
RODRIGO SAUCEDO:

Good morning, good afternoon, and good evening. My name is Rodrigo Saucedo. I am the Project Manager for Latin America at ICANN. Welcome to this LACRALO webinar. Today we will be speaking about the ICANN Bylaws Amendment Process.

So first of all, I would like to thank you all for your time and for participating in this call. This webinar is being organized within the framework of the Capacity Building project for the LAC strategy. This is our second webinar for 2016 that is being organized for the LACRALO community. So I would like to thank Humberto Carrasco and Maritza Agüero for their effort in the organization of these webinars.

Today we are honored to have our guest speaker. I know you know her very well, and you know her great effort and her work in all the processes she's doing in the IANA transition process. She is Theresa Swinehart. She is the Senior Vice President for the GSC department at ICANN. So I would like to thank her so much for being here, for her time.

And before starting, I would like to tell you about certain communication rules. First of all, for respect to our participants and our speaker, I would kindly ask you to mute your speakers or your phones. Secondly, this webinar is an interactive webinar. So, please, you are welcome to ask questions by raising your hand on the AC room or by typing those questions on the chat. So your questions will be read aloud and answered at the end of the webinar. If there is not enough time, you can send your questions in writing to the speaker, and they will be published on the wiki page.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

At the end of the webinar, we will have a survey. This is an evaluation survey. It will only take five minutes. But the idea of this survey is to improve our future webinars.

So without further ado, I will now give the floor to Theresa Swinehart. Thank you very much.

THERESA SWINEHART:

Hi, thank you, everybody. And my apologies, I can't do the presentation in Spanish. But please let me know if I'm speaking too quickly as I do this in English.

First of all, thank you so much for holding this webinar. It's a wonderful opportunity to not only share what is happening, where we are in the IANA stewardship transition, but it's also an opportunity say thank you very, very much to the entire community for the amazing work and contribution throughout the entire process. Many participants were either directly involved or following the dialogs. The results are a package of proposals and reflect the engagement by everybody. So I know it was many hours, but I just wanted to up front here also acknowledge and thank you for everybody on the call has been doing as part of this.

Let me start with the slides here, and then happy to go into any questions and discussions. And as you know, my colleague, Sam, is also on the call, who can help if there's any questions that I can't answer or also, obviously, around some of the bylaw-related preparations that have been currently underway.

First, and some of this may be old information for some participants, but it's always good to make sure that everybody has the opportunity with the same sort of information. It was a bit over two years ago that the US announced its intention to transition the stewardship of the IANA functions to the global multistakeholder community. And the timing of this is really the result of the enormous work by the community to make ICANN what it is today, to strengthen the multistakeholder environment on a global level and to really, over the years, since ICANN's inception, the tireless work to really reach this point in time.

It has been the intention of the US to transition this, as many of you know, since the inception of the organization. And through both the Republican and the Democratic administrations, progress had been made with MOUs and joint project agreements, and affirmation of commitment relationships to evolve the relationship of ICANN with the US Department of Commerce, and also reach stability for the organization and its global nature. And that involves all of you, as well. So it's really together that we reached the point where the US could be in a position to make this kind of announcement.

The announcement was, I think, eagerly awaited by many and has been a topic of discussions also through international Internet governance related discussions, including the World Summit on the Information Society, so quite timely.

In making their announcement, it wasn't just a, you know, "Here it is." It really was the community needed to come together and reach a set of recommendations to transition the stewardship role that the US

Department of Commerce Holds but that meets a certain set of requirements and principles. And these are very important principles because it's also what is going to ensure the longevity of this transition.

And it said the recommendation support and enhance the multistakeholder model. And as we know, a multistakeholder process was run in order to achieve these recommendations.

That it maintains the security, stability, and resiliency of the Internet DNS.

Importantly, that it meets the needs and expectations of the global customers and partners of the IANA services. The protocol parameter community, namely the Internet Engineering Task Force, the IP addressing community reflected in the regional Internet registries, and LACNIC for the Latin American and Caribbean region, and the naming community, both the country code naming community and the generic naming community.

It needs to maintain the openness of the Internet, and also that the role of NTIA is not to be replaced by a government-led or intergovernmental organization or solution. So namely, to reaffirm the importance of the multistakeholder model.

With the announcement, two parallel processes were undertaking, that ICANN facilitated. The one was the operational communities, namely the customers of the IANA functions, coming together to reach a proposal. That was overseen by the group called the IANA Coordination Group. And the other, and parallel, process that was undertaken was a realization that, with the changing historical relationship with the US

Department of Commerce, any perceived or enhancements to ICANN's accountability should be looked at. So ICANN's existing accountability mechanisms were looked at, and then anything that was seen as important and needed in addition to that, in light of the changing contractual relationship and the perceived backstop role of the US, that those are addressed.

These two parallel processes worked to develop the respective proposals. You can see in this graphic here that the IANA Coordination Group, so at the top, received the input from three different working groups, so all working together globally in a multistakeholder manner to reach their proposals, and provide those to the IANA Coordination Group, at the top. And then what was referred to as the Cross Community Working Group on Accountability, the box at the bottom, that likewise worked very hard to reach its set of recommendations around any enhancements of accountability.

These two proposals were provided and then transmitted to the ICANN Board at its recent meeting, ICANN 55 in Marrakesh, and then subsequently transmitted as the package of proposals over to NTIA, at the Department of Commerce, on the 10th of March of this year.

And as you can see, this delivery of the proposal, reflective of two years of hard work by the global community, including yourselves, took place. And I think this set of pictures is a very nice set of pictures, really congratulating the global community on the success of the transition.

So where are we now? We're currently in what is reflected here, of Phase 2. So Phase 1 was completed on the 10th of March, with the

transmission by the Board over to NTIA the package of proposals. And we're now in Phase 2, where NTIA is undertaking a review and evaluation, also ensuring it meets the criteria that I described earlier that they had set out.

We're also looking at the preparations of the bylaws, which are now out for public comment. And these draft bylaws must be provided to the US Department of Commerce and NTIA before they can sign off that the proposal, and the package of proposals, is actually fully complete. And that will be reflected in a report that they will issue, which we anticipate to occur in early June. So our expectation is that we will be providing them the bylaws after the public comment process, towards the end of May of this year.

In parallel, we're starting to begin some of the other areas of work, setting the groundwork around the implementation, namely in relation to agreements with the different operational communities, and also undertaking a 90-day root zone management system parallel testing. That is to look at any changes to the root zone management and doing some parallel testing for the time frame of when NTIA's role is taken out of that process itself. And so far, those tests are showing up 100% and excellent, so everything is proceeding well.

Subsequent to the issuing of NTIA's report, which we anticipate in early June, we then proceed forward with the other parts of the implementation that are reflected in the proposals themselves, with the expectation of providing a report to the Department of Commerce around the 15th of August of this year that will then lay the groundwork

for the lapse of the contract by the end of September. So you'll see that will be the end of the blue phase, and then moving into the red phase.

In parallel, of course, there's the work that has been identified and referred to as the Work Stream 2 related issues that will continue to occur well after the lapse of the contract. And these are issues that have been identified by the community, some of which are already under discussion in different parts of the organization, that are important to be addressed as part of the evolution of ICANN as an organization. You know, improving areas around diversity; supporting organization and Advisory Committee accountability, especially in the context of an empowered community; and interest of a framework of interpretation around human rights; additional areas around ICANN transparency; and some jurisdictional-related issues, in particular around contractual enforcement areas. So those will be some topics for the Work Stream 2 that will continue well into the next coming year.

And so where are we on the amending of the bylaws? The draft bylaws, which went out on the 21st of April, are amended to reflect the recommendations of both the IANA Coordination Group proposal and the accountability-related proposals. And the bylaws were drafted in a partnership with our own ICANN's legal team and in partnership with the independent law firms that were hired to assist both the naming community, namely the CWG Stewardship and the Accountability Working Group.

These bylaws were prepared in draft form with what we refer to as a Bylaws Coordination Group that was comprised of community members, ICANN Board members, and representation from the

respective groups that were involved in preparing the package of proposals, to respond to any questions that came up as the legal teams and expertise were preparing the draft bylaws that went out for public comment.

So the timeline for the next steps of these bylaws, and I would encourage everybody to take a look at them and look at what's being changed and adjusted based on the proposals, is as follows. As I mentioned, NTIA said that they needed to have the approved bylaws prior to signing off on the proposals themselves. And so with that, the work undertaken to prepare them and then post it on the 21st of April was very intensive. We anticipate, at the conclusion of the public comment period, which will be the 21st of May, there will be analysis and a review of the public comments, the appropriate revisions made to reflect that. But also importantly, staying consistent with the package of proposals. So the draft bylaws do not alter the package of proposals. They are only to reflect what is in the package of proposals.

The Board will then adopt the bylaws and send the adopted bylaw language to the US Department of Commerce. And based on that, Department of Commerce will issue its report that the conditions have been met, and we can proceed into the next steps of implementation, as appropriate and needed to be taken care of.

So on this website, you can see where the bylaws can be found. It's under the ICANN Public Comment area, on the front page of the website. And what you'll see is the new draft bylaws, the redline of the bylaws, namely to show the difference between the old and the new,

and then the current bylaws as they exist, for those who would find that useful.

So what kind of feedback is being requested? This comment period is really designed to solicit inputs from the broader community on how the elements of the proposal were brought into the bylaws, and if there's any areas that are considered to be inconsistent with the package of proposals that the Board had transmitted to NTIA. The accountability working group is reviewing these bylaws and looking at them, as is the naming community and the different operational communities. But it's also important that, consistent with ICANN's own accountability processes, we must put bylaws out for public comment, and in this case are putting these out specifically for public comments.

The public comment period, however, is not intended to be a mechanism to reconsider any of the transition-related proposals – that is, there's no renegotiation of any of the agreed-upon recommendations – and clean up edits that were not called for within the proposal. So it's very specifically to ensure that everything is being met.

So here you can see how you can submit any comments. Again, on the Public Comment page, if you go there, over to the left-hand side you can see that. And public comments are open again until the 21st of May.

So with that, I think I'll turn it back over to the team, and happy to answer any questions. Also, Sam, in case there's anything you wanted to add in to this, please. I hand it over to any of the next speakers.

RODRIGO SAUCERO:

Thank you very much, Theresa, for this presentation. I think it was very clear. Very concise, also.

So before we continue, I just forgot to introduce [Samantha Bateman]. She is the Senior Legal Advisor in ICANN. And I would like to thank her for her participation today.

So let's now go to the question-and-answer section of this webinar. As I was saying before, you can ask those questions by raising your hands on the AC room, and also by speaking with the microphone. And you can also write them down on the chatroom. Thank you.

Silvia, did you write down any question, or did you see any question appearing on the chatroom? I haven't really had the chance to look at the chatroom.

I think everything is clear. Is there anybody who would like to ask a question?

Okay, so it seems everything is clear regarding this process. Perhaps, maybe, Theresa, you can deepen a little bit more on how the community can get involved in this process so that it is clear. I know you've touched upon this already, but maybe to make it clearer. Thank you.

THERESA SWINEHART:

Maybe I could ask Sam to first weigh in on that, and then I could talk a little bit about some of the other areas the organization is working on, to help elaborate. But maybe I could turn it to Sam first. Is that okay?

SAMANTHA EISNER:

Hi, everyone, thank you for having me. I'm Associate General Counsel with ICANN, and I was one of the main people from the ICANN legal team that coordinated with the external counsel in the development of both the CCWG recommendations. – I'm a member of the CCWG as a staff liaison – but also in the development of the bylaws.

And I wanted to confirm that the public comment period is open. It remains open through May 21st. We currently have three comments in the public comment room. We know that the CCWG, the Cross Community Working Group, on Enhancing ICANN Accountability is preparing their own set of comments, focusing on potential revisions to the bylaws to possibly more accurately reflect the proposal as it came out from the Cross Community Working Group.

I think it's important to note that the external firms that were assisting both the Cross Community Working Group on enhancing ICANN accountability, as well as the CWG Stewardship, they have both provided a certification at the point of submissions of the bylaws for public comment, that the bylaws, as drafted so far, are accurate reflections of the proposals. And so that is a continued test that we will continue evaluating the bylaws against. And so any comments that come in – and we do encourage comments – will be tested against that same evaluation as to whether or not the proposals remain met, or if there are issues with how the proposals have been reflected. ICANN Legal, as well, has taken on a role in certifying the bylaws to that effect. So we continue to monitor the comments for that.

And so we encourage you to look through the bylaws themselves, to look through the comments that have been submitted – which are not very lengthy to date, so they're fairly easy to take a look at – and to provide your own inputs into the process, as you see fit.

I see that there are a couple questions coming into the room. So, Rodrigo, if you wanted to queue those up for us?

RODRIGO SAUCEDO:

As a matter of fact, a lot of them coming up. Of course, thank you, Samantha. We have a question from Antonio Medina, from Colombia. He's asking whether the Department of Commerce could reject the new bylaws and affect the transition.

SAMANTHA EISNER:

So the Department of Commerce is not in a place, it doesn't have an approval right over the ICANN bylaws. So the Department of Commerce, as we understand it, is looking for confirmation that the bylaws are a reflection of the proposals that the community has produced. And so the Department of Commerce is looking at the proposals themselves as part of their review. We don't know what the Department of Commerce will say at the end of that process, but we know that they will come out with a public report. And what they've asked for ICANN to deliver, which is why the bylaws have been developed at this point, is to have bylaws that give voice to the proposals be adopted in advance of the NTIA providing its report so that there's some assurance that the enhancements that will come out of the process will actually be put into effect once the transition happens.

And so clearly, the Department of Commerce, or NTIA more specifically, would have the ability to consider whether or not it believes that the bylaws are an accurate reflection of the proposals. But as far as I understand it, they are looking more at the proposals themselves to make sure that the NTIA criteria are met. And then they are looking to make sure that the bylaws are an accurate reflection of those proposals.

Theresa, did you have anything to add on that?

THERESA SWINEHART: No, I think that's exactly right. Thank you. I have nothing to add to that.

RODRIGO SAUCEDO: Thank you very much. We have another question, from Rudi Daniel. He is asking – it's actually in English, the question's in English, so it would be then easier to read it. "Perhaps you'd like to comment on the state of the human rights bylaw and how it is to be incorporated, please."

SAMANTHA EISNER: The human rights bylaw, the Cross Community Working Group on Enhancing ICANN Accountability agrees that there should be a bylaw put into effect now that basically said that ICANN respects human rights. However, what it also will do is recognizes is that there is more work that needs to happen about what this means. And so the bylaws that have been put up for public comment include that commitment to respect human rights. However, they also include a provision that the community itself, through the CCWG and its Work Stream 2 effort, will develop a framework of interpretation for what that means within

ICANN, what “human rights” means as ICANN interacts with its community within its limited technical mission.

And so it will only be at the point that the community develops a framework of interpretation as a consensus recommendation out of the Work Stream 2, and the Board then accepts that framework of interpretation according to the rules that the Board has for the consideration of consensus recommendations out of the Accountability Group. Only then will there be an actionable part of ICANN bylaws that rely on human rights. And so you can consider it a placeholder, something that helps commit the organization and guide future work of the organization. But it doesn't become actionable. That means that you couldn't go and file an independent review against ICANN for an alleged violation of human rights, or you couldn't file a reconsideration request for actions alleged to be against human rights, just based on that bylaw provision yet, because the rest of the work about how we should all consider human rights within ICANN's limited mission has not completed.

THERESA SWINEHART:

And just one element to add to the point that Sam has made, and this is why it'll be important in the Work Stream 2 around this work. ICANN's mission is very limited. We have a very limited mission and mandate. And as we know from the accountability discussions, the community feels very strongly about that as well, and that's reflected in many of the discussions. And so even the discussions around the human rights, or any of the other topics that are coming up, the work of the community will be important to ensure that the community recommendations that

come out are not unintentionally expanding the scope of the organization, its mission or mandate, because we have a strong responsibility to stay close to our mission and mandate and adhere to that.

Sorry, Rodrigo, back over to you.

RODRIGO SAUCEDO: Thank you. We have Alberto Soto, who has raised his hand. Alberto, please go ahead.

ALBERTO SOTO: Thank you. Just one more thing. I am working on the Cross Community Working Group on Accountability, and we are working on the implementation of the changes to the bylaws. Precisely with respect to the human rights issue, there is a very important, significant discussion, because there isn't international legislation. And it was very well said right now. ICANN does not have any comprehensive involvement on this issue. In the field of human rights, many states and many governments have their own legislation, and ICANN cannot go over those legislations and intervene.

So there are actually several issues that are related to human rights and are also in connection with national legislation, and that is why ICANN cannot deepen into that. That is why we are discussing this nowadays. Thank you.

RODRIGO SAUCEDO: Thank you very much, Alberto. More than a question; it was just a comment.

So we have Maritza Aguero here. And, I'm sorry, before, there is Eduardo Mendez, from Venezuela. He says, "I don't really understand why we cannot accept what has been accepted by much larger organization in connection with human rights. I am not an expert, but I can say that this is sufficiently universal legislation to adopt."

SAMANTHA EISNER: Rodrigo, is that a question to us?

RODRIGO SAUCEDO: Yes, actually, I didn't really understand the question. Perhaps if Eduardo would like to raise his hand and explain his question a little better, maybe he can do this. It's not really very clear what is it that he means with this. So we will leave this for a little later, and we will now go on. Eduardo, then, if you can please write down your question again or just ask it using your microphone.

So our next question comes from Maritza Aguero for Samantha or Theresa. She is asking, "What are the new changes on the bylaws with respect to end users, if any? Thank you."

SAMANTHA EISNER: Thank you, Maritza. So there aren't specifically changes to the bylaws as they relate to end users, other than the very big issue of the inclusion of the ALAC, which of course LACRALO feeds into, as part of the new

empowered community. So what that means is that there is a collection of community groups across ICANN. There are currently five of them – the ALAC, the GNSO, the ccNSO, the GAC, and the ASAO – that have all expressed interest in being part of the new empowered community mechanism. And that is where the new community powers will be exercised through. So to the extent that the community has expressed its wish to have the ability to reject part of ICANN's budget or to reject standard bylaws amendments or to approve fundamental bylaws amendments, for example, the end users that, through their home within the ALAC, will have a direct voice in that to be coordinated, of course, through the ALAC and how the ALAC will determine internally to participate in those efforts.

So while there are not new changes that specifically mention the end user, I think that we could look at the new ways that the ALAC will be empowered to act, along with the other counterparts in the community, to help impact ICANN's operations in new ways is a very strong voice for the end users to choose to participate through the various RALOs and ALSes.

RODRIGO SAUCEDO:

Thank you very much, Samantha. I think the answer was very clear.

All right, so Eduardo Mendez didn't really write his question down again, so perhaps he will do it very soon. Is there anybody else with another question or another comment?

SILVIA VIVANCO: Rodrigo, if I may, I can read Eduardo Mendez's comment. Would you like me to read it out loud?

RODRIGO SAUCEDO: Sorry, I'm not reading that question. I cannot see it.

SILVIA VIVANCO: I can read it out loud, if I may. This is Eduardo Mendez, from Internauta Venezuela. The comment reads, "In the debate with the experts, it is indicated that in relation to human rights, there will be an interpretation based on the consultation to the community. My question is, why it is not being adopted? Would have been already established and subscribe at all those countries in this subject, UN, etc., etc. Thank you."

SAMANTHA EISNER: Thank you, Eduardo, for that clarification. I see that Rudi Daniel has included his own explanation in the room, stating, "I think that there is difficulty in that although there are universal human rights, there are many different interpretations across sovereign states." And he expresses his agreement that a framework is a necessary exercise.

I think that Rudi's explanation actually is a really good explanation for why we're going into a framework of interpretation role, as opposed to solely adopting a document, such as the UN Declaration on Human Rights. Because of this very issue, as we raised it, we heard within the CCWG there was a lot of conversation about what that would mean. There has been different working parties within ICANN that have been

looking at what human rights mean, given the fact that there are universal declarations that also interplay with local laws, “local” being at the national level or more localized, depending on the framework of any state or country.

And so there was agreement at that point that it was difficult to make reference to any single set of standards, particularly in light of ICANN’s mission and how things are to be understood with it. So we do expect that many of these are the issues that will be discussed within that Work Stream 2 effort. And so we know that that will be a very lively area of discussion, as the Cross Community Working Group on Accountability continues into Work Stream 2.

RODRIGO SAUCEDO:

Thank you very much, Samantha. So we had a comment from Rudi, but I think Samantha has already explained that comment quite well.

Is there any other comment or any other question?

Well, this is a comment by Alberto Soto, and the comment reads, “Another issue has to do with equal treatment, and this is related to public interest.”

Okay. Any other comment? Any other question?

SAMANTHA EISNER:

Just to follow up on Alberto’s comment on public interest, that is another area where more universal community input is needed. This is not a Work Stream 2 effort within the Cross Community Working Group

on Enhancing ICANN Accountability. However, there is already work started through ICANN's Department of Public Responsibility and Development, where this conversation is happening. For example, there was a session in Morocco to start kicking off the community discussion on reaching a common definition of what "public interest" means, or at least acknowledging that maybe within different departments, the "public interest" could mean something different.

So that is an area of community conversation, and hopefully the staff that helps support the LACRALO can collect some information to determine how the LACRALO, and interested members of the LACRALO, can help participate in those discussions as they get kicked off.

RODRIGO SAUCEDO:

Thank you very much, Samantha, for your comment. There is a comment by Alejandro Pisanty. "It is important, the re-acknowledgement made by Theresa Swinehart, in terms of avoiding the ICANN's mission [creed] and having an innocent or naïve adoption of the human rights agenda."

Samantha, Theresa, would you like to make any comment regarding Alejandro's comment? Anything that you would like to add? And I don't know if there is any further questions or comment.

I don't think I understand Alejandro's comment. I will read it again. "It is important, the re-acknowledgement that Theresa Swinehart has made, in terms of avoiding ICANN's mission [creed], and naïve adoption the human rights agenda may contribute to this. Thank you."

THERESA SWINEHART: I think just to thank Alejandro for that very, very important reminder. There's many organizations that have expertise and remit and responsibilities around a range of human rights issues, and we must respect and honor those. And ICANN's mission is very much limited, since its inception. And so it's very important that we all work together to not unintentionally end up putting pressure on the organization to try to expand that when we're all working very hard together to keep the mission very limited. And the human rights area is going to be an important one, to keep an eye on that ball, in order that, as an organization, we can be as efficient and effective as possible with regards to our mission and our responsibilities. So thank you for that.

RODRIGO SAUCEDO: Thank you very much, Theresa, for your comment. So I believe that we can finish this call. We have some spare time for one or two comments or questions. If not, I will finish this call. And I think this was a very clear webinar regarding the ICANN [inaudible].

But before ending this call, I would kindly ask you to fill in this survey. This is important for us to improve our webinars in the future. So before finishing, I would like to thank Theresa Swinehart and Samantha Eisner for their participation. I think this was very important. It was important to have this webinar for the community to have very clear in their minds the process and how they can participate on it.

So having said this, I would like to finish this webinar. And thank you very much for your participation, and have a nice evening. Thank you very much for your participation.

UNIDENTIFIED FEMALE: Thank you. And we do have six questions for our evaluation poll. The first question now appears on the right-hand side of your screen. How is the timing of the webinar for you? Please cast your votes now.

Question number 2: How many years of experience do you have in the ICANN community? Please cast your votes now.

Question number 3: How is the technology used for the webinar? Cast your votes now.

Question number 4: Did the speakers demonstrate mastery of the topics? Please cast your votes now.

Question 5: Are you satisfied with the webinar? Please cast your vote now.

And finally, question number 6: What topics would you like us to cover for future webinars? I will leave this one open as you close out of today's webinar.

Once again, thank you very much for joining today's webinar. And please remember to disconnect all remaining lines once you've finished answering.

[END OF TRANSCRIPTION]