporting organizations and the advisory committee and provides for - to have enforceability of its decisions in case the board would refuse the decision for, for instance, to reject a budget.

The current proposal - reference proposal would be to create that each (ASO) and (AC) creates an unincorporated association that in turn becomes officially a member of ICANN.

So we hear a lot about transforming ICANN to a membership organization but it's important to state that this would not be an open membership organization where everyone can join.

It's about just adding a little touch of legal (personhood) to the current ASOs and ACs of ICANN in order to provide the right balance in terms of legal powers to - that would create the enforceability of the model.

That's one of the key discussion points right now. Second area of discussion is, of course, so far, the proposal has a balance of influence in the community, the empowered community that includes all ASOs and ACs with various options.

All of them to provide for the representation of governments and we're aware that this creates some difficult - I mean some - it may create some difficulties or concerns or governments to participate to such voting mechanisms, potentially create - give the GAC, the Government Advisory Committee, the authorization to create an association.

Those are very difficult questions for governments that we know are - provide for important discussions. And there are various others - topics around the other proposals that are being raised.

I would like - I see that come in terms of introduction, I would like to not be too long but provide the opportunity to my fellow co-chairs, Thomas Rickert. I don't know if he is on the call actually but Thomas is - to provide any additional information at this point.

Thomas Rickert: This is Thomas. Hello everybody. Mathieu, I think you did a sterling job so I have nothing to add at the moment.

Mathieu Weill: Thanks, Thomas.

Leon Sanchez: This is Leon and I support fully Thomas. I think you did a great job and I have nothing else to add.

Mathieu Weill: Thank you, both of you. And so with that I think the best we could do now is open for questions, comments from advisors and so that we provide you with the details you need or can discuss about your specific proposals.

And, (Caboose), I noted your hand was raised and I'm willing to give you the floor but just want to note that for this call, I'd like to - I will have a bias towards advisor input when (managing the queue). But obviously if you have a point of order or anything, you're welcome to make it now. No? Okay, I see your hand is down. So maybe Roberto.

Roberto Bissio: Yes, I - the question I have at this stage is whether you're expecting a collective decision of the advisors as a group or just we have enough (provided) to comment on the proposal like everybody else.

Mathieu Weill: Thank you very much, Roberto. That's a good - that's a very good question. This - I think individual comments are welcome and we encourage you, if you have individual submissions, to provide them as well through the official channel so they can be shared with the overall community.

And if there was a common view of advisors, obviously it would be also very useful to (stress) that out either through the public comment or through the title of communication of the co-chairs to this CCWG.

But I think both options are open and we should obviously recognize that there might be (dividing views) between advisors as well. That happens within our group. And I guess they can happen within an advisor group as well. Did that answer your question, Roberto?

Roberto Bissio: Yes, (unintelligible) is that - well, we haven't had many chances to function as a group, as such, but yes, I guess we could still circulate some ideas between the members.

Yes, I have a sense that we haven't had enough of internal conversations among the groups although I do feel that we made a lot of points that we're not making in the proposals. So yes, that's why I was asking about what would still be done as a group.

Mathieu Weill: Okay. I see Willie's hand is up next. Willie, if you're speaking, we can't hear you. You might be muted. Hearing nothing from Willie, so maybe what I suggested - maybe (our staff) will check whether it's - yes, will try to reach out to you, Willie. And meanwhile, we'll take Jan who raised his hand and then come back. Jan.

Jan Aart Scholte: Yes, okay. Thanks, Mathieu. Let me just - I'm talking into the phone and hearing my Adobe Connect. So let me try and move away from my computer a minute.

I did send in comments already, written comments, and I think you posted them on the public comment. I had 14 comments. At that time, I don't hear from your presentation that much has changed yet since I submitted that three weeks ago.

So maybe just for - if I had to choose, out of those 14, the main ones that I have in mind - one was point number two which was about how you maximize correlation between the ICANN community in the community empowerment mechanism and the evolving wider world of global Internet stakeholders so that the community, as it appears within ICANN, bears a

relationship to the community as in the wider community of global Internet stakeholders, making sure that those to correlate with each other well.

So that's one. The second one that I would highlight, I suppose, is that the draft is strongly arguing for participation in the ICANN empowerment mechanism to reflect the functional geographical and cultural diversity of the Internet. That's the wording that comes up.

But there's nothing that's very concrete about what kind of concrete measures going to be used to put these principles into practice. So when one looks at the SOs and ACs as they are going to be part of the proposed community empowerment mechanism, one sees functional diversity there because the different constituencies and functional terms are allocated places.

But in terms of gender, language, region, et cetera, that's not clear how that's going to happen. A third is one that we've talked about at various times and everyone acknowledges, the accountability of those who hold ICANN to account, so those people are going to be on the community empowerment mechanism.

They will hold ICANN to account but how will they, in turn, be held to account? And we've talked about that any times and everyone acknowledges that it's an issue but actually working out specifically how that's going to work seems to be still something that's a work in progress.

And then the last point, just, it sounds like work stream two issues are going to be kept alive in the form of the CCWG continuing to work after the IANA transition is completed.

Page 87 of the draft implies that that's going to be the situation but I wonder whether you've talked about that more explicitly, definitively, the CCWG will continue post-transition moment. So those are the four out of the 14 points that I think if you had to say what are my tier one issues, it would be those four.

Mathieu Weill: Thank you, Jan. I think regarding the process, indeed what I described is the proposal that was put out for comments on May the 3rd. And since then, obviously we're in the public comment phase. We haven't (embedded) the proposal.

So the comments that you made on May the 3rd, we didn't really have time to re-discuss them with the group before we publish so, there, I think, if I'm not mistaken, they're public comment number one in the public comment forum, so it's still a work in progress.

And obviously the points you're raising on diversity, the representation of ASO, AC is certainly going to be one of the items of discussion after the public comment period.

And the other question you're raising in terms of process is what about after the transition? So we have two work streams. We're currently focused on work stream one which deals with items that need to be in place or committed to before the IANA (goes into) position.

And we have started highlighting issues that will (feed) the work stream two. And so I am afraid our group might extend beyond the transition (itself) because we are expecting that not everything will be closed before that date.

I know it's only a partial response to your comments but at least I think it's important to make this part very clear. Next in the queue I think is Nell through the CCWG CCT (nickname) - Nell.

Nell Minow: Yes, (too), also I don't want to get too into the weeds but I have a couple of general comments. First I - this one which was touched on a moment ago has to do with the accountability of the groups and how they're selected and come you know, we can find ourselves in sort of an infinite regression of groups that oversee the groups that oversee the groups that oversee the groups.

And I think that it's important that we be more specific about how, in order to participate, the groups have to be able to demonstrate that their own mechanisms for internal governance and for keeping their membership fresh an independent are sufficient.

And also, my second comment is that with regard to our frequent mentions of transparency and the importance of transparency, I think we need to be more specific.

You know, the fact that you - you know, we're talking about organization that is core to the most transparency friendly entity in the history of the world, and yet we don't have any specifics there about what people - what the organization needs to do when there are say, for example, proposed bylaw changes to make sure that they are widely disseminated.

And I think we do need to have some specifics there about making sure that, not only that they, say, here, you know, we're doing something but that they take specific steps to make sure that everything they do and everything that the advisory groups do is as widely disseminated as possible even to the extent of saying that, you know, you have to have reached the following

number of people or the following number of page hits or whatever to make sure that transparency is not just offered but is actually implemented.

And in addition, I think it may be worth considering whether some of the - I was in the bylaws, but some of the principles are not subject to being changed in any way.

And I think the inherent founding principle that this - this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle they cannot be changed a matter how many people go for it.

Mathieu Weill: Coming off mute. Thank you, Nell. I think is a very valid points and it's - the (last) one is striking an interesting, so this call will certainly be How we can make sure we track the comment and have them as inputs for our process (downstream). Willie, will probably - now is in a position to be heard.

William Currie: Hello everyone. Can you hear me?

Mathieu Weill: Clearly we can hear you.

William Currie: Can you hear me? I have two questions. One is, has the working group, when it comes to tightening up the principle (section) discussed whether to include a commitment towards freedom of expression? And the reason I raise this is that one of the accountability issues in the - you know, (of the group) is the accountability forum accountable (too).

And it's to do with an accountability to certain standards for democratic standards and it seems to me that having one is an important aspect of the kind of logical infrastructure that ICANN is the steward for and that - in a way -

it's a way in which an infrastructure and a (pim), a humanity's freedom of expression.

And I was wondering if that has been discussed for inclusion in the revised bylaws. The second point is that I don't quite follow in the discussion where some people are arguing for unincorporated association which seems to be the overall position of the group.

But there's also an argument that individual chairs of SOs and ACs could assume that membership. I was just wondering if there's any clarity on that issue.

Mathieu Weill: Thank you, Willie. I think regarding the item of freedom of expression, it's - as was reminded in the chat by Becky, the proposal currently is focused on avoiding that ICANN get into content regulations which in a way is actually trying to ensure that ICANN is not used as a means to restrict freedom of expression and that - so that's the current state of the proposal.

And regarding the fact - the question about who would share membership, whether it would be shares or unincorporated associations, this is very much an ongoing discussion. And so that is - I can't say it's a done deal or a closed matter. It's a very open discussion, and which obviously for - there are any input from advisors on, that will be welcome.

Mathieu Weill: Thomas, you're next in the line.

Thomas Rickert: Yes, thank you, Mathieu. Actually, I would also like to follow up on the comments that were made with respect to the accountability of the SOs and ACs. And I think we do have a couple of aspects in the draft report that should help raise the quality of the standard of accountability.

For example, when we discuss how many votes there should be, we thought of allowing for one vote per world region, you know, so we came up with five, you know. So some of these parameters that we put into the report were based on the thinking with respect to inclusiveness; also the accessibility of the IRP, in particular when it comes to costs.

You know, so I think for our core piece of work -- and David has also mentioned in the chat that we need to focus on the transition -- I would be interested in what level of detail the advisors would recommend we put into the set of recommendations for Workstream Number 1, because I think our issue with that is two-fold.

Firstly, we need to keep very focused on the sort of narrow task of dealing with what's in one issue prior to the transition, and look at other aspects after the transition. The second aspect is that our charter is not broad enough for us to actually make recommendations on the make-up and the decision-making processes, the membership inclusion processes, outreach, et cetera (unintelligible).

So I would be afraid that if we open it up too much, we would mission-creep into something that's out of our charter. So, you know, maybe you could briefly get back to us and clarify what aspect you would deem essential for this (unintelligible) that we are in, i.e. the period prior to the transition. Thank you.

Mathieu Weill: Thanks, Thomas. I see Jan raised his hand, so it's probably a response.

Jan Aart Scholte: Yes, indeed it was, Mathieu. Thank you. Just when Thomas was saying that the charter of the CCWG was not broad enough to decide the composition and

empowerment mechanism and so on, if I understood that remark correctly, who does have that competence? And who will take that kind of decision, if not the CCWG at least making recommendations to that effect?

Mathieu Weill: Thomas, a response as well?

Thomas Rickert: Yes. Just briefly, I think that that I understood your comment to be broader with respect to inclusiveness, with respect to other Internet-related stakeholders and such.

And I think that we can hardly prescribe for the SOs and ACs how they should constitute themselves, other than maybe giving some general principles that they should be inclusive; that they should be looking at gender balance; that they should be looking at geographic diversity; that they should engage in outreach activity.

But, you know, we have SO and AC representatives on this call as well, so maybe they'd also like to chime in and maybe raise their hand or put a comment into the chat. What I'd like to avoid is that you deem something an essential factor, which maybe we can't deliver on -- at least not in this (unintelligible).

Man: But then you do have a situation where if the SOs and ACs delivered all women in their 20s, there would be nothing to do.

((Crosstalk))

Thomas Rickert: You've been waiting for another response from me, but I'm not sure to what level of detail we can actually go based on our charter, as well as given the Workstream 1 mandate that we have. But maybe we should leave it there and

take it up - Jan, your point is well-heard. Maybe we can continue conversation on that (unintelligible).

Mathieu Weill: I think this point was in Jan's input, and should be pursued, and it might be value in some offline exchanges to make sure we have the clear program statement, and check it with our charter correctly. And I see that's giving rise to some questions in the chat.

I notice a comment in the chat by Nell, which I see points a little farther than the initial input, because it went to - and Nell on the chat is on the (unintelligible) CCWG (HCCD). And that was about external accountability and the need for an explicit reference to human rights and democracy. I wonder, (Niall), if you wanted to expand on this?

Roberto Bissio: (Unintelligible) process, I wanted to emphasize agreement with the points that Jan made. And I understand that an extension of those points is the whole issue of whether the accountability is, in a way, internally or related to an external body. And that is what I feel is the (unintelligible).

And that is an issue that we discussed among the advisors, but only found a very short reference in the document. And I suspect that even knowing the physical reality that makes it difficult, (unintelligible) point saying we have here (unintelligible) identified, because if it is not clearly identified, then all we try to find solutions to that on self-referential base.

And that then relates to this part of (circularity) that was referred to recently of who are, you know, this body accountable to, and that's accountable to whom, and who makes accountable (unintelligible) nature of the lack of a clear external accountability.

Now related to that, whenever you have external accountability, and that relates to the incorporation via international treaty or via, you know, self-defined or under US laws, which is completely different, is the question of what are the values from which you derive the mandate? Because freedom of expression was mentioned.

Inclusiveness was mentioned. Gender equality or whatever, which are values that we all cherish, (unintelligible) universal values, there is nothing more universal than the universal declaration of human rights.

And we should make it explicit that this is the principles and the values that ICANN stands for. And then of course you derive out of that the need for inclusiveness, and freedom of expression, association, whatever.

(Unintelligible) and so on in the functioning of the system, which is of course what you will value the performance against, don't make sense if it is not in relation to, ultimately, human rights and democracy, which is, you know, implicit. They both go together.

Mathieu Weill: Thank you, Roberto. I think that you unfortunately were breaking up. But I think we captured - (unintelligible) check - you check the notes on if you're able to check whether we captured your points. But I'm hearing several - advice to take that internal accountability issue into account. It is not a very easy task for our group at this point.

So maybe that might be an opportunity for us to turn to you as advisors, and ask for specific input on that external or internal accountability; and ask for specific suggestions that would fit, obviously, in our mandates on the topic, so that we maybe have a clearer view of what we could come up with. I see Jan's hand is up.

Jan Aart Scholte: I was just going to say maybe as a minimum, at least an explicit acknowledgement of the issue in the report, and some notion or some commitment to deal with it further in Phase 2, or in Workstream 2, would reassure those who might have concerns on this point.

These issues are not - you don't have to reinvent the wheel. There are the INGO accountability charter and various other constructions that address these issues in some detail. And one could look at how far such principles might apply in the ICANN case.

Maybe that's not Workstream 1 work immediately, but maybe part of the eventual report. If I understand it at the moment, these issues - a commitment to address these issues more systematically and carefully is not made, which can leave a skeptic wondering whether it will be put in the long grass and not addressed at all.

Mathieu Weill: Thank you. That's very constructive. And I mean the point is well made, and I'm hearing that it's a point that is shared by several advisors. So I think it really deserves the group's attention, so that's perfectly understood. And the way forward you're suggesting is definitely something we need to talk about within the group.

I think this would be valued or (unintelligible) by one of the questions from Keith in the chat, to make sure we're speaking about the same problem statement behind external/internal accountability.

And what might one suggest would be to take that one step further offline after this call, so that we go with one, deeper; and two, (unintelligible) what is the potential issue we would like to address when we use these concepts of

exploring accountability to non-accountability, because they might not be shared within our group with the same understanding as yours, because we have such a diverse population.

I think what I would like to do now, because we have a few minutes left, is to give you the opportunity, to CCWG members and participants, to ask questions to advisors if they have, or discuss if they think some of the topics we have now would require further attention by advisors, and we will be able to ask them to you.

Wolf, I see your hand is up. I want to note that the four questions that I saw you asking in the chat, and we took notes, are more clarifying questions on the proposals, or I think we will address them, rest assured.

What I think is important now is to give the opportunity to group members if they have topics they think the advisors could bring input on. We need to just reverse the set-up and say - well if you have questions you think the advisors - we should direct to the advisors that would be a good opportunity. I'm obviously taking everyone by surprise, so no one's raising hands. Thomas, you want to ask a question?

Thomas Rickert: Sorry, Mathieu. I have to get off mute. Yes, thank you very much. I'm not sure who of the advisors would like to speak to this, but we recently had some discussion surrounding the question of enforceability of accountability mechanisms.

And I'm speaking in personal capacity, and not on behalf of the group. It is my understanding that we are tasked with the development of enhanced accountability architecture, which includes robust enforceability. And is there

anything - maybe some high level principle or guidance that you can share with us, with respect to this very aspect?

I'm not sure whether that's too broad. I can go into more detail. It has to do with the possibility to ultimately enforce community powers by calling upon arbitration or courts. And there are some in the community, as I understand, that would not want a court to have a say in these matters. So maybe someone, if you could speak to that, thank you.

Mathieu Weill: Thanks, Thomas. Any volunteer on that very question?

Man: It sounds like you want a lawyer on that one.

Man: (Unintelligible).

Man: Okay, sorry.

Man: Hello?

William Currie: Yes?

William Currie: Well I think this is a very interesting question in the sense that it may be that the executive of the US government in the form of Department of Commerce is handing over oversight and accountability in a proposal to the community of ICANN. But the courts - the legal or judicial accountability still remains in terms of the courts in California and, I guess, legislative accountability in terms of what's in the non-profit corporation legislation.

So, you know, it's in a sense left with the argument that the community should not be seen to be going to the courts for enforcement, and therefore arbitration

is a better solution, or it's really a way of perhaps avoiding the (unintelligible) still is judicial accountability for ICANN even after the transition. So that's - I don't know. I obviously haven't been party to all of the discussions. I'm really not fully (unintelligible).

Mathieu Weill: Thank you very much, (unintelligible). Are there other sorts of questions or topics? If not, I suggest we draw this call to a close. What I'm getting from this call is potential and very useful comments that each of you made in terms of practicality.

Willie and Jan have already submitted comments. I would suggest that maybe, based on the notes of the call, (unintelligible) interact with you and provide you with support if need be, so that the comments that you made and shared in this call can be submitted in the public comments, so that they're shared with the wider community; anyone can see them, and we ensure that they get appropriate treatment in the analysis of the public comments.

So my suggestion for that would be that we extract relevant sections of the notes of this call, check with you whether that was indeed the comment you intended to make, and then publish it to the public comment forum, so that we are certain we track them and provide a response.

And the other aspect, I think, is to provide you with a bit of clarity of where we're going. So the comment period ends on June 3. We will disseminate the inputs until our face-to-face meeting, which takes place on June 19 in Buenos Aires. And then we'll be discussing with all parts of the ICANN community, during the Buenos Aires meeting, on the days that will follow.

And the second public comment will then be organized. And so it is possible - it's quite likely that we may turn to you, as advisors, when drafting the second

round of proposals, especially if we're confronted with diverging views of who will need to benefit from your wider expertise to provide suggestions or external points of view before we finalize the proposals.

And our hope is that after this second public comment, which will end in September, we will be - we'll manage to provide final proposals for Workstream 1, for endorsements during the (unintelligible) meeting of ICANN in October.

So hopefully the - we do hope that some of you, at least, and as many as possible, can join us in Buenos Aires for that meeting, but also participate through the further stages of our work. Thomas or Jan, would you like to say a few things as concluding remarks?

All right. I'm making a note as well of Keith's and Suzanne's comments. And I support the addition of an action item for staff to send the advisors the reference documents of existing community SO/AC structures and articles, so that you get a view of their own accountability mechanism.

And with that, I think with two minutes ahead of time, we'll be able to close the call. I'd like to thank you again for your time, for considering the proposals, and for the very thoughtful propositions that we've heard during this call, but also during the - I mean with the submissions we've had already.

And I'm sure this will contribute to enhancing our own enhancements of ICANN accountability, and that this will make our final work product an even better one. So thank you all for your contributions, and I look forward to seeing you in Buenos Aires or talking to you over the next few weeks in our various calls. Thank you all.

Man: Thank you very much everyone.

Man: Thank you.

Woman: Thanks.

Coordinator: Thank you, and that concludes today's conference. Thank you all for participating. You may now disconnect.

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