CCWG-Accountability Working Session II

Wednesday, 21 October

Agenda

1. **Welcome, Roll call, SoI** (17:00-17:05)
2. **Further assessment of merits of the models** (17:05-18:05)
3. **Taking stock and next steps** (18:05-18:50)
4. **Removal of individual Board director** (18:50-19:05)
5. **AoC into the Bylaws** (if time permits)
6. **Work plan** (19:05-19:50)
7. **A.O.B** (19:50-20:00)

Further Assessment of Merits of the Models

Summary of Monday Discussion

- Member Model provides direct enforcement of separation recommendation.
- CWG-Stewardship requirements could be met with either model.
- Board can be constrained in the Designator Model if a separation process is incorporated in the Bylaws.
- CWG-Stewardship recommendations request a form of co-decision regarding separation.
- Going to arbitration for some specific powers has some level of uncertainty both for Member and Designator models.
- Member enforcement of the various powers implies a year of legal action.
- IRP enforcement is not different in each model in terms of timing.
- Litigation is very unlikely, not only because of the time and cost associated, but also because Board recall would provide a faster way.

List of Criteria

Enforcement

- Direct or Indirect enforceability
- Worst case enforcement delay
- Cost of worst case enforcement

Capture Risk

- Derivative action against Board
- Right to dissolve organization
- Balance between the various SOs or the Acs
- Scope of issues where Board business judgement is applied (fiduciary duty)

Transparency

- Access to corporate records

Complexity

- Necessity to create legal persons for SO/Acs
- Necessity for individuals to act as legal persons
- Ease of understanding
- Ability to explain that the change is minimal

Special IANA Functions Review

“Special” IFR may only be initiated upon exhaustion of these escalation mechanisms:

- CSC remedial action procedures are followed and fail to address the identified deficiency (see Annex G of CWG Proposal); and
- The IANA Problem Resolution Process is followed and fails to correct the deficiency (See Annex J of CWG Proposal).

Only then do ccNSO and GNSO determine whether Special IFR is necessary.
Consideration by ccNSO and GNSO:

- Must include meaningful consultation with other SO/Acs; and
- May include a public comment period.

Special IFR requires approval by both ccNSO and GNSO Councils.

- Each by a supermajority according to their own procedures for determining supermajority.

IANA Separation Process

Step 1

Special IFR determines that separation process is necessary (as outlined in process on prior slide)

Step 2

Special IFR recommends creation of Separation Cross Community Working Group (SCWG); recommendation to form SCWG must be approved by each of:

- Supermajority of each of the GNSO and the ccNSO Councils
- Community mechanism derived from the CCWG-Accountability process
- ICANN Board after a public comment period; determination by ICANN Board not to approve SCWG formation follows same supermajority thresholds and consultation procedures as ICANN Board rejection (by a supermajority vote) of a PDP recommendation that is supported by a GNSO supermajority

IANA Separation Process (2)

Step 3

SCWG responsible for attempting to resolve issue that triggered SCWG formation.

- SCWG may recommend actions ranging from “no action required” to initiation of RFP and recommendation for new IANA functions operator (IFO), or divestiture or reorganization of Post-Transition IANA (PTI)

Step 4

If SCWG recommends new IFO or separation process, recommendation needs further approval by each of:

- Community mechanism derived from the CCWG-Accountability process (Could include requirement of formal determination of Global Public Interest by community mechanism)
- ICANN Board; determination not to approve subject to same standard as above.

Enhanced Transparency

Sole Designator may be given "inspection rights" analogous to statutory rights of a member in Bylaws, including:

- ICANN's accounting books and records
- Minutes of Board meetings
- Minutes of Board committee meetings

New SOs and ACs

Creating a new SO or AC will require amending the Bylaws, which will be subject to the community powers that relate to Bylaw Amendments.

Align Duties of Directors with Consensus Decisions by the Community

ICANN's Purpose, which sets outer limits on what ICANN (and Board) may do, may be amended to require the Board to use the definition of "global public interest" determined by the community through an inclusive bottom-up multistakeholder community process.

ICANN Articles of Incorporation, Article III, as proposed to be amended:

"[T]he Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest*, as such global public interest may be determined from time to time by the multistakeholder community through an inclusive bottom-up multistakeholder community process,* in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ('IP') address space; (iii) performing and overseeing functions related to the coordination of Internet domain name system ('DNS'), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv)."

Heat Map

Google Doc URL: https://docs.google.com/document/d/1Bu6ze45ONESJyO_f3RCpEafQsb1VAPgCFHtmWsNIIoM/edit

Taking Stock and Next Steps

Removal of Individual Board Directors

Removal of Individual Board Directors

Download Document here: https://community.icann.org/download/attachments/56143884/Dublin%20breakout%20on%20Community%20Decision%20v3.pdf?version=1&modificationDate=1445439533449&api=v2

Affirmation of Commitments into the Bylaws

WP1 Assessment

Download Document here: https://community.icann.org/download/attachments/56142506/2015-10-12-CCWG-WP1-SecondPC-FullAnalysis.docx?version=1&modificationDate=1444644437000&api=v2
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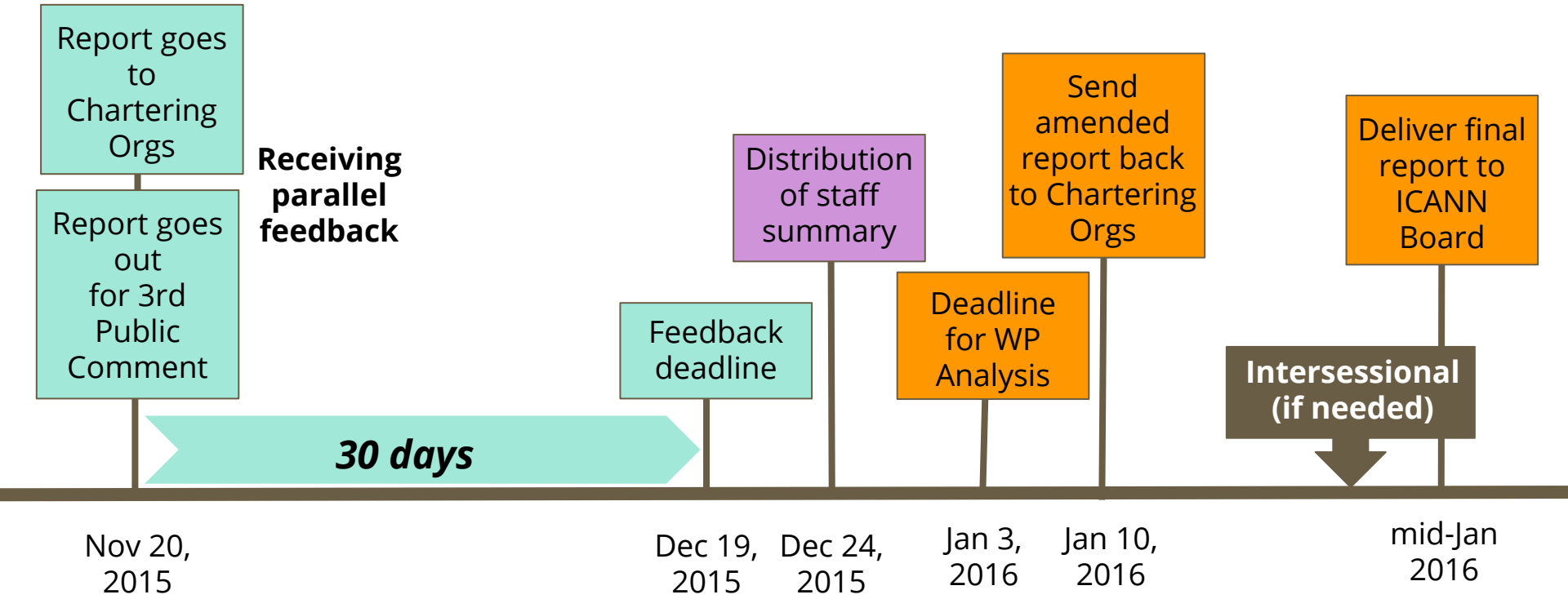
Work Plan

Potential Timeline



*All dates are tentative**

A.O.B.