CCWG ACCT Meeting #16 (10 March)

Attendees:

Members: Alice Munyua, Athina Fragkouli, Becky Burr, Bruce Tonkin, Cheryl Langdon-Orr, Eberhard Lisse, Fiona Asonga, Izumi Okutani, Jordan Carter, Jorge Villa, Julia Wolman, Leon Sanchez, Mathieu Weill, Par Brumark, Robin Gross, Samantha Eisner, Steve DelBianco, Sebastien Bachollet, Thomas Rickert, Tijani Ben Jemma   (20)

Participants: Avri Doria, Alain Bidron, Barrack Otieno, Bob Takacs, Chris LaHatte, David McAuley, Edward Morris, Greg Shatan, Jorge Cancio, Kavouss Arasteh, Markus Kummer, Olivier Muron, Pedro da Silva, Sabine Meyer, Yasuichi Kitamura, Vrikson Acosta   (15)

Staff: Alice Jansen, Brenda Brewer, Laena Rahim

Apologies: Alan Greenberg, David Maher, Martin Boyle, Suzanne Radell, Olga Cavalli, Berry Cobb (staff)

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

Transcript

[Transcript CCWG ACCT #16 10 MARCH.doc](#)

[Transcript CCWG ACCT #16 10 MARCH.pdf](#)

Recording

The Adobe Connect recording is available here: https://icann.adobeconnect.com/p6b9ogdh454/

The audio recording is available here: http://audio.icann.org/icann-ccwg-acct-10mar15-en.mp3

Proposed Agenda

1. Welcome, roll-call & SoI
2. Activity reports
WP 1
WP 2
ST-WP
Legal Subteam
3. Timeline (sharing expectations from Istanbul)
4. Structure of public comment report
5. A.O.B
5. Concluding remarks

Links:

WP1 Drafts - http://tinyurl.com/puvneyq
WP2 Drafts - http://tinyurl.com/p9yemfx
ST-WP Drafts - http://tinyurl.com/mye8o3e
Legal Subt Drafts - http://tinyurl.com/kajxlc4
Timeline - http://tinyurl.com/kd2u3b7

Notes

1. A substantial number of colleagues have not submitted their SoIs. Cochairs have reached out to them and reiterated the need for accountability and transparency.

2. Activity Reports

WP1

Jordan invited the Group to review the current work status document - https://community.icann.org/download/attachments/52888421/WP1-WorkStatus-CCWG-ACCT%202015-03-10.pdf?version=1&modificationDate=1425966317000&api=v2 and reported that: 1) the WP is making progress on elements; 2) the WP will discuss outstanding items and how it will arrive at consensus on WP1 call on Thursday; 3) the WP will have a consensus call agreement meeting next week and circulate documents for consideration in Istanbul.

WP1-4A Defining GAC consensus for ICANN

Mathieu informed the Group that Cochairs have engaged with Thomas Schneider to further discuss the question raised during the stress test analysis about decision making rules for GAC advice – see https://community.icann.org/pages/viewpage.action?pageId=52891502 and are in the process of finding a time slot with Thomas to provide more context and have an initial discussion about how to proceed.

Work Status

Jordan walked the CCWG through the Work Status spreadsheet - https://community.icann.org/download/attachments/52888421/WP1-WorkStatus-CCWG-ACCT%202015-03-10.pdf?version=1&modificationDate=1425966317000&api=v2 . Orange items will be discussed WP1 meeting #4. WP2 confirmed they will not be conducting work on last table.

ACTION ITEM: Jordan to touch base with Keith Drazek on WP1-5B.

AoC Reviews

Steve del Bianco walked the CCWG through Competition, Consumer Trust and effectiveness of WHOIS Policy reviews - https://community.icann.org/download/attachments/52888421/Draft%201-%20AoC%20Accountability%20Mechanisms%20%5BSteve%20v5%5D.pdf?version=1&modificationDate=1425509039000&api=v2 - and informed the Group that text is mainly from AoC. Amendments include Review Team designated by Community (SO/AC/SG), independent advice, access to relevant documents at ICANN and non-disclosure, "consider approval and begin implementation within 6 months of receipt" language. It was noted that WHOIS review due to start in 2015 and that EWG work should be considered along with inherent implementation timeline this could imply.

Feedback on CCT-RT

- Start of New gTLDs was subject to heated debate at GAC: it should also take into account lessons learned, difficulties.

--> Feedback needed on Kavouss Arasteh's suggestion that subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section has been implemented.

--> Wouldn't we be interfering with other process? We should not use accountability work to force decision on ICANN about nature of rounds system and whether rounds or not can happen until review done.

--> Writing is based on assumption that there will be successive rounds. There might an option where no rounds but an ongoing flow of applications. This might create inconsistencies in the future. It is important to have a regular review but no need to have it connected to rounds.

--> We are trying to perpetuate Aoc into Bylaws. In terms of drafting techniques, it would be inconsistent to make something work for years to come and highlight one specific event in there. The idea is to have outcome of reviews needs to be analyzed by Board and taken into consideration for next steps applicable to all sorts of reviews. This reminder could be placed in section on periodic reviews.

--> Word this to not predetermine future rounds and scheduling and leave that up to Committees: i.e. set up periodic reviews as instructed and indicate requirements arising out of the upcoming review. -This group enforces accountability - no pre-staging of what responses need be.

---> Jordan's group will analyze discussion while proceeding with work. No request to embed this specific point in WS1. If objections, speak up. Let's keep it on radar for discussions and put it in bucket for WS2.

- All the elements are not directly related to transition. This is overall accountability. The draft should go to full GAC for in-depth discussion.

- Let's not spend too much work on drafting of implementation specifics – legal experts will need to review.

- It is a pity we are losing two-step selection process because it is useful for balance. Balanced composition should be key criteria in selection process.

ACTION ITEM: Obtain further feedback from the Group during the week.

Feedback on WHOIS

- Will the WHOIS work stay? It may be worth expanding discussion in light of work on New gTLD Directory Services.

- Could just amend the "title" of the review : effectiveness of policies to meet legitimate needs of LEA, promote consumer trust while taking into account privacy.

ACTION ITEM: Obtain further feedback from the Group during the week.

WP2

Becky Burr reported that: 1) WP2 sub teams have kicked off; 2) Independent review sub team is particularly active; 3) Lively discussions in the request for reconsideration sub team; 4) WP2 is planning to have a completed draft of compact mission on 20 March for in-detail discussion at Istanbul meeting as well as reports and updates from various groups. Independent Review may be further along than the others by that point. Becky has circulated resources on international ombudsman association and hopes to kick off that discussion shortly.

Feedback:

- Is the issue of binding/non-binding of the Review Committee concluded or being discussed?

--> It is ongoing. Legal input will be needed on this. There seems to be strong support for making it binding although there are questions about what that means: e.g. binding in what way: sending decisions back to Board? Important questions that will need to be addressed in context of legal advice we will receive.

- What is the legal nature of this compact mission? Will it be binding, actionable?

--> The goal is to establish a standard for what kinds of actions are within ICANN's remit. Questions that would be relevant in any of the review/redress mechanism are: is the action taken within ICANN's mission statement; in carrying out its mission statement, has ICANN conducted its activities in accordance with its commitments to the community to respect multistakeholder model, to comply with transparency standards, to avoid discriminatory treatment, to reflect diversity etc. It is a standard against which ICANN's behavior would be measured procedurally. It is the nature of what people have called a Golden Bylaw meaning that some parts of it could not be changed without certain safeguards occurring: e.g. threshold for Board, community approval. How it will be binding and enforced is a question for the group itself. The notion that ICANN could expand its mission statement is something people are skeptical about.

--> This goes back to 4 accountability components discussed in Singapore. This compact could be the test for spilling Board or other actions with sufficient grounds if violation of compact. Reminder from Bruce setting out mission in articles of incorporation and Bylaws: has that been addressed?

--> It has been forwarded to compact mission sub team and needs to be factored into the process.

- Compact mission are fundamental guiding principles/constitutional.

- If a review is made binding, what would happen to an appeal to that decision?

--> There is nothing that would necessarily change GAC advice: we will need to consider what opportunity GAC would have to respond if someone appealed ICANN's deference to GAC advice on the grounds that the GAC advice is violated. The general notion in the straw man proposal is that ICANN would reconsider GAC advice to the extent that that advice was consistent with compact.

- If constitutional, need to be careful if amend anything as this may have considerable impact. How did you pick items you are suggesting now in compact mission, what are the inputs you are using? This will be an important aspect to inform SO/ACs. Need to focus on aspects that generate consensus.

--> A significant part of document already exists in the mission statement and core values in the current Bylaws. Also reflected are: 1) a provision in section 3 of Bylaws; 2) a significant number of comments about public interest obligations; 3) comments about institutional excellence, competence and operational excellence. The WP2 is trying to capture disussions that have come up starting with Bylaws, general principles and using inventory of suggestions. Various suggestions about giving ICANN a human rights mission was not included: ICANN is not in the business of content and giving ICANN a promotion of human rights was problematic.

ACTION ITEM: Review the WP2 document https://community.icann.org/download/attachments/52888740/Work%20Item%20List%20and%20Principles% 20WP2%20PDF.pdf?version=4&modificationDate=1425965515000&api=v2 and socialize with your respective groups before the next call to ensure the Group is fully aligned with WP2 suggestions.

- WP1 is also discussing principles. WP1 and WP2 should synchronize so that it is clear where the discussion about principles is taking place.

ACTION ITEM: WP1 and WP2 rapporteurs to synchronize to avoid duplication and clarify where the principles discussion is taking place.

- Is there still a need for a position like the Ombudsman if community powers? And if so, what of conflicts etc.

--> This should be revisited in light of big picture to determine whether it makes sense. The question will be answered in course of discussion, we should not prejudge if going in.

ST-WP

All Stress Tests templates are filled in for consideration.

ACTION ITEM: CCWG to review ST-WP work - https://community.icann.org/download/attachments/52232556/Applying%20Stress%20Tests%20% 5BDraft%20v7%5D.pdf?version=1&modificationDate=1425965091000&api=v2

Caveat that nothing can be finalized until WP1 and WP2 work is completed. The Group is welcome to join the ST-WP call on Wednesday, 11 March at 11: 00 UTC: the WP intends to go through all stress tests with objective of having documentation reading for CCWG discussion. The WP also intends to cross-check with stress tests proposed by CWG.

Steve del Bianco walked through stress tests 3 (litigation arising from existing public policy e.g. Anti-Trust), 4 (New regulations or legislation) and 20 (Court order is issued to block ICANN's delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties).

Feedback:

- Are we dealing with people who are present and voting?

--> Supermajority 3/4 - 4/5 will a necessary precision. For time being, not defined. It is not based on quorum. Working towards SO/AC/SG bodies that will be given sufficient time to respond on a decision that was brought forth to veto a management move: SO/Acs will have to review that and indicate support or non-support. This would required a documented process.

- Current draft indicates there is a potential for ICANN community to require ICANN to take action considered unlawful in certain legislations. If certain legislation is in place and if ICANN were to violate laws in place, there could be lawsuits. How is that addressed in stress-tests?

--> Community under a very high standard of supermajority could believe that ICANN should not fear implementing what was identified by a bottom-up process under pressure of law suits etc. Community could instruct ICANN what legal counsel believes is not in best interest of corporation. That possibility could occur in the future.

--> If US congress comes up with legislation contrary to a certain ICANN policy, are you arguing that community should have power to force ICANN to act contrary to legislation?

--> These are general community empowerment steps currently under discussion. Unaware of any effort to constrain or restrict the community's power just because one nation might disagree with implementation. It is possible that country could adopt measures that would violate notion of single root. We are going to have pressures. ICANN Board and management will do their best for corporation and community but community should be empowered to tip the balance towards community's will.

--> This key aspect would need to be underlined. It is a risk. Is the underlying suggestion that we should accept the risk and live with it?

--> To increase capability of giving community the accountability and empowerment on how to answer that risk. Not all stress tests are solvable. It is about giving the community the voice it needs to decides how to react.

--> Enable community to have final word.

--> There is a series of mechanisms that are suggested. Thresholds for disagreeing with and moving Board sit at different levels. Consider whole system in mind. There is a broad array of powers for community we are proposing here.

--> Does it conflict with Articles of Incorporation?

--> One scenario is where Board takes action presumably because law is created somewhere and informed by GAC representative. Legal counsel advice would be given on whether or not ICANN would fall under that law but government could take action under law enforcement. There is a difference between taking Board action on advice received from a government and taking Board action that is in breach of policy. Board approves community policies – one of mechanisms for community is to create policies around that law. Consider IRP and request for reconsideration.

--> It does not change the conclusion. We are improving mechanisms to make them accessible to community at large.

--> International law being subordinated to decision is outside mandate.

--> There can be contradictions between national legal laws. It is outside mandate but should be considered as part of stress testing. It is not clear we should know what answer is but we should be aware of potential issue before going out for public comment. It is a key risk for ICANN to find itself in contradiction with international law.

--> Exercise is not to eliminate risks – it is to ask whether existing accountability measures give the community the power to hold Board accountable to way it reacts to this stress-test.

ACTION ITEM: Report on contingencies we cannot mitigate.

ACTION ITEM: ST-WP to identify stress tests for discussion on 17 March.

Legal Subteam

León Sanchez reported that the Legal Subteam held one call last week to incorporate some of the concerns raised. Although the document was not shortened, language and questions were refined. WP1 and WP2 should provide questions to be incorporated into legal document. The jurisdiction issue was widely discussed: although all agree that concerns should be addressed, the Subteam also agreed that this would be an issue for WS2. If addressed as part of WS1, could be facing derailing of whole process. This agreement will be put forward for CCWG agreement. The CWG has announced engagement with law firm to provide legal advice. The Legal Subteam will hold a call with one of the shortlisted firms. The possibility of engaging with same law firm is high but the Legal Subteam needs to go through own process.

ACTION ITEM: WP1 and WP2 to provide legal questions to Legal Subteam.

Feedback

- Will question on jurisdiction be put out to the CCWG?

- Explanation about California law limitations are needed. Get started on the work asap.

- It would simplify work moving forward if CCWG goes with same law firm. Recommendation to go for it unless good reason not to.

ACTION ITEM: León to confirm legal subteam decision

- Which areas of enquiry will be in WS1 and WS2? Once legal firm is selected, CCWG should have opportunity to determine WS1 and WS2.

3. Timeline

Mathieu Weill stated that a common understanding of Istanbul meeting is needed. An agenda has not been produced yet because the most efffective way will be for Cochairs to build agenda on issues arising out of WPs and items we will need to reach consensus on so that can leave Istanbul with understanding of what will be put out for public comment. WP outcomes should be circulated a few days before the meeting so that the CCWG can review materials before the meeting. Ideas need to socialized prior the meeting as well, including compact mission, AOC discussion (what should be included and how), WS1 measures, review and redress. Aware that no legal feedback yet but need to work on initial feedback we have from past interactions and raise questions with legal doubts. It is a risk but no other option.

The Group will discuss in Istanbul whether changing timeline or not. Objective is to get as much work done as possible: i.e. testing level of agreement in Istanbul rather than discussing extending timelines etc. It is important to focus on work and requirements - if go into details, will derail timeline. Compact will be on the Istanbul agenda.

ACTION ITEM: Co-chairs to include agenda item regarding next steps for the group and timeline in last section of Istanbul agenda.

Feedback:

- We need to be careful about aligning expectations about what final output needs to be and what the output sent to Board is, what we are going to get public comment on in April etc. By end of Istanbul meeting, we will know if issues will closed: prepare enough details.

--> There is no reasonable expectations from us to provide fully fleshed Bylaws changes.

- Public comment is currently 30 days.

4. Proposed Structure of Public Comment Report

The Co-chairs are working on a structure for the report, populating the sections and would welcome the CCWG's feedback. Thomas Rickert walked the Group through the proposed architecture.

Feedback

- We need to be mindful of readability of report: structure report in a way that is readable very quickly using appendices. Think about best way to get feedback from communities.

5. A.O.B

Action Items

ACTION ITEM: Mathieu to report back to the CCWG on conversation with Thomas Schneider in due course.

ACTION ITEM: Jordan to touch base with Keith Drazek on WP1-5B.

ACTION ITEM: Obtain further feedback from the Group during the week. (Feedback on CCT-RT)

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ACTION ITEM: WP1 and WP2 rapporteurs to synchronize to avoid duplication and clarify where the principles discussion is taking place.

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ACTION ITEM: Report on contingencies we cannot mitigate.

ACTION ITEM: ST-WP to identify stress tests for discussion on 17 March.

ACTION ITEM: WP1 and WP2 to provide legal questions to Legal Subteam.

ACTION ITEM: León to confirm legal subteam decision

 ACTION ITEM: Co-chairs to include agenda item regarding next steps for the group and timeline in last section of Istanbul agenda.

Documents Presented

Chat Transcript

Alice Jansen 3: (3/10/2015 00:19) Welcome to CCWG-Accountability call #16! Chat sessions are being archived and follow the ICANN Expected Standards of Behavior: http://www.icann.org/en/news/in-focus/accountability/expected-standards

ARASTEH: (00:56) Good morning to all

Chris LaHatte: (00:57) good evening from New Zealand

Tijani BEN JEMAA (ALAC): (00:57) Hello evryone

Chris LaHatte: (00:57) loving the chicken

Alice Jansen 3: (00:57) Please mute your lines

Sabine Meyer: (00:57) Good morning, everyone!

Leon Sanchez (Co-Chair-ALAC): (00:58) Hello everyone!

Leon Sanchez (Co-Chair-ALAC): (00:58) Welcome again!

Alice Munyua (GAC): (00:58) Hello everyone

Leon Sanchez (Co-Chair-ALAC): (00:58) May I remind you to please mute your lines if you are not speaking?

FIONA ASONGA (ASO) 2: (00:58) Hallo Everyone

ARASTEH: (00:58) this is a very nice morning in Geneva,

Athina Fragkouli (ASO): (00:59) Hello all!

Leon Sanchez (Co-Chair-ALAC): (01:00) The rooster is an indication we're about to begin

Olivier Muron /GNSO/ISPCP: (01:00) Hello all!

ARASTEH: (01:00) it is good to hear that some body laughting

Avri Doria: (01:00) o like the rooster. bit odd at 2am, nonetheless.

Jordan Carter (.nz): (01:01) Good evening folks

Izumi Okutani (ASO): (01:01) Hello all

Jordan Carter (.nz): (01:01) a lovely sunny 20 degrees at 7pm Tuesday in Wellington

Avri Doria: (01:01) guess just a side effect of daylight savings time.

Mathieu Weill, ccNSO, co-chair: (01:01) Hello there ! Good day/night/morning/evening to all

EBrhard W Lisse [.NA ccTLD Manager]: (01:02) 08:00 in the morning here in Windhoek :-)-O

jorge cancio GAC: (01:02) hello to all

Brenda Brewer: (01:03) Leon is back on audio now

Leon Sanchez (Co-Chair-ALAC): (01:03) Thanks Brenda!

Brenda Brewer: (01:04) Barrack Otieno is on audio only

Alice Jansen 3: (01:05) Available here - https://community.icann.org/download/attachments/52888421/WP1-WorkStatus-CCWG-ACCT%202015-03-10.pdf?version=1&modificationDate=1425966317543&api=v2

jorge cancio GAC: (01:07) GAC Chair sent a preliminary answer to CCWG Co-Chairs on March 5th, with a number of questions

Alice Jansen 3: (01:07) Apologies - we seem to be having problems with the document uploading features

ARASTEH: (01:07) good morning Thomas SCHNEIDER

Alice Jansen 3: (01:07) It should now be on your screens - thanks for your patience

ARASTEH: (01:08) ARE YOU THERE?

Alice Munyua (GAC): (01:09) The GAC chair responded with some clarifying questions

ARASTEH: (01:10) aLICE i am not able to raise hand

Steve DelBianco [GNSO - CSG]: (01:10) not here, as far as I recall

Brenda Brewer: (01:11) Apologies Kavouss, if you cannot raise your hand, you will need to log in again please.

Alice Jansen 3: (01:11) @Kavouss, please try rejoining the Adobe Connect

Thomas Rickert: (01:11) Kavouss, I note your request to speak after Jordan's intervention

Brenda Brewer: (01:12) Keith Drazek is not on audio at this time.

Thomas Rickert: (01:13) Please mute your lines when not speaking

Leon Sanchez (Co-Chair-ALAC): (01:13) Kindly mute your lines when not speaking

David McAuley: (01:14) bad echo

Jordan Carter (.nz): (01:14) Big echo echo echo

Jordan Carter (.nz): (01:15) oh that seems better

Thomas Rickert: (01:17) Kavouss, we will hear you after Steve's presentation

Samantha Eisner: (01:28) Information on the full complement of work on reviewing the New gTLD Program (not just the AoC review on Consumer Choice) is available at http://newgtlds.icann.org/en/reviews

Jordan Carter (.nz): (01:28) I giess it is a point to note that we need to decide at the meeting in Istanbul what we consider to be WS1 and what we consider to be WS2, and propose those to the community as part of our consultation

Jordan Carter (.nz): (01:31) could the AP be to clearly define in this material which WS the team thinks each needs to be at?

Jordan Carter (.nz): (01:31) (if they don't think it needs to be in WS1)

jorge cancio GAC: (01:34) Agree on the need to keep balance in review teams

Steve DelBianco [GNSO - CSG]: (01:35) there is also Review #4 (WHOIS) in our draft

jorge cancio GAC: (01:38) question for Becky: what is the legal nature of this compact mission? will it be binding? actionable?

Eberhard Lisse [.NA ccTLD Manager]: (01:40) got kicked off, but am back in :-)-O

jorge cancio GAC: (01:41) how will it be implemented legally?

Jordan Carter (.nz): (01:42) I would imagine it fits into the Bylaws.

jorge cancio GAC: (01:42) and thanks for the explanations

Bruce Tonkin: (01:42) IN terms of changing some bylaws like mission etc - a process could be dinfed that requires some level of cosnensus at least in the SOs as well as some voting threshold at the Board.

jorge cancio GAC: (01:42) sounds like a constitutional level within the fundamental rules for ICANN

Jordan Carter (.nz): (01:43) jorge, that does sound like a good analogy to me.

Mathieu Weill, ccNSO, co-chair: (01:43) +1 Jorge

Becky Burr: (01:43) I agree Jorge

Bruce Tonkin: (01:43) Yes @#jorge - one way of thinking of this is like making a change to a constitution versdus a change to the laws under the constitution.

Bruce Tonkin: (01:43) That is why I had been looking at both the articles of associations and the bylaws.

Julia Wolman, Denmark, GAC: (01:43) +1Jorge

Leon Sanchez (Co-Chair-ALAC): (01:44) @Jorge that is exactly right

Bruce Tonkin: (01:44) Articles of Incorporation - to use the California legal term.

Chris LaHatte: (01:45) we do need to think in the longer terms about constitutional or founding principles as the top level for governance, as I think you are saying Bruce

Bruce Tonkin: (01:46) Yes @Chris - I think we need to have a core purpose of ICANN that is much harder to change than say a "bylaw" that defines how we operate - rather than what we do.

Jordan Carter (.nz): (01:47) Golden bylaws, or sticking stuff into the Articles? Pre or post transition? So many questions.

Chris LaHatte: (01:47) A constitution I think

Becky Burr: (01:47) that is something we need legal advice on

Leon Sanchez (Co-Chair-ALAC): (01:48) One of the questions in the legal scopoing document addresses precisely the issue of keeping ICANN's mission narrow and explores the Golden bylaw

Bruce Tonkin: (01:53) just a question for the co-chairs - is the CCWG planning to use the same legal counsel as the CWG - or is that still under discussion?

Leon Sanchez (Co-Chair-ALAC): (01:54) @Bruce the initial intentions is to use the same but it is still under consideration. I will give an update on that in a moment

Jordan Carter (.nz): (01:55) +1 for that coord point

Chris LaHatte: (01:57) I can talk on those issues

Bruce Tonkin: (01:58) Thanks @Leon.

Mathieu Weill, ccNSO, co-chair: (02:02) @Steve : maybe we could just amend the "title" of the review : effectiveness of policies to meet legitimate needs of LEA, promote consumer trust while taking into account privacy

Alice Jansen 4: (02:03) Chris, do you need a dial-out?

Chris LaHatte: (02:03) I have lost sound

Samantha Eisner: (02:03) For each of the reviews, consideration of the length of cycle between reviews/community workload should be considered

Bruce Tonkin: (02:04) With respect to reviews - such as WHOIS - I think it is importnat to fcus the next review on what has changed and the effectiveness of the cnage.

Chris LaHatte: (02:04) yes I think I will need that

Robin Gross [GNSO - NCSG]: (02:04) yes, Mathieu

Bruce Tonkin: (02:04) Trying to review the whole of WHOIS again would not be productive as there are range of parallel activiites still underway from the last review.

Steve DelBianco [GNSO - CSG]: (02:05) Agree, Bruce.   Especially since we need to do the AoC WHOIS review in 2015

Eberhard Lisse [.NA ccTLD Manager]: (02:06) unfortunately I'll have to step out any second now...

Mathieu Weill, ccNSO, co-chair: (02:06) 3&4 are on page 4 if you wantto scroll

Steve DelBianco [GNSO - CSG]: (02:07) page 5, on the document displayed in Adobe

Brenda Brewer: (02:07) 11:00 UTC for the Stress Tests Call 11 March

Alice Jansen 4: (02:07) You should all have scroll control

Mathieu Weill, ccNSO, co-chair: (02:07) @Steve: oups, right, page 5

Chris LaHatte: (02:09) does whistleblowing have a role in stress test?

Mathieu Weill, ccNSO, co-chair: (02:09) @Chris; sure, could be related to stress test about corruption for instance

Chris LaHatte: (02:09) ombudsman typically has a role there

Chris LaHatte: (02:10) a confidential place to lodge such issues

Cheryl Langdon-Orr ALAC - APacRegion Member: (02:10) Thanks for the suggestion @Chris

Jordan Carter (.nz): (02:11) YOu have that right, Steve.

Chris LaHatte: (02:11) and as accountibility you can ask the ombudsman to investigate, as an individual or corporate

Chris LaHatte: (02:12) Systemic problems are part of my mandate

Bruce Tonkin: (02:14) Which number stress test is Steve referring to?

Samantha Eisner: (02:14) 3 and 4

Samantha Eisner: (02:14) they are on page 5 of the document

Bruce Tonkin: (02:14) Thanks @Samantha

Samantha Eisner: (02:17) There's a difference between a risk analysis towards an action and actually violating a law

Bruce Tonkin: (02:18) I think there is a ig difference from doing something that might lead to litigation with respect to a contract, versus action that a law enforcement body might take with respect to coompliance with teh law.

Jordan Carter (.nz): (02:18) If the United States legislates towards ICANN post-transition, then we are in serious trouble.

Jordan Carter (.nz): (02:18) Ditto the State of California.

Chris LaHatte: (02:19) +1 Jordan

Leon Sanchez (Co-Chair-ALAC): (02:20) @Jordan but that is true in any case in any jurisdiction

Bruce Tonkin: (02:21) @Steve the community certainly has a voice through the IRP and recosnideration if the Baord took a deicsion that was against an approved community policy.

Jordan Carter (.nz): (02:22) Leon - yes, but it's mainly relevant in the jurisdiction in which ICANN resides

Leon Sanchez (Co-Chair-ALAC): (02:23) @Jordan agree

Steve DelBianco [GNSO - CSG]: (02:23) @Bruce -- I do not believe the Comminity has standing or access to file an IRP. And the IRP is not binindg

Chris LaHatte: (02:26) the community would however be able to complain to the ombudsman

Chris LaHatte: (02:26) and has done so

jorge cancio GAC: (02:28) in some jurisdictions the ombudsman has standing to bring in, for instance, constitutional appeals - and does so when there is relevant community (civil society for instance) support...

Bruce Tonkin: (02:29) Yes - this is a tricky area. Ultiately thICANn needs to adhere to its policies and the communiyt needs to update policies as communiyt valuaes and requirements change.

Bruce Tonkin: (02:29) The compleixity is when laws are created where there is no expolicit ICANN policy in that area. So an accouontaibility mechansims that ensuresICANn follows its policies may not be appropriate.

Bruce Tonkin: (02:30) I agree with Steve though that one of hte coencerns is how laws relating to freedom of expression creating in some countries could apply to ICANN.

Cheryl Langdon-Orr ALAC - APacRegion Member: (02:30) Exactly Mathieu!

Jordan Carter (.nz): (02:31) I think we have talekd this out

Jordan Carter (.nz): (02:31) *talked

Cheryl Langdon-Orr ALAC - APacRegion Member: (02:31) yup

David McAuley: (02:31) We do need to be aware of issue and Steve is right that not all risks can be eliminated.

Jordan Carter (.nz): (02:31) We need to demonstrate that we have considered a wide array of situations, and that our proposed set of reforms respond in a balanced way to them. Not solve everything for all time.

Bruce Tonkin: (02:33) Yes @David - certainly at a multi-national company point of view - companies can simply choose not to do business in some countries where they feel they cannot comply with the local law. It does get more comlication with a public benefit corporation that is supposed to operate for global benefit.

Samantha Eisner: (02:33) ICANN has an obligation to follow court orders issued from applicable jurisdictions

Leon Sanchez (Co-Chair-ALAC): (02:33) +1 Jordan

David McAuley: (02:33) @Bruce - agreed

Mathieu Weill, ccNSO, co-chair: (02:33) @Sam: can opt to challenge legislation as well

Bruce Tonkin: (02:34) The WHOIS policy - is one response - in that ICANn can give some exemptions for registrars that are located in a local where the local law is different to the requirements in the registrar accreditation agreement.

Samantha Eisner: (02:34) Yes, orders can be challenged

Leon Sanchez (Co-Chair-ALAC): (02:34) @Sam @Mathieu ICANN could challenge the resolution that derives in the Court order but if it decided not to challenge it I think it couldn't be held accountable on executing a Judge order

Chris LaHatte: (02:35) and if the court is corrupt?

Avri Doria: (02:35) Sam, I also assume there are grey areas where the question of whether ICANN is liable under a country's legislation might be opne and benefit from policy recommendations.

David McAuley: (02:35) @Bruce - RAR data retention is another

Leon Sanchez (Co-Chair-ALAC): (02:36) @Chris that wouldn't be up to ICANN to decide, hence the challenge of the resolution and for a higher Court to decide

Bruce Tonkin: (02:36) An interesting point @leon. It would certainly be a choice from ICZANZn as to whether or not it challenges enforcement of a particular law through the courts - versus simply accept it.

Samantha Eisner: (02:37) Challenging an order is often different from just ignoring it or choosing not to follow it

Jordan Carter (.nz): (02:39) Staff - I parse the action points for WP1 - can you note the action to pass legal questions on is for WP rapporteurs?

Jordan Carter (.nz): (02:39) I agree that jurisdiction should be done as WS2 not WS1, personally.

jorge cancio GAC: (02:41) @leon: will you put this question on jurisdiction explicitly to the CCWG-list?

David McAuley: (02:41) Not sure why CCWG would use separate legal advisor – if we would want that we should have good reason given the time it will take to arrange

jorge cancio GAC: (02:43) thanks, gracias, Leon!

Alice Jansen 4: (02:45) https://docs.google.com/document/d/132V7P8nmyalhoso7zcevjW3_ox1laXn5JIEH3dDAF3A/edit?usp=sharing

Edward Morris: (02:45) @David. i don't think it should be assumed the same law firm suits the needs of both groups given that each group may, or may not, have different legal specialist needs.

Julia Wolman, Denmark, GAC: (02:46) I believe it makes most sense to use the same law firm in both groups

Jordan Carter (.nz): (02:46) I can see no reason on earth why we would use a different firm

Jordan Carter (.nz): (02:46) but if we were going to use another one, surely it has to be one of the short listed ones from the CWG

Chris LaHatte: (02:47) thee are not such difficult questions of law, that we need different specialists

ARASTEH 2: (02:47) I FULLY AGREE WITH JULIA IN HAVING THE SAME LAW FIRM BOR BOTH

Jordan Carter (.nz): (02:47) I strongly support us going to the same firm.

David McAuley: (02:47) Thanks @Edward. I have tried to envision what need might cause that but don't see it so far. Open to other thoughts.

Bruce Tonkin: (02:47) Although - note that the law firm has a great deal of resources to call upon with respect to specialist advice in different areas.   The CCWG woudl not be limited to the advice from a single lawyer at the firm.

David McAuley: (02:47) Good point Bruce

Avri Doria: (02:48) While i think it most convenient, i agree with the reasoning that indicates there could be a diffence in skill sets between contract law (most of the CWG questons) and acocuntabilty meansure (most of the CCWG issues)

Jordan Carter (.nz): (02:48) I trust the legal group to test that

Jordan Carter (.nz): (02:48) (Avri's point)

Jordan Carter (.nz): (02:48) look forward to hearing the report back

Avri Doria: (02:48) i trust them too. just ndicating a basis for a decsion to pick a different firm.

Pedro da Silva [GAC Brasil]: (02:49) +1 Steve

David McAuley: (02:49) +1 Steve also

Pedro da Silva [GAC Brasil]: (02:49) (apologies for joining the call only now)

Leon Sanchez (Co-Chair-ALAC): (02:51) no movies for anyone on the plane :P

Robin Gross [GNSO - NCSG]: (02:51) We aren't even going to get our legal advice back in time to decide what mechanisms are viable and will achieve our goals for a couple more weeks. I don't think we can possibly know what we are proposing for a draft proposal coming out of Istanbul.

Robin Gross [GNSO - NCSG]: (02:52) We need a realistic timeline. The one we have implies we will have the issues in WS done by May. That is not realistic.

Robin Gross [GNSO - NCSG]: (02:52) WS1 done by May, that is.

Robin Gross [GNSO - NCSG]: (02:53) But we won't have WS1 done by May.

Leon Sanchez (Co-Chair-ALAC): (02:54) Let's not miss the point that legal advice will result in a series of iterations and while we won't be able to have definitive advice before Istanbul, I believe it is feasible to have at least initial advice before our meeting, as long as we engage with the law firm in time

Robin Gross [GNSO - NCSG]: (02:55) We may entirely re-structure ICANN with one single 21-day public comment period? That doesn't seem right.

Jordan Carter (.nz): (02:55) We have to ask for SOME SORT of comments in April, I hope

Jordan Carter (.nz): (02:56) but whether we can sustain that being the ONLY public comment period, I don't know.

Jordan Carter (.nz): (02:56) especualy given the community overload in April - people will have 21 or 30 days for comments both on Accountability and on the Names proposal.

Jordan Carter (.nz): (02:57) +1 Mathieu - we should be running full speed ahead to Istanbul.

David McAuley: (02:57) +1 Mathieu

Jordan Carter (.nz): (02:57) +1 Mathieu's suggestion that the Agenda in terms of ISSUES can be settled only late next week

Jordan Carter (.nz): (02:58) Matheiu-- we need to talk about the longer term frame of this project, at Istanbul, especially how our recommendations interact with Stewardship and whether our advice has to be IMPLEMENTED before the transition

ARASTEH 2: (02:58) Dear All

Jordan Carter (.nz): (02:58) because if they have to be implemented, then the more detail work we can do early, the more useful.

ARASTEH 2: (02:59) I WISH TO TAKE THIS OPPORTUNITY TO SINCERELY THANK icann staff and in particular

Mathieu Weill, ccNSO, co-chair: (03:00) @Jordan : Right Jordan. All our recommendations will have to go with implementation proposals / timelines I guess

ARASTEH 2: (03:00) Bruce who has been always very helpful in providing timely and comprehensive informatrion

David McAuley: (03:00) +1 @Kavouss

Jordan Carter (.nz): (03:00) ICANN Board Member Bruce. :-) +1

Leon Sanchez (Co-Chair-ALAC): (03:00) +1 Kavouss

Mathieu Weill, ccNSO, co-chair: (03:01) +1, and demonstrates the value of CCWG Board liaisons

jorge cancio GAC: (03:01) +1

ARASTEH 2: (03:01) CCWG IS A LOVELY AND FREINDLY GROUP

ARASTEH 2: (03:02) tks to all its members and in particular its co-chair

Julia Wolman, Denmark, GAC: (03:02) +1

Jordan Carter (.nz): (03:02) Aren't all ICANN groups like this?

ARASTEH 2: (03:02) NO COMMENT

Pär Brumark (GAC): (03:03) +1 Kavouss:-)

Julia Wolman, Denmark, GAC: (03:04) +1 Jordan

Alice Munyua (GAC): (03:04) +1

Jordan Carter (.nz): (03:04) I agree we need to think about feedback stuff but also the substance needs to be clear and crisp. Appendixes or background docs could be our friends.

Mathieu Weill, ccNSO, co-chair: (03:05) Good point Jordan. Will start thinking about key questions

Cheryl Langdon-Orr ALAC - APacRegion Member: (03:05) Good call Thank you all talk soon then... bye for now...

Chris LaHatte: (03:05) +1 Jordan

David McAuley: (03:05) Thanks all

Thomas Rickert: (03:05) thanks all!

Jordan Carter (.nz): (03:05) Thanks everyone ! Good call!

Markus Kummer: (03:05) Thanks and congrats: impressive work by the CCWG!

Mathieu Weill, ccNSO, co-chair: (03:05) Thank you everyone ! TTY soon !

Alice Munyua (GAC): (03:05) Thank you

Pär Brumark (GAC): (03:05) Thx!