

ICANN Board Informational Call with CCWG co-chairs
4 December 2015

>>THERESA SWINEHART: From the board members, I see we have Cherine, Chris, George, Lito -- going down -- sorry, it's taking me -- Lousewies, Markus, Mathieu as the co-chair of the CCWG -- thank you, Mathieu for joining -- Ron, Rinalia, Ron da Silva, Steve Crocker, Suzanne Woolf.

And then I have a few phone numbers in addition to Steve -- I have Steve Crocker and then I have a few phone numbers. Did I miss any board members in naming off board members?

Jonne indicates he's going to dial in now.

So, Cherine, I think with that, we have the three co-chairs of the CCWG and looks like all the board members. If I haven't called your name, please indicate that just so we know for the record.

>>CHERINE CHALABY: Okay. Thank you. I'll start the meeting. Hi, everyone.

For the record, this is Cherine Chalaby speaking. Welcome to all of you and especially to Leon, Mathieu, and Thomas. This call, for the record, is a series of three meetings the board has planned to hold in order to prepare and submit its comes on the CCWG third draft proposal by mid December.

This call today will be heard in two parts. Part 1 will be a discussion with the CCWG co-chairs, who thankfully offered to provide the board with a briefing on the third draft proposal and to answer any question the board may have at this stage.

Bruce Tonkin -- I hope he's on the call. He's the ICANN board liaison to the CCWG -- will facilitate this discussion.

There will be an audio recording and a transcript for this part of the call, which is estimated to take approximately 30 minutes.

After that, we will conduct part 2 of this call, which will be a board review of the initial comments prepared by staff on the 12 recommendations contained in the third draft proposal. I will facilitate this review. It is estimated that part 2 will take approximately 3 1/2 hours.

So before I hand over to Bruce, Steve Crocker, Chairman of the ICANN board, wishes to say a few opening remarks. Steve?

>>STEVE CROCKER: Thank you, Cherine. First of all, let me thank everybody, particularly the co-chairs, and without any question all of the many people, the CCWG members, participants, and observers for the really tremendous global effort that's gone into the work of the accountability process, which has reached the point

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of preparing this third draft proposal that was issued a week ago. It's really a momentous milestone. I think it's going to be one of the major points in the history of ICANN and marks the turning point, I think, from multiple perspectives well beyond the immediate prospect of submitting the proposal and getting on with the transition. I think the impact no matter what is going to be felt over the coming years.

So with that, I would simply say thank you to everybody. I'm going to stand back, turn things back over to Cherine and to Bruce.

>>CHERINE CHALABY: Okay. Thank you, Steve.

Bruce, are you there? Are you ready?

>>RAM MOHAN: Ram dialed in.

>>STEVE CROCKER: I don't know that we have Bruce yet. If we don't, Cherine, I think you're burdened with carrying on here.

>>CHERINE CHALABY: No problem. Well, I will start. And when Bruce joins in, he can take over.

>>STEVE CROCKER: And I'll note that Ram Mohan and Rinalia and Ron da Silva have all joined us just to round out the set of board members that -- and Markus Kummer. Any others that have joined us that I haven't mentioned or that Theresa didn't mention earlier?

>>JONNE SOININEN: This is Jonne Soininen.

>>STEVE CROCKER: Hi, Jonne.

Thank you.

Okay. Sorry. Back to you, Cherine.

>>CHERINE CHALABY: All right. Well, another thanks to Leon, Mathieu, and Thomas. We are very happy that you offered this ability to come and comment and give us some briefing on the proposal.

We have read the proposal and any opening comments will be very welcomed. But we thought it would be very helpful to us to know how the initial comments we made a few weeks ago on the mission statement, and then we made further comments on other items that were in the summary proposal, how they were handled by the CCWG. That would tremendously help us as we now go through preparing our comments for that third draft that was published.

So may I hand over to you, Mathieu, Leon, or Thomas? And perhaps you start with some opening remark. And then if you could come back to tell us how the -- how the comments of the board were handled, what was the reaction of the CCWG members, and how they were taken into consideration in that proposal that was just issued. Thank you.

>>THOMAS RICKERT: Thank you very much, Cherine. This is Thomas Rickert speaking. And we would like to thank you for your warm welcome, both Steve as well as yourself.

In fact, this has been a tremendous group effort. And let me applaud ICANN staff in particular and the professional writers that we hired to help with this exercise. We couldn't have done it without them, and we hope that you have good bonus packages for all of them available.

[Laughter]

Joking aside --

>>FADI CHEHADE: Easy now, Thomas. Please, easy. Budget constraints, okay?

[Laughter]

>>THOMAS RICKERT: Okay. I think the good news is that we have been able to stick to the time line that we have presented in Dublin which means that we have issued the update to the community setting out in plain language what the essence of our recommendations is. We have published our report.

I think it's not necessary for me to go through the report structure in detail because if you have read it, then you know how we went about with this.

We hope that we -- that you will agree with us that the readability of the document, that the accessibility of our recommendations is much better than the two previous reports. And I should even go as far as saying much better than almost any PDP recommendations or other documents that I've seen coming out of the community. So we really do hope that this is an inclusive exercise that the community can easily understand what we are trying to achieve and allow for the chartering organizations, in particular, to approve the recommendations swiftly and to allow for the community members that are not chartering organizations and can make themselves heard through those, to chime in via the public comment forum, which also we have facilitated by offering in addition to the classical email contributions that are possible an interactive tool via SurveyMonkey where we ask specific questions on the recommendations that we have issued.

That serves two purposes. One, we want to make it easier for the community to chime in. But also we want to make it easier for our group to analyze public comment.

We are staying in close contact with the various constituent parts of the community in SO/AC leadership calls and position calls but also through our members. And so far what we're seeing is that the SOs and ACs are working very hard to make it possible to chime in on our recommendations by the 21st of December or around the 21st of December.

The ccNSO, for example, is going to have their discussion on the 23rd.

And it is our hope that by that time, we will be able to understand whether the chartering organizations can support our recommendations or whether there are issues with our recommendations that would result in a rejection.

And in that case, we would need to circle back, have another feedback loop by issuing a supplemental draft report. And that's, as you will understand, certainly something that we hope we can avoid.

Therefore, we're trying to work closely with chartering organizations. We need five out of six chartering organizations to improve our recommendations. And we do hope that both the feedback from the chartering organizations will be favorable as well as the feedback that we get from the community because due to the time constraints that we're working under, the chartering organizations will form their views as the public comment period closes. And prior to us having issued a formal analysis of the public comments.

I'm just flagging this proactively because this question has been asked multiple times in our group by different people from different groups inside the ICANN community. Let's be very clear, we hope that since we've been populating the buzz of our recommendations for months, that there's not going to be a lot of unfavorable feedback from the community. We've done changes to our second report, substantial changes. But many of the ideas and concepts have been around for more than half a year now.

So we do hope that the chartering organizations will be able to say yes. And in the absence of other comment coming in through the public comment forum that requires us to revisit and rewrite the recommendations, we would be good to go. It would be only the case that we receive a lot of pushback from the community that we would need to circle back to the chartering organization and say that they have based their approval hopefully on recommendations that need to be further worked -- worked on.

But one thing's for sure, if that is the case, then surely we need to revisit the overall time line. So far we've planned everything to run smoothly so that we can hand over the recommendations on the 21st of January. And we hope that we will be able to continue to work as planned and then deliver on that time line.

So that is where we stand in terms of process. So we're very confident that we can deliver as promised.

With respect, Cherine, to the points that you mentioned with respect to your initial feedback, let me turn to Mathieu to give you a quick recap of where we are.

>>MATHIEU WEILL: Thank you, Thomas. This is Mathieu Weill speaking, ccNSO appointed co-chair of the CCWG. Thank you for inviting us to this call today. And this is very much appreciated and I think very useful to engage directly.

The comments that -- the preliminary comment that was sent to our list on November 24th gave -- like any board comment and signal from board members very closely scrutinized by our group and looked at under different angles.

I think we've all learned now that -- by now, I hope, that comments from the board and even sometimes from board members individually are always looked at extremely carefully and that the messaging -- the way they're framed and the timing are also of very high importance and sometime for some people even more important than the actual content. And we know what the consequences of misunderstanding here can be.

The comments from 24th of November, there was a lot of -- there was Rob's discussion about some aspects of it on the mailing list to be closely transparent. Since the comment came in on November 24th and our publication of report was for November the 30, there wasn't a lot of bandwidth available at that point to discuss it at length in the CCWG. So most of the discussions took place in the -- on the mailing list. I'm not planning to go through each and every item, but I would note that for some items there were some discussions about what the interpretation of the comment would be. That is the case for the board removal part of the comment which initially was felt to indicate -- was probably not appropriately understood by some in the group.

So it's our -- we can certainly -- I would rather go topic by topic based on questions that you would raise. But it's our impression that there's nothing in our report that is going in a direction that is not compliant with the comment. But because it was preliminary comment, there might be some room for further discussion and explanations to make sure our report is clear and we haven't made an interpretation of our comment that is inconsistent with your intent.

So that's the (indiscernible) of how we handled the comments. That would be it. Probably if you want to focus on certain topics, it would be better in a question-and-answer format, I would say.

>>CHRIS DISSPAIN: Cherine, if you are talking, we can't hear you.

>>CHERINE CHALABY: Sorry, guys. I apologize. I was on mute, perhaps. Thank you.

Mathieu, perhaps the mission statement, if you can comment a little bit on that because we submitted a detailed comment on that and we suggested splitting the mission statement into two components, one which is a short component which defines the mission statement and another one, which is more extensive which defines the scope of responsibility.

And we felt that this was a good suggestion and indeed some of the comments that we saw on the list. People said these were good -- a good suggestion from the board and should be taken in good faith and be considered by the CCWG.

Okay. Can you comment a bit more on the mission statement because when the -- when the third proposal came out, our suggestion was not taken into account. Would appreciate -- the board would appreciate very much your input on that.

>>MATHIEU WEILL: Thanks, Cherine. On the mission statement, in Dublin, the mission statement was felt to be very close to finalization. It appeared shortly at the end of the Dublin meeting that some concerns were raised on the -- by some stakeholders about ICANN's ability to enforce the contracts.

And shortly after Dublin, concerns were raised by the IAB about the clarity of the scope of ICANN's mission with regard to protocols, asking for -- that was actually in the public forum as well.

Somehow this reopened the discussion a lot. And since then, there has been very, very intense back-and-forth discussions with proposals from the board, from the IAB, and from a number of other stakeholders that went in many directions at some point, were very diverging. And it was really challenging to move for a compromised view on this.

So the proposal that's in the third report -- and I'm not the best person to speak of the legal subtleties behind it are really a compromised proposal after a lot of back and forth. There have been so many proposals and counterproposals that it's really difficult to say who proposed what. And, actually, I don't think that's really what matters first.

It's our understanding that so far most of the concerns that were raised from the IAB from those stakeholders who were concerned about the ability to enforce contracts, stakeholders who were concerned about not making -- putting ICANN in a position to regulate services beyond the existing picket fence.

We believe that we have an appropriate picture of ICANN's mission here. We haven't given -- our goal is really to find an appropriate balance. The way it's structured, I don't know if I should be the core focus. But certainly it's important for the board to review that part of the proposal. That's one of the rather substantial changes that took place in the last few weeks. And if there are any key concerns, that's an important -- that's an important aspect.

A final point, it's clear in this draft report that what is meant to be achieved at the level of the draft report is that the requirements are captured and a finalization of the drafting, of the wordsmithing, potentially some of the structuring of the document will happen at the implementation stage. So I think it's really important to distinguish between the functional concerns related to the mission statement compared to some of the potentially wordsmithing issues that might take place -- that could take place later.

And I'm aware that's not fully answering your question, Cherine, but this question has been -- I've been given so many -- so much debate in our group that it's -- it's difficult to really track exactly how your comment was addressed because there was so many comments and such at the time on this.

>>CHERINE CHALABY: Thank you. Thank you, Mathieu. I wonder if any of my Board colleagues would like to ask a question at this stage.

All right. Anybody -- I see Thomas Rickert actually, Thomas.

>>THOMAS RICKERT: Yes, Cherine. Thank you very much, Cherine. Mathieu has outlined that we had numerous issues to be discussed when it came to the mission statement and we really worked very hard to ultimately reach consensus on that part of our proposal to ensure that ICANN can enforce contract -- entering into contracts that we prevent excessive content regulation. We put it that way. That existing arrangements that might impact content are grandfathered, but we have appropriate demarcation from other organizations such as the IAB. So if your question or -- we would like to understand whether there are additional concerns or remaining concerns that you have with that because it really was interesting to see that after a lengthy debate, you know, we seem to have found a solution that everybody was happy with. And if it's -- if it's the structure that you are -- that you think is more apt to meet the organization's needs, then let's really discuss that when it comes to concrete bylaw drafting and the implementation.

So are there any -- any concerns that you see with this, that you could share with us?

>>CHERINE CHALABY: Well, I think today it would not be fruitful to get into details of any -- any of these. I agree with you. I think we just wanted to know how our comments were handled. And let me give you a briefing of our plan over the next two or three weeks and ask you a question after that.

So today, after our discussion with you, we will hold a meeting with -- about three and a half hours to start working through initial comments that were prepared by staff. Then we have two more meetings. One on the 10th of December, about five hours the Board will have a face-to-face meeting, and one on the 13th of December for a couple of hours. And the view is that by 14, 15, middle of December, we should be submitting our comments on the third draft proposal.

And we wonder as a Board whether you would -- you would feel it -- you would want to engage with us at one point through this -- the next couple of weeks where we have some discussions on some of the points we would like to convey in our comment, particularly again the mission statement, the inspection rights, the human rights, some of the Board removal and others. Is there appetite for that, or you'd rather wait and see all of our comments in one go? What's your suggestion there?

>>THOMAS RICKERT: This is Thomas. Thank you very much, Cherine. We would very much welcome to have a dialogue with you. Certainly as this call today is being recorded and transcribed we would need to do the following expected standards of transparency of our discussion. But as Mathieu mentioned earlier, almost every sign of life we get from the Board is really scrutinized by our group and beyond. And so we -- and I don't mean this in a bad way, but the community's really looking forward to signals from the Board and they are trying to understand what the -- what the Board's reactions might be, whether it's supportive, whether there are concerns, whether it is rejection. And I think at this critical point in time -- this is also why I spoke a bit about the planning of this exercise as such -- that we should do what we can to avoid misunderstanding and confusion that might lead to conspiracy theories, what the Board might or might not do with respect to recommendations. So if we can discuss things, I think that would help. You mentioned things like inspection rights, Board recall. These topics have a very long history in our deliberations, and we think that we might be able to shed some light on the concerns that hopefully you don't have. Maybe it's just a question for clarification, but we would offer -- we would certainly volunteer and offer to discuss this with you to avoid friction as much as we can.

>>CHERINE CHALABY: Okay. Well, that's really great because we want to bring our comment as early as possible so there are no -- no surprises later on and everybody is aware of what the Board is saying and we want to be very transparent about it. So we will come back to you with a suggested date between now and mid-December

we'll have another discussion, this time around particularly perhaps two or three -- two or three of the recommendations rather than the totality of it. That would be great.

Okay. I don't believe we have -- unless any of my colleagues would like to ask another question, can I hand over to the co-chairs for final remarks, comments?

>>THOMAS RICKERT: Thank you, I would give my co-chairs the opportunity to speak, but I think we must be very clear that when we discuss with you we can try to explain and offer information about why our group came to consensus the way it did. What we will certainly not be able to do is rewrite policy in our discussions with you. And should there -- I think we have to be very clear that if there are concerns that can be removed by virtue of adding more explanatory language or by keeping some placeholders for implementation phase, that is all fine.

If the Board's concerns would be the equivalent to a rejection of the recommendation, if you were a chartering organization, then certainly that would be a different matter and that would certainly put into question or into doubt the approval that we would hopefully get from the chartering organization. So I think we need to be very cognizant and conscious of the impact that these discussions might have as well as any written feedback that we get from individual Board members or from the -- from the Board as such. So that's it for me. Since I don't expect to speak again, let me thank you again for the opportunity to join you in this first phase of your quite long call, so I wish you a lot of good thoughts and a lot of stamina. Thank you so much, and Leon or Mathieu, would you like to speak as well?

>>LEON SANCHEZ: Yes, Thomas, thank you very much. This is Leon. And also to thank you for this opportunity of having this dialogue. And as Thomas said and Mathieu pointed out also, we are more than happy to help you understand whatever point might need any kind of clarification, and we hope to receive your feedback and your comments according to our timeline, of course. And, of course, also suggest we get as concrete feedback as possible so we have clear signals whether you support or not the recommendations.

So that will be all on my side. I would like to turn to Mathieu in case he wants to say something, and thank you again.

>>MATHIEU WEILL: Thank you very much, Leon. And thank you, Cherine and all Board members, for this offer for further dialogue which we'll certainly support. I think the point that we've reached now, we really need to be very, very clear and take the messaging into account, and to do that, sustained dialogue is very useful to make sure there is no room for misunderstanding. And I think we've -- we've learned probably a little bit the hard way what the consequences of misunderstandings or comments that can be misunderstood or the yes buts might have. So I think we -- what we're looking for through this dialogue is to achieve a

level of understanding of your -- your position where it is very clear whether there's support, whether there's some more concerns that can be solved in implementations, or whether there is a situation that needs to provide a material change to the document and with the consequence that we know are attached to that. It's a key responsibility that the Board has to look at it in this way through the lens of the global public interest, and we -- I think the community, in the process, needs a very clear signal about this and certainly sustained dialogue is the right way forward for that. We thank you very much for initiating this, and look forward to further dialogue.

>>CHERINE CHALABY: Okay, Mathieu. I think Bruce has joined. But as I say, from my side the Board, when we meet again, I think we will be very clear about our reaction to various recommendation. As you mentioned, whether we totally agree or we see some recommendation for changes or things that depend on bylaw changes, et cetera, et cetera, we'll be absolutely clear with you so that you know where we stand without any doubt. And that, I'm sure, will help the dialogue between us and is CCWG and the community.

I understand Bruce has joined our call. May I ask him perhaps to say something, and Mathieu, were you going to say something else or --

>>MATHIEU WEILL: No, I was finished. Thank you very much, Cherine.

>>CHERINE CHALABY: Okay. Bruce, would you like to say something?

>>BRUCE TONKIN: I've got a sore throat unfortunately so I won't speak much. I'd like to thank the co-chairs for taking the opportunity to give us an update. I think we're all feeling the time pressure. I know that CCWG has been trying to sort of get things finished so that we can provide the report through to the (indiscernible) and the NTIA in January and the Board's putting the effort. Spent half the day today going through the report and also will be spending at least another half a day next week. One of the things we'll be -- you know, what's the best way for us to perhaps communicate with the CCWG as we start to finalize our comments, and I guess that would depend on whether our comments get a bit -- suggest substantial changes or whether the comments are minor. But I'll keep in touch with the CCWG on that. And if our comments are going to be major, then perhaps we might suggest a call with the whole CCWG where we can at least explain our position.

>>CHERINE CHALABY: Okay. And Steve, Steve, you wanted to say something?

>>STEVE CROCKER: Thank you very much. Mathieu and Leon and Thomas, thank you very much for all of this. I think you've -- as you know, we're about to plunge into several hours' work here. You've gotten us off on a good start. I think this has been the easy part. We now have to work very hard. And the comment about the time pressure is right. We very much appreciate the hard work that everyone has

put into it in order to meet the schedule so far, and now we feel very strongly the pressure on us.

One key point that has come out in this short exchange is that some of the specifics are going to emerge more clearly in the drafting of the bylaws and that's something we're very conscious of, of course. So we're going to endeavor to be as responsive as we can be within a very short time and at the same time there may be some references in our response to the details coming out in the bylaws. And so that will require attention from everybody, not only from us, of course, but from the entire community.

So with that, look forward to hearing from us as rapidly as we can. I think our aim is in about -- what December 14, is that what we said? Somewhere close to that. And -- but even at that point, that's just one major step along the way. And then we continue, everybody continues to work on this process. So again, thank you. And you've gotten us off to a good start. And sort of in the spirit of eat dessert first, I think you've given us the dessert and now we have to go sit down to a major meal.

>>CHERINE CHALABY: Okay. Thank you, Steve. And if no one else has a comment to say, I would like to declare that this part of the meeting is closed. Thank you, everyone. Thank you, Mathieu. Thank you, Thomas. And thank you, Leon.

>>THOMAS RICKERT: Thank you very much.

>>CHERINE CHALABY: Bye-bye.

(Meeting ended at 2143 UTC)