Session 3

Attendees:

Members: Alan Greenberg, Alice Munyua, Athina Fragkouli, Becky Burr, Cheryl Langdon-Orr, Eberhard Lisse, Fiona Asonga, Izumi Okutani, James Bladel, Jordan Carter, Leon Sanchez, Mathieu Weill, Olga Cavalli, Par Brumark, Roelof Meijer, Samantha Eisner, Steve DelBianco, Sebastien Bachollet, Suzanne Radell, Thomas Rickert, Tijani Ben Jemaa   (21)

Participants: Adrian Carballo, Andrew Harris, Arun Sukumar, Avri Doria, Carlos Raul Gutierez, Chris Disspain, Chris LaHatte, David McAuley, Edward Morris, Erika Mann, Finn Petersen, Jonathan Zuck, Jorge Cancio, Keith Drazek, Malcolm Hutty, Mark Carvell, Markus Kummer, Martin Boyle, Matthew Shears, Maura Gambassi, Oanh Nguyen Thi, Olivier Crepin-Leblond, Olivier Muron, Paul Rosenzwieg, Pedro Ivo Silva, Peter Van Roste, Phil Corwin, Rafael Perez Galindo, Rudi Daniels, Sabine Meyer, Thomas Schneider, Tracy Hackshaw, Wisdom Donkor, Wolf-Ulrich Knoben, Wolfgang Kleinwachter   (36)

Staff: Jim Tengrove, Laina Rahim, Therese Swinehart, Adam Peake, Alice Jansen, Grace Abuhamad, Nathalie Peregrine, Marika Konings, Julia Charvolen

Apologies:

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

Transcript

Transcript CCWG ACCT F2F Session 3 23 March.doc

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Recording

The Adobe Connect recording is available here: https://icann.adobeconnect.com/p48tvzvm4b8/

The audio recording is available here: http://audio.icann.org/gnso/gnso-ccwg-acct-3-23mar15-en.mp3

Proposed Agenda

14:00-16:00 EET – 12:00-14:00 UTC – Session 3

14:00 Incorporating the AoC into the Bylaws

15:00 Independent Panel

Notes

These high-level notes were prepared to help you navigate through content of the call and do not substitute in any way the transcript.

CCWG Istanbul Meeting - 23-24 March 2015 Session 3

WP1.A Block Changes to ICANN Bylaws

Jordan Carter - WP 1 rapporteur walked the CCWG through 1.A Block changes to ICANN's Bylaws. Feedback included:

- Suggestion to separate Bylaws changes: suggested by Board vs. Bylaws changes that went through bottom-up process.

- Circumstances for community veto should be described.

- Suggestion to use "considerations for community voting" language

- Ultimate resort of blocking would be a positive way to strengthen overall process

- For budget, we have a public comment process but it is not stated in bylaws.

- This power would be a valid remedy e.g. change of standard of work for independent review.

- How we would initiate idea of Bylaws change would need to be defined.

- Need to define supermajority vs. majority

- Clarity needed on percentages (e.g. GAC MO).

--> No feedback received from members on feasibility.

--> GAC is undergoing revision of operating principles - that may include right to vote - vote should be involved in these decisions whatever way is felt appropriate

- What happens if a group sits out voting? Endangers supermajority.

- Voting thresholds and quora should be clarified

- Should mission creep contingency be factored into this conversation?

- Questions of how independent panel would influence this.

- Do we want to prohibit changing mission? For each Bylaw, we may want to consider laying out what requirements are needed for change

- Consenus call for this power

ACTION ITEM – Produce comparison table for the powers

WP1-7A Removing the ICANN Board of Directors

Jordan Carter - WP 1 rapporteur walked the CCWG through 7A Removing the ICANN Board of Directors. Feedback included:

- Rather than having committee using SO/ACs, did you consider having bylaws mandate that each SO/AC needs to go through process? There would be a cross community discussion but that vote would occur in each SO or AC.

- Who makes the Committee?

- What is the minimum Board size and composition required under California law?

- Should Board members who served on spilled Board be ineligible?

- Variations for how this power might work: 1) last resort mechanism (stability is of high priority) broad community support (# of So/Acs) needed and last resort potentially a document such as AoC; 2) High threshold but lower thresholded would be set for starting conversation. Discussion would happen within community council. A substantial element of community would be an avenue to go to to place grievance (forum); 3) Based on idea of Board serves several communities and must command confidence of each community it serves (-vote of no-confidence). Need to determine what kind of power do we want and when would we want to use it (under realistic circumstances.

- Suggestion to spill Board based on objective decisions

- Belief subjective decisions suffice

- A back-up solution is needed: interim Board

- Decisions must engage SO/ACs directly

- Should a supervisory Board is in place, the management function would be filled but it is not in our case. What liability risks does this entail?

- While some believe it should be through SO/ACs, others believe it do not make a difference if conveyed through a member.

- Moral authority of community needs to be acting

- There is a need for a caretaker board to step in

- Comments were offered on straw mans petition for Board spill: straw man 2 requires a lot of work; 2 constituencies in GNSO - 3 regions in ccNSO does not mean anything; strawman 3 is unacceptable. It was observed that community council needs to vote on it in the end (supermarjority)

- To have decisions made in SO/ACs is a sensible suggestion

- Both sides of SO/ACs should have voice in it --> 2 and 1 combo

- Objective criteria can be defined

- Sidley letter to CWG meeting indicated that it is common for members to remove directors without cause I e. no need to delineate standards of removal

- Removing IANA functions from ICANN - nuclear option - is one way of discipline but ultimate nuclear action is for stakeholders to select other Directors

ACTION ITEM - Read CWG letter to set the scene.

- Clarity needed on who can trigger process, what the threshold is.

- Level of petition matters.

- Motion of no-confidence is very disruptive.

- Need to take into account extreme perception it gives. High level of threshold is needed to avoid giving impression ICANN is in crisis mode

Conclusion

- No objection to dropping straw nab # 3

- Merge strawmans # 1 and # 2

- High threshold for no-confidence

- More support for subjectivity (which objective criteria as well)

- Wish to keep veto process

- Call for flexibility

- Community empowerment of Frankfurt meeting was that this apply to limited set of issues - not a provision for WP1 to work on generic mechanism.
Do we want to limit community veto mechanism?

Community Empowerment

- Multitude of mechanisms created – some would be merged

- Budget/strat plan should be WS1 - allocation of resources is a way for ICANN to go outside its mission. Community should be empowered to check if that happened.

- Put process to place that is community consultation mechanism that would become part of mandate process to be use including a process for community veto. That would give option to work within timeline.

- It has to be realistic for it to work.

- Get a timeline and determine what needs to be slot it

- Designed characteristics in a waythat it does not delay process.

- Delineate WS1 and WS2

Conclusion

- Take into account continuity impact

- Voting is involved and needs to be transparent

- Need work on supermajoirty, how manage abstentions etc

- Votes are not directed by SO/ACs

- Thresholds willl need to be simplified/harmonized

- DIfferent rules for voting of different processes

- SO/ACs vote

- Which groups do we think should be represented and how are the powers balanced? Thresholds?

- Discussions needed on who we think should be on it or not - needs to be based on facts rather than thoughts.

- Dangerous to differentiate between SO/ACs

- Suggestion of an opt-out or observers/liaisons. Opt out for ACs

- Any member of community needs to be represented - everyone is represented

- Inclusiveness is important

- We need to make sure we are enabling outsiders - external stakeholders need to be given opportunity to appeal

Action Items

ACTION ITEM - Produce Comparison table for the power

Documents Presented

Chat Transcript

Brenda Brewer: (3/23/2015 07:15) CCWG Accountability Day 1 Session 3

Carlos Raul Gutierrez: (07:24) volume is getting lower and lower

Carlos Raul Gutierrez: (07:24) difficult to hear

Becky Burr: (07:24) +1 Jordan

David McAuley (GNSO RySG): (07:24) volume has wavered up and down

Carlos Raul Gutierrez: (07:24) Danke!

Olivier Crepin-Leblond: (07:25) yes - much better

Steve DelBianco: (07:26) @Markus: Can do the Strenghtening in Work Stream 2.   IN WS1 we need the power to block a bylaws change

Markus Kummer: (07:27) @Steve: more a question of approach and presentation, I agree that the power to block is key.

Edward Morris: (07:28) Excellent example Becky.

Leon Sanchez (Co-Chair-ALAC): (07:32) Different decisions will need different thresholds

Jordan Carter (ccTLD member, .nz): (07:36) Avri, you're green :)

David McAuley (GNSO RySG): (07:42) Maybe best to wait to IRP discussion but IRP itself may have a timeline for complaints and if it does the community sleepiness could still be an issue

Malcolm Hutty: (07:43) You can make that less likely by requiring minimum notice periods before bylaws changes

Malcolm Hutty: (07:45) +1

Becky Burr: (07:46) +1 Jordan

Steve DelBianco: (07:46) In Sidley's letter, they say "Rights commonly reserved to Members include ... approving bylaws amendments adversely affecting Member interests

Paul Rosenzweig: (07:46) +1 Jordan -- we need to make two things Golden -- the mission definition and the existence of thee IRP itself! We can't allow a bylaw change to eliminate the rreview

Cheryl Langdon-Orr: (07:47) correct @steve that is a commonly used tool. in my experience

Becky Burr: (07:47) i believe that the commitments and core values also need to be durable

Steve DelBianco: (07:49) The Sidley letter says "Rights commonly reserved to Members include ... the removal of directors without cause"

Mathieu Weill, ccNSO, co-chair: (07:49) + community powers (the ones we discuss). Basically WS1 should be golden bylaws

Mathieu Weill, ccNSO, co-chair: (07:49) I recall Sébastient suggested that we divide the bylaws into different docs. We would have golden + normal bylaws

Steve DelBianco: (07:50) @mathieu -- They dont have to be Golden, since the community could block the board's effort to diminish WS1 Powers

Mathieu Weill, ccNSO, co-chair: (07:51) @Steve : then why put the others in and not the powers ?

Steve DelBianco: (07:53) no harm in doing so, Mathieu.   Just that we don't need to put all WS1 powers in the golden bylaws

Tracy Hackshaw (GAC): (07:55) I may have missed this - but who or which group/entity is monitoring/tracking/identifying synergies between the CCWG-Accountability and CWG-Stewardship? Is it the respective Chairs/Co-Chairs?

Mathieu Weill, ccNSO, co-chair: (07:55) We sync at co chair level every week

Mark Carvell GAC - UK Govt: (07:56) Re-appointing individual members should primarily be in the interests of operational continuity and stability, and ensuring caretaker is effective and safe.

Alice Jansen: (07:56) Link to template: https://community.icann.org/download/attachments/52888421/WP1-7A%20Community%20can%20remove%20ICANN%20Directors%20v3-1.docx?version=1&modificationDate=1426855108000&api=v2

Tracy Hackshaw (GAC): (07:57) Thanks @Mathieu - some of the discussions seem awfully similar - on approach, principle, and content layers

Mathieu Weill, ccNSO, co-chair: (07:58) @Tracy : yes, although the "powers" might not be the same

Tracy Hackshaw (GAC): (07:58) @Mathieu - noted. This might need further ventilation

Chris Disspain: (08:00) Good point James but it owuld be important I think that any caretaker Board wasn't just new peple

Paul Rosenzweig: (08:01) @Mathieu -- my view of Golden is the few powers where we are also worried about captureof the community (Chris' point earlier today). One of those might be that the large majority of the community wants to expand Mission for "good" reasons that are really beyond the scope of ICANN (e.g. allowing ICANN to regulate spam). That and the indepenednets/immutability of the IRP are the reason I think those two are golden, and not necessarily others.

Mathieu Weill, ccNSO, co-chair: (08:02) shouldn't dismissal of the Board be given the same kind of protection ?

James Bladel-GNSO: (08:02) @Chris: It would simply be a temporary (but functioning) stop gap until a new Board can be constittued.

Paul Rosenzweig: (08:09) @Mathieu -- possibly. My two are the ones I think are a minimu.m. We could add others,,   It may be that the powers we give the community are all non-derogable

Steve DelBianco: (08:11) @Tijani, regarding subjective vs objective reasons.. The Sidley letter says "Rights commonly reserved to Members include ... the removal of directors without cause"

Carlos Raul Gutierrez: (08:13) +1 For the German model of a two tier Board

Edward Morris: (08:16) Severe liability issues in California law that auger against the supervisory board structure.

Mark Carvell GAC - UK Govt: (08:16) Spilling the Board would likley be disastrous for ICANN politically. and provide a premise for seeking an external solution to a collapse in confidence. This adds to desirability of credible caretaker provisions that ensure continuity and stability.

Jonathan Zuck (IPC): (08:16) +1 Steve. Objective vs Subjective will never resolve itself. The board serves at the pleasure of the community

Matthew Shears: (08:19) + 1 Mark

Matthew Shears: (08:19) caretaker is key

Edward Morris: (08:19) It should be noted that if a statutory membership mechanism is chosen the rules and thresholds (generally a majority of members) are set by statute.

Leon Sanchez (Co-Chair-ALAC): (08:20) a transition Board or substitute body should be in place maybe

Alan Greenberg: (08:21) Re spilling the Board, regardless of formal rules, ALL such discussions will start and be built in the corridors and 1:1 phone calls, not formal meetings

Wolfgang: (08:23) @ Avri: This is true :-)

Mark Carvell GAC - UK Govt: (08:27) Objective criteria: multiple disregards of responsibilities and decisions that constitutes a defined trend of misbehaviour on which more than one SO and at least one AC have passed resolutions (or equivalent) stating absolute loss of confidence in the Board.

Jordan Carter (ccTLD member, .nz): (08:27) Agree with that Alan - and so the threshold thing is kind of irrelevant

Jordan Carter (ccTLD member, .nz): (08:28) a higher threshold, I guess, just saves whatever mechanism we have the time taken from risking "frivolous" triggerings

James Bladel-GNSO: (08:28) Or resign...

Chris Disspain: (08:29) Mathieu is right...the mere calling of the possiblity of a vote of no confidence is itself a serious step

Malcolm Hutty: (08:30) @Mark, by "at least one AC", do you mean GAC consent to spill should be required, or do you think SSAC, RSSAC might ever co-sign such a petition?

Izumi Okutani(ASO): (08:30) + 1 Mathieu

Izumi Okutani(ASO): (08:31) Giving low threshold for the community to express concerns can be considered by other mechanisms, spilling the entire board has more serious consequences

Matthew Shears: (08:32) yes, this can't be seen as disassociated from individual board member recall and other mesures

Matthew Shears: (08:32) as an escalation to spilling the entire board

Mark Carvell GAC - UK Govt: (08:35) @ Malcolm: not necessarily the GAC only; is it a given that SSAC and RSSAC would not wish to petition if they believed Board was acting recklessly and jeopardising the global system?

Cheryl Langdon-Orr: (08:36) and of course. ALAC may pay a role as well

Malcolm Hutty: (08:36) @Mark I think so,yes. They conceive of their role as advisory only.

Cheryl Langdon-Orr: (08:36) pay should read PLAY

Malcolm Hutty: (08:36) (Of course, if *every* other element of the community was co-signing, they might still co-sign out of comity, but otherwise no)

Mark Carvell GAC - UK Govt: (08:37) @ malcolm: how do they react if the Board fails to seek or ignores their advice?

Mark Carvell GAC - UK Govt: (08:39) @ Cheryl: yes - apologies for omission - and thanks for clarifying pay/play typo! :)

Malcolm Hutty: (08:39) @Mark, well, would be best to ask them directly, but in my perception they say "we've advised the Board, whether the Board chooses to follow or ignore our advice is their prerogative

Mark Carvell GAC - UK Govt: (08:45) Agree with Chris on budget proposal solution in view of time criticality of budget process..

Matthew Shears: (08:48) lin item veto - Interesting idea Alan

Cheryl Langdon-Orr: (08:48) would/could be less disruptive

Jordan Carter (ccTLD member, .nz): (08:49) I'd rather the ICANN board did that tbh

Jordan Carter (ccTLD member, .nz): (09:00) So quiet in the chat, has my Internet died?

Chris Disspain: (09:01) no...we're ignoring you

Sabine Meyer: (09:01) who? :)

Roelof Meijer (ccNSO, @IST): (09:01) @Jardan: yours has, ours hasn't..

Roelof Meijer (ccNSO, @IST): (09:02) Oops... "Jordan"

Jordan Carter (ccTLD member, .nz): (09:02) :P

Edward Morris: (09:04) Just want to confirm that this Community Council is just one of several structures under consideration.

Mathieu Weill, ccNSO, co-chair: (09:05) @Edwward : if we had a member structure, question would be the same don't you think ?

Keith Drazek: (09:07) The definition of community should be based on existing (or future) community structures. The GNSO is so diverse it probably needs SG and C representation. I'm also ok with the concept of weighted voting for balance.

Edward Morris: (09:07) @Mathieu, generally yes. Just confirming we're considering community composition of whatever mechanism we chose rather than the one cited. thanks for confirming.

Mathieu Weill, ccNSO, co-chair: (09:07) @Ed : yes that is the intent

Leon Sanchez (Co-Chair-ALAC): (09:07) @Edward I think that this is one of the options in the table but we have more under consideration for different means

Edward Morris: (09:07) Thanks for clarifying guys.

Edward Morris: (09:08) +1 Keith

Alice Jansen: (09:11) spreadsheet available at https://community.icann.org/download/attachments/52888421/CCWG_Threshold_Tool_v0.2.xlsx?version=1&modificationDate=1427056925000&api=v2

Jordan Carter (ccTLD member, .nz): (09:14) I vote for our scheduled coffee break

Matthew Shears: (09:14) + 1 Jordan

Jordan Carter (ccTLD member, .nz): (09:15) Go Green for coffee.....? :)

Becky Burr: (09:15) YES COFFEE

Sabine Meyer: (09:15) AND TEA:

Alice Jansen: (09:16) We will be back at 14:45 UTC