

28Sep16

TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the At-Large Capacity Building Program, 2016, the eighth webinar on the topic, “New ICANN Bylaws and Its Effect on ICANN,” held on Wednesday, the 28th of [September] 2016 at 21:00 UTC.

We will not be doing a roll call as it is a webinar. But if I could please remind everyone on the phone bridge, as well as computer, to mute your speakers and microphones, as well as state your name when speaking, not only for transcription purposes, but to allow our interpreters to identify you on the other language channel.

We have English, Spanish, and French interpretation.

Thank you for joining. I’ll now turn it back over to our moderator, Tijani Ben Jemaa, Chair of the Capacity Building working group. Please begin.

TIJANI BEN JEMAA: Thank you very much Terri. Good morning, good afternoon, good evening everyone. As Terri just said, this is the eighth webinar of this year, of 2016, that the capacity building working group, the At-Large capacity building working group is undertaking. We have four more webinars that we will do during this year, and I hope that it will not be very [inaudible], because there is a lot of events.

Today, the subject of this webinar, or the topic, will be the new ICANN bylaws and their effects on ICANN in general. And for this topic, we chose the two best, in my point of view, persons for this topic, who are

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28Sep16

León Sanchez, with one of the three co-chairs of the CCWG accountability, and also who has always been the chair of the legal party, the legal working party in the CCWG.

So he’s very well placed to speak about the changes of the bylaws and their effect. The second speaker will be Samantha Eisner, who is one of the legal team members of ICANN. And she’s also the liaison of this legal team in the CCWG accountability. So she’s very, very well placed to speak about this topic.

Both will speak about the changes, the new bylaws or the changes, more specifically the changes, done on these bylaws. And then they will explain us what will be the effect of this change on ICANN in general. So I will not take more time to speak about the introduction. I’ll give Terri the floor to make some housekeeping, so Terri, please go ahead.

TERRI AGNEW:

Thank you very much, Tijani. I would like to go ahead and go over a few housekeeping rules. One moment please as I bring up those slides.

On our housekeeping, I would just like to remind you, during the presentation, to the bottom left-hand side, you can use the question and answer pod to type in any questions you might have. Also, after today’s presentation, we will have two pop quiz questions. And then at the very end, if we could please ask you to stay on for a few minutes longer for a seven question evaluation survey.

28Sep16

The pop quiz questions and the survey, once it becomes time, will appear on your bottom right hand corner. As another reminder, we are also conducting the At-Large community and independent review. All of you are encouraged to participate in the global survey, which is available in English, Spanish, and French.

Your feedback will be extremely valuable to improve the organization effectiveness of the At-Large community. And we have put the staff, and we have put the links in the chat for you. With the housekeeping rules concluded, I'll now turn it back over to you, Tijani.

TIJANI BEN JEMAA:

Thank you very much Terri. And I will give the floor immediately to our speakers, so who wants to begin? To start? León, León go ahead.

LEÓN SANCHEZ:

Thank you very much. This is León Sanchez. And I'm really happy to be here with all of you on this webinar. I might have a little bit of background noise, so if it's a little bit loud, I apologize for the situation. But as you know, as part of the IANA transition process, there have been a series of changes into ICANN bylaws. These changes in the bylaws have been defined not only by the CWG, but also by the CCWG, which means that these new version of the bylaws have been an enormous amount of work by both groups.

And they were actually already approved by the ICANN Board on May 27th this year. And if everything goes well, and the transition actually

28Sep16

takes place, then these new bylaws should take effect very soon. So, there are many changes in the bylaws, but as many changes as you can see, the intention is that these changes won't really affect the way we are doing things today, and that we will continue to do things ahead.

So, the best proof that these bylaws will be successful, is exactly to have a continuous way of doing things as we have always done. Of course, there are new things. Of course there are some things that might change in the future, but not on our day to day work.

So, of course, Sam will walk us through some of the most important changes in regards to the At-Large community, but I would like to remind ourselves, also, about some changes that have been, according to this new version of the bylaws, such as, for example, the affirmation of commitments, which was, in part, incorporated into the new bylaws as part of the ICANN mission.

So this commitment that existed between the government of the United States of America and ICANN, as I said, were now introduced into the ICANN bylaws, so that this commitment that continue to be there, at this time, are commitments to the larger ICANN community and the internet community. So this is, of course, something important because it is part of ICANN's mission, and of course, part of ICANN's core values.

For example, there is a commitment to respect human rights in ICANN's actions and day to day activities. So as part of work stream two, we are working in a subgroup to define a framework of interpretation, that will

28Sep16

allow those meetings to actually implement things with new bylaws, to have a better understanding of the scope and the way in which the particular point on respecting human rights, must be interpreted and of course, implemented.

So there are, of course, all of the changes, as I said. There is the formation of the PTI. For those of you who are not familiar with the terminology, PTI is the Post-Transitional IANA. And there is also the formation of the empowered community. And the way that this empowered community will exercise the new community powers, and there is a series of changes that, of course, involve the At-Large community and the ALAC, as well as other constituencies and other stakeholders across ICANN.

And also, [inaudible] where we think about, for example, PTI, there are also some external actors that are related to ICANN, when its word on carrying out the IANA functions. So this is not any more just, let's say, driven by the ICANN community, or [inaudible] to the ICANN community, but we also have some external actors or players that are very important to the future of ICANN and the different functions that ICANN will continue to perform as the IANA operator.

So with this, I would like to turn to Sam Eisner, so she can walk us through the presentation, and the most important topics that are of interest for the At-Large community. So Sam, you have the floor.

28Sep16

SAMANTHA EISNER:

Thank you very much León. This is Samantha Eisner from ICANN. I’m Deputy General Counsel with ICANN. I appreciate being invited here today to present to you on this. I’m here more so on my role of having worked very closely with the CCWG accountability throughout its couple of years of work. As well as, I helped with the drafting of these new bylaws.

If you’ve taken a look at them, and they’re on the ICANN website, the ICANN bylaws are now about 230 pages of detail. We added over 40 pages to the ICANN bylaws through the amendment process after the proposals. And so, the initial task of presenting the changes of the ICANN bylaws could be quite daunting. And so we’ve identified some of the key changes that we thought would be important to stress for the ALAC as community participants, and as part of ICANN’s multistakeholder community.

León touched on some very important other key areas of changes, including the development of a post-transition IANA entity called Public Technical Identifiers. That has, in fact, been put into place, and if the transition moves forward, PTI will be that place that actually performs the IANA function on behalf of ICANN.

But as we all know, part of the transition work also included enhancements to ICANN’s accountability. And that’s where some of the major changes to the ICANN bylaws came from. And so we’ll walk through and pay particular attention to the idea of this new empowered community that is developed through the ICANN bylaws, that is a way that we can put these new powers into place and to give the

28Sep16

community, across the community and not just within the ALAC and At-Large, but give a voice to some more operational items within ICANN, and a stronger voice to hold the ICANN Board accountable for its actions.

And so, we’re hoping to not take the full 60 minutes for a presentation here. That would be a lot of information. And so if we have questions, we’ll likely be moving to questions earlier and can provide more context in some of the areas, depending on how the questions come up.

So if we look here at the slides in front of you, we have... The ICANN bylaws, as León had mentioned, were approved by ICANN Board on May 27th. The bylaws were drafted alongside external counsel to, that have been advising CCWG accountability, as well as cross community working group, the CWG stewardship that developed the naming related proposal.

And they helped us make sure that the bylaws give us back to the proposals to the community. We’ll see, specifically, these bylaws created some new roles for the ALAC. One of the most important things that we’ll discuss in depth today, is the participation in the empowered community.

Another area where ALAC now has a voice that did not exist before the bylaws changed, is on the customer standing committee. This is actually a new concept. It is one of the ways that the multistakeholder community itself will hold ICANN accountable for the performance of the IANA functions.

28Sep16

It is a community oversight role over that performance. And the ALAC has a place on that customer standing committee. And I believe that the ALAC has already completed their appointment to that role. Following from the establishment of the PTI, or Post-Transition IANA, there will also be opportunities for the ICANN community to perform various reviews over those IANA functions performances.

And the ALAC will have the opportunity to identify representatives to those IANA functions review teams. And León mentioned that the Affirmation of Commitment has been brought into the ICANN bylaws in large part. And one of the ways that that’s happening is that the reviews that are called for under the Affirmation of Commitment, and those include the accountability and transparency review, the WHOIS or the registry directory services review, the security, stability, and resiliency review as well as the consumer choice and trust review.

Those are all now going to be mandated through the ICANN bylaws as opposed to through the Affirmation of Commitment. And with that, came a change in how these review teams are selected. Under the new bylaws that ALAC will have the opportunity to directly nominate up to seven people for consideration, to be part of that review team.

And then the ALAC Chair is actually identified as one of the chairs, along with these chairs of the other SOs and ACs across ICANN, to select the actual review team composition. Currently today, under the Affirmation of Commitments, the ICANN community does not have that type of direct role.

28Sep16

And it's my understanding that the ALAC has been working through a rules committee to try to identify new processes or identify which established processes, will apply to how the At-Large community and the ALAC exercise these new powers. So if there are further questions about how that organization is happening, that's actually one of the things that in my role, working with the ICANN organization, I don't know how that's happening.

It's very important that the community has the ability to organize themselves, and so each part of the community has the ability to organize themselves, in the manner that they deem as appropriate for their participation. So if there are questions about that, hopefully there are people from that work within the ALAC who can help answer a question.

So, what does this empowered community mean? The CCWG accountability recommended creating an entity to act at the direction of the community to exercise and enforce the community powers. This group is called the empowered community. The empowered community will be given the role of, as the sole designator of the ICANN Board of Directors, and will have the ability to enforce other directly, or indirectly, the community powers that have been established with the CCWG accountability proposal.

The empowered community will act as directed only by the participating SOs and ACs, which we call the decisional participant, on the next slide we'll describe a little bit more in-depth who those SOs and ACs are. And then the rules governing the empowered community, how the

28Sep16

empowered community can come together and enforce their powers, are actually constituted through the ICANN bylaws in a manner that’s called a fundamental bylaw.

When we get to the powers, we’ll actually discuss a little bit more in-depth with the difference between a fundamental bylaw and a regular, standard bylaw is. But, before we get there you can keep in mind that a fundamental bylaw is something that has been deemed so fundamental to maintaining ICANN’s accountability that it creates a higher obligation and threshold across the community, to have a voice in the change of those bylaws.

So the empowered community actually winds up as a new legal entity. As I mentioned earlier, there was external counsel to the CCWG, in developing its recommendations. And so one of the things that came out as important from the consultations with those external counsel, is that in order for the powers of the empowered community to be enforceable, there had to be an entity behind them.

And so, this really doesn’t represent a big change in how things are done within ICANN. There is actually no formal documentation that needs to be filed or anything, but it’s what we call an unincorporated association. And that unincorporated association is made up of five of the SOs and ACs across ICANN, the ASO, the ALAC, the ccNSO, the GAC, and the GNSO.

These are the five entities that agreed that they wanted to come together and participate in these new powers. Now we have the RSSAC,

28Sep16

and the SSAC, so the root server, the advisory committee as well as the security and stability advisory committee, that elected to not be considered part of the decisional participant grouping of the empowered community.

And that was based a lot upon the remit of the groups’ whole, as well as the fact that they have a lot of overlapping memberships to the other groups that exist within ICANN. And so, when these five entities, the SOs and ACs come together, they formed this new empowered community. The biggest impact that it has to ICANN is that it’s a new form of checks and balances in the post-transition environment.

So this is creating additional places where the community can call for a check on what ICANN is doing, and for the community to actually come together and discuss items. We haven’t necessarily had the best cross community mechanisms to do that before, when there wasn’t a need to go to a cross community working group. So we actually create the processes through this empowered community to come together and exercise these different powers.

The community powers that the empowered community will now get to enforce are seven. So first, there is the ability to reject an ICANN budget or strategic or operating plan. Now this is a very key power because what it does is, it builds upon the community public comment process and consultation processes already in place for building out ICANN’s budget and operating a strategic plan.

28Sep16

But it now, first of all, includes a requirement that ICANN take these matters out to the community before ICANN approves them, but it also gives the community an opportunity to take a look and to see if there is something within that budget, or within the strategic or operating plan, that the community agrees is not appropriate.

Likely that would be something that the community determines to be outside of ICANN’s mission. We haven’t, of course, seen how any of these powers work, but we will have the opportunity to see a budget process, and have an opportunity for the community to come together to evaluate a budget in the next budget cycle that ICANN faces after the transition is complete.

Another area of community powers are the ability to reject changes to ICANN’s standard bylaws, and that goes hand in hand with the next one, the ability to approve changes to fundamental bylaws, or articles of incorporation. I mentioned earlier that there were two different levels of ICANN bylaws now developed through the CCWG accountability recommendations.

There was a group of bylaws that were identified as so essential to maintaining ICANN’s accountability to the community, that the CCWG recommended that they have a higher threshold associated with them, for Board action. And so now instead of having two-thirds of the Board needing to approve them, it actually requires 75% of the ICANN Board to approve them, but also for those fundamental bylaws, there has to be affirmative agreement by the empowered community, that it is appropriate to amend those bylaws.

28Sep16

And so, it removes the ICANN’s Board ability to act unilaterally, to change those accountability items that were deemed so important to the community, that really were some of the basis for why we even initiated this accountability review.

And then for all other bylaws, there is again an additional check on the ICANN Board’s ability to modify those bylaws. So while the threshold for Board action remains the same as the bylaws today, which is two-thirds of the Board, the empowered community actually has the ability to come together and reject a bylaw that the ICANN Board wishes to put through.

It also now requires that ICANN must put out proposed bylaws changes for public comment. Now that has always been an operational practice of ICANN, and so it’s not necessarily a change or an impact to the community that ICANN would propose bylaw changes out for public comment. But now that’s an additional check on the organization to make sure that we follow a robust process, to make sure that the community itself has transparency and views into how the organization’s bylaws are being changed.

Now, one of the main things that the empowered community can do is, appoint ICANN directors. And that really doesn’t represent a change to what happens today. As you know, the At-Large community through the ALAC, appoints one Board director. The GNSO appoints two, the ccNSO, and ASO also appoint two. And then eight directors are appointed through the NomCom, and we have our President and CEO who also serves a voting member to the ICANN Board.

28Sep16

Under the new empowered community, all of those appointments will be run through the community itself, through the empowered community mechanism itself. But the empowered community group has no ability to change who the At-Large community, for example, agrees should be their representative to the Board. But the reason we now make these go through the empowered community entity, is that it gives a legal authority for the empowered community to be able to remove individual ICANN Board Directors.

And so, for example, we’ll get into this more detail later. We have some detailed slides spelled out around the Board removal process. But gives the At-Large community, for example, the ability to look at the director that it has selected, and if during that three-year term of the director, the At-Large community is not satisfied with how that director is performing, a removal process could be initiated.

Any of the SOs and ACs have the ability to initiate that removal process for the directors that they appoint. And there is also a separate removal process identified for those directors appointed by the Nominating Committee, because those are considered more of a community wide appointment.

But then there is an even broader power, and this power has been discussed within the CCWG as a bit of the ultimate power, that the community now holds, that it has never held before within ICANN community, and that is the power to recall the entire ICANN Board. So if the empowered community came together and determined that the ICANN Board itself, as a whole, was acting in a manner that was so

28Sep16

inappropriate, the Board itself shall be removed as a whole, the community has the process and the power to do that.

We, even during the CCWG deliberations, there were statements that we hope that this would never be used, it's the fact of having this power in place would serve as enough warning to the ICANN Board to remain acting consistently with ICANN's mission, and to remain aligned with the community, that this would never be used.

So it's a very important and key new power that exists within the ICANN bylaws. You may have heard about different types of accountability mechanisms that exist within ICANN, and those are the independent review process, and the reconsideration process. Those will remain in place after the transition.

There have been some changes to each of those processes for the reconsideration process. There is now more time to file for reconsiderations, and more direct ability to challenge staff actions through that reconsideration process. On the independent review side, which is where we take, or where community members can take challenges to an ICANN decision, that is alleged to be against the bylaws, or acting against the mission or commitments or core values that are set out in the bylaws, that they can ask an independent third-party group to perform a review of that action.

We used an arbitration provider, the International Center for Dispute Resolutions, to perform those reviews. Under the new bylaws, the standard for those reviews has been updated to make it a broader

28Sep16

standard, more applicable to more conduct within ICANN. And also it will now allow conduct of ICANN organization’s staff members to be challenged as well as the ICANN Board actions that were able to be challenged today.

Now, why would the CCWG’s recommendation of how both the independent review process and that reconsideration process could be better updated to reflect more accountability mechanisms against ICANN. There is also a recommendation that the community itself can come together to initiate an independent review or a reconsideration process.

So this would be a way the community could identify that a particular action by the ICANN Board or the ICANN organization, trip the threshold to file one of these actions, and the community, together, as a whole, could challenge that conduct. Within that, there are new requirements of how ICANN would fund, particularly on the independent review side, that type of action.

And finally, the new powers for the empowered community also includes the rejection of ICANN Board decisions relating to the IANA functions review. If you recall, I spoke a little bit earlier about the fact that we have a new entity called the PTI, or the Public Technical Identifiers, that is the entity that will be performing the IANA function on behalf of ICANN in the post-transition environment, particularly as it relates to the naming function, so your top level domains and the entry of those into the root, etc.

28Sep16

There is now a series of reviews laid out in the ICANN bylaws for how the community oversees ICANN in the performance of those naming related functions. And so, after those reviews are complete, there will be community recommendations that come out as part of that. And so, if the community is not satisfied with how ICANN takes on the recommendations from those reviews, the community has an opportunity to provide a direct challenge for that, through the empowered community powers that have been put into place.

León, I don't know if you would like to provide any other discussion about the CCWG's intentions of putting any of these in place, or any other background on any of those community powers we've talked about?

LEÓN SANCHEZ:

No, I see that you walked us through quite well on this. I mean, in the end, the intention of the CCWG on providing the community with these powers is up to be able to hold accountable the ICANN Board, if something would not be approved by the community. So, these different powers are there to guarantee that the way that the Board actually carries out its duties are also aligned with the interest of the community.

But it also provides [inaudible] to the Board, because the community needs to look towards to meet some requirements in [inaudible] powers. So we are both safe in the way that the community has safeguards put in place to hold the Board accountable, but also the

28Sep16

Board is safe in the way that the policy exercise, it's not just an arbitrary action that the community can undertake. So I think that we have some more slides on hand, in which we can see the escalation path should the need for ICANN to exercise these powers up to [inaudible].

So I would like to turn back to you, so you may continue with the explanation [inaudible] path. Thanks.

SAMANTHA EISNER:

Thank you León. And I think that your explanation of this around the protections that are inherent on each side, both protections to ICANN and protections to the community, really help reinforce this idea that this is a new system of checks and balances. This isn't a system where any one party gains new powers that can be exercised in a wholly unchecked manner.

And that's important, I think, across the ICANN multistakeholder community. So as León mentioned, our next slide here actually walks you through the escalation path that the ICANN Board, or that the empowered community, I'm sorry, would follow in order to actually take an item to the end result of the determination that a power should be exercised.

And so this is really, I know it looks a bit daunting and there are many steps to it, but that is part of the checks and balances system that's been put in place. This reflects what the CCWG itself recommended as a way to achieve due process and full community discussion around

28Sep16

this, even for those parts of the community that are not part of the empowered community.

And so, I encourage you all to enlarge your screen, if you can, to take a look at that. We’re not very active in the chat right now, so you might be able to go to full screen if that helps you. So first, within any AC or SO, there is the ability for, and this has to be one of the empowered community groups, of course. There is an ability for an individual to begin a petition.

So if there has been an ICANN action that the, that an individual believed triggers one of the community powers, someone can raise their hand and say, I think that this was wrong. I want to start initiating this community power. Then each SO... Whichever SO or AC this is raised within, has the ability to then consider whether or not they want to do that.

And this is an area where I’m sure, for those who are active within the At-Large community, more detail that Alan or others on the call could provide about how this is actually expected to work within ALAC, might be of interest to you. So anyway. So you look at whether or not the SO or AC is willing to take on this petition.

Maybe the issue is one of broad community concern and is easily taken on. Maybe the issue is one that’s really just a particular issue, held by one person. And so there isn’t support within that SO or AC to take on that issue and escalate it through the process. But if that petition is accepted, there is then the opportunity through the empowered

28Sep16

communities cooperation and discussion process, to gain support from an additional SO or AC for that petition. And if there is support gained, then the community has a few options for how they want to then move forward.

The community could call for a conference call to come together and start discussing the issues that come into play. You’ll see when we look a little bit more in-depth at the removing of Board director escalation path, there are actually some specific places where we would expect the Board Director at issue, or the Chair of the Board, or even the full ICANN Board to be called, and to have an opportunity to discuss this issue as well.

And it could be a conference call, and it could be before the SO or AC. But the focus here is on the fact that conversation among the community is really one of those necessary steps to exercise the community power. And then if the community agrees that it’s appropriate to keep continuing on the path, you keep [inaudible] on. There is a community forum, and that is a requirement if there is ever an ultimate escalation of a formalized mechanism for the community to come together.

The SOs and ACs have the ability to provide written information to be used prior to the community forum for community deliberations on it. And this is really the place where you’d expect some of the harder questions to come up. Things that weren’t able to be resolved on an optional conference call.

28Sep16

And then there is always a possibility at this community forum, or any place along the path, that the Board and the empowered community can resolve the issue. Maybe it’s the basis of a misunderstanding. Maybe there is an interim solution that can fix the issue. You know, no solutions are off the table with this, and so there is always the ability to resolve the issue before it comes to the ultimate time when the community would exercise its powers.

But if there hasn’t been any resolution to the issue, it’s after this community forum that the empowered community comes together, to establish whether or not it actually wishes to use its power. So it could be that, even though the Board and the community haven’t reached a resolution, that not everyone that was in the empowered community is supportive of actually moving forward and taking the action of exercising the community power.

So there are thresholds that will turn to them, and that’s fine, that empowered community would have to meet in order to formally exercise its powers. And then it would take that decision to ICANN Board, and then if the ICANN Board did not act accordingly to that decision, then there would be the opportunity to enforce that action against the ICANN Board.

So this is where it’s very important that the empowered community is actually a legal entity, empowered community could take an independent review against the ICANN Board. If it’s appropriate, the empowered community can even initiate court action against ICANN in the proper instance, because it is an entity capable of going into court.

28Sep16

And so of course, it's everyone's hope that we would never reach a situation that if the empowered community had a power that it needed to exercise, that the ICANN Board would continue to act in opposition to that community wish. But if that does happen, there are possibilities for enforcement action by the empowered community.

So that again, is one of those places for the ultimate checks and balance. Let's look at the required threshold. This again, is a slide with a lot of information on it. I will turn to the next one.

LEÓN SANCHEZ: May I interrupt you for a second?

SAMANTHA EISNER: Yes, please.

LEÓN SANCHEZ: Thank you. So what is important about what Sam is explaining to us, is that if you remember when I opened the presentation, that I said that everything was changing but everything would remain the same, well, this is exactly what I was trying to tell you. These powers or this path, this escalation path, only apply for the case in which the community wants to determine whether it wants to exercise any of the community powers that are vested into the community with the new bylaws.

But this doesn't change, at all, the way that we operate our day to day PDPs and the rest of the activities that we carry out in each of the

28Sep16

constituencies and stakeholder groups within ICANN. So if you see this escalation path, it only refers and it only encompasses those community powers that are now vested in the community, and [inaudible] the new bylaws.

So these don't affect at all any of the usual work that we developed within the ICANN community. So thank you for this chance to clarify this information for them, and you have the floor again.

SAMANTHA EISNER:

Thanks León. And that is a very important reminder, that the addition of new community powers does not change at all the historical role of the ALAC or any of the other SOs or ACs. The work that the ALAC does, or the work that the GNSO does, the ccNSO, etc. all remains the same, it's just that each has agreed to take on this additional responsibility of participating in this community power escalation process, and taking on the responsibility to consider these new operational issues that came on.

So if we look at the slide that's on the screen right now, and we don't need to run through the entire slides. The slides will be made available to everyone on the call. The important thing to look at is that it's not always the same for any of the powers to be enacted. The CCWG actually assigns different thresholds to different activities, based upon the seriousness of, or what we can estimate to be an evaluation of the seriousness of what was being challenged.

28Sep16

So you'll see that the blocking of a proposed operating plan or strategic plan, requires four of the community, the empowered community decisional participants to be in support, and no more than one objecting. But the ability to reject a change to a regular bylaw requires only three of the decisional participants in the empowered community to enact that power.

And so, there is the ability, and I'll step back for a second, it's actually very important to note, when you look at that last column on this page, it says, is there consensus support to exercise community power? You will see that none of these require all five decisional participants to unanimously exercise a power.

And that was one of the fundamental tenants of developing these thresholds within the CCWG, that no one individual group would be able to stand back and hold up the rest of the community from moving forward with a power that it thought it was important. However, there was also the balancing and consideration made, that some of these are of the seriousness that you do want to have enough support demonstrated across the community, that this power actually should be done.

So with a strategic plan or a budget, it's a very important power to be able to hold back ICANN's budget from coming into operation. It actually impairs ICANN from having the ability to move forward under an intended new budget, and move to ICANN to what we are calling a caretaker budget situation to maintain only its more core activities.

28Sep16

And so it's a very important power to be able to exercise, and so there is a very high threshold in order to make that happen. And you'll see that also the removal of the entire Board of Directors is held to that very high threshold, or the rejection of a decision on how the ICANN Board considered an IANA function review decision.

So, none of these, and this goes back to what León was discussing earlier about the checks and balances in the system, none of these are assured to pass, right? We've seen the ICANN community, and the ICANN community has been very aligned on some issues. So there are other issues where there are many different views on things.

And so, this really is about these areas where the community itself comes together, and is of the same mind on a topic, that it's so important that something moves forward. Now you'll also see, we've walked through the escalation path earlier, but not all of the items are as easy to move along the escalation path as others.

So for example, to recall the entire Board of Directors would require three of the empowered community participants to support moving forward to a community forum. But again, for rejecting changes to regular bylaws, there is only two SOs or ACs that would be required to reach that level, or to allow the community to move forward to initiate a community independent review process.

And so these were all judgment calls made by the CCWG, based on the potential to impact the organization and how the community should be considered to come together to express a consensus view on these

28Sep16

items. So we have two slides coming up, unless they are particular questions, we'll just show you how for, how a particular situation results in a very particular escalation path.

So here is the slide for moving a nominating committee appointed Board director. And so, within this, this requires the community to come together to use a community power and advise the ICANN Board and take its decision as to whether or not a specific nominating committee director is supposed to be, should be recommended for removal.

But that is in contrast to removing one of the SO or AC appointed directors, including the director that's been appointed through the At-Large community process. So here, there isn't as much as role for the rest of the empowered community to have the opportunity to stop the action of the individual AC or SO issue, but there is the requirement though, for the community to come together and discuss this.

So there is still the role for the community to come together and discuss the import of an action such as the removal of a Board director, even if it's one of those directors that is identified solely through a SO or AC community process.

So, with this, I'll just move you on to just kind of an overview of the different kinds of coordination that has been going on throughout the community to date. And so, as you know, these ICANN bylaws are not actually in place yet. They will go into force on the date of the transition. And so, we do need to have, in place, a lot of

28Sep16

implementation activity to make sure that we’re ready to get these bylaws in place for that date of transition.

So for example, in July, the selection of the customer standing committee was completed. That required action from the ALAC itself to identify who the ALAC would want to represent it on that customer standing committee. Then the ccNSO and GNSO had to move forward in confirming that CSC membership had been appointed from across the ICANN community.

That was another really key area where the community coordination was needed to make sure those bylaws were in place. We’re now in September of 2016, and we have an anticipated transition date of 30 September 2016. Again, it’s not completed until it’s completed, but we are hopeful that we will be able to have the NTIA IANA functions contract be deemed expired on the 30th of September, which means that all of these things go into effect on October 1st.

The new bylaws become active. The new structures that have been developed become active. And so, by that time, we’ve asked the community groups to work together to identify who their representatives to the group that will run the administration of the empowered community will be. That’s the group that will actually be responsible for transmitting notices of decisions of the empowered community to ICANN.

By this point, we’re working with the community to try to identify what might be needed for a review team selection processes under the new

28Sep16

bylaws for the reviews we’re discussing, because in the month of October, we are anticipating kicking off two reviews that will require community input into the selection process.

So it’s the SSR, the security, stability, and resiliency review, as well as the new registration directory services review, or the WHOIS review. And we’ve asked across the different decisional participants to gain some sort of understanding of at least the initial process and plans within each group of how they want to participate in the empowered community.

So what types of thresholds might your group need in order to initiate a petition, for example, or determine whether or not you want to ultimately support them using one of the empowered community powers. Those are all decisions that are within the ALAC control, as the ALAC or as well within the GNSO’s control, and the ccNSO control. The ICANN organization has been encouraging, and I know policy staff has been working closely with many of the groups, to help come to the point that you’ve identified these types of initial items, knowing, of course, that processes can evolve over time.

We know that by early 2017, will be one of the first times that there will be an opportunity under the bylaws that we’re required to provide notice to the empowered community and give the empowered community choice of whether or not it wants to initiate its escalation process. That would come around March, with the submission of the ICANN budget.

28Sep16

So once there is an approved budget, there is a requirement that ICANN give them notice to the empowered community, and the empowered community decisional participants have a period of time of approximately 30 days, within which they consider whether or not they want to kick off their process.

And so, it's really important that each of the groups across the community understand how they're going to prepare to react to that first notice. And then we're also looking forward to the community coming together in the end of October 2017, under the assumption that the transition happen at the beginning of October of this year. For a first review of that customer standing committee, of that community mechanism to oversee these activities of that post-transition IANA.

So those are some of the most immediate types of work that we'd ask the community to start looking at and organizing itself into. And so that's the end of my presentation. León, I don't know if you have any other words you'd like to say before you open up for questions.

LEÓN SANCHEZ:

Thank you very much Sam. No, I just want to thank you for this wonderful presentation, for walking us through the different topics that are now built into the new bylaws. And of course, I would like to thank Tijani and the rest of the attendees to this webinar for hosting us. And I will not turn back to Tijani, so we can have questions and answers session. And Tijani, I'm turning back to you.

28Sep16

TIJANI BEN JEMAA:

Thank you very much León, and thank you very, very much Samantha for this presentation. [Inaudible] As you see, a lot of things will be changed in ICANN, once the transition will happen. For the structural side, there will be perhaps not a lot, only the creation of PTI, which will be the new issue, the new thing.

But for the governance, there will be a lot of changes, and I hope you follow it very well what Samantha presented, and then I am asking you now, to ask all of your questions, all questions you will want to Samantha and León. So, waiting for your hands.

Waiting for your questions. I will give the floor to Terri for the pop quiz. So Terri, go ahead.

TERRI AGNEW:

Thank you Tijani. While we wait for everyone’s questions, we do have two pop quiz questions. As a reminder, they now appear in the right hand side of your screen. The first pop quiz question, will the ALAC be a part of the empowered community? Yes or no. Please cast your vote now.

And Samantha and León, if you could please provide us with the correct answer.

SAMANTHA EISNER:

The correct answer is yes.

28Sep16

TERRI AGNEW: Pop quiz question two. Will the At-Large community still identify a member of the ICANN Board? Yes or no. Please cast your vote now.

And Samantha and/or León, if you could please provide us the proper answer.

SAMANTHA EISNER: The answer again is yes.

TERRI AGNEW: Thank you. That does conclude the pop quiz portion of today’s webinar. Once again, we open it back up for any questions. You may type your questions in the chat, or in the question box on the bottom left hand side of your pod, or again, raise your hand in Adobe Connect and ask it over the verbal...

TIJANI BEN JEMAA: Yes, thank you Terri. And please, this is for you. The webinar is for you to better understand what will happen, once the transition happens. So please ask your questions. If you have any questions, please ask them now. You may also type it. Yes, Olivier Crépin-Leblond, go ahead please.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Tijani. It’s Olivier speaking. And I have a question if, God forbid, the transition stewardship of the IANA function does not take place as one should hope it takes place, on the 30th of this month,

28Sep16

which I believe is in two days’ time, does all of this empowered community, do all of these things that have been designed and so on, do all of these remain in place or will there be some backtracking to annul all of this? Thank you.

TIJANI BEN JEMAA:

Samantha?

SAMANTHA EISNER:

Sure, thank you León. Thank you Olivier. This is Samantha Eisner for the record. The ICANN Board committed, at the time that it approved sending the CCWG accountability recommendations to NTIA, so that was in March of 2010, that in the event that the IANA stewardship transition did not happen, that it would work with the community to identify all of the appropriate parts of the CCWG accountability recommendations that could go into place.

And so, if there is a delay or hopefully, this won’t happen, but any indication transition will not happen, then the Board is actually committed to working with the community itself to make sure that we have a clear path of understanding of how we would implement all appropriate parts of the CCWG accountability proposal, and that is where this entire empowered community idea comes from.

TIJANI BEN JEMAA:

Thank you very much Samantha. Any other questions?

28Sep16

Of course, now all the work done by the CWG was to try to make ICANN and its Board accountable to the community. But a question was raised during the work of the CWG accountability was, and how we will be sure that the community is accountable and to whom it would be accountable? That’s why there is a specific subgroup of the CCWG who is working now in the work stream two about the accountability of the community of the SO and ACs.

There is another subgroup also working on the accountability of the staff. I see Olivier raising his hand. Olivier, go ahead please.

OLIVIER CRÉPIN-LEBLOND:

Yeah, thank you Tijani. It’s Olivier Crépin-Leblond speaking. I was going to let you go through the various work groups of work stream two, but I guess you could still go on, but my question was going to be, regarding work stream one work, there was a commitment for the recommendations of work stream one to be carried over due to the requirements to meet the NTIA’s requirements, and the plan that the CWG IANA had put together.

What commitment is there for the work stream two recommendations to be implemented? Bearing in mind that there is no, there are no NTIA requirements for the work stream two, at least to my knowledge, and exactly as you say, the accountability of the ICANN communities. Well, you know, why bother working with them? Why not just set this aside?

By the way, I’m being provocative here on purpose. It’s a question that I have heard being asked. Thank you.

28Sep16

TIJANI BEN JEMAA: Thank you very much. Samantha, do you want to answer this question?

SAMANTHA EISNER: So, I'll answer part of the question, then I'll leave it to others to answer the more provocative part of the question. So, Olivier you asked, what are the safeguards or protections that are in place to make sure that the outcomes of work stream two are put into place?

And one of the things that actually came out of the CCWG proposal, and that is actually included in the ICANN bylaws, is something that's included in article 27 on the ICANN bylaws when you have a chance to go look at them. ICANN has incorporated into their bylaws a commitment to considering the consensus recommendation coming out of those work stream two groups, on the same terms on the ICANN Board committed considering the CCWG's work stream one effort.

And so that includes a commitment that the ICANN Board, how the ICANN Board would indicate whether or not it was able to accept one of them, or one of the recommendations, and that it would have to provide a rationale for that, have an opportunity for dialogue. The ICANN Board is not able to substitute its own recommendation for the recommendation of the community.

So there are some protections built into there. And then also, given the NTIA criteria that it laid out for the transition proposal, those have actually also been brought also into that transitional article, setting out

28Sep16

ICANN’s obligations to work stream two, to allow for the consideration of those criteria in the future accountability changes coming out of work stream two.

And then I’ll leave it to someone else to answer the question of the community accountability to each other.

LEÓN SANCHEZ: Thank you very much Samantha.

TIJANI BEN JEMAA; Yes, León, go ahead.

LEÓN SANCHEZ: Thank you very much Tijani. Excuse me for jumping in. For the provocative part of the question, Olivier, what would happen, I think, is that since we now have the empowered community, if the Board actually wanted to implement or continue to work on work stream two issues, then the empowered community could actually remove the Board and bring in another Board that will be, or that would be compliant with this part of the transitional [inaudible] that Sam just explained, and would carry out the work stream two work.

So I guess that is the safeguard that [inaudible] that guarantee that work stream two will actually happen, because as you said, it is indeed a question that has been raised many times in different forum and by

28Sep16

different stakeholders. But I guess the work that both the CWG and the CCWG carried out is guaranteed to these transitional bylaws.

And well I think that’s how I would be [inaudible] the scenario in which a rogue Board wouldn’t want to carry out work stream two work at [inaudible] work stream one. Thanks.

TIJANI BEN JEMAA: Thank you León. Any other questions? Provocative, if possible?

SAMANTHA EISNER: Tijani, I see a question in the Q&A box.

TIJANI BEN JEMAA: Go ahead.

SAMANTHA EISNER: Forgive me, but I don’t know if someone else from the team can read out the name, I’m not sure how to pronounce the name. But the question is, as internet end users, what are the impacts of these new bylaws? So it might be interested to hear from León or another person from the ALAC about your impressions of how these bylaws actually impact the internet end user.

28Sep16

LEÓN SANCHEZ:

Thanks Sam. Yes, I can try to provide a view on how these new bylaws may impact the end users. And my take on this is that end users have always had a voice within the ICANN community, and those who have been around for more time than I have been, will attest to the fact that there has been a continuous struggle for the [inaudible] end users [inaudible] count into the different positions and different activities that are carried out in ICANN.

So, the impact of these new bylaws, as for end users, is that now the end users will have a means or different means, to not only raise their voice, but also exercise powers, should they consider that there is a need to exercise their power. We have been saying through the whole presentation, it doesn't mean that one day we just wake up with some kind of angriness that gets ICANN will decide such as a power, no.

As far we need to follow, the process and the [inaudible] that has been explained in order to exercise that power. But, this time as soon as these bylaws are going into effect, then the community of end users within ICANN will have these tools and these mechanisms to have an additional guarantee that our point is correct and is considered to the extent that we, of course, provide some constructive and some thoughtful, with some thoughtful discussions into the different positions that we want to make.

So I guess, that would be my view on how it impacts end users. And I will now take... I would like to turn back to Tijani.

28Sep16

TIJANI BEN JEMAA: Thank you very much León. And Alan has something to add.

ALAN GREENBERG: Thank you very much. I guess I look at it from, perhaps, an interesting point of view. When you ask questions about internet users, I think of the 3 and 4 billion of internet users. And the impact of the bylaw changes on them, unless we’ve done something really stupid, is zero. Most of them don’t know about ICANN, and it will certainly have no impact on it.

Where ultimately it will have an impact is, should something that is crucial to users be decided in ICANN, that has a negative, could potentially have a negative impact on ICANN, then the At-Large representatives have an alternative, has a mechanism by which we can start to look at that. So that’s part number one, and try to address the issues that are of importance to users.

The second part is, because we exist within ICANN with this voice, it is really important that ICANN have credibility that the internet community around the world believes ICANN will do a good job, and these accountability measures, significantly in my mind, increase that, because without ICANN, we don’t have a voice at all.

If the IT, if we’re looking at a group like the ITU, there are no user representatives there. So, the existence of ICANN is important to users, and therefore the credibility and continued existence is of importance, and accountability does impact that. Thank you.

28Sep16

TIJANI BEN JEMAA:

Thank you very much Alan. I agree with you. Normally the transition should be transparent for the end user, for his user or her use of the internet, but as you said, and as everyone said, now the end user can even initiate a petition, which wasn't possible before, and users now through the representatives in ALAC and in At-Large, they are now part of the decision making in ICANN, which wasn't the case.

We were an advisory committee, giving advice to the Board. Not binding at all. So this is a big change for the end users, but it will not be felt by the end users when they are using the internet. It will be felt by the end users that are aware, and who are in connection with ICANN, and who wants to participate in decision making.

So this is a big change for the end users. And I think that's something that perhaps we didn't say in the presentation, the big change for ICANN with this bylaw change, is that ICANN was an incorporated association without members. Now, it is an incorporated association with a designator. And the designator is the whole community, the empowered community if you want.

So there is a big change for ICANN. I am trying to speak, and waiting for the hands, and I don't see any hand. Is there another question? Yes, go ahead please, Samantha.

28Sep16

SAMANTHA EISNER: Yes, thank you. We have a question in the question box from Amal Al-saqqaf from ISOC Yemen. And the question is, is there a PTI related section in the new ICANN bylaws? Is PTI subject to ICANN bylaws? And so, I'll take the answer to that. So the PTI does have some PTI related sections within the ICANN bylaws.

PTI is setup as an affiliate of ICANN and ICANN is the sole member, and the other part of the ICANN PTI relationship is that ICANN will be contracting with PTI to perform the IANA functions, either through direct contracts or through subcontracts, or some parts of the IANA functions.

And so the ICANN bylaws set out ICANN's obligations to make sure that it's responsible for the activities of PTI, that it makes commitments to the community for how ICANN will treat the community reviews of PTI, as well as customer complaints arising from PTI. And so that's where there is the tie in the ICANN bylaws between PTI and ICANN. There are also some [inaudible] related items in there too that [inaudible] the obligation, to make sure that PTI operations continues with responsibility from ICANN.

TIJANI BEN JEMAA: Thank you very much Samantha. And Aida, please go ahead.

INTERPRETER: This is the interpreter. We cannot hear Aida.

28Sep16

TIJANI BEN JEMAA: Aida, please go ahead. You might be muted.

Aida?

We still don't hear her.

TERRI AGNEW: Tijani, this is Terri. And the interpreters can hear her now, it will be one moment.

AIDA NOBLIA: My question relates to the empowered community. You said that the empowered community would have a legal entity, would be a legal entity, I don't know whether you discuss whether that entity would look like, that legal personalities that this entity would have, or that is something that we would have to be decided later, because the community, all the community will have a certain legal personality, or legal status.

I'm not sure how you manage that. What are your thoughts about that?

TIJANI BEN JEMAA: Sam, please.

SAMANTHA EISNER: Thank you Aida. This is Sam Eisner. The ICANN bylaws actually specify that the empowered community will be what is called an

28Sep16

unincorporated association under the ICANN bylaws. So there are no further decisions that the community has to take on how to organize the legal entity of the empowered community.

It is already an issue that’s been resolved in the ICANN bylaws and aligned with the CCWG recommendations, and following the recommendations of the external counsel that were advising the CCWG.

TIJANI BEN JEMAA: And I think that the PTI is already incorporated as a non-incorporated association in California jurisdiction, isn’t it?

SAMANTHA EISNER: So, PTI is separate. So PTI has been formally, with papers filed, including articles of incorporation, PTI has been formed as a Californian non-profit public benefit corporation, under the laws of California. And that too, has already been formed. The empowered community really won’t be formed until the bylaws go into effect, but PTI is a separate entity.

It’s not a non-incorporated association. It’s actually a formally filed and recognized entity under California law, based on its articles of incorporation.

TIJANI BEN JEMAA: Thank you very much Sam. Any other questions? We still have some minutes, so please try to make use of them.

28Sep16

Any questions? It doesn't matter if the question is not... We all ask questions, so please ask questions.

Waiting for your questions, I will continue speaking about the subgroups of the work stream two. So I spoke about the SO and AC's accountability. The second working subgroup I spoke about was the staff accountability. There is also diversity subgroup, transparency subgroup. There is a subgroup about jurisdiction, and another one about human rights.

There is a subgroup about the ombudsman, I surely forgot some, but I think I shared much of the measure of them. There are nine, in fact, plus one which is about the IRP. It is not work stream two subgroup, it is work stream one subgroup, defining the rules of procedure, more or less, of the IRP.

Any questions? Otherwise I will give the floor to the staff for the evaluation questions. So Terri, go ahead please.

TERRI AGNEW:

Thank you very much Tijani. We will now conduct our evaluation of today's webinar. There will be seven questions total. They now appear on your right hand side of your Adobe Connect.

Question one. How was the timing of the webinar for you? Please cast your vote now.

Thank you. Question number two. What region do you live in at the moment? Please cast your results now.

28Sep16

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

Question number four. How was the technology used for the webinar? Example, the audio bridge, the Adobe Connect. Please cast your results now.

Question number five. Did the speakers demonstrate mastery of the topic? Please cast your vote now.

Two more evaluation questions to go.

I do apologize. It appears that my Adobe Connect has frozen up. I’m just double checking. Is everyone still seeing question number five? Did the speakers demonstrate mastery of the topic?

CHERYL LANGDON-ORR: No, we’re up to number six, Terri.

TERRI AGNEW: Thank you Cheryl. That’s not showing on my screen, but we’ll go ahead and continue since you all are seeing it. Number six. Are you satisfied with the webinar? Please cast your vote now.

And the last evaluation question, and I’ll keep it up on screen, hopefully it does appear for you. What topics would you like us to cover for future webinars? Tijani, I’ll turn it back over to you for closing comments.

28Sep16

TIJANI BEN JEMAA: Thank you very much... Yes, go ahead. Who is speaking?

CHERYL LANGDON-ORR: It's Cheryl, Tijani. Question seven isn't showing up. Ah, it is. Yeah.

TERRI AGNEW: Thank you. Sorry about the troubles.

TIJANI BEN JEMAA: Cheryl, go ahead.

Cheryl, do you want to speak?

CHERYL LANGDON-ORR: Tijani, Cheryl here. We'll just move on without question seven. For your information, it's what other topics would you like to suggest? And of course, for us to deal with in a capacity building webinar series, this is a very important question, but it is one that you can send us via email.

TIJANI BEN JEMAA: Exactly, this is exactly what I say every time this question is asked. If you could put your topics now on the chat, it would be good. If you are not able to do it, and if you don't have time, you can send it by email. This is a very important question. This is the way we are developing the new topics for the new webinars.

28Sep16

Let me now, if there is no other remarks, let me now thank every one of you, especially the two presenters, Samantha, who is the deputy counsel of ICANN, and León who is the vice-chair of ALAC, and the co-chair of the CCWG accountability. Thank you very much for this presentation and explanation you gave.

Very much appreciate your dedication. And thank you for our staff, our wonderful staff, all of you, Heidi, Terri, all of you. And Ariel, and all people who participated in this, [inaudible], don't forget her. She was the main person in the capacity building webinars.

And thank you for our interpreters, and for all of you who attended this webinar. Bye-bye.

[END OF TRANSCRIPTION]