

ICANN

**Moderator: Brenda Brewer
November 23, 2015
8:00 am CT**

Coordinator: The recordings have started.

Jordan Carter: Great, thank you. Hi everyone. My name is Jordan Carter, dotNZ, rapporteur for the Work Party 1 in community empowerment for the CCWG on Enhancing ICANN Accountability. I think I'm never going to forget that sentence. Welcome to our meeting Number 32 at 7 hours UTC on the 23rd of November 2015.

This is the second of two calls that were designed to give CCWG participants and others the chance to share feedback and thoughts on the draft - third draft proposal that's been released to us a few days ago. Now we had a call around about 12 hours ago that went through some key comments. And the way that we ran that call seems to work reasonably successfully.

The approach was to ask first if there were any major or significant issues that people wished to raise and we worked through those first. And then it was sort of secondary issues that people wanted raised. The staff take high level notes of the discussion and the idea is that all of the feedback gets absorbed and fed back to the CCWG. These are not decision making calls so we're not - it's not

our job to make decisions about things. We can identify things that need to be decided and maybe flesh out some options if we have to. But then we provide that to the CCWG for its decision.

And everything that's said will get taken into account by the drafters. And we've got our helpful staff online who will help us if required to make sense of the draft text. On the call this morning we worked through the third draft proposal, the document that's in the Adobe room in front of you now. And we had various people speaking about Annexes 1, 2, 3, 4 and 9.

So that's the kind of approach. If you've got major issues, and remember that the feedback that we're looking for is what's wrong with the way it's expressed and what needs to be conveyed instead. So we're not looking to do any line editing on this call.

So I think that's about it in terms of a precursor. If you're able to share your thoughts online by email as well that's welcome because it's easier to make sure you've checked off everything that's sent by email. It's my job this afternoon after this to share my thoughts on that basis as well.

Thomas Rickert is on the audio bridge only, he's not in the Adobe room. There's a small and select the four of us in the Adobe room. To be honest I wasn't expecting vary many participants and there are only six this morning. So it'd be surprising if this call took two hours. It would be even quite surprising if it took more than one hour. And so let's start this as a chance to share feedback.

Are there any other people who are only on audio and not in the Adobe room?
Hello?

Kavouss Arasteh: Jordan, this is Kavouss Arasteh. I am on audio only. Thank you.

Jordan Carter: Okay thank you Kavouss, for letting us know. So Kavouss and Thomas are on audio and I now see that that was mentioned in the chat. So without further ado the first question is in respect of this draft you've got are there any major significant issues that you believe - see the draft text misrepresenting the view of the CCWG? That's the first question in front of us today. And I'd ask for people to raise hands if there are.

For Kavouss and Thomas I'll try and remember to come regularly to ask you if you've got anything to add since you can't put up an Adobe hand. But if you feel I'm not giving enough attention please just interrupt and let me know that you wish to speak.

The first person's hand up is Alan so, Alan, please go ahead.

Alan Greenberg: Thank you, Jordan. I'm not sure how many of mine are what I would call major. There's certainly one which I think could become major. And I sent some to the list prior to the earlier meeting 12 hours ago and I sent another pile of them to the list a few minutes ago.

The first one on the further comments one is one that I think is really problematic. We talk in various places about ACs and SOs participating. In one place it is actually on Page 10 is defined sort of as saying if only - if less than five or some wording like that - had said they would participate.

And I find that somewhat problematic because specifically for the GAC we know the difficulty that the GAC will have in making a decision to participate. It means essentially it has to get assent or at least no objection from all of its government representatives.

And that's a decision that we - at least I understand - is going to be relatively difficult for the GAC to make and in fact difficult for the people who come to the GAC to even ask their government should we or shouldn't we.

So I would really like to see something equivalent to what - a measure similar to what the SSAC has done. They've said we do not want to participate. And that's a positive statement of a negative.

And I think that is likely to be the way that we need to measure whether how many are participating or not, that is how many have opted out explicitly. If we're waiting for positive assent we may get very few.

You know, the ASOs, for the last year has been silent and has refused to say whether they will participate or not. We don't know whether they're going to say yes in the near future.

Jordan Carter: Alan, it's Jordan here. I might be able to set your heart at ease on this one.

Alan Greenberg: Okay. Then I'll stop talking.

((Crosstalk))

Jordan Carter: From two directions actually. One of them is the way I read that sentence, and I'll just paste it into the chat, it's a reference from Page 10, and I'll just paste it out of your email and put it in the chat. It says, "If fewer than five of ICANN's SOs and ACs are going to participate." The way I read that is slightly different, it isn't whether they participate in each decision or not, it's whether they are enabled in the bylaws as decisional participants in the scheme so whether they can offer a view about the use of the powers or not.

And to me the only way for them to opt out of that, assuming that our third draft report says that they'll be in, is for them to object to the third draft proposal and to say you need to remove us as participants in this scheme, we won't do it.

And so I think we'd get that feedback as the chartering organizations consider the third draft report, presuming we put them all in. And if they do that this sentence is designed to remind people that if one of them opts out probably we need to reopen the decisional calculus, probably we'll need to assure supplementary report. That will deal with this problem and then reassure it to the chartering organizations.

Alan Greenberg: Okay I'm - I'm delighted if that is how it is being interpreted. But the phrase "agree to participate" has tone to it if not - and I suspect syntactically would be parsed as saying they must take action to participate. So...

Jordan Carter: Yeah, I think we need to fix the language to not quite convey that.

Alan Greenberg: Okay then I'll stop talking.

Jordan Carter: Well there's one other - there's one other angle as well, right.

Alan Greenberg: Okay.

Jordan Carter: Which is there's a paper I circulated about how to deal with the thresholds if here's fewer than five participating. And we need to work through that paper on the CCWG call tomorrow.

Alan Greenberg: Okay.

Jordan Carter: And that may add another layer of comfort to this question.

Alan Greenberg: All right which addresses the question I have later of whatever happened to that. All right.

Jordan Carter: Yeah. And what happened to that...

((Crosstalk))

Alan Greenberg: I've got lots of other points. Yeah, I've got lots of other points. I think they're all things that can be easily fixed but we'll go over them whenever you - when we finish the major ones.

Jordan Carter: Well let's see if there are other major ones. The way that it was done on the call as well day is if they're really minor, they're really syntactic, we don't need to discuss them, if they're kind of no brainer then they'll just be incorporated in the next draft. So don't feel that you need to speak to everything that you've raised in writing unless you want to, unless you think there's explanation that's needed.

But thank you for kicking us off, Alan. Are there other - any other major issues that people would like to raise? And they could be major to you or they might - you might think that they're major to other people or that we need to work through or you may think they're confusing or complicated issues that need to be talked through so that we have a common understanding.

There are no hands up in the Adobe room so I'll ask Thomas, have you got any issues of that sort that you'd like to discuss with the group?

Thomas Rickert: No, nothing major. Thanks for asking, Jordan.

Jordan Carter: Okay, thanks Thomas. Kavouss, how about yourself, you're on the call as well. Okay it's very early in the morning I believe where Kavouss is so and he may be stuck on mute. But, Kavouss, we definitely can't hear you if you're speaking now. Tijani is on the line as well, Aarti Bhavan is on the line as well. I'm not seeing a flock of hands coming up on the major.

And so I'll move into the second category which is issues that you might want to raise but maybe don't think are as major. And Tijani, I'll start with you actually, if you've got anything you'd like to raise or any concerns to air in respect to the draft. I know you haven't put your hand up but we've got time to go around the table. So is there anything you'd like to share with us?

Kavouss Arasteh: Thank you, Jordan. I have a comment to make if you allow me some time.
Yes.

Jordan Carter: Okay yes, well Tijani isn't speaking that we can hear. So, Tijani, if you're still on mute or struggling with that let us have Kavouss' intervention first and then come back to you. Kavouss, please go ahead.

Kavouss Arasteh: Yes, my question that I have raised that the decision of GAC to participate or not would be - would not on permanent basis. It might be possible that GAC decide on a case by case depending whether the issue has any relation to their activities and to the terms and so on so forth.

So it is somewhere in the text that this action is not a permanent, is something of a case by case. And I'm sorry, I didn't understand that the others made an objection that GAC participates.

Who made objection? The GAC itself or other organization, other SO and AC? And SO and AC decide. So I was not quite clear because the audio was not a very comprehensive (unintelligible) just briefly mention the situation (unintelligible) case by case, maybe that is maybe case by case. And second, the objection to not participate coming from who, should come from (unintelligible) I didn't understand what objection means in that text. Thank you.

Jordan Carter: Okay. Yeah, I think I can clarify both of those, Kavouss. And I'll try to speak a little bit more slowly and I'm holding my microphone up closer to my mouth so hopefully the audio will be a little bit better this time. On the first question that you've raised on the case by case versus general, no SO or AC has to pledge or promise to participate in every decision. Every SO and AC has the right to decide not to express a view in the - in the decision that's in front of it.

So if the decision is to exercise a specific community power each SO and AC can decide whether to support its use, to object to its use or to not make a comment at all, and that's fine. The binary choice is whether people will allow their SO or AC to be listed in the bylaws as one of the SOs or ACs that it's entitled to have a decisional say, that is entitled to decide whether to object or to support the use of a power.

And so the way the proposal has been shaping up since the last draft is that the GAC will be listed as one of those. So the GAC will be able to exercise a view when it has a view that it wants to express. And if it chooses not to it will be able to choose not to. So that's the first question.

So if the GAC - if the final - if this draft to the proposal is released on the 30th of November and the GAC in considering it says, you know, as a consensus

position GAC does not wish to have the right to make these decisions, then I think we'd have to respect that on the same basis we have to respect the RSAC and SSAC decisions to not participate.

And I think it's up to each SO and AC to make a clear view of that and as people do not want to participate I don't think that we should force them to. I'm much less interested in whether any SO or AC thinks that any other SO or AC should participate.

So I don't think that we should get into a situation where the GNSO tells the ccNSO that it shouldn't participate or the ccNSO tells the ALAC that it shouldn't participate. I think we'd be right to ignore those kind of comments. But it's about what each one about their own participation.

Now having explained that one, I can't remember what your second point was. But I think I may have been covered already. Please let me know if not.

Kavouss Arasteh: Thank you.

Jordan Carter: Okay. And a few more people have joined the call. Welcome Muara and (unintelligible) to the call. Please remember to mute your lines if you're not speaking. Tijani, I asked you before if you had any issues that you wanted to raise for us. I don't know if you had audio issues or anything like that.

If you've got anything you'd like to raise is now a good time for you? We can't hear you if you are speaking, Tijani. But someone is off mute so in the meantime let me deal with Aarti's question in the chat.

Aarti Bhavan asked if each SO or AC can decide on a case by case basis will the escalation model reflect the change in the number of supporting votes needed for enforcement if only three SOs or ACs are participating.

The answer, Aarti is no, generally speaking. The thresholds are designed to evidence a reasonably wide degree of community support to use a power. So if you were saying that the power was to remove a NomComm appointed director and only two of the ACs supported it and one didn't the power wouldn't have any effect, it wouldn't go anywhere because the idea is that you need a wide array of support.

The only exception to that's been proposed is the one in the paper circulated last week which the CCWG will discuss tomorrow and which relates to a situation where only four are participating and whether that's too low for the thresholds that require four SOs and ACs to participate. But except for that particular situation we haven't got a variable scale of SOs and ACs.

Maura Gambassi, you've just joined the call. Welcome along. And did you have any - so the process that we're going through is just inviting any comments or concerns about the draft text that people have on the question of whether it accurately represents the CCWG's view and we're focusing on the Work Party 1 elements so those parts of the proposal that are our responsibility and Annexes 1-4 and annex 9. So if you have any comments on those you're very welcome to offer them now. You're very welcome to offer them on the email list.

And this is open mic people, if anyone has got an issue that they would like raised and considered you can do it on this call, you can raise it by email. I believe that the deadline to raise issues is 2359 UTC today. So that's, at the

moment I think it's 0720 so you've got around 18 hours on the email list to raise any concerns that you've got.

And while we let you people continue to think about whether there are some issues - any further issues you'd like to raise because there have already been a few raised, I mean, personally, I'll just share with you but on my reading of the report there were no major show stoppers. I thought that broadly speaking it did successfully represent the CCWG's views.

And I'd just like to say to the staff in front of everyone on this call that you guys have done a very good job with our own CCWG staff and the ICANN writing staff and the contractors hired to get such a large and complicated piece of work together so quickly so thank you very much.

So as I mentioned at the start of the call about 20 minutes ago, there was every possibility this call could be and would be quite brief. So far that's how it's playing out. Alan, your hand is up, please go ahead.

Alan Greenberg: Yeah, I was being silent because you said you were going to go round robin so I was waiting to be called on. At this time of night for me I'm subservient, what can I say.

Jordan Carter: Okay.

Alan Greenberg: Okay I'll go briefly over the ones that I think warrant some discussion. One of them is one that's been raised numerous times and gets passed over each time and I don't know whether it's been discussed on calls that I'm not on and conscious decision made to ignore it or not. It's the threshold to change the articles of incorporation. Now in my mind they are at least as crucial as

fundamental bylaws and therefore I believe that the threshold should be raised to 75. That's mentioned one place but not consistently, other places it isn't.

And then there's the question of as if it's equivalent to a fundamental bylaw should the empowered community have to weigh in on it? There's a host of answers in the report, it's not consistent. In one place it doesn't mention the community, in other place the sole member is still being mentioned.

It's in - obviously an editing change that wasn't caught. But it's less clear how we could change the articles of incorporation to reference the empowered community since that's not really a something that has a meaning within the articles of incorporation.

So again I'm not sure whether it's a conscious decision as we made to ignore it or just keeps on slipping through the cracks. But I just wanted to focus on that. I'm not sure we can make a decision or even a recommendation here but I think it's something the CCWG needs to consciously decide on.

Jordan Carter: Alan, that was raised on the call this morning as well. And there was a bit of a discussion about it. And there was a view that the same kind of co-decision process should apply for changes to the articles as should apply for changes to the fundamental bylaws. And the discussion was whether there should be exactly the same threshold or whether the threshold to changes to the bylaws should still be co-decision but at a slightly lower level.

If we'd gone with the member model the law says that 2/3 or the articles say 2/3 of the members would have to agree. So one option to keep it clean is that just the same threshold as the fundamental bylaws would be extended to the articles as well. The other is that a slightly lower threshold should. So that was scheduled as an item that the CCWG decided to discuss at its call on Tuesday.

Alan Greenberg: Okay.

Jordan Carter: So thank you for raising it again. It isn't super evident in the notes from the last call. And I -it would be good if it was raised actually as an action item on this. The other thing is that the lawyers were being asked for their input on that question as well and we hope that they will be able to offer their response to that in time for the call tomorrow too.

Alan Greenberg: Yeah, thank you. I'll just note that if there had been a sole member the California statute says 2/3 of the members but of course there is only one member so somewhere else we would have had to decide what's the threshold of the participants in the member to decide if the member decides. But...

Jordan Carter: Yeah.

Alan Greenberg: ...that's neither here nor there. I'm - I'll eagerly await to see how the lawyers reference the empowered - the empowered community when it doesn't exist at the time the articles are being looked at. But anyway okay. So that's one of them.

One of the other ones that's been raised a number of times is the 120 - is the 15-day time to set up a community forum which might in fact be face to face. That's ludicrous.

((Crosstalk))

Alan Greenberg: The concept of finding a space that can hold the people, making travel arrangements and getting there and holding it all on 15 days is just beyond

comprehension. So either we're saying it's never going to happen, which some of us might be happy with, or we need to make it more realistic.

Jordan Carter: Or I think you made a suggestion somewhere else that the - they should only ever be virtual meetings. And...

Alan Greenberg: I don't think I said that but I could live with it.

Jordan Carter: Okay. I remember seeing that suggestion somewhere. That's actually my view. If you recall where the community forum came from we want it to be a lightweight and sensible way to discuss and share community perspectives on these things.

And the idea of (unintelligible) and meet space, like the idea of getting everyone together from all the around the world some unknown and unspecified number of ICANN participants to debate on this issue when it could simply be a number of hours in an Adobe room seems beyond ludicrous to me.

Alan Greenberg: Well except - unless it's removing the whole board or something like that.

Jordan Carter: Yeah, yeah, and that might be the one where there needs to be a conclave at an ICANN meeting or something...

((Crosstalk))

Alan Greenberg: All I'm suggesting is we may want an escape hatch out of the 15 days.

Jordan Carter: So this issue has been raised before and there hasn't been a successful resolution to it. I guess the options are to extend the time period for ICANN

meeting staff to always have a meeting venue ready to go somewhere in the world. Or to ban face to face meetings except for any particular - like I think it's easy to disallow it for the bylaws changes powers and I personally think it's easy to disallow it for the budget power and for the removal of an individual director. To me the only two where it's a bit dodgier is the removal of a NomComm director and removal of the whole board. That's the way I see it.

Alan Greenberg: Yeah, I would restrict it to removal of the whole board. On a similar vein, we still say potentially one to two days - or sorry we say a community forum will be one to two days. The concept of a one to two day community forum even if it's virtual, to approve a fundamental bylaw where chances are we've all discussed this ad infinitum already, again I think we want some more flexible words than that.

Jordan Carter: I completely agree with you.

((Crosstalk))

Jordan Carter: It's be like clubbing yourself to death with a baby seal essentially.

Alan Greenberg: Okay, a big thing which I think is a typo or a mis-drafting, is in the previous report we were incorporating the AOC into the bylaws, now in the main report we are saying we're incorporating the reviews into the bylaws.

Jordan Carter: Oh where is that?

Alan Greenberg: Look Recommendation 9. The actual words of the recommendation. Page 3 or 4 or something like that.

Jordan Carter: Okay. Yeah, right in the list it definitely says that but does it say it in the body of the report?

Alan Greenberg: It does. It doesn't say it in the body of the annex. The annex is correct or at least the title of the annex is correct.

Jordan Carter: Okay. Yeah, I think that's an action that staff need to follow up because definitely there's more - I mean, the detailed recommendations on Page 49, 50 do mention the other parts that are being incorporated but I think that the summarized abstract at the top probably needs a little bit of adjustment to make sure it's clear right up front.

Alan Greenberg: That's correct. There is only one part of the AOC which has been religiously not incorporated. It should be within the mission probably so it may be out of our scope. But it's in reference to consumer trust in Section 3 which for some reason or another people seem to not want to incorporate. And the ALAC curiously enough is determined to be incorporated.

Jordan Carter: Okay so that's...

((Crosstalk))

Alan Greenberg: ...I guess but will be brought up. What else is there. Typo, typo, yeah Annex 4 seems to stop halfway through that is the drafting stopped after the title of for removing the entire board. I guess I just want confirmation from staff that it's indeed a work in progress.

Jordan Carter: Bernie, could you comment on that for us please?

Bernard Turcotte: Yes, I noted it in your comments and we're going to have a look at that and fix it if necessary. There was so much cut and paste going on at the last minute that...

Alan Greenberg: Yeah.

Bernard Turcotte: ...this may have been (unintelligible).

Alan Greenberg: Yeah, all the other sections have all these detailed diagrams and repetitive stuff and the removing the entire board is so unimportant that none of that included there. That's a joke. And that's about all I have other than typos and various other things that I presume will be fixed once they've been pointed out.

Jordan Carter: Very well. And, Alan, thank you for taking the time to go through the report in some depth and to write down your concerns and share them and then discuss them here. It's good input. Thanks.

Okay I don't see rushes of hands. I don't see interruptions on the call. So I'd like to make a last call for items at this point. If you've been staying very quiet to see how the call goes and you think you've still got an issue to raise remember you can do so on the email list for the next 18 hours or so.

But otherwise you can raise it now verbally with us or in the chat or otherwise we're going to call this call to a close. And everyone can get about their day, evening, morning whatever it is.

Alan Greenberg: Or get their 4.5 hours sleep.

Jordan Carter: So that's even better that it's 4.5 instead of 3 at the rate we're going. Okay that's us, everyone. Thank you very much for coming along to attend the meeting. You still have time to write your comments and please do so if you've got any input. Thank you for attending this nice brief call. And I look forward to speaking with you all on the next CCWG call sometime tomorrow.

Alan Greenberg: And while people are still...

Jordan Carter: Thank you.

Alan Greenberg: ...here I'll also say thank you to staff who have done a phenomenal job.

Jordan Carter: They certainly have.

Alan Greenberg: Bye-bye.

Jordan Carter: Thanks, guys. Bye, bye.

Thomas Rickert: Thanks all. Thanks, Jordan. Well done. Bye-bye.

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