

03.7.2017

Guidelines, G.Faith- Public Comment

From
SAM LANFRANCO

Re
**Stand Alone
Recommendations
comment on
Enhancing
Accountability
Guidelines G. Faith**

Comments:

I offer the following comments on the Stand Alone Recommendations (page 4)

For the process to be fair and manageable as good faith conduct it is essential that "A standard framework be developed" and that "that the guidelines as...apply to all discussions even if not covered by...Article 20". A standard framework is essential for a fair and manageable process, and minimizes complications that could arise on procedural grounds.

Also the "scope of application" should be as wide as possible in order to avoid different standards for addressing different issues within ICANN. This would minimize complications and delays resulting in struggles over appropriate frameworks in particular cases.

I would be tempted to see these as among first principles with regard to the task at hand.

03.8.2017

Guidelines, G.Faith- Public Comment

From

**R.R. KRISHNAA
Legal Officer and
Public Grievance
Officer
National Internet
Exchange of India
(.IN Registry)**

Re

**Comment on
Enhancing
Accountability
Guidelines G. Faith**

Comments:

Petitions for removal: a. may be for any reason: The phrase “may be for any reason” is too wide and has to be interpreted to include reasons like the director has involved in actions of moral turpitude, acted against the interests and goals of ICANN; has committed grave offence of severe magnitude which in the reasonable opinion of the ICANN or SO/AC has reasons to believe that the said director is not eligible to continue as a director.

Explanation: For the above causes, acts or incidents or issues done by the director in any personal capacity or in any other official capacity (not relating to ICANN or its bodies); done in good faith and unintentional; or acts which are irrelevant or trivial issues cannot be reasons for removal of directorship.

Whilst the guidelines speak about “**good faith**”, the guidelines must also speak about “**bad faith**”. Guidelines must contain clauses on the action to be taken against the indemnified party is found to have filed the petition on false grounds or false evidence or for settling personal issues or found to have any other bad faith or malafide intent in filing the petition. The bad faith or malafide intent can be presumed or proved/established either by the director (during the pendency of the issue or post removal of directorship). The proof of bad faith or malafide intent of the indemnified party may be brought to the notice of the concerned SO/AC or other SO/ACs by the director or any other individual. Such evidences also have to be duly verified by the SO/AC in equal vigor as the evidences filed for removal of directorship were verified.

In other words the said guidelines must strike a balance between actions of good faith and bad faith. **Guidelines must also stipulate whether indemnity afforded to the indemnified party should be allowed to continue if bad faith or mala fide intent is discovered on the part of the indemnified party.**

Refer to Page 4: Para (d): Rationale for Recommendations: The recommendations in this paragraph stipulate that different guidelines / different internal standards can be framed for each SO/ACs. Though the reasoning provided in the said Para supports such recommendation in a good perspective taking into account the non interference in decision making process of the individual SO/ACs, it must be noted that such differences should not become a legal impediment or hurdle in future that a defense is raised or set back caused for the process of removal that different standards and guidelines are in place for SO/ACs. Also as a matter of abundant caution, uniform guidelines may be put in place which is approved by consensus of all SO/ACs. This may certainly be time consuming process but uniform guidelines are the key for such crucial/critical process of removal of directors to avoid any legal objections later.

03.30.2017

Guidelines, G.Faith- Public Comment

From

**MARIANNE
GEORGELIN
@AFNIC**

Re

**AFNIC comment on
Enhancing
Accountability
Guidelines G. Faith**

Comments:

Afnic is the registry operator for top-level domains corresponding to the national territory of France (.fr, .re, .pm, .yt, .wf, .tf) and the backend registry operator for 15 new generic Top Level Domains. Afnic is a member of CCNSO, Centr, and APTLD.

Afnic welcomes the recommendations on Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors of the ICANN Board (Guidelines for Good Faith or GGF). These recommendations provide the required clarification on what constitutes Good Faith within the new Community power framework.

The group should be commended for achieving this through simple, clear and effective recommendations.

Afnic's support includes support for the stand-alone recommendations. Extending the purpose of these guidelines to any discussion regarding the exercise of Community powers appears not only sensible, but also necessary.

Finally, we would like to make two extra suggestions, directed to other aspects of the CCWG-Accountability Work Stream 2. First, the enhancement of SO/AC accountability may also benefit from considering how this type of Good Faith guidelines may be included in a set of SO/AC best practices. Second, we believe similar Guidelines may also be considered by the Staff accountability working group, if issues of Good Faith were raised as part of its issue identification effort.

04.24.2017

Guidelines, G.Faith- Public Comment

From
Steve DelBianco

Re
Business
Constituency (BC)
Comments on
Enhancing
Accountability
Guidelines G. Faith

Comments:

The ICANN Business Constituency (BC) appreciates the work of the CCWG-Accountability on its Work Stream 2 recommendations.

The BC endorses the draft recommendations on Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors of the ICANN Board.

This comment was approved in accord with the BC charter.

—

Steve DelBianco
Vice chair for policy coordination
ICANN Business Constituency

04.24.2017

Guidelines, G.Faith- Public Comment

From
Jason Schiller

Re
Comments on
Enhancing
Accountability
Guidelines G. Faith

Comments:

Disclaimer:

Speaking as an individual in the Internet Numbers Community (with a general perspective on concerns of the Internet Numbers Community but NOT on behalf of the Internet Numbers Community).

Speaking as an individual who is a community elected ASO AC representative (having a general perspective of these issues discussed within the ASO AC, but NOT on behalf of the ASO AC and NOT on behalf of the ASO).

/End Disclaimer

In general, I am comfortable with the spirit of the document.
"As long as the Indemnified Party participant is truthful, acting for the benefit of the community and following established, transparent procedures, the good faith standard should be met." (P.3)

And that the petition for removal must be made in good faith that any claims included are true and any substantiating proof (which is also believed to be true in good faith) be included in the claim in writing. (p.3 III.a.1)

While removal of director(s) can be without cause, I would prefer the document more clearly indicate that the rational is intended to be useful to prevent malicious and/or capricious removal of director(s).

While this is sufficiently and clearly supported by "Recommendation 4 of the final report of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) includes a process by which the Empowered Community or the nominating SO or AC can remove a voting director of the ICANN Board. It further stipulates that if those parties who undertake to remove a director using this process are sued by that director, that ICANN will indemnify those parties subject to a set of conditions which include acting in good faith.", it was not immediately apparent to me. This is not specifically a concern, as it is sufficiently and adequately addressed, just not clearly apparent to me.

My concerns generally are around specific phrases that have been used and likely connotations that may be problematic, and potentially complicated for the ASO. This can be generally summed up as 1. "representing the communities", 2. "membership of the SO", what a 3. "community process" connotates, a 4. "recommended standard framework", and 5. the requirement that the process be initiated by the So chair.

In the Executive Summary there is the following text:

"The result is that individuals who are representing their communities in a Director removal process are shielded from the costs of responding to Director initiated actions during or after the escalation and enforcement process for Director removal."

1. "individuals who are representing their communities"

"individuals who are representing their communities" (p.2) is contrary to the norms of RIR process. In the RIR system it is understood that people have affiliations. This may be one or more current or past corporate associations, as well as a community elected position. These affiliations are often noted, and inform the perspective of an individual, and occasionally recognize expertise, but individuals speak as individuals.

Likewise, when an ASO AC member speaks, they are usually speaking as an individual of the numbers community, with their view on general participation of the numbers community, with the support of the numbers community, and in the interest of all of the regional numbers communities.

An ASO AC member can only speak on behalf of the numbers community when that proposed position has been expressly shared with the numbers community and input, responses, and concerns have been gathered. In this case the ASO AC member may speak on behalf of one or all the regional communities in summarizing the position posed, the process used, the general position of the community in relation to the

proposed position,
and noting any outlying positions.

An ASO AC member may only speak on behalf of the ASO AC or NRO NC with permission of the ASO AC chair (or NRO NC chair in the case of the NRO NC if such a chair is established).

An ASO AC member may otherwise summarize their perspective, as a participant of the ASO AC or NRO NC, on views that have been expressed within the ASO AC or NRO NC, or may provide information relating to published procedures, published positions, or their individual understanding of the informal workings of the ASO AC.

The NRO shall fulfill the roll of the ASO per the ASO MoU. Per the NRO MoU, the NRO EC shall be the sole body empowered to represent the NRO (and by extension, the ASO).

ASO AC members can not speak on behalf of the ASO. ASO AC members may provide information on published positions of the ASO, NRO, or NRO EC.

2. III.a.2. Review by the entire membership of the SO/AC

There are two issues here.

The first is that it seems there is a recommendation that SOs have a procedure for each of the types of Board removal.

During our periodic SO review, it became clear that the recent changes in ICANN to deal with accountability and oversight of IANA in a post NTIA world, that there are many new requirements placed on the ASO that are outside of the ASO MoU which has narrowly defined the tasks of the ASO AC.

At the current time it is unclear if participation in all of these activities are germane to the numbers community and/or numbers policy, and if the ASO's participation is beneficial to the numbers community, and if it is even appropriate

for the ASO to participate in some of these activities (noting that some of the numbers community member organizations also have separate and direct participation in other ICANN SO/ACs).

Section III.a.2. seems to suggest that the ASO AC must have a process for each of the board removal types. At the current time, it is unclear which of those removal processes it is appropriate for the ASO to participate in, and of those which would fall to the ASO AC. This work is currently underway, and should be sorted soon, but not likely prior to the close of the comment period.

In the event that it is determined that the ASO should not participate in one or more of the board removal processes, would it be acceptable to lack a procedure for such, or have a procedure that states that the ASO or ASO AC will not participate?

The second is the recommendation that the SO/AC's process for board removal include the entire membership of the SO/AC (p.3, III.a.2.b)

" 2. SO/AC's shall have procedures for consideration of board removal notices to include:
[snip]
b. period of review by the entire membership of the SO/AC"

The current ASO AC procedure for the appointment and removal of ICANN seats 9 & 10 is through a clearly established process that only involves (if eligible) the 15 members of the NRO NC (10 who are elected by their individual regional numbers community, and 5 who are appointed by their regional RIR boards) who serve the role of the ASO AC.

This neither includes the 5 members of the NRO EC who are not elected by the community, nor the NRO secretariat, all of which make up the NRO which serves as the ASO.

Furthermore policy development and the numbers community activities happen at the individual RIR meetings and mailing lists. Unlike normal SOs, ASO is

not
made up of the numbers community. As such it is not entirely clear that
the
phrase "entire membership of the SO/AC" captures the desired population, or
makes sense in the case of the ASO.

Same with respect to "The [good faith] guidelines developed by the
community..."
(p. 5, 2.d.2.e)

3. Similar concerns apply to page 4 (III.a.2.d) where it states a
recommendation for
documentation of a "community process" for how the decision to remove the
ICANN director was reached.

4. Similar concerns apply to the recommended "standard framework" (p.4,
III.b.1.).
Application of such a framework may not make sense in the case of the ASO AC
if the framework does consider that accountability, transparency, and
community
involvement are all handled in the RIR system. Furthermore some of these
tasks
may be delegated to the ASO AC, and some may remain with the NRO EC. In
these cases it may not make sense to refer to the ASO as a single unit.

For example the current ASO MoU clearly places the appointment of seats 9 &
10
as a responsibility of the ASO AC. Prior to recent bylaws changes, it was
anticipated that removal of those seats may also fall to the appointing
party. As such
the ASO AC also has a removal process. Both are predicated on a vote of
the
ASO AC 10 community selected members, and 5 RIR board selected members.

5. The new ICANN Bylaw changes require the SO chair to initiate the
petition process.
This is problematic if you think the appointment and removal of seats 9 &
10 should
rest solely with the 15 ASO AC members. The ASO has no chair. The NRO
serves
as the ASO per the ASO MoU. The NRO EC represents the NRO per the NRO MoU.
By extension, the NRO EC chair would be the only party to be qualified to
serve as
the ASO chair. As such all 5 RIR CEOs would need to agree to support the
decision

of the ASO AC to remove ICANN Board seat 9/10 in order for the NRO EC chair to initiate the petition process. It is likely that some or all of the RIR CEOs would also look to their boards for approval.

Lastly section IV.b.i.2 states "In the case of an individual SO/AC, the guidelines will assist the voting process that requires a majority in order for the escalation to move to the Community Forum phase."

The current ASO AC removal procedure has a very high bar, requiring unanimous support of the 15 ASO AC with less than half of the eligible voters abstaining. We noted that this is a much higher bar then specified in the ICANN Bylaws for initiating a petition, or removing a director.

The ASO AC has not had formal discussions about modifying their operation procedures as we are awaiting the resolution of the question of which SO tasks that are outside of those clearly defined in the ASO MoU are appropriate for the ASO's participation, and furthermore, of those tasks which would fall in part or whole to the ASO AC.

There has been a preliminary discussion where it was suggested that the ASO AC would prefer not to have a lower bar for starting the petition process specifically for seats 9 & 10 than for the final decision for removal, in that it makes no sense to initiate the petition process for seats 9 & 10 if there is not the support for removal. It has even been suggested that our current procedure to remove seats 9 & 10 be considered as the requirement to initiate the petition process, and the final vote for removal default to "Yes, remove the seat 9/10 director(s)" unless there is unanimous support to keep the director with less than half the ASO AC abstaining.

We also noted requiring action from the ASO chair, will require action from the NRO EC

chair which will require agreement among the 5 RIR CEOs, and perhaps the support of some or all of their individual board of directors.

Again, there is no position of the ASO AC on this matter, as changes to our operating rules have not been considered until the larger question of which SO tasks outside of those clearly described in the ASO MoU are appropriate for the ASO, and of those tasks which will fall in part or whole to the ASO AC.

Unrelated is an editorial question:
There is a section III.2.d.b. There is no section III.2.d.a.
Is section III.2.d.b intended to be III.2.d.1 or additional III.2 text following the sub-sections of III.2. (a-d)?

__Jason
