Work Stream 2-CCWG-Accountability Face-to-Face Meeting

ICANN-57 in Hyderabad, India

Wednesday, 2 November | 09:00 - 18:00 (IST)

Session 1

- **Introduction and General Administration**

- **PCST report**

    o Bernard Turcotte: Introductory remarks: PCST formed to track financials and responsibility for WS2 budget – certain sections only. WS2 Budget approved for transition by all chartering organizations for IRP IOT & WS2. Disclosure of FY 7/16, 8/16 and 9/16 – numbers made available monthly. Budget managed in 2 parts – Community part & ICANN part – will be tracked, 30 days after the close of month, numbers presented to board – 5 days later they are made public. COMMUNITY PORTION BUDGET - IRP phase 2 & WS2 IRP – incurred external legal expenses, within parameters of budget and is on course – (front loaded) WS2 – expenses forthcoming: travel and legal - incurred no expenses for this quarter but with Hyderabad and other upcoming meetings travel, legal expenses will be incurred – funding for travelers will go in next quarter report for OCT and NOV.

    o Xavier Calvez: This type of reporting is taking things to the next level – granting CCWG co-chairs to manage budget relative to this group – historic. Report – published upon approval of co-chairs, along with forecasts for future costs. Transition implementation – significant amount of resources incurred over first 3 mos. of FY – transition included PTI and its formation – organizing relationships as wells, RIRs etc. – all under contract with enormous amount of activity such as legal expenses for writing drafts/documents etc. Now, largely completed – so costs front loaded and expected to be minimal through the rest of the year.

    o Sebastien Bachollet: 25% for everything?? Taking into account 3 mos instead of 12 mos., not very clear – need to include in the budget how we will include in the Ombuds office review – how will we deal with that in the future? Bernard answer: We are aware of that and will have to work out those details in the future.

    o Kavous Arasteh: 33% and 25% - what is the guest-estimate for the next few months – 40%? And what is the time frame to complete the work within budget?

    o Xavier Calvez: rough estimate - closer to the 50% to 60% spend - after 6 month period (3 mos past and 3 mos now to come) – next quarter of effectivity we will be over the 50% but more leaner – staff support leaner and looking forward legal spending down due to the writing of the agreements and then the report over the monthly basis – over a 9 mos period.

- o Leon Sanchez: WS2 – have limited time to complete WS2 - to have many calls in different groups, one of the expectations of the F2F is to refocus the groups to make progress –taking theory and making it pragmatic. Onto the next step - the budgets – Karen Mulberry to present dashboard

- **CCWG-Acct. reporting Dashboard – finalization for publication**

  - o Karen Mulberry: (presentation of slides) Looking for approval to publish.
  - o Jorge Cancio: Question regarding active participation.
  - o Karen Mulberry: Participation is averaged as per the request when this was created.
  - o Kavouss Arasteh: How useful to the public is this? How much time are we spending on this vs what we need to do?
  - o Karen Mulberry: It takes some time to prepare as to value this is for the co-chairs.
  - o Thomas Rickert: This is useful in that the community and sponsoring orgs can see how we are doing. We all need to understand how we are doing.
  - o Alan Greenberg: captured at the time of the meeting?
  - o Niels ten Oever: question regarding meaning of a draft? First and second indicators seem to overlap.
  - o Karen Mulberry: explanation of expectations.
  - o Thomas Rickert: 1st time that we have a tool like this dashboard. 1st time that we have a budget to manage. So we needed a tool to monitor progress.
  - o Karen Mulberry: Dashboard presents factual data as of October. Dashboard will be posted to the wiki every month, on the 5th of the month.
  - o Alan Greenberg: How is the participation rate calculated? active participants over signed-up participants
  - o Avri Doria: not happy about the dashboard, doesn't necessarily represent how the work is being done, and biases the way the subgroups will work to improve the numbers
  - o Thomas: Useful for the community to know where we are. Takes transparency to the next level.
  - o Greg Shatan: Following on Alan's point: We really need 3 categories of participant, whatever you may call them. Observer status is too passive for many, since you don't get to attend the meetings or make any remarks. As such, Member status is over-subscribed with those who have no intention of making a significant contribution (and that's fine). We should have a category for such people, e.g., Associate Member. And these people should NOT be in the denominator for participation statistics.
  - o Leon Sanchez: Looking forward to feedback from the full CCWG as to improvements etc. ACTION ITEM: get feedback from CCWG on what needs to be adjusted - discussion to be carried out on the list

- **ATRT2 update presentation**

  - Larissa Gurnick: update. Overall ATRT2 work is winding down and documents on the update are being posted. Some of the tasks from ATRT2 were moved over to the CCWG – funding for the Ombudsman review from the ATRT2 budget.
  - Sebastien Bachollet: Question on overlap between the work between WS2 and the new groups Lars is creating which is the CCWG responsibility? Just want to be certain we are not duplicating the work.
  - Lars Hoffmann: The aim not create a second process.

- **ATRT3 discussion following Board response to our request**

  - Steve DelBianco: Background on letter to the Board on August 8 2016. Essentially the Board has asked the SO/ACs to decide. Would ask that we forward this material to the chartering orgs.
  - Thomas Rickert: although this is not directly our responsibility we will keep in touch with the Board as we move forward on this. ACTION ITEM - SDB will prepare a draft response to Steve Crocker.

- **Ombudsman - on going forward strategy considering the confirmation of funding for the evaluation**

  - Sebastien Bachollet: (presentation of slides)
  - Herb Waye: Invitation to the Ombuds office.
  - Kavouss Arasteh: Have you identified any issues – why all this work?
  - Sebastien Bachollet: this will benefit all the organization and what better time to do it. The Ombuds sub-group will be steering the Ombuds review and will consider if it should do work in parallel.
  - Steve DelBianco: Would our Ombuds have the skills etc to assist for issues within an SO or AC.
  - Sebastien Bachollet: Can they do this yes, its more a question of resources. Coordination of the work between the sub-groups is critical especially given the delays which will be necessary for the evaluation.

Session 2

- **Exchange with ICANN CEO re: new complaints office and interaction with WS2, especially staff acct and Ombudsman**

  - Goran Marby: My view is that staff are not a member of the community. My role is to facilitate the policy development for the community and run the organization. In that context I am the most responsible person in the organization and am looking to make issues more transparent. The Complaints Officer is meant to be complementary to the Ombuds function.

- Sebastien Bachollet: I am very concerned with diversity and am concerned how we use certain words. When I read your blog the use of the word Organization, by using this word which most consider includes everything including staff so this is confusing. Secondly it is your responsibility if you want a Complaints Officer but it seems odd to define this vs the work we are doing without any coordination. Thirdly responsibility of this position to legal seems to be a significant issue.
- Thomas Rickert: Reminder this is about presenting the links to the sub-group work.
- Michael Karanicolas: Presentation of the 3 major areas DIDP, Proactive disclosure and whistleblower. When I hear about a new complaints office I associate this with the issues surrounding DIDP reviews. We need a strong review process and would be curious to see how this position would interact with this.
- Jordan Carter: (staff Acct sub-group) Not looking to interfere with management of staff. We are looking for information. We are curious about your take on the culture of the organization.
- Avri Doria: Staff are part of the community when they go home at night. One of the questions regarding community facing staff – how do we interact with those if there are issues – what are the points of accountability. Another issue is we are a group talking about staff acct. but have no staff participating? So we feel we have to ask you to have them to participate safely without repercussions.
- Thomas Rickert: Thanks to rapporteurs. Goran any comments?
- Goran Marby: Good questions. What we need is an implicated and diverse community so we need to include new people. But to do this we need to make the acronym soup of ICANN simpler not to scare new people from coming in. Was organization the right word – maybe not but we do not have anything else for the moment. The community is replacing the oversight of the USG which has very good checks and balances, Inside the organization we are at the point where we have to change things if we are a service organization. 5 new internal groups – 1 ICANN cultural ethics (and it could be good to have CCWG participation in this) – 2 demand driven outreach, we need more people to come onboard – 3 transparency is important – we are good at disclosing things but we seem to fail to explain things which is as important, we need a narrative especially for the Board decisions – 4 We need to train people in these points – 5 - We need to support staff so they can do a good job. (lost audio feed).
- Avri Doria: Any staff member who wants to participate can do so and safely. There are also many points of interaction.
- Goran Marby: No one has asked me and I have not refused.
- Thomas Rickert: So there is no issues with staff participating?
- Goran Marby: none.
- Alan Greenberg: use of the word Organization has been used forever in ICANN to mean all and that is critical. Given the history of mistrust the optics of it reporting to legal is bad.

- Goran Marby: Re legal – I am responsible to you the community regardless where something is reporting internally regardless of the history.
- Robin Gross: Re Complaints Officer – WS1 worked to try and remove some of these things out from legal because of their responsibility to protect the corporation from things like reconsideration requests – there is a conflict there – and as such having this placed in the hands of legal seems to be undoing the work of WS1. You may want to rethink this considering these points.
- Goran Marby: I understand WS1 but do not see the point of how this is relevant. Legal is also responsible to me so this is not an issue.
- Robin Gross: These kind of issues by people who are not legally obligated to protect organization – but the evaluation you will be given about these issues will be from a conflicted POV.
- Goran Marby: Well I am also responsible to protect the organization according to California law as are other officers.
- Fiona Asonga: Definition of the Organization is important. What are we looking at for mechanisms for diversity in ICANN – Staff, Board,….? English is an issue. Need to be clear what is ICANN if we want to make it easier to explain to others.
- Goran Marby: It is confusing because we do many different things. ICANN is all of us. Want to be clear on who has what responsibility but the community has its part. Diversity – I am not a native English speaker and for the first time we are reporting to the Board don diversity – but it has to be demand driven, how can we better support you.
- Kavous Arasteh: I am surprised at the level of mistrust. There is confusion of transparency, accountability. Staff cannot be responsible to both the CEO and to the community.
- Gorn Marby hierarchical orgs. Is for delegation. I want people to have clear mandates to staff can do their work effectively. Next time we do this, we can make this a tradition,.
- Tijani Ben Jemaa: Agree with the definition of organization – need to better use the words. Agree with AD it should be an issue bureau vs complaints. I like this because you are defining things well. Staff is staff and the Complaints Officer is a channel for communications – but why should it be reporting to legal?
- Thomas Rickert: still some audio issues.
- Goran Marby: Trust is something you earn and you have no reason to trust me but I hope that over time you will come to trust me even if I make mistakes. I will promise that I do not make back room deals, everything I do will be transparent – the trust I hope will come over time. I may do things you will not like – but I will keep explaining it.
- Greg Shatan: Staff acct. is the most important thing this group can look at given staff does most of the work for the community. Complaints Officer – their role has often been seen by the community as protecting the organization from the community – so placing this in legal seems to be not optimal.
- Goran Marby: I have to be responsible for how I set up the organization. We as staff have sometimes been involved in solving issues that are not our

responsibilities – staff have to be neutral and the community is responsible for policy decisions.

o Thomas Rickert: Staff to copy and make the chat discussion which has been very active. Will the Complaints officer make decisions?

o Goran Marby: its about aggregation, all complaints will be published but anonymized.

o Thomas Rickert: what I hear is the community may have concerns vs this reporting to legal. There are many points for lodging complaints. When can we expect answers (Theresa Swinehart – ASAP). We should liaise with you or your staff on these issues (Goran Marby says ok).

o **Copy of chat for this portion**

o Jordan Carter: if the complaints officer's only job is to collate and publish complaints, rather than to resolve them or recommend resolution, then I see no problem

o Greg Shatan: There are two levels to this issue -- the generic and the particular (i.e., the historical position and approach of ICANN legal).

o Robin Gross [GNSO NCSG]: Jordan, that is the same that they did on Recon Requests and we said NO

o Izumi Okutani (ASO): I think Steve's distinction makes sense and easy to understand

o Robin Gross [GNSO NCSG]: that initial "recommendation" is entirely based on a conflicted view.

o Greg Shatan: Jordan, if that's the only role, it could be filled by a tape recorder.

o Pam Little: + 1 Greg

o Milton Mueller: Exactly Greg. Jordan's view is quite naive

o Jordan Carter: A tape recorder with hands to type ;)

o Robin Gross [GNSO NCSG]: Meet the new boss, same as the old boss...

o Jordan Carter: Milton: no, it's about role. If there is a narrow role with no recommendation or decision, then there isn't a conflict.

o Chris LaHatte: complaint officer needs teeth

o opentech.ca@gmail.com: +1 @ Greg Shatan

o Farzaneh Badii: fangs!

o Jordan Carter: If they have "teeth" then they need independence.

o Chris LaHatte: yes

o Jordan Carter: If they just collate, they don't.

o Jordan Carter: hardly naive.

o Robin Gross [GNSO NCSG]: Jordan, this has not been described as a "collate" position. Not sure your insistence that it is based on anything other than wishes.

o Jordan Carter: it was just based on how he described it here

o Farzaneh Badii: It is unrealistic to think you can change the industry and policy language and simplify it. It will be waste of resource.

- Robin Gross [GNSO NCSG]: an initial recommendation is not a collation. it is an evaluation of the merits.
- Jordan Carter: Robin: ah, missed that bit.
- opentech.ca@gmail.com: How can CEO follow/respond to community when he does not take the time to actually talk to the community? ("community" is NOT SO & AC chairs)
- opentech.ca@gmail.com: please make sure the CEO gets this entire chat room transcript
- Robin Gross [GNSO NCSG]: that evaluation does not belong in conflicted hands, especially since WS1 said get those evaluations out of conflicted hands.
- Anne Aikman-Scalese (IPC): Speaking frankly, this discussion demonstrates the fundamental flaw in the Sole Designator model. This model is still very Top-Down in the actual functioning of the corporation. The EC can only go straight to the Board and ask them to direct the CEO's actions and then if they do not, threaten to remove directors. However no SO or AC will be willing to be so extreme in relation to this type of decision, no matter how much it contradicts all the discussions that have gone before in the Accountability CCWG. Or perhaps EC can object to budget which includes position being based within ICANN Legal? (Again, I doubt anyone will take this issue to that extreme, but perhaps so.)
- Pam Little: @opentech.ca@gmail.com - that's the fallacy of ICANN outreach program/effort.
- Pam Little: They assume the community = those who attend ICANN meetings.
- Jordan Carter: Right: Robin - found the lingo from the blog post: "The ICANN Complaints Officer will receive, investigate and respond to complaints about the ICANN organization's effectiveness, and will be responsible for all complaints systems and mechanisms across the ICANN organization. We will be appointing someone to this role, reporting directly to John. This person will work closely with Ombudsman Herb Wayne."
- Steve DelBianco [GNSO CSG]: who is Opentech.ca, please?
- opentech.ca@gmail.com: could you please tell the moderator to place a time limit on statements? clock is running out and sooo many questions have not been addressed
- Farzaneh Badii: thanks for asking that Steve
- Milton Mueller: this is just wrong, Kavouss. Staff is accountable to the community, albeit indirectly
- Robin Gross [GNSO NCSG]: if the staff is not accountable to the community, what are we doing here at all?
- Jordan Carter: Your contention Robin / Milton has been in that response and investigation role, there's an inherent conflict given the duty of that staff member to act in the corp's interests, right?
- David McAuley 2: It remains true that the bylaws have been changed and that in WS2 we are working out additional understandings of those bylaws. The RR and IRP have been addressed in bylaws and the complaints officer can't change that.

- Jorge Cancio (GAC Switzerland): Tijani makes very good points
- Farzaneh Badii: oh that is a good idea
- Jordan Carter: Wehn you read the whole para about the Complaints officer as I pasted, it does make clear the concern Robin raised to me anyhow
- -Jordan Carter: Agree with Greg
- Anne Aikman-Scalese (IPC): Greg is right.
- Chris LaHatte 2: independence is critical
- Robin Gross [GNSO NCSG]: Quite concerning that the new CEO dismisses this concern out of hand. Not a good sign for the future and trust building.
- Jordan Carter: Let's put it on the agenda for the staff accountability group
- Cheryl Langdon-Orr (CLO) ALAC-AP Member: well said Greg
- Anne Aikman-Scalese (IPC): lost sound again
- Robin Gross [GNSO NCSG]: "my organization" said several times in the last 10 minutes. yikes.
- Pam Little: History is important.
- Farzaneh Badii: we have to wait for a year for a mistake to be corrected?
- Aarti Bhavana: Just how much freedom does the CEO have to take these kinds of decisions unilaterally?
- Anne Aikman-Scalese (IPC): @Aarti - Quite a bit actually but of course he reports to the Board.
- Greg Shatan: Maybe I should apply for the position of Complaints Officer...
- Greg Shatan: :-)
- Robin Gross [GNSO NCSG]: :-)
- Farzaneh Badii: what are simple things? how do we define that
- Mathieu Weill, ccNSO, co-chair: I should apply for the position of Complaints Submissioner ;-)
- Mathieu Weill, ccNSO, co-chair: Looks easier
- Kavouss Arasteh: Complains office should be managed without having any sort of retaliation from the hierarchy with respect the staff who complains
- Anne Aikman-Scalese (IPC): Good question Thomas. This is in fact a structural issue and not one of whether complaint process is transparent.
- Kavouss Arasteh: Complains should be deth with internally and not to public as may create unmanageable consequences if the complains are not justified or valid
- Jordan Carter: A question for clarity about is: what impact does the imperative on legal to "Defend the Fortress/Faith" have on how people might have complaints dealt with, or their willingness to complain
- Kavouss Arasteh: Thomas pls ensure that my last comment in the chat is well taken into account
- Robin Gross [GNSO NCSG]: We are not finished with this issue of legal dept. as complaints officer.
- Jordan Carter: not at all
- Cheryl Langdon-Orr (CLO) ALAC-AP Member: indeed needs continuation

- o Mathieu Weill, ccNSO, co-chair: Absolutely Robin, staff acct subgroup will follow up
- o Farzaneh Badii: so we are not using acronyms anymore? hmm that's a shame. Took me 3 years to learn them. Are we going to learn another language?
- o Kavouss Arasteh: could CEO ensure that any complain should not give rise to any retaliation

- **SO/AC Accountability : draft questions to SOs and ACs - 2nd reading**

  - o Cheryl Langdon-Orr: (presentation of report)
  - o Steve DelBianco: (Review of Questions document) Looking for approval by plenary to send these questions to the SO/ACs.
  - o Cheryl Langdon-Orr: Correct – we are open to fine-tuning, but only fine tuning. Time is critical to submit these questions now for this ICANN meeting.
  - o David McAuley: How long will SO/ACs have to answer?
  - o Cheryl Langdon-Orr: Hoping for 30 days after the Hyderabad meeting.
  - o Kavouss Arasteh: I think some of the questions may be difficult to answer in the time requested – specifically the first one – are we expecting the SO/AC to give a legal opinion? We should not require SO/ACs to make any interpretation of the Bylaws.
  - o Fiona Asonga: good questions and like the first question.
  - o Jan Scholte: One dimension that seems to be missing is the review-evaluation dimension?
  - o Alan Greenberg: If the questions do not properly apply we are simply asking for a best effort response.
  - o Steve DelBianco: Re JS yes this is meant to be covered but not for reviews as this is for the ATRT reviews.
  - o Cheryl Langdon-Orr: take on JS point. Re KA we were very careful not looking for reconsideration – simply for reference. If it is not clear please make comments in chat so we can consider this. Re AG this could go to a covering note or pre-amble.
  - o Izumi Okutani: Support way forward. Support FA comment that reviews come from the community. Support AG comment all SOACs different.
  - o Jan Scholte: Alter wording to ask people to provide more information – further information.
  - o Thomas Rickert: Second reading successful and the questions can be distributed. We can break for lunch now.
  - o Sebastien Bachollet: Can we have some time this PM to review the discussion with the CEO.
  - o Thomas Rickert: Good idea, we should have some areas where we have some time to do so.

Session 3

- **Update on the progress of the Jurisdiction subgroup**

  - Greg Shatan: (presentation of the status update), (presentation of the Multiple Layers of Jurisdiction document).
  - Parminder Jeet Singh: Want clarification of the scope of this group – only about contracting or US public law. Uncertain about the scope.
  - Greg Shatan: Disputes is not only limited to contractual disputes. Need to look at issues and then we can consider remedies.
  - Kavouss Arasteh: Many of us have divergent views – we would like the assurance that we will not end up with the status quo.
  - Greg Shatan: We should all be thinking how to reconcile views. I have no pre-conceptions so I cannot say there will change or not.
  - Jorge Cancio: It would be interesting to hear the views from registries, registrars and others on their views regarding current jurisdiction – or we risk being just an academic exercise.
  - Greg Shatan: Good point. We may want to consider putting out a survey? Another point could be to hear from ICANN legal. Agree we need more real world facts.
  - Leon Sanchez: great suggestion. Taking away that the group should continue identifying issues first and then look at remedies.

- **WS1 Implementation - IRP supplementary rules – 2nd reading**

  - Becky Burr: (presentation of slides) Looking for approval for public consultation.
  - Jorge Cancio: Take into account the language to be used in the proceedings.
  - Becky Burr: Bylaws state proceedings to be in English but with translation where needed.
  - Thomas Rickert: Second reading, any issues.
  - Alan Greenberg: Will BB stay on now that she is on the Board.
  - Kavouss Arasteh: I have made an editorial comment. Need for the CCWG to thank BB for all her hard work.
  - Steve DelBianco: Is the CCWG-Accountability's consensus? Will the IOT stay active.
  - Becky Burr: Correct and the IOT will continue. Technically there is no requirement for public comments but this is good practice.
  - Thomas Rickert: Second reading concluded. BB and the IOT team have done a great job. Since she is joining the Board she cannot continue to lead the group. As such David McAuley has agreed to take on the leadership of the IOT.

- **Guidelines for Good faith**

  - Lori Schulman: (presentation of slides – remote with very bad audio).

- o Izumi Okutani: Who verifies the facts? Did I hear something about the ICANN legal team?
- o Lori Schulman: Up to the community to decide. For ICANN legal to review this might place them in a conflict of interest.
- o Julie Hammer: Re second para – add another step – ensure potential candidates to the Board be made aware of the expectations.
- o Alan Greenberg: Fact based is fine as long as it can be "we think you need to be replaced" – need not be objective, can be subjective. WS1 worked hard to avoid having limitations for SOACs to remove.
- o Lori Schulman: Tricky drafting problem.
- o Milton Mueller: this seems to have gone off track a bit. We have all agreed in WS1 there is no requirement to remove someone. The limitation is in getting the support to remove a Director. Lets make it clear that Board members are serving at the behest of the community.
- o Robin Gross: this seems to be going off the rails. This is more about the indemnity issue.
- o Alan Greenberg: when are SOACs indemnified is what this is about.
- o Thomas Rickert: given this we will recommend that dev. continue. Thanks to Lori. Since we have some time left let us start with Transparency.

- **Transparency subgroup proposals – 2nd reading**

  - o Michael Karanicolas: (presentation of report).
  - o Robin Gross: Where are we on Board deliberations?
  - o Michael Karanicolas: Still under discussion. Could have a mandated release after X years.
  - o Robin Gross: WS1 discussion was to make the Board use the same rules as the Gnso council. Has this be considered?
  - o Michael Karanicolas: Good suggestions in what is an evolving document.
  - o Parminder Jeet Singh : Have you considered USG standards as a default? I take ICANN not to be a corporation but rather a public interest which should operate as per govt rules.
  - o Michael Karanicolas: We have looked at a number of models and it is good to follow govts for some things but not for others. Good point on open contracting – govts do this everyday. We should be looking at a govt type system for ICANN.
  - o Ed Morris: Defined conditions of non-disclosure – suggest having Ombudsman check on this. Requiring Board members to declare speaking fees.
  - o Sebastien Bachollet: Anything we ask of Board members we should ask of ourselves and if the answer is yes we should do this.
  - o Michael Karanicolas: I do not think we are expanding our mandate beyond our remit. Suggestion on speaking fees and other things need to discussed more.
  - o Finn Petersen (chat): Why is the proposed additional disclosures limited to interaction with Governments. Would it not provide "a clearer picture of how,

when and to what extent ICANN engages" if the proposal is extended to interaction with all external parties?

- o Chris Wilson: We are open to thinking about this but we are starting with the mandate.
- o Thomas Rickert: What do you think is needed for a next step.
- o Michael Karanicolas: This is not yet ready for publication. We need to incorporate the input from today and re-circulate to our group before going ahead.
- o Thomas Rickert: Let us send this to the plenary and you can include these comments in your next draft. We should also reach out to Goran and ICANN legal for some of their input.
- o Michael Karanicolas: not certain ICANN legal comments would not be premature.
- o Parminder: Given the nature of ICANN wrt contracts I do not see why govt standards would not be applicable.
- o Thomas Rickert: will give the plenary some time to give comments and we will discuss later today the possible follow on with ICANN legal and Goran. Again congratulations to this team for the great work. Coffee break now.

Session 4

- • **Requests for external support / advice : Ombudsman (External review), Human right, Legal Committee**

  - o Leon Sanchez: Reminder that we have limited resources for this phase of the project. The legal group will review all requests for legal advice, if valid and well formulated will ask ICANN legal for input – if this input is satisfactory to the requesting group it can be completed. If not then we can consider going externally.
  - o Robin Gross: have to evaluate on a case by case given there may be a conflict of interest issues – but if there is no conflict then yes this could be fine.
  - o Ed Morris: support for RG position.
  - o Thomas Rickert: just want to ensure we are not spending money for something that has already been answered for ICANN.
  - o Fiona Asonga: Legal Comm. Should meet.
  - o Kavous Arasteh: External legal requests should be limited to a minimum.
  - o Parminder Jeet Singh: External views are good and the conflict issues are important.
  - o Leon Sanchez: The legal committee should have a meeting soon.
  - o Greg Shatan: If ICANN legal advice is free we should take it. The legal committee should decide if it is satisfactory.

- o Leon Sanchez: We are not trying to change the rules – simply adding a layer to avoid extra costs if possible. Remind everyone to send their requests to the legal committee.
- o Robin Gross: The legal committee will make the decisions on the requests?
- o Leon Sanchez: correct.
- o Thomas Request: We are almost done with the formal agenda. As such are there any AOB items (none). Mathieu Weill working on a draft communique. Until them let us talk abut the Goran follow-up in two areas – gather up concerns and then look at the sub-groups for clarification.

- o **Follow-up on interaction with Goran Marby**

- o Tijani Ben Jemaa: Appreciate the initiative but do not put it in legal – call it something else than complaints.
- o Sebastien Bachollet: Organization word is not acceptable in the context presented. Suggest call staff the Team? We need to have discussions but we need to be heard.
- o Alan Greenberg: Support TBJ. Organization is a generic term and using Organization for staff will confuse people. Lets not do things which cause confusion and descent.
- o Fiona Asonga: In the Bylaws we refer to organization as all of ICANN except in two places – therefore the organization is everyone. We need to have a dialogue and we have not had it.
- o Kavous Arasteh: Agree with TBJ not use Complaint rather Feedback.
- o Jordan Carter: what was presented by Goran today is different than what was in his blog. Don't care if there is one or not – optics would seem that if it were somewhere else than legal would be better.
- o Steve DelBianco: Naming should be left alone as there is some logic to it. We should focus on substantial issues.
- o Tijani Ben Jemaa: good initiative but needs to be improved. Do not really agree everything be made public – it could make things worse.
- o Milton Mueller: main concern is that he seems insular as he did not understand the problem of putting this in ICANN legal. RG has made it clear to him yet had no impact.
- o Thomas Rickert: We could not expect him to back pedal in this meeting. But I believe if we explain our views properly he would understand.
- o Sivasubramanian Muthusamy: We have limited information on what the complaints officer will actually do – this new functionality should be the result of considering a comprehensive view of the things in place and being developed.
- o Greg Shatan: Putting this in legal has created issues. The thought behind the complaints office could have been a great idea but in fact it could just be a worse version of the Ombudsman. This needs to be better defined and better thought out.

- o Ed Morris: Agree with much what has been said. This seems to be an attempt by ICANN legal to capture the ICANN Ombudsman – there needs to be clear separation.
- o Thomas Rickert: Goran suggestion of Bubbles sounds like something we do not want?
- o Tijani Ben Jemaa: The Complaints office would not make decisions.
- o Michael Karanicolas: New to ICANN but not to these processes – universally there is pushback. My experience is that we get a solid consensus before presenting it. This being said I am open. But we can ask general questions.
- o Thomas Rickert: Reminder of how we started this process of doing an inventory. Maybe we could ask legal about their operations – and as such I would think that working with ICANN early.
- o Kavous Arasteh: Support this.
- o Ed Morris: Agree with this also. Sam Eisner has been a big plus to CEP sub-group.
- o Thomas Rickert: MK could you please send your list of issues to the plenary.
- o Michael Karanicolas: Will do in a week.
- o Jordan Carter: We have a list of questions – Theresa Swinehart has agreed to provide answers by early December.
- o Thomas Rickert: In our communication with Goran we note with great interest wrt the 5 teams being created and would like to know more to see if we participate.

- o **Follow up discussion on Transparency**

- o Michael Karanicolas: we got such great input earlier wanted to get a bit more.
- o Steve DelBianco: Contracts was initiated for lobbying contracts – extending this to all contracts we could cause more issues unless we need to do so. ICANN is not a government – but compare to relevant not for profits such as the IETF etc.
- o Parminder Jeet Singh: Do not understand why ICANN should not be like governments for such things – I have not heard why ICANN would not – ICANN is more like an NGO who follow govt regulations. We should meet those standards and potentially more.
- o Michael Karanicolas: There are a lot of advantages to transparency.
- o Chris Wilson: ICANN discloses all contracts of 1M$ or more – maybe what we are talking about is lowering the amount.
- o Christopher Wilkinson: (audio issues) not proposing open contracting – above a certain amount yes but that is it.
- o David McAuley: Should not SSAC and RSSAC approve changes?
- o Michael Karanicolas: any information that would be HARMFUL would not be released vs a complete ban on such information.
- o Greg Shatan: I would caution this group vs mission creep – as we should all be. Secondly I would caution to think ICANN is a quasi govt institution is very dangerous.

- o Michael Karanicolas: DIDP is about releasing information so contracts are part of that.
- o Denise Michele: Contractors should be disclosed – the standards we are aiming for should be in line with what the transparency objectives. Understand there are restrictions for security as well as amounts. There will be exceptions.
- o Jan Scholte: harmful determined by whom for what – if you do not get specific you can get into landmines.
- o Michael Karanicolas: Harm would be enumerated and as to who would make the determination that has to be discussed.
- o Kavouss Arasteh: What harm, potential harm? What is the criteria for determining harm?
- o Michael Karanicolas: Yes we are talking about potential harm since the information is not yet released. As to what are the cirteria we get back to the enumerated list (DIDP already has such a list).
- o Julie Hammer: Assessing security and stability time is a key factor.
- o Michael Karanicolas: yes very important and common to schedule release later. Govt rules would not apply to ICANN – however best models are usually from govts and these should inspire us.
- o Parminder Jeet Singh: This is a public interest body vs a private interest body – and as such it should follow those rules. Do not agree with limitations on the mandate (narrow vs wider) given this is a quasi-constitutional moment for ICANN.
- o Leon Sanchez: Would like to thank MK and CW for their work and look forward to the revised document in about a week. Time to review the communique. Action Item – Transparency sub-group to publish an updated version of their report for Plenary review within 1 week.

AOB

- (none)

Conclusion and key messages for co-chairs' publication

- o Thomas Rickert: This is a strawman that will be refined.
- o Jan Scholte: wording – we did not adopt WS1 recommendations today and we discussed Jurisdiction.
- o Thomas Rickert: Hillary Jet will take this in account and MW will take care of the second.
- o Milton Mueller: Constructive should only be used only once and then be more specific.
- o Tijani Ben Jemaa: Do not see why we have to mention Jurisdiction since we did not take any decisions.
- o Kavouss Arasteh: put Complaints Officer in inverted commas since this is not the best term.
- o Greg Shatan: Agree with TBJ.

- o   Julie Hammer: Advised Lyman has had an accident and we wish him well.
- o   Thomas Rickert: thanks to all including remote participants.

End of meeting

Action Items:

- Dashboard – NV to review per comments.

- ATRT3 – SDB to draft a response to Chairman Croker.

- SO/AC Accountability – will publish a final version of the questions for distribution to SO/ACs

- IRP-IOT – Staff will work with BB to publish for public consultation.

- Transparency – Will publish an updated version within one week.

- Legal Committee – LS will arrange for a meeting of the committee.

- Conclusion and key messages – Co-chairs will work with staff to publish this as approved.