WP1 Meeting #4 (11 March)

Attendees:

Sub-Group Members: Avri Doria, Beran Gillen, Bruce Tonkin, Caitrin Dwyer, Chris LaHatte, Edward Morris, Gary Campbell, Jordan Carter, Jorge Villa, Julilla Wolman, Keith Drazeek, Malcolm Hutty, Matthew Shears, Olivier Muron, Par Brumark, Phil Buckingham, Robin Gross, Roelof Meijer, Steve DelBlanco, Tijani Ben Jemaa  (20)

Staff: Adam Peake, Alice Jansen, Berry Cobb, Brenda Brewer, Laena Rahim

Apologies: David Maher

**Please let Brenda know if your name has been left off the list (attendees or apologies).**

Transcript

Transcript WP1 Meeting #4.doc

Transcript WP1 Meeting #4.pdf

Recordings

The Adobe Connect recording is available here: https://icann.adobeconnect.com/p9kljsj8ish/

The audio recording is available here: http://audio.icann.org/icann-wp1-11mar15-en.mp3

Proposed Agenda

1. Consideration of Agenda
   - Items for the agenda?
2. Report back from CCWG meeting
3. Discussion of Work Items in progress
   - I suggest we discuss all outstanding items, so that means:
     - Matthew and Fiona - WP1 2D on requiring AOC implementation (think we did discuss this?) & on other AOC into bylaws matters & crossovers with WP2
     - Steve Matthew and Fiona - WP1 2E on AOC document access
     - Steve - WP1 2E on ability to ensure WS2 stuff is implemented
     - Keith Drazeek on 5B1&2 - on ICANN obligations
     - Jordan - 7A on removal of ICANN directors
   - In terms of mechanisms I hope we can also discuss:
     B - Jordan - permanent CCWG
     F - Robin - community veto
   - I would also like us to test whether any other work is required on any other work items before we can do a consensus call on our next call.
4. Next steps in our work
   - a) what we need to do for Istanbul
   - b) consensus calls in terms of documents being finished for consideration by CCWG at Istanbul
   - c) how to wrap up outputs
5. Next Meetings
   - a) We need one meeting next week to consensus call on documents. I propose same day/time - 21h UTC on Wed 18th.
   - b) if we need another working meeting, we will need to schedule it before this last chance for consensus.
6. Any Other Business
Notes

1. Consideration of Agenda
   Items for the agenda? No

2. Report back from CCWG meeting
   How to approach the meeting in Istanbul. Sense from co-Chairs, that any controversial or difficult issues have been socialized on a CCWG call

3. Discussion of Work Items in progress
   WP1 work start charts. Work on the issues in red, except 6a 6b. Nor work on defining GAC consensus
   Bylaws matter and his AoC matters that had not been addressed by Steve: 3, 4, 7, 8
   Document: Proposal for incorporating elements of the AoC into the ICANN bylaws. Recommendations for text that should be taken into the bylaws.
   Note about the AoC language on jurisdiction issue. Bylaws are silent on ICANN remaining an not for profit while the AoC commits and operating as multi-stakeholder organization for the benefit of the public..
   Suggestion that jurisdiction may be one issue that may need to be shelved when moving AoC text into the bylaws
   There has been an expectation set about remaining a US corporation, with CCWG email discussion about letters from Senator Rubio (+ others)
   Action: Jordan to ask the co-chairs as to how to deal with the jurisdiction issues

   * AoC document access

   5b 1 and 2.
   Text from the scope, powers and mechanisms document as starting point “prevent ICANN from imposing obligations on others unless needed to operate DNSCreate an Accountability Contract between ICANN and Registries, Registrars, and Registrants. Contract lets ICANN impose rules on others only when supported by consensus of affected parties and necessary to protect operation of the DNS. Disputes go to independent arbitration panel that could issue binding decisions.-or-Describe this limitation in a ‘golden’ Bylaw or Article that cannot be amended by any means.”
   Golden rule not needed, a founding document or constitution more appropriate, and agreement with this thou off topic and more for WP2 and the compact
   Keith to continue on work on clarifying ICANN’s technical mission, this has been transitioned to WP2 and continues

WP1-7A: Removing ICANN’s Board
   Asked to considered ways to remove the whole board
   a new power, but a triggered mechanisms so belong is WP1
   Need somebody to do it. Suggesting a community council to do this
   Proposal suggests that the community council should be somewhat separated, giving more accountability. Will be a issue for discussion.
   Members appointed by SO/AC for 1 year. Frequent election and barring of long terms to keep dynamism.

   Q: does the proposal work for other structures (supervisory board etc)? A: election thresholds, caretaker mechanism could be the same.
   Is a new body (cc) required? When the SO/AC structures exist? A. a number of powers giving the community, (bylaws approvals etc) and a new body may come together to consider those. The SO/AC structures not able to do this, too autonomous. May ask Advisors to consider this.
   CC as a type of senate. Of the community but slightly detached.
   Standing described is a very high bar. Should it have lower level of triggers? Is it a nuclear option. Or is it a means for some part of the community to raise very significant concerns with the rest of the community.
   Community veto.

   community veto. a process to challenge certain board "high end" decisions, a discrete set of pre-determined issues.
   Two SO to trigger a challenge, and then for the community to consider a veto under their own procedures.
   The Board then takes a subsequent vote to consider the community decisions or to reject the veto, but that set to a very high standard. 4/5 etc of voting. And if vetoed it would be sent back to the community for further work and adoption by the organization.
   An equivalent to the community council. discussion needed on which mechanisms are preferred.

   1a and b. Looked at member structure, for update on legal issues with a final version next week
4. Next steps in our work

5. Next Meetings

Agenda 4 & 5 Wed 18 At 21:00 UTC for 2 hours.

Meeting Sunday in Istanbul, but remote participation not possible - not for formal work but more swapping of work.

Action: staff to send announcement for next call, 21:00-23:00 UTC Wednesday 18 March

Action Items

Action: Jordan to ask the co-chairs as to how to deal with the jurisdiction issues

Action: staff to send announcement for next call, 21:00-23:00 UTC Wednesday 18 March

Documents Presented

Chat Transcript


Jordan Carter (.nz): (15:59) hi all!

Brumark (GAC): (16:02) Hi all!

Beran Gillen: (16:02) hello everyone

Keith Drazek: (16:04) Hi all

Chris LaHatte: (16:05) Morning all

Roelof Meijer (SIDN, ccNSO): (16:05) Hi all, good evening, night, morning, afternoon. Apologies for being late

Jordan Carter (.nz): (16:09) Can Matthew's doc be presented on the screen?

Alice Jansen 2: (16:11) Now up on the screen

Jordan Carter (.nz): (16:12) Thanks Alice!

Berry Cobb: (16:12) Forgive me for not tracking 100% here. 2D & 2E, will these be assigned to WS1 or WS2, or yet to be determined?

Jordan Carter (.nz): (16:12) Where there are blanks here Berry, it means TBD

Avri Doria: (16:15) isn't that sort of defacto in bylaws of an american corproation. i understand the issue, but it does not seem to fit bylaws. does it?

Avri Doria: (16:15) i mean that it is a US corporation.

Edward Morris: (16:16) I would be opposed to placing the location of ICANN's HQ into the Bylaws. Not the right place for it.

Edward Morris: (16:19) disconnected...

Chris LaHatte: (16:19) Most corporate law requires an office in the state of registration, doesnt need to be in the bylaw therefore. The location of "head office" may be a different issue

Matthew Shears: (16:20) @ Chris - good point

Matthew Shears: (16:21) Thanks Keith - would be good to see e-mail

Matthew Shears: (16:22) thanks Jordan

Brenda Brewer: (16:25) Tijani Ben Jemaa has joined the audio line

Jordan Carter (.nz): (16:25) Prevent ICANN from imposing obligations on others unless needed to operate DNSCreate an Accountability Contract between ICANN and Registries, Registrars, and Registrants. Contract lets ICANN impose rules on others only when supported by consensus of affected parties and necessary to protect operation of the DNS. Disputes go to independent arbitration panel that could issue binding decisions.-or-Describe this limitation in a 'golden' Bylaw or Article that cannot be amended by any means.


Chris LaHatte: (16:27) Rather than a "golden rule" incapable of amendment, and at the risk of going a bit off topic, we need a founding document or constitution

Keith Drazek: (16:29) Is that different than the Articles of Incorporation?
Chris LaHatte: (16:30) Yes, it would be a deeply entrenched document
Matthew Shears: (16:30) Thanks Keith - happy to assist on those items in WP2
Keith Drazek: (16:31) Thanks Matthew, I incorporated all your suggestions into the document I sent. I copied you on it.
Berry Cobb: (16:31) Keith for tracking purposes, you were just referencing WP1-5A "Clarify ICANN's Technical Mission" - xfer to WP2, yes?
Keith Drazek: (16:35) Yes Berry, that's correct.
Berry Cobb: (16:35) @Keith - Thank you sir.
Matthew Shears: (16:36) why would the council not be represented by the leadership of the various community bodies?
Chris LaHatte: (16:37) to avoid capture by a leadership elite?
Matthew Shears: (16:38) I guess - but I would have thought that they are selected for those leadership positions for good reason
Roelof Meijer (SIDN, ccNSO): (16:39) @Chris: "leadership elite"?
Chris LaHatte: (16:39) is this council like a sort of senate?
Roelof Meijer (SIDN, ccNSO): (16:40) @Matthew: me too. And does one already belong to the elite before (s)election, or does one automatically enter the elite after (s)election...?
Chris LaHatte: (16:40) @roelof-perception of bias perhaps with the leaders being too close to the board
Roelof Meijer (SIDN, ccNSO): (16:41) @Chris: I do not agree at all with that argument. We either are happy with the elected leaders, or we elect other ones
Avri Doria: (16:44) i think i agree with the thought about the focus of this group and the elected chairs being different. the elected leaders have the day to day concerns of their SOAC to deal with. This group has to take a more abstracted higher level view and should not get hung up in the crisis of the day.
Chris LaHatte: (16:45) +1 Avri
Matthew Shears: (16:46) Jordan - impressively thought through!
Robin Gross [GNSO - NCSG]: (16:48) So there will be no proposal to remove one board member - only all board members?
Matthew Shears: (16:48) there has to be the possibility of removing single board members but perhaps that is done through a community process - not this one
Jordan Carter (.nz): (16:49) Robin: this template is about removing the whole Board.
Julia Wolman, Denmark, GAC: (16:49) Just to note that a GAC rep from one country cannot represent another government
Robin Gross [GNSO - NCSG]: (16:49) thanks. is someone filling one out for removing single board members? I can volunteer for that if needed.
Matthew Shears: (16:49) Jordan perhaps you can elaborate on other powers this Council might have - I think we have touched upon this sort of structure already and foresaw a limited set of powers including spilling the board
Jordan Carter (.nz): (16:50) Robin: the discussion we had last time and at the CCWG was that recall mechanisms for single directors could be a WS2 matter, as it can be done through usual ICANN processes. We need to decide about that.
Chris LaHatte: (16:51) muted and fixing, start the next speaker while I fix
Matthew Shears: (16:53) This body might have other very limited powers
Chris LaHatte: (16:53) fixed
Keith Drazek: (16:54) If I recall correctly, there was a recognition that the various community groups would need a recall mechanism for their respective board members, to include a process for recalling NomCom board members. It "could" be pushed to WS2 but the ability to remove individual board members was instrumental in the context of a 3-year election/appointment cycle.
Jordan Carter (.nz): (16:56) Robin: if you wanted to design a 7B for recalling individual directors, that would be fab
Keith Drazek: (16:57) Whether we pursue a Standing CWG or a membership structure, it needs to be rooted in the existing community groups, which have their own accountability mechanisms in place. For example, if I as RySG Chair am a "member" I could be recalled and replaced by my constituency. It's a built-in accountability loop grounded in the multi-stakeholder process.
Jordan Carter (.nz): (16:57) The work would not go to waste.
Robin Gross [GNSO - NCSG]: (16:57) From a legal standpoint, it sounds like this is a version of the statutory "delegate" model being proposed
Robin Gross [GNSO - NCSG]: (16:57) the community council members would be "delegates" with certain powers
Jordan Carter (.nz): (16:57) Robin: delegates might be the legal way to implement this
Jordan Carter (.nz): (16:58) so might members
Jordan Carter (.nz): (16:58) so might just bylaws

Jordan Carter (.nz): (16:58) we'd need legal advice about what would stick

Robin Gross [GNSO - NCSG]: (16:58) or the "supervisory board" proposal, which I don't think can exist under California law.

Keith Drahek: (16:58) exactly Jordan

Robin Gross [GNSO - NCSG]: (16:58) I want to make sure these models match what we are asking for advice on

Jordan Carter (.nz): (16:59) We need to decide the best mechanism to deliver a power such as this. Best being simplest to implement while remaining effective, perhaps?

Matthew Shears: (16:59) this is a nice elaboration of those various and similar proposals

Matthew Shears: (17:00) @robin - good point - our thinking is evolving and need to ensure we get relevant advice

Jordan Carter (.nz): (17:00) Robin - that's the timeline challenge eh? :)

Brenda Brewer: (17:02) Steve DelBianco has joined the phone line

Robin Gross [GNSO - NCSG]: (17:03) right, Jordan.

Avri Doria (participant, atrt): (17:07) Agree with Tijani, the community is SO + AC - not just SO.


Malcolm Hutty: (17:07) I didn't say that ASO didn't need to be there; I said that I doubted the ASO would ever feel that it was sufficiently impacted by ICANN decisions to want to spill the Board - or if it were, it would resort to the MoU the RIRs have, rather than to this mechanism

Avri Doria (participant, atrt): (17:07) ... sorry mispelling ... agree with Tijani ...

Malcolm Hutty: (17:08) Also, I doubt RSSAC or SSAC would ever feel that it was their role to initiate such a mechanism. I believe they see themselves as advisory only

Berry Cobb: (17:11) Robin, in your next draft, can you add WP1-F to the title for tracking purposes? Thank you.

Matthew Shears: (17:13) @ Malcolm - you may well be right

Chris LaHatte: (17:13) Do you see the Ombudsman as an entry point for this process, so I could then recommend the CC consider the issue?

Jordan Carter (.nz): (17:13) Chris - "this process" - the ability to veto a Board decision?

Chris LaHatte: (17:13) Yes

Chris LaHatte: (17:15) Most impressive work Jordan, really useful document

Jordan Carter (.nz): (17:16) This document is Robin's

Jordan Carter (.nz): (17:16) Mine was the Directors

Chris LaHatte: (17:16) I meant yours but so is Robin's too :)


Robin Gross [GNSO - NCSG]: (17:17) I've lost audio too

Edward Morris: (17:17) Sent early today.

Robin Gross [GNSO - NCSG]: (17:17) back

Robin Gross [GNSO - NCSG]: (17:18) Barry, WP1-F should already be in title, no?

Berry Cobb: (17:20) @Robin, not that I can see. Not urgent, can wait until other edits are made.

Matthew Shears: (17:20) Apologies Jordan but have we set a time for the meeting on Sunday in Istanbul?

Roelof Meijer (SIDN, ccNSO): (17:20) @edward: I checked and found it, came in 7.40pm CET. I'll have a look at it tomorrow

Matthew Shears: (17:20) One longer meeting would be better

Edward Morris: (17:21) Wow, Thanks Roelof. I've had email bounce back from you as well. ;( 

Bruce Tonkin: (17:21) Just joining a little late. I like the idea in the discussion notes that the community can consider an issue can vote to reject a board matter, then let the board consider the community decision but have a very high bar to reject - e.g the 4/5 in the discussion note. I think that is a reasonable balance. I think it would be extremely rare that the Board would ever reject a community consensus - and I don't believe that has ever happened.
Robin Gross [GNSO - NCSG]: (17:21) yes a mtg before next week would probably be good. too bad we are running out of hours in the day. ;-) 

Avri Doria (participant, atrl): (17:21) perhaps just before the cocktail for those of us getting in in the afternoon.

Robin Gross [GNSO - NCSG]: (17:22) I organized my flight to arrive on time to work on Sunday 

Avri Doria (participant, atrl): (17:23) and if the work is not completed in the next mtg, can alwasy do another on thrusday

Keith Drazek: (17:25) thanks very much Jordan!

Robin Gross [GNSO - NCSG]: (17:25) Thanks, Jordan!

Chris LaHatte: (17:25) Thanks Jordan

Jordan Carter (.nz): (17:26) Thanks everyone!

Matthew Shears: (17:26) thanks - excellent progress

Adam Peake: (17:26) thanks.

Olivier Muron /GNSO/ISPCP: (17:26) Bye!

Brumark (GAC): (17:26) Thx! Great work!

Julia Wolman, Denmark, GAC: (17:26) thanks, bye

Phil Buckingham: (17:26) thanks you Jordan . Impressive