

Work Stream 2

Guidelines for Standard of Conduct Presumed to Be Good Faith with Exercising Removal of ICANN Board Members

Copy of Report Submitted to Subgroup Plenary Planning Group on October 2, 2016

Dear All,

Due to the religious observance, I will not be attending the meetings on October 2 or October 3. However, I would like to report that our Subgroup has had 2 calls and we have made progress toward establishing a framework for Guidelines of Standards of Conduct Presumed to be in Good Faith with Exercising Removal of ICANN Board Member. We have determined that we will propose a “minimalist” set of guidelines that will put the responsibility of putting specific processes in place by each SO/AC. This is because we do not wish to interfere in the decision making process of any particular SO/AC. The SO/ACs may have different expectations and standards for Board Members who are chosen to represent them. The guidelines will note each SO/AC has (or should have) a decision making process and the process must include a means to document the decision made, including verification and the steps taken to reach the decision. Our thought is not to be too prescriptive but establish principles for fair and reasonable conduct for the community even if different internal standards apply for different interests. Per the guidance from the WS1 discussions, we will not be listing specific causes of action. Each SO/AC could have a different standard for what constitutes a cause of action for board removal but all SO/ACs must follow the same guidelines in order to elevate their concerns to an action for removal in good faith. The proposed action may be subjective but should be able to be explained and accepted by others.

The subgroup has determined that this topic should be categorized as “less complex” and should be able to turn a final or near final report by January 2017. Having a preliminary report by October 5 is not realistic as that is 3 days away but we will work with staff to coordinate a reasonable timeline and to have as complete a set of information as is reasonable for the Hyderabad meeting.

Our next step is to begin drafting the actual guidelines and then compare them to the NTIA criteria and WS1 proposal and by-laws. I will note that our sub group is small and many members are involved in other subgroups so helping hands may be full. As the rapporteur, I understand that my responsibility is to ensure the proper drafting of the proposal and will assume most of the drafting work. I will seek assistance from staff as I believe that we will need it. I will reach out to Karen Mulberry to establish a realistic time table and how to coordinate with the staff given all of their other responsibilities.

With regard to legal assistance, we have not discussed this issue yet. However, I do not anticipate the need for heavy assistance. It would be prudent once the guidelines are complete to have a review by a legal expert with substantial experience in California nonprofit governance to ensure that there are no red flags. Diligence requires process and as long as we have a clear and documented process, we should be able to meet a “good faith” standard. However, given the quirks of CA law, I would not want to assume anything. I would anticipate maybe 8-10 hours of very experienced, independent attorney time and will confirm this with my subgroup.

Lori

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