

CCWG-Accountability WS2 Plenary Meeting #5

20 September 2016



CCWG Plenary Agenda 20 September

- Update on US Senate Hearing on IANA Transition
- WS2 Planning and Timeline
- Update on Action Item from 30 August Plenary
- WS2 Budget Update and Travel to ICANN 57 Hyderabad
- Status of subgroup work and issues to be raised for Plenary discussion from WS2 Subgroups
 - Sébastien Bachollet - Ombudsman
 - Greg Shatan – Jurisdiction
- WS1 WP-IOT - IRP Implementation Oversight Team

Next CCWG-Acct Plenary meeting will be on
4 October at 0500 UTC.

US Senate Hearing on IANA Transition

Protecting Internet Freedom: Implications of Ending U.S. Oversight of the Internet

US Senate Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts

Date: Wednesday, September 14, 2016

Meeting recording:

<http://www.judiciary.senate.gov/meetings/protecting-internet-freedom-implications-of-ending-us-oversight-of-the-internet>

Review of WS2 Planning and Progress

Initial WS2 Proposed Timeline appears to be no longer feasible as no group has identified their work plan as being either of the following:

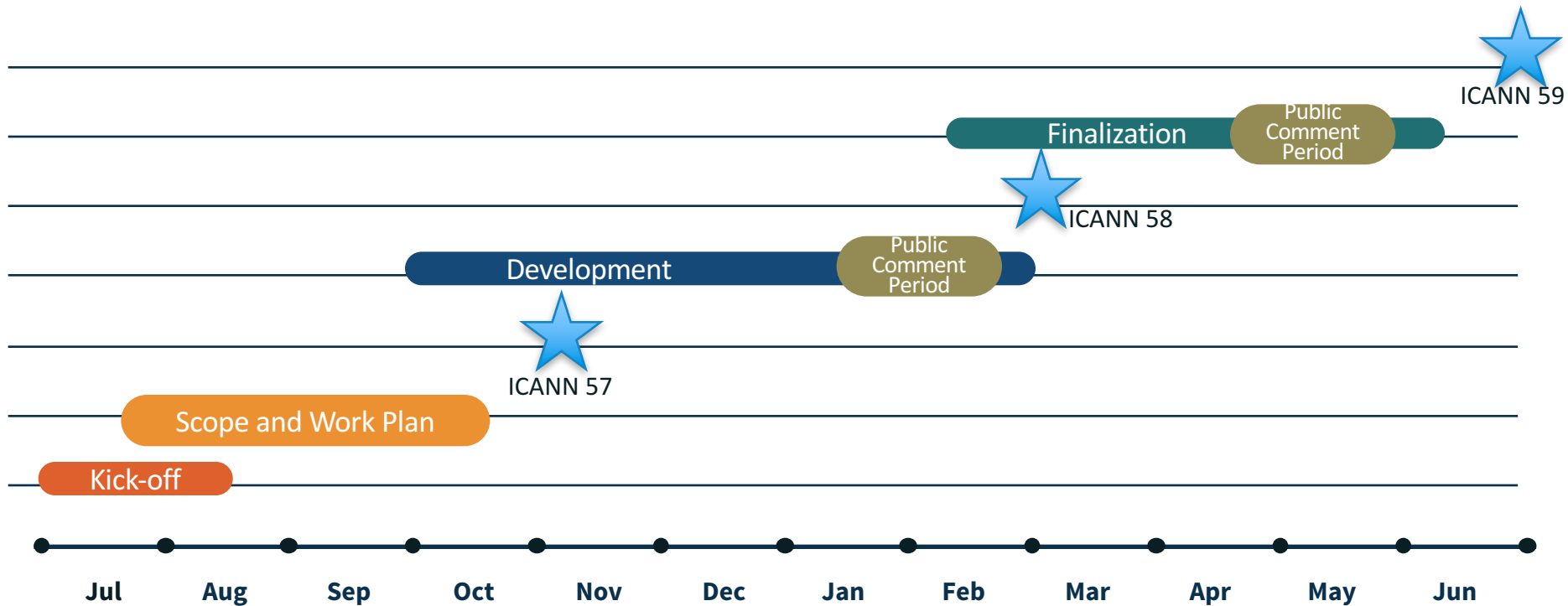
Simple/Lighter topics

- **June 2016: sub-groups agreed, commence work on docs for public input**
- **Aug 2016: first discussion with CCWG**
- **Sep 2016: refining work**
- Oct 2016: CCWG agrees for public input
- 20 Oct-30 Nov: Public Input comment period
- Dec 2016: Analyze public comment staff/subgroups
- Jan 2017: Sub-groups refines and revises output
- Feb 2017: CCWG agrees final Output for consideration by community FOR ADOPTION at Copenhagen

Complex Topics – Intermediate/Long Term

- **Jun 2016: sub-groups agreed**
- **Sep-Oct 2016: first discussion with CCWG - identifies whether and how to update community at Hyderabad**
- Nov-Dec 2016: second discussion with CCWG (first SUBSTANTIVE)
- Jan 2017: refining work
- Feb 2017: CCWG agrees docs for public input
- 1 Mar to 10 Apr: Public Input comment period
- Apr 2017: Analyze public comment staff/subgroups
- May 2017: Sub-groups refines and revises output
- May/Jun 2017: CCWG agrees final Output for consideration by community

Revised WS2 Timeline



The chart outlines the anticipated work flow for CCWG WS2 Subgroups and Plenary sessions in order to complete the work by the anticipated due date, June 2017.

Action Items from 30 August Plenary

Question

Staff to confirm if there are sessions attendees need to be at on November 9th or if they can leave on the 9th.

Response

The draft schedule shows that Intra-Community Work SO/AC/SG/C Wrap-Up Sessions will happen on the 9th.

See block meeting schedule at

https://meetings.icann.org/sites/default/files/icann57_hyderabad_agm_blockschedule_aug16.pdf

CCWG-Accountability WS2 Budget Status

- Webinar presentations on the CCWG-Accountability budget were given to the GNSO and the ALAC in August.
- Proposed budget from Helsinki has only received approval from the ccNSO
- No external expenses have been incurred as of September 1st 2016 beyond the external legal costs for the IRP Implementation Oversight Team (IOT) which has its own budget for this.
- Of the 20 seats available in the budget for travel funding the face to face meeting in Hyderabad only 8 fully funded seats were allocated (which represents all of the eligible requests made) and 4 partial funding requests (additional hotel nights and per diems). The Co-Chairs have opted to use part of the excess funding to extend the stay of the funded participants for the entire conference (additional hotel nights and per diems).
- Currently awaiting the financial results for the CCWG expenses for July 2016.
- PCST has requested time at the Hyderabad face to face meeting to update the CCWG-Accountability plenary on expenses for the first quarter.

ICANN 57 Travel Visa Information

Frequently Asked Questions

Check this site <https://meetings.icann.org/en/hyderabad57/travel> regularly for updated information on Visa Applications

This information is based on ICANN's current knowledge of visa requirements and the application process. The site will be updated when we receive new information from the Government of India.

ICANN's role in the visa application process is to share information as we receive it, and to assist you by getting answers to your questions. However, all policies and decisions regarding visas are those of the Government of India alone.

If you have a question that you don't find here, email the ICANN help desk: icann57visasupport@icann.org.

Issues for the Plenary from WS2 Subgroups

WS2 Topic	# Meetings Held to Date	Issues raised for Plenary Discussion
Diversity	1	
Human Rights	4	
Jurisdiction	2	
SO/AC Accountability	6	30 August <ul style="list-style-type: none"> Should we (SO/AC group) seek to increase accountability of each SO/AC to global community beyond its membership?
Ombudsman	6	30 August <ul style="list-style-type: none"> CWG-Stewardship identified a new role for the Ombudsman, as a place of escalation for complaints about (Public Technical Identifiers) PTI's naming function service delivery to be determined in WS2
Transparency	3	
Staff Accountability	1	
Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual ICANN Board Directors	0	
Reviewing the CEP	0	

Subgroup Issues to be raised

- Ombudsman - Sébastien Bachollet
- Jurisdiction - Greg Shatan

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Meeting #7
19 September 2016

Rapporteur: Sébastien Bachollet

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



(Om-buhdz-muhn: *a person who investigates and attempts to resolve complaints and problems.*)

Draft Doc IOO-WS2 chapters (V#5)

1. Background for ICANN Ombuds Office (IOO) in Work Stream 2
2. Dependencies between the WS2 Design Teams
3. Overlap ATRT2 / CCWG-Accountability
4. Stress Tests (WS1) vs Ombuds
5. Current role of the IOO
6. Evaluation (Framework vs best practices)
7. Various types of Ombuds roles
8. Challenges
9. Recommendation (about the IOO)
10. Additional role for the IOO?
11. Interaction (with other ICANN mechanisms)
12. Communication & Relationship
13. Trust
14. Advice to the ICANN Ombuds Office (IOO)
15. Conclusion



5. Current role of the ICANN Ombuds Office

- The Ombudsman Role has been expanded through WS1, to include a responsibility to perform a first substantive review over Reconsideration Requests.
- In addition, the CWG-Stewardship identified a new role for the Ombudsman, as a place of escalation for complaints about (Public Technical Identifiers) PTI's naming function service delivery.
 - ICG final proposal p.111 <https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>
The ombudsman gets involved at phase two
 - [***Do we need to propose Bylaws (ICANN and/or PTI)?***]
- This expansion is in addition to the Ombudsman's existing role (as set forth in the ICANN Bylaws) and further described in the Ombudsman Framework.
- The Ombuds office is a mediator and not a decision maker. The Ombuds office can only suggest it can never tell anyone to do anything - which is why informality is so important.

Discussion of PTI and Ombuds activities

- The PTI Bylaws have been published and are going to be approved by the Board.
However, there is no mention of the Ombuds in the bylaws.
- IANA Staff POV
 - *Over the next 3 years the IANA functions will transition from ICANN to being independent with regard to ICANN HR. Given their ongoing strong link to ICANN they should remain covered by the ICANN Ombuds Office.*
- ICANN Legal POV
 - *There are particular mechanisms through which in the naming functions agreement the Ombudsman will have the responsibility to get involved with complaints within PTI. This is particularly around the issues of customer complaints.*
 - *PTI's work is solely directed by contracts with ICANN. With that nexus, we are comfortable that the PTI Bylaws do not have to be updated to specify the ombudsman role as it relates to PTI, as the responsibilities are tethered to ICANN's contracts.*
 - i.e. there would be no need to change the content of the PTI bylaws.
- POSSIBLE SOLUTIONS
 - provide content on the Ombudsman and PTI websites that explain that the Ombudsman is able to assist in a dispute between PTI and a party that is received a service from PTI
 - modify Ombudsman Framework/Charter
 - availability of ombuds is enforceable on ICANN through ICANN's bylaws

- What will the role of the Ombuds be in any PTI (naming functions) related disputes?

Next Meeting #8 IOO-WS2

- Monday September 26, 2016 13:00 UTC
- Thanks for your help and inputs

WS1 WP-IOT - IRP Implementation Oversight Team

Background, Status and Open
Issues for the CCWG-
Accountability meeting of 20
September 2016

Recommendation #7: Strengthening ICANN's Independent Review Process

- **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.

Members

- Becky Burr (CPH/RV & ccNSO, US)
- Chris Disspain (Board, AU)
- David McAuley (CPH/RV, US)
- David Post (US)
- Greg Shatan (NCPH/IPC, US)
- Malcolm Hutto (NCPH/ISP, UK)
- Robin Gross (NCPH/NCSG, US)
- Samantha Eisner, ICANN Staff Liaison
- Elizabeth Le, (ICANN Staff Liaison)
- Tijani Ben Jemaa (ALAC, TN)
- Arun Sukumar (IN)
- Marianne Georgelin (ccNSO, FR)
- Avri Doria (GNSO/NCSG, US)
- Olga Cavalli (GAC, AR)
- Kavouss Arasteh (GAC, IR)
- Konstantinos Komaitis (ISOC)

CCWG Chairs and Legal Counsel

- CCWG Accountability Co-Chairs:
Thomas Rickert, Mathieu Weill, Leon Sanchez
- Sidley Austin: Holly Gregory, Ed McNicholas
- Jones Day: Jeff LeVee, Kate Wallace, Kevin Espinola

Substantive Tasks

- Draft detailed rules of procedure for Board adoption
- Develop a process for the selection of an organization to provide administrative support for the IRP;
 - Review of ICANN drafted tender document to be issued for public consultation.
- Call for expressions of interest from potential panelists
 - Review ICANN drafted call for EOI
- Develop a process for community review and selection of proposed slate of panel members

Current Status

- IRP-IOT is currently working on Updated Supplementary Procedures
- The IRP-IOT has met ten times since June 2016 and has agreed on a number of modifications to the Supplementary Procedures to make these consistent with the recommendations of the CCWG-Accountability WS1.
- There are several open issues for which the IRP-IOT cannot agree on changes and would appreciate the input of the CCWG

Application of subsequent modifications of the rules to existing IRPs

- **Current Rules:** IRPs commenced prior to the adoption of these Updated Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced.
- **Relevant reference from Annex 7:** None.
- **Concerns:** Some IRP-IOT participants are concerned that the implementation of major changes to the rules, such as those proposed by the IRP-IOT, could have a significant impact on the outcome of an ongoing IRP case and argue that in such circumstances not allowing the parties access to the new rules would be unfair. Other participants argue that all parties in an IRP case should have an understanding and a certitude of the rules under which the case will proceed at the outset.

Application of subsequent modifications of the rules to existing IRPs cnt'd

- **Alternative:** IRPs commenced prior to the adoption of these Updated Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced unless the IRP Panel determines that a requesting party has demonstrated that application of the former Supplementary Procedures would materially and unjustly affect judgment on the case as presented by the requesting party and would not materially disadvantage any other party's substantive rights.

Any party to a then-pending IRP may oppose the request for application of the Updated Supplementary Procedures. Requests to apply the Updated Supplementary Procedures will be resolved by the IRP PANEL in its discretion.

Deadline to File

- **Current Rules:** A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 45 days after a CLAIMANT becomes aware or reasonably should have been aware of the action or inaction giving rise to the DISPUTE.
- **Relevant reference from Annex 7:** (Standing) They must do so (*file a complaint*) within a certain number of days (to be determined by the IRP Subgroup) after becoming aware of the alleged violation **and how it allegedly affects them.**
- **Alternative 1:** ...becomes aware, or reasonably should have been aware of the material affect of the action or inaction giving rise to the Dispute.
- **Alternative 2:** ...becomes aware or reasonably should have been aware of the material affect of the action or inaction giving rise to the Dispute; provided, however, that a statement of a Dispute may not be filed more than twenty-four months from the date of such action or inaction.

Cross Examination of Witnesses at Hearings

- **Current Rules:** All hearings shall be limited to argument only.
- **Relevant reference from Annex 7:** None.
- **Concerns:** A number of IRP-IOT participants believe that if there are witnesses then cross examinations should be allowed as this is a tenet of common law systems. Other IRP-IOT participants are concerned about the added complexity, time and costs of allowing witnesses and cross examinations. Note: the IRP-IOT has agreed that witnesses can be requested as per the rules presented in Alternative 1 below.

Cross Examination of Witnesses at Hearings

- Alternative 1: All hearings shall be limited to argument only unless the IRP Panel determines that a the party seeking cross examination of [a] witness[es] has demonstrated that such cross examination is: (1) necessary for a fair resolution of the claim; (2) necessary to further the PURPOSES OF THE IRP; and (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness cross examination.
- Alternative 2: ~~All hearings shall be limited to argument only.~~ The IRP Panel shall determine, in its discretion, whether or not to permit cross examination of witnesses at any hearing.
- Alternative 3: ~~All hearings shall be limited to argument only.~~ The IRP Panel shall determine, in its discretion, whether or not to permit cross examination of witnesses at in-person hearings. All other types of hearings (telephonic/video hearings), should use another standard TBD.

- <https://community.icann.org/pages/viewpage.action?pageId=59643726>

