Transcript

Transcript CCWG WP1 Meeting #6 1 April 2015.doc
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Recording

The Adobe Connect recording is available here: https://icann.adobeconnect.com/p8nmsj4hpi1/
The audio recording is available here: http://audio.icann.org/gnso/gnso-wp1-01apr15-en.mp3

Agenda

1. Agenda review.
2. Work Plan for the next sprint.
3. Community powers mechanism - do we have a preferred mechanism to propose to CCWG? (CCWG/Council, Members/Delegates, or internal SO/AC processes)
4. Stress Test 18 paper (GAC advice and when the Board needs to try and reconcile with it) from Steve, who unfortunately cannot be on the call, but which is well set out
5. Individual Board Member Recall - given the legal advice we have seen, do we need to put this back on the table as a WS1 power?
6. AOC reviews update - can anyone on the call present these?
7. Next Calls - make sure we are clear about when our next call/s are.
8. Any Other Business

Notes

CCWG-ACCT WP1 CALL #6

Wednesday 1 April 2015, 21:00-22:30 UTC

1. Agenda review.

None

2. Work Plan for the next sprint.

Workplan for the "short sprint". Attempt to finish work as a complete proposal by 20 April. This will allow the CCWG to carry out a double reading of the proposal.

Can expect additional calls to be added to WP1's agenda of meetings.

Propose calls on the 8th and 10th April

First set of work on powers, earlier work and new text to be drawn together over the weekend.
Sections 6.5 and 6.6, too early for mechanisms, need legal advice.

Activity on the AoC also moved off the schedule, for the time being leave the mechanisms to later.

Some uncertainty of the overall workplan, and need adapt as work changes from discussions on the CCWG calls

Finalize a draft close of play Monday 6th and discussion on 8th

Keith Drazek and Robin Gross volunteered for review of text

Difficult to know how legal advice will take some of WP1 proposals

3. Community powers mechanism

Legal call -- 2nd call today was primarily procedural. No discussion of the arrangements, lawyers are likely say all are possible, but suggest working together with the lawyers to decide which is closest to ICANN's way of working and culture.

Lawyers may join some working party calls. Sidley to coordinate between the counsels. Both will voice their expertise.

The work parties are the clients in this arrangement. WP1 will invite the lawyer(s) on the calls to thrash out issues.

Three classes of mechanisms:

* group of people organized within the bylaws
* a group organized with CA laws as member or delegate
* a group of processes and flows

Jordan: preference for a mechanism like the community council?

Two points of view expressed: the group needs legal advice before drafting text, and, that the group should move forward in parallel and decide what we want rather than wait for the lawyers.

Also noted that it's chicken and egg. Would be good to have something to put in front of the lawyers, but not going to fine detail. A balance needed.

Powers set out in the 1st draft. Then invite the lawyers to the 8 April call for them to advise. Continue drafting based on that outcome.

1st draft, will not address mechanics don’t have enough time to come to consensus, to have a lawyer on the 8 April call and the first item to be addressed will be mechanisms

Action: Jordan Carter to write to lawyers to invite to 8 April WP1 call

4. Stress test 18 paper: GAC operating procedures and consensus advice.

"GAC advice that is supported by consensus" co-chairs have asked for feedback from the GAC, and individual responses from Thomas Schnieder, Denmark, Spain, USG.

Jordan: suggests that this is a useful clarification to put in place, No other SO/AC can change their internal procedures and affect their influence on ICANN policy. Comfortable with the proposal.

Greg: classic stress test. Doesn't affect the GAC's processes or ability to contribute collectively or as individual governments.

As the bylaws are currently drafted it presupposes that GAC advice will be made on consensus. Not about the GAC per se.

Comfortable that when the Board has to do reconciliation advice it is based on actual GAC consensus.

5. Individual Board Member Recall

Individual board member recall. First draft was on recalling both the whole board and individual directors. If the only way to deal with a problem director is to remove the whole board then that isn't an effective accountability mechanism. And WP1 considers this issue in WS1.

For SO/AC need to develop a mechanism for the appointing bodies. More complicated is how to deal with NomCom appointees. Problems with using the NomCom to perform the recall, not what it was created and designed for.

Could ask the lawyers

As NomCom appointees are there for the community as whole, then some recall might be based on some super-majority rule of the community mechanism. Not removed en masse, but likely singly (they don't act collectively, so why remove collectively?)

* individual removal important
* individual removal of any type of director (except CEO)
* no consensus on removal of nomcom appointees, we don't know how to
* approaching consensus on recommending that appointing organizations removing their director(s) (noting complexity of GNSO and house arrangement)
6. AOC reviews update

Section 8b on jurisdiction and whether it would be brought into the bylaws has been discussed. Some sections might be left in the AoC.

Suggest CCWG consensus needed on how to deal with this issue.

7. Next Calls

Meetings April 8, 10, 13.

Wed 8 April 21:00 UTC, 2 hours (with lawyers)

April, Fri 10 (early UTC) and 13 (late UTC) - doodle poll on the best time.

April 10 and 13, 90 minutes duration

Action: staff to check with Jordan about times of April 10 and 13 calls

8. AoB

Other groups contemplating bylaws changes the same issues. May need to reconcile.

Future topic whether recommending removal of the AoC and inclusion on the bylaws or keeping it as a separate mechanism in some form

END

Action Items

- Action: Jordan Carter to write to lawyers to invite to 8 April WP1 call
- Action: staff to check with Jordan about times of April 10 and 13 calls

Documents:

Chat Transcript

Alice Jansen: (4/1/2015 15:58) Welcome to WP1 call #6 - Chat sessions are being archived and follow the ICANN Expected Standards of Behavior: http://www.icann.org/en/news/in-focus/accountability/expected-standards

Matthew Shears: (15:59) evenin'

Robin Gross [GNSO - NCSG]: (16:02) afternoon

Edward Morris: (16:02) Evening

Jordan Carter: (16:02) hi all

Greg Shatan: (16:02) Late afternoon. Almost the "golden hour."

Jordan Carter: (16:02) sorry I was late and we will kick off in 1 minute

Greg Shatan: (16:03) Jordan, you can blame the lawyers.

Robin Gross [GNSO - NCSG]: (16:03) and you spend it with us, Greg!

Greg Shatan: (16:04) That makes it even more golden, Robin!

Keith Drazek: (16:05) Hi all

Robin Gross [GNSO - NCSG]: (16:05) then you are in luck, because we spend a lot of time in this AC room

Greg Shatan: (16:06) But who will stress test the working party?

Matthew Shears: (16:07) we'll need it!

Keith Drazek: (16:11) Sounds like a good plan to me, Jordan.

Jordan Carter: (16:11) Thanks Keith

Matthew Shears: (16:12) yep agree

Robin Gross [GNSO - NCSG]: (16:12) I will volunteer to review text

Keith Drazek: (16:15) I was not on the legal call

Jordan Carter: (16:17) OK, sorry Keith
Matthew Shears: (16:18) Greg - how do we get to interact with Sidley on these issues - do we invite them to these calls?

Keith Drazek: (16:19) No problem at all Jordan

Greg Shatan: (16:20) @Matthew -- yes. We need to invite them when the time is ripe. And this is a quick-ripening fruit.

Robin Gross [GNSO - NCSG]: (16:22) I think we need the legal advice and some understanding of it before we have a draft text

Greg Shatan: (16:22) Vestigial hand.

Greg Shatan: (16:23) It's a chicken and egg issue. I tend to agree with Jordan.

Matthew Shears: (16:23) Jordan - when you say “a group of people organized within the bylaws” you are referring to the council?

Izumi Okutani (ASO): (16:23) I like that approach, work in parallel

Jordan Carter: (16:23) Matthew - either the community council or the nearly identical permanent CCWG

Matthew Shears: (16:23) ok

Keith Drazek: (16:24) Our progress on defining the powers we're seeking has been excellent. I feel very good about where we are on that front. Now the challenge is finding the most effective, efficient and simple package of solutions to secure those powers. And for that, we'll need to work collaboratively with the legal advisors.

Greg Shatan: (16:25) +1 Keith

Izumi Okutani (ASO): (16:25) +1 Keith

Matthew Shears: (16:25) we know that the members and delegates is possible - do we know that the council is possible under CA law?

Edward Morris: (16:25) I can't make a judgement until I have answers to certain questions from the lawyers. For example, we're proceeding with membership as if we can't alter thresholds (simple majority) for dumping Board members. That is unacceptable to me. Yet if those thresholds can be altered - something the lawyers will be asked - it probably would be my number 1 choice.

Matthew Shears: (16:26) key point Ed

Greg Shatan: (16:26) Early indications are that the Council is not really contemplated under CA law. But the lawyers are creative.

Greg Shatan: (16:27) @Edward, I'd bet good money we can raise that threshold.

Matthew Shears: (16:28) agreee Jordan - this is what we want to achieve - what's the best mechanism

Keith Drazek: (16:28) +1 Jordan, completely agree with that approach.

Edward Morris: (16:28) I agree Greg. Have done a bit more research indicating that may be true.

Greg Shatan: (16:28) Not contemplated is not the same thing as prohibited. ICANN's structure is actually pretty groundbreaking.

Izumi Okutani (ASO): (16:28) I agree Jordan

Greg Shatan: (16:28) +1

Robin Gross [GNSO - NCSG]: (16:28) sorry, I just said a bunch of stuff to no one. my phone line wasn't connected. sorry.

Greg Shatan: (16:29) It's good to practice.

Brenda Brewer: (16:29) Robin, you can try logging out and back in to Adobe or I can have operator call out to you for a phone connection.

Robin Gross [GNSO - NCSG]: (16:29) ok

Brenda Brewer: (16:29) Robin, see private chat please

Robin Gross [GNSO - NCSG]: (16:30) rejoining audio line. no burning issues

Matthew Shears: (16:30) in the interim what is the process for getting the items close to the point where we want legal advice?

Matthew Shears: (16:31) ok thanks

Keith Drazek: (16:36) lol

Pär Brumark (GAC Niue): (16:36) :-)

Greg Shatan: (16:36) Prime the pump, Jordan

Finn Petersen, GAC: (16:37) The GAC as a whole has not discussed this point – I have no problem with the suggested text.

Matthew Shears: (16:37) so - it is only in situations that there is consensus in the GAC will the GAC and ICANN try to find a solution

Keith Drazek: (16:38) I agree with don't want to dictate GAC operating principles on consensus thresholds, but I DO think we want to address how the Board reacts to GAC Advice. This requires a reasonable and predictable definition of what constitutes GAC Advice.
Keith Drazek: (16:39) Big A Advice vs. little a advice?

Jordan Carter: (16:40) Suz Radell's text is in this document

Keith Drazek: (16:41) I think a key requirement is to ensure predictability...for all parties. The GAC needs to have predictability in how the Board will react. The rest of the community needs predictability. The Board needs predictability. That all requires further definition of process.

Keith Drazek: (16:41) I agree with Greg's comments.

Matthew Shears: (16:41) also agree and + 1 Keith

Keith Drazek: (16:43) And for the record, I support Steve's work and recommendations on this.

Greg Shatan: (16:43) On the other hand....

Greg Shatan: (16:44) I'm of two minds about this. Actually, I'm not.

Robin Gross [GNSO - NCSG]: (16:45) I've wanted individual board recall in WS1.

Matthew Shears: (16:45) I agree Robin

Robin Gross [GNSO - NCSG]: (16:45) Yes!

Edward Morris: (16:45) Agreed.

Matthew Shears: (16:45) its an escalation path to full Board recall

Matthew Shears: (16:46) the challenge of course is related to nomcom

Samantha Eisner: (16:46) @Jordan, there are 7 appointed through SO/AC, 8 through NomCom, and then the CEO (appt by Board)

Edward Morris: (16:47) Should we assume there will be a NomCom?

Robin Gross [GNSO - NCSG]: (16:47) yes, we should assume there will be NomCom recall as well.

Keith Drazek: (16:47) I think eliminating or evolving the NomCom would be a WS2 consideration.

Keith Drazek: (16:47) evolving

Greg Shatan: (16:48) I went first last time.

Robin Gross [GNSO - NCSG]: (16:48) If we can't come to a relatively easy solution for NomCom recall, we could put that in WS2. But individual AC/SO recall should be WS1

Robin Gross [GNSO - NCSG]: (16:49) "wild cards"

Izumi Okutani (ASO): (16:49) It would make sense to consider it as WS1 if this is bound with California Law. + 1 Robin

Jordan Carter: (16:50) NomCom appointees only removed by the community mechanism?

Matthew Shears: (16:50) doesn't that make the NomCom less accountable? and therefore as important if not more to have in WS1?

Robin Gross [GNSO - NCSG]: (16:50) that could work, Jordan.

Robin Gross [GNSO - NCSG]: (16:51) agree that it would be better in WS1, Matt.

Jordan Carter: (16:51) Doesn't make NomCom less accountable?

Robin Gross [GNSO - NCSG]: (16:51) but if it is too much of a challenge, let's not let it hold-up AC/SO recall in WS1.

Matthew Shears: (16:51) yes

Robin Gross [GNSO - NCSG]: (16:55) yes

Edward Morris: (16:56) Yes.

Jordan Carter: (16:57) SO/AC/SG then

Jordan Carter: (16:57) 

Robin Gross [GNSO - NCSG]: (16:57) right-o

Matthew Shears: (16:57) sounds good to me Jordan

Greg Shatan: (16:57) The hand that won't die....

Matthew Shears: (16:58) Unfortunately I am not up to date on the AoC status Jordan so don't have an update

Robin Gross [GNSO - NCSG]: (16:59) pas moi
Matthew Shears: (17:01) a number of the AoC articles have been moved to Becky's work on the mission and core values

Jordan Carter: (17:01) Sorry, my network fell off

Adam Peake: (17:02) for info: some of these issues are being discussed in WP2, for example which reviews should be brought into the bylaws, might the be re-written.

Jordan Carter: (17:02) i can't scroll the doc on the screen

Samantha Eisner: (17:02) I haven't heard that either ICANN or the NTIA would be required to terminate the AoC as part of the implementation of the WS1 efforts

Samantha Eisner: (17:02) I don't know what will become of it . . .

Matthew Shears: (17:03) I don't think we have made the detmination that it should end yet

Matthew Shears: (17:04) but there was an effort to account for those parts of the AoC that made sense to retain or move to the bylaws, etc.

Jordan Carter: (17:04) is there any way I can be allowed to scroll the document on the screen?

Matthew Shears: (17:06) there was a good discussion on jurisdiction in the CCWG on Tuesday AM that is reflected in the notes from that call (I was not on that cal)

Matthew Shears: (17:06) Jordan its referred to on the last page in passing

Samantha Eisner: (17:06) Page 4

Samantha Eisner: (17:06) I think

Keith Drazek: (17:07) A key point of distinction as we discuss AoC #8....it's specific to "ICANN headquarters" not "jurisdiction"

Samantha Eisner: (17:07) that's not specifically on headquarters

Philip Corwin: (17:07) I need to leave the call at this time/bye all

Berry Cobb: (17:07) I think Stress Test #15

Keith Drazek: (17:08) No? I thought it was focused on HQ. Apologies if I got that wrong.

Samantha Eisner: (17:08) Sorry keith - was talking about document. the AoC commitment is on HQ

Samantha Eisner: (17:09) two separate conversations happening at the same time

Keith Drazek: (17:09) ok thanks Sam

Matthew Shears: (17:09) I think we note that this is under discussion at the CCWG level and refer to discussion from Tuesday

Robin Gross [GNSO - NCSG]: (17:11) agreed, Matthew

Matthew Shears: (17:13) I think we should plan on extra time with legal advisors

Robin Gross [GNSO - NCSG]: (17:13) 90 minutes

Matthew Shears: (17:14) none from me

Matthew Shears: (17:15) although we probably do need a recommendation on the AoC and whether or not it will remain in place in some form

Edward Morris: (17:17) Thanks Jordan and all.

Matthew Shears: (17:17) good call Jordan - thanks

Pär Brumark (GAC Niue): (17:17) Thx! Cheers!

Keith Drazek: (17:17) Thanks Jordan

Robin Gross [GNSO - NCSG]: (17:17) thanks, Jordan, and all

Jordan Carter: (17:17) thanks all, catch you soon!