

Most of the comments I made (sent to the CCWG list and IANA-Issues lists) have either been completely integrated into the CCWG comments or are not particularly important. There are two that I feel still have merit and want to pass them by the ALT.

Alan

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**Section 4.6(e)(v)**

During the CCWG discussions on the interval between reviews, the issue of ICANN immediately being in default on the WHOIS/RDS review was never raised. Moreover, since those discussions were held, the GNSO new RDS PDPWG has been convened and is well underway. It is reasonably clear that the people in the volunteer community who would likely participate in an RDS review significantly overlap with those who are heavily involved in the RDS PDP. To schedule an RDS Review soon after the Bylaws are enacted would be serious error and will only serve to slow the work of the PDP - a PDP that even now may go on for quite some time.

It is clear that there is work that needs to be done that would fall under the auspices of a full blown PDP. We need a good picture of how the various current WHOIS/RDS efforts mesh together. We need to assess how the recommendations of the first WHOIS review are being implemented and their impact, as well as other WHOIS/RDS related activities unrelated to that last AoC review.

But these efforts, as important as they are, do not need to be done by a full-blown AoC-like review. Most of the work can be done by staff. To the extent that "staff cannot be trusted" (something that I question, but will address), I am others in the community will gladly act as a sounding block and review their work. [For the record, I was the person on the ATRT2 who did the full analysis of the WHOIS RT Recommendation implementation, so I have some idea of what I am talking about.]

The Bylaws for the organizations review all have explicit time limits in them, but also have the words "if feasible". That was true even when the organization review interval was (foolishly) three years instead of the five years it was quickly changed to. "If feasible" allowed the Board to save an immense amount of wasted community expense and ICANN dollars. We need some wiggle room in the current case as well.

I strongly suggest that the draft Bylaws be revised to allow additional flexibility to defer the RDS review until there is a real RDS to review, and would even suggest that once implemented, they soon after be amended to add the missing "if feasible".

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The overall intent of this was included in the CCWG comments, but I believe need to be strengthened.

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## Section 7.4(d)

"No person who serves on the EC Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC Administration and as a Director or Liaison to the Board."

Lawyers Comments:

On March 31, 2016, counsel posed the following question to the Bylaws Coordination Group and received confirmation that the disqualification in Section 7.4(d) be included in the Bylaws:

"Confirm that chairs of the Decisional Participants and persons designated by the Decisional Participants to serve on the EC Chairs Council cannot be nominated or serve on the ICANN Board. Such a provision would be consistent with other provisions in the current Bylaws, which provide that (a) "no person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board" (Article VI, Section 4.2)" and (b) persons serving on the Nominating Committee must be "neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities" (Article VII, Section 4.4)."]

My Reply:

I will be submitting a comment akin to this to the Public Comment. There are several reasons.

1. I cannot understand what the relationship is to the EC Administration and the rules that apply to the NomCom. The NomCom makes decisions. The AC/SO Chairs or other delegates who participate in the EC Administration have no discretion whatsoever. They MUST follow the directions of the entity nominating/removing a director.
2. Given that lack of ability to influence outcomes, I find it unreasonable to restrict such a person from submitting an SoI to the NomCom or to their own AC/SO as a potential director.
3. I would find it quite reasonable that they would have to surrender (or be deemed to have surrendered) their EC Administration seat if they are actually nominated (nominated in the sense of the Bylaws - will actually serve on the Board once the EC Designates them). This is in line with the cited about serving "simultaneously"
4. I note that the wording in the proposed Bylaws is different than what is cited below. The March 31st question was "Confirm that chairs of the Decisional Participants and persons designated by the Decisional Participants to serve on the EC Chairs Council cannot be nominated or serve on the ICANN Board.". The draft Bylaws extend that to "considered for nomination" which is a much wider group.
5. Given that the path of AC/SO Chair to Director is not unreasonable - both require high degree of confidence in the person expressed by the AC/SO, and given that arguably two of our best AC/SO Directors have followed exactly that path.