Transparency Meeting #5 (21 October @ 19:00 UTC)
Attendees:
Sub-group Members: Alan Greenberg, Avri Doria, Barbara Wanner, Cheryl Langdon-Orr, Chris Wilson, David McAuley, Jean-Jacques Subrenat, Michael Karanicolas, Philip Corwin, Ricardo Holmquist, Robin Gross, Wale Bakare. (11)

Staff: Bernard Turcotte, Karen Mulberry, Larisa Gurnick, Yvette Guigneaux

Apologies: Ed Morris, Herb Waye, Julf Helsingius

** If your name is missing from attendance or apology, please send note to acct-staff@icann.org **

Transcript

- Word Doc
- PDF

Recording

- The Adobe Connect recording is available here: https://participate.icann.org/p79kkl28kt/
- The audio recording is available here: http://audio.icann.org/accountability/ccwg-accountability-transparency-subgroup-21oct16-en.mp3

Notes

(including relevant parts of chat):

Michael Karanicolas: will go through document section by section and leave some time at the end to review the process. Background - no comments. Next Reforming DIDP - questions comments? (reading comment from Brett Schaefer)

Chris Wilson: From Ed: My congratulations on one of the most thorough and impressive pieces of work I've seen produced by an ICANN working group. I regret I haven't been as active in this group as I had anticipated as a mixture of illness and meeting conflicts (including tonight: Friday evenings European time are just not doable for me) have limited my participation but I did want to share these thoughts with the group: 1. On page 8 there is a factual error. It is stated; 'Currently, appeals against refusals or other non-compliance with the DIDP are handled by the Ombudsman'. That is not true. Appeals against a denial of information from ICANN under the DIDP are properly matters for a reconsideration request or IRP. Here is one such appeal which I wrote and was filed by the Non-commercial Stakeholders Group: https://www.icann.org/resources/pages/13-11-2014-02-13-en Appellate procedures for DIDP refusals are also mentioned on the ICANN website under 'Appeal of Denials' here: https://www.icann.org/resources/pag

Chris Wilson: Actually, he has said more, but too much to put in chat. Perhaps Bernie or Yvette and cut and past his email into the notes section or put up on screen?

David McAuley: what happens when the information is public - finding it can sometimes be challenging. We should have a mechanism whereby people should not ask ICANN to do the work for them but this could be abused - so we need to be careful.

Michael Karanicolas: Probably covered under Vexatious requests. No other comments. Suggest we present BF request to ICANN to see their reaction.

David McAuley (RySG): I love the idea of getting ICANN feedback - good idea

Chris Wilson: Good idea

Jean-Jacques Subrenat: @Chris +1.

Avri Doria: i worry about documents that cannot be found through any search method and an expansive notion and use of vexatious are quest accusations.

David McAuley (RySG): fair point Avri but ICANN would face the same hurdle, no?

Avri Doria: ICANN knows what documents they have, and what they are called &c. we often don't

David McAuley (RySG): what about email archives, e.g., for group like CCWG

Jean-Jacques Subrenat: Michael et al: page 9, para. 3 speaks of "the Ombudsman's mandate": to be accurate, does he have a mandate resulting from a vote, or is it simply his "responsibility"?

Alan Greenberg: mandate can refer to responsibility due to being elected but it also just means a commission to do something.

David McAuley: refused DIDP can go to reconsideration or IRP.

Michael Karanicolas: I will follow up vs EM's first comment. His second point is that we should avoid considering Human Rights as it would conflate with the discussion going on. I disagree with this - this is a fundamental responsibility of ICANN.


Avri Doria: agree with Ed, DIDP should stand on it on as a requirement, and given the difficulty we are having in getting ICANN to accept human rights respect, i would not like to see Transparency undercut but the lack of observance of HR.

Jean-Jacques Subrenat: @Michael +1. We could simply mention the principle in a couple of sentences, and refer to the work in the group dealing with Human Rights.

David McAuley (RySG): good point Avri - I think Avri's distinction makes sense
Jean-Jacques Subrenat: @Avri +1: good distinction, that's what I was suggesting.

Michael Karanicolas: So we should re-frame it for a better argument for good governance (support in chat). On to point 3 - ICANN is not a nation state, IGO or NGO. He is correct but the reason we are trying to ground this in international level is that California law is quite weak in this area.

David McAuley (RySG): I would be reluctant to seek legal advice on the background section of the document

Jean Jacques Subrenat: there is a danger is trying to use references to IGOs etc. Rather us the notion of serving the public interest world wide.

Michael Karanicolas: this is the type of statement that supports making this stronger.

Jean-Jacques Subrenat: @Michael: I'm not suggesting we NOT mention those international law references. Rather, I plead that we ADD the unique status of ICANN and that it serves the global public interest.

Michael Karanicolas: JJS suggestion seems very applicable.

David McAuley (RySG): sounds fair but will depend on the wording.

Jean-Jacques Subrenat: Suggestion: "While fully complying with the US laws which apply to ICANN as a US corporation, the corporation has a wider responsibility towards the global Internet community worldwide. These two sets of requirements are not contradictory, but complimentary".

Alan Greenberg: Our job is to come up with a reasonable level of transparency given its role. We do not have prove it has to do it vs a given law or other etc. So trying to find the rationale is the wrong tact.

David McAuley (RySG): Well put, Alan. We are pursuing what amounts to a self-evident need

Wale Bakare: >>I plead that we ADD the unique status of ICANN and that it serves the global public interest<< I

Michael Karanicolas: grounding it back to existing standards then it looks like we are pulling this out of the air vs pointing how things are done elsewhere as best practices.

Alan Greenberg: Agree with this - but we seem to be pushing this to be the basis for having to do it.

Alan Greenberg: @JJS, yes, but they are not the reason that ICANN "MUST" do it rather than why they should.

Jean-Jacques Subrenat: @Alan: nowadays, in addition to law(s), there are universal standards, norms, requirements. I agree with Michael that we should at least mention the legal references.

Michael Karanicolas: Given my background I may be making these arguments too strongly so understand that. Seems to have consensus here. Back to EM comments on Appeal which he does not support what is proposed. Would be ok with a first review by an internal process.

Jean-Jacques Subrenat: @Michael: review should be part of an escalation process; so internal redress as a first step is appropriate. @Alan: you're right, and I was not suggesting that ICANN "must"...

David McAuley (RySG): IRP could be used if it violated the Bylaws or the Articles of Incorporation.

Michael Karanicolas: who is the decision maker in the IRP?

David McAuley: Panel of 3 arbitrators (details of IRP).

Michael Karanicolas: This sounds good but should include requirement that the panelists should have training or knowledge of transparency issues. As such we have dealt with EM comments on Appeal which he does not support what is proposed. Would be ok with a first review by an internal process.

Jean-Jacques Subrenat: @Michael: review should be part of an escalation process; so internal redress as a first step is appropriate. @Alan: you're right, and I was not suggesting that ICANN "must"...

David McAuley (RySG): IRP could be used if it violated the Bylaws or the Articles of Incorporation.

Michael Karanicolas: This is a big issue. We should have a discussion on this. ICANN should not enter into non-disclosure unless absolutely necessary.

Avri Doria: do we define what is 'absolutely necessary'

Avri Doria: I think any definition has to be alterable by the community without necessarily needing to redraft bylaws.

David McAuley: We could appeal to the EC on this.

Chris Wilson: Do we want to at least consider certain subject matters that the presumption is against non-disclosure?

Alan Greenberg: Common practice in business agreements these days. We have to accept there will have to be some level of confidential.

Michael Karanicolas: not about preventing it but more about limiting it. We will have to discuss this.

David McAuley (RySG): I agree with Alan

Cheryl Langdon-Orr (CLO): Yup

Michael Karanicolas: Pro-Active disclosure - not quite complete yet.

Chris Wilson: BS has asked that we clarify that we are including Education and Engagement type vendors. Xavier Calvez has stated that these type of vendors were only for the Transition. We have to be careful that we are not too narrow in our definition.

David McAuley (RySG): This is another area where it would be good to hear the ICANN perspective along the way.
Jean-Jacques Subrenat: In para 4 we mention IANA Transition - we should be careful that we are talking about the transition of the oversight of the IANA function.

Chris Wilson: Its shorthand, but this can be cleared up in a final document. This is meant to go beyond the US govt and IANA.

Jean-Jacques Subrenat: Chris: we should avoid such shorthand, because this text is aimed at people, not all of whom were on the ICG, CCWG or CWG. I would insist on putting the right words.

Chris Wilson: yes. understood

Michael Karanicolas: want to move over to whistle blower section which is very well written. Should we support the NAVEX recommendations which is the way it is currently written?

Barbara Wanner: Welcome all edits. (Comments on draft)

Avri Doria: I would like to suggest an additional requirement, something like requiring that the program be audited every 3 years by an outfit such a NAVEX

David McAuley (RySG): On hotline access question, I personally think this sounds like a good idea but would like to think about it further. I was able to read this good whistleblower write-up but only quickly and want to read again.

Michael Karanicolas: Avri - I think we have a requirement of that, when it says that there should be subsequent audits but certainly, I think there needs more clarify on when, and I was going to ask

Avri Doria: must have missed it in my quick read. apologies.

Michael Karanicolas: you're suggesting 3 yrs? which seems reasonable to me

Avri Doria: and I am suggesting a continuing periodic audit, not a one time of the changes we make now.

David McAuley (RySG): Nicely done document, Barbara

Avri Doria: I agree that the policy should be on the ICANN web site and visible to all.

Ricardo Holmquist: Contractors and temporaries is fine. All business partners would include all registries and registrars which would be too large. We need to separate the business partners in those who are serviced by ICANN vs the other way around.

Michael Karanicolas: Agree we need more clarity - but what is the issue of making this available to more people? what is the rationale for narrowing?

David McAuley (RySG): good question to take up next call

Ricardo Holmquist: I should say none, but we should divide who goes by the ombudsman, and who is going by the whistleblower

Michael Karanicolas: Way forward we will review and distribute to the CCWG Monday. No objections if labelled draft. with footnote.

David McAuley (RySG): sounds good

Jean-Jacques Subrenat: @Michael: yes for footnote.

Michael Karanicolas: Adjourned.

Documents Presented

CCWG_WS2_Transp Report.pdf


Chat Transcript

Yvette Guigneaux: Welcome to the Transparency Subgroup | Meeting #5_ 21 October 2016 @ 19:00 UTC!

Yvette Guigneaux: This meeting will be recorded. Press *6 to mute and unmute your phone

Jean-Jacques Subrenat: Hello all!

Jean-Jacques Subrenat: Thanks.

Cheryl Langdon-Orr (CLO): HI JJS

Chris Wilson: I am x6514

Jean-Jacques Subrenat: Hello All!

Yvette Guigneaux: Michael & Chris - can you hear me?

BERNARD TURCOTTE: hi all
Michael Karanicolas: Audio is working for me - let me just test mine.

David McAuley (RySG): Hi Yvette, I am 4154

David McAuley (RySG): small Friday group

Yvette Guigneaux: Hi David - good day and thanks for the number

Chris Wilson: dedicated bunch!

Barbara Wanner: Hi Yvette -- I am phone #2026173155. Thanks

Yvette Guigneaux: Hi Barbara - copy that and thank you!

David McAuley (RySG): Sounds good Michael

Chris Wilson: Ed Morris just sent some comments to the list serv.

Yvette Guigneaux: Everyone can scroll the document now if need be- just fyi

David McAuley (RySG): I don’t have feedback on exec summary or background

Chris Wilson: From Ed: My congratulations on one of the most thorough and impressive pieces of work I’ve seen produced by an ICANN working group. I regret I haven’t been as active in this group as I had anticipated as a mixture of illness and meeting conflicts (including tonight: Friday evenings European time are just not doable for me) have limited my participation but I did want to share these thoughts with the group: 1. On page 8 there is a factual error. It is stated: “Currently, appeals against refusals or other non-compliance with the DIDP are handled by the Ombudsman”. That is not true. Appeals against a denial of information from ICANN under the DIDP are properly matters for a reconsideration request or IRP. Here is one such appeal which I wrote and was filed by the Noncommercial Stakeholders Group: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_13-2D2011-2D2014-2D2013-2D2en&d=DQIFaQ&c=FmY1u3PJp6wrcnl3mSVzgkbfSPS6sJms7xoc4l5cM&r=xjNMRR- flJgBx7uqEdEh8b2c299RlymyqWkymcecegCJuwDxFVsW68VkusqKnS_lk&m=8sUj7SzkhTznaaK6TzmKXCZ3W0b7_J4VL_CBe1_g&=30AAMqX3ISea_ylyuwoDwqovtX2UEVF1xR0AHk&= Appellate procedures for DIDP refusals are also mentioned on the ICANN website under ‘Appeal of Denials’ here: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages&d=DQIFaQ&c=FmY1u3PJp6wrcnl3mSVzgkbfSPS6sJms7xoc4l5cM&r=xjNMRR- flJgBx7uqEdEh8b2c299RlymyqWkymcecegCJuwDxFVsW68VkusqKnS_lk&m=8sUj7SzkhTznaaK6TzmKXCZ3W0b7_J4VL_CBe1_g&=J-Dqblp42bPDS3nh8kuIUQ6R79IUXMcM-RVstvhM&=

Chris Wilson: Actually, he has said more, but too much to put in chat. Perhaps Bernie or Yvette and cut and past his email into the notes section or put up on screen?

Wale Bakare: Hi everyone

David McAuley (RySG): I love the idea of getting ICANN feedback

David McAuley (RySG): good idea

Chris Wilson: Good idea

Jean-Jacques Subrenat: @Chris +1.

avri: i worry about documents that cannot be found through any search method and an expansive notion and use of vexatious request accussations.

David McAuley (RySG): fair point Avri but ICANN would face the same hurdle, no?

avri: ICANN knows what documents they have, and what they are called &c. we often don’t

David McAuley (RySG): what about email archives, e.g., for group like ccwg

Alan Greenberg: Sorry to be late.

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Ricardo Holmquist: sorry for being late

Jean-Jacques Subrenat: Michael et al: page 9, para. 3 speaks of “the Ombudsman’s mandate”: to be accurate, does he have a mandate resulting from a vote, or is it simply his “responsibility”?

Yvette Guigneaux: Working on it now

Alan Greenberg: mandate can refer to responsibility due to being elected but it also just means a commission to do something.

Chris Wilson: Thanks, Yvette!

Jean-Jacques Subrenat: @Alan: that’s right, but in a loose sense.

Yvette Guigneaux: You’re welcome Chris

Yvette Guigneaux: Scrolling of the email available now - just fyi

Jean-Jacques Subrenat: @Alan and Michael: elsewhere, there is a mention of the Ombudsman’s “remit”, which is more accurate than mandate or even responsibility.
Yvette Guigneaux: There was a second email from Ed with a correction - please note: My apologies: I just noticed a typo in paragraph 11 of my recent post to this group. "With" should have been "within". It makes a difference. I certainly do not believe the information requestor should have a give a reason for a DIDP request. Sincere apologies for the error. per Ed

Avri Doria: agree with Ed, DIDP should stand on it on as a requirement, and given the difficulty we are having in getting ICAnn to accept human rights respect, i would not like to see Transparency undercut but the lack of observance of HR.

Jean-Jacques Subrenat: @Michael +1. We could simply mention the principle in a couple of sentences, and refer to the work in the group dealing with Human Rights.

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Jean-Jacques Subrenat: @Avri +1: good distinction, that's what I was suggesting.

Wale Bakare: @Avri + 1

Yvette Guigneaux: 202 and 703#'s if you can see the chat, please kindly identify for the record?

David McAuley (RySG): I would be reluctant to seek legal advice on the background section of the document

Jean-Jacques Subrenat: @Michael: I'm not suggesting we NOT mention those international law references. Rather, I plead that we ADD the unique status of ICANN and that it serves the global public interest.

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Jean-Jacques Subrenat: Suggestion: "While fully complying with the US laws which apply to ICANN as a US corporation, the corporation has a wider responsibility towards the global Internet community worldwide. These two sets of requirements are not contradictory, but complimentary".

David McAuley (RySG): Well put, Alan

David McAuley (RySG): We are pursuing what amounts to a self-evident need

Wale Bakare: >>I plead that we ADD the unique status of ICANN and that it serves the global public interest<< I think, we need to clearly look at suggestion made by @JJS

Jean-Jacques Subrenat: @Alan: nowadays, in addition to law(s), there are universal standards, norms, requirements. I agree with Michael that we should at least mention the legal references.

Alan Greenberg: @JJS, yes, but they are not the reason that ICANN "MUST" do it rather than why they should.

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Chris Wilson: Do we want to at least consider certain subject matters that the presumption is against non-disclosure?

David McAuley (RySG): I agree with Alan

Cheryl Langdon-Orr (CLO): .yup

Yvette Guigneaux: Chris or Michael - Do we need Brett's email on screen?

Michael Karanicolas: no - i think it's ok

David McAuley (RySG): This is another area where it would be good to hear the ICANN perspective along the way

Yvette Guigneaux: Copy that

Jean-Jacques Subrenat: Chris: we should avoid such shorthand, because this text is aimed at people, not all of whom were on the ICG, CCWG or CWG. I would insist on putting the right words.

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David McAuley (RySG): Nicely done document, Barbara

avri doria: and i am suggesting a continuing periodic audit, not a one time of the changes we make now.

David McAuley (RySG): good question to take up next call

Cheryl Langdon-Orr (CLO): Yes I am wondering what the harm in wider access is as well

Ricardo Holmquist: I should say none, but we should divide who goes by the ombudsman, and who is going by the whistleblower

Yvette Guigneaux: Time check - top of the hour

avri doria: will staff allow it to be submitted Monday?

Chris Wilson: CCWG is what we are talking about

BERNARD TURCOTTE: its not ICANN its the CCWG

David McAuley (RySG): as long as it shows DRAFT

David McAuley (RySG): good question Bernie - i was wondering

David McAuley (RySG): sounds good

Jean-Jacques Subrenat: @Michael: yes for footnote.

Cheryl Langdon-Orr (CLO): Great progress on all this people ... Good call Thanks... Bye for now...

BERNARD TURCOTTE: bye all

Ricardo Holmquist: ty Michael, good call

Wale Bakare: Thanks, bye

David McAuley (RySG): Thanks Michael, Chriss, staff and all

Barbara Wanner 2: Thanks everyone