

Legal SubTeam Meeting #8 (1 April)

Attendees:

Sub-Group Members: Alice Munyua, Athina Fragkouli, Becky Burr, Cheryl Landon-Orr, David McAuley, Edward Morris, Farzaneh Badii, Gary Campbell, Greg Shatan, Jonathan Zuck, Leon Sanchez, Mathieu Weill, Megan Richards, Philip Corwin, Robin Gross, Samantha Eisner, Steve DelBianco, Vrikson Aco sta-Velasquez (19)

Guests: Edward McNicholas, Janet Zagorin, Josh Hofheimer, Rosemary Fei, Stephanie Petit, Steven Chiodini, Tennie Tam, Vivek Mahan (8)

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

Apologies: Sabine Meyer, Jordan Carter

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

Transcript

[Transcript CCWG ACCT LEGAL Subteam #8 1 April.doc](#)

[Transcript CCWG ACCT Legal Subteam Meeting 1 April.pdf](#)

Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p6coqeisw50/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-accountability-legal-01apr15-en.mp3>

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

Methodology

S&A suggestions: context important for ability to do research. Mechanism for community to agree on questions and consolidate them would be useful. Helpful to have process where law firms coordinate for overlapping questions for efficiency purposes.

--> Memorandums will be filed on the wiki

--> Legal executive subteam to ensure there is no duplication

--> Coordination between law firms is desirable

--> Suggestion to add section in legal scoping document to record questions

--> Legal executive team to set order in questions

--> Q&A exercise or holistic structure?

--> Timeline to be considered

--> Context to be provided

--> Consider triage to ensure efficiency

CONCLUSION: methods have been established (see wiki). All questions will be assigned to lawyers through memorandums. No need to address questions outside memorandum. Legal subteam should consider 120-minute calls. Scoping document will be the main document of reference - all questions assigned to lawyers will be inserted into legal scoping document for records. Questions will be posted on wiki page. Clarify questions prior to responding.

ACTION ITEM: Call duration to be adjusted -> 120 min - 1 hour (15:00-16:00 UTC) subteam members - 1h (16:00-17:00 UTC) lawyers

Review of Community Empowerment

We are looking for advice on our proposals (legally viable or not), not for a redesign. Need to know what structural changes are needed - if any - to implement powers and mechanisms we want in place.

Outline next steps to meet goals:

1) Subteam to review documents from A&C - S&A

2) Ask how we may operationalize

ACTION ITEM Circulate templates of mechanisms to lawyers

Request to prioritize and narrow down areas to explore.

Board removal

Budget approval

Bylaws approval

Golden Bylaws

Independent Review Panel

Reconsideration Process

Jurisdiction

- Would help to focus on California law and avoid looking across globe.

- Jurisdiction refers to HQs.

- No political discussion - focusing on legal advice instead.

--> Jurisdiction will be addressed in WS2, as needed

ACTION ITEM - Circulate jurisdiction paper for information

Liability

Supervisory Board: what would it entail in terms of liability? Input would be welcome.

Lawyers to look at templates we are discussing so as to identify any issues we would be facing.

Legal subteam to sort out point of orders on list.

How do we may independent review panel binding? Framework around fundamental bylaws

ACTION ITEM: Schedule a legal subteam call for 1 April - 20:00-21:00 UTC

Action Items

ACTION ITEM: Call duration to be adjusted -> 120 min - 1 hour (15:00-16:00 UTC) subteam members - 1h (16:00-17:00 UTC) lawyers

ACTION ITEM Circulate templates of mechanisms to lawyers

ACTION ITEM - Circulate jurisdiction paper for information

ACTION ITEM: Schedule a legal subteam call for 1 April - 20:00-21:00 UTC

Documents Presented

Chat Transcript

Alice Jansen: (4/1/2015 06:15) Welcome to the legal Subteam call #8! Chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Holly Gregory: (09:52) Good morning /afternoon/ evening all!

vrikson: (09:52) Hello everyone :)

Steven Chiodini (Adler & Colvin): (09:54) Hello, everyone

Leon Sanchez (Co-Chair-ALAC): (09:58) Hello everyone

Holly Gregory: (09:58) greetings Leon

Michael Clark: (09:59) Greetings all

Greg Shatan: (10:00) Hello all.

Joshua Hofheimer: (10:00) Greetings and salutations!

Athina Fragkouli (ASO): (10:00) hello all

Brenda Brewer: (10:01) Alice Munyua is on phone line only

Brenda Brewer: (10:01) who has children in background?

Steven Chiodini (Adler & Colvin): (10:01) Rosemary and Stephanie will be joining shortly from Adler & Colvin

Mathieu Weill: (10:01) Hello everyone

Edward McNicholas, Sidley Austin LLP: (10:02) Good morning.

Brenda Brewer: (10:02) thank you!

Cheryl Langdon-Orr: (10:02) here in Listen mode

Robin Gross [GNSO - NCSG]: (10:03) good morning!

Philip Corwin: (10:04) Good morning all

David McAuley: (10:04) +1 to law firm coordination Holly

Holly Gregory: (10:05) there are additional questions that circulated last night from several members

Rosemary Fei: (10:06) Sorry, waiting for operator to get on audio

Stephanie Petit: (10:07) Same as Rosemary

Leon Sanchez (Co-Chair-ALAC): (10:07) Yes Holly, those are being noted and they will be formally assigned through a memo

Leon Sanchez (Co-Chair-ALAC): (10:08) That is right @Athena

Rosemary Fei: (10:08) Finally got on audio

Stephanie Petit: (10:08) Same

Becky Burr: (10:08) Hi Ed McN!

Robin Gross [GNSO - NCSG]: (10:08) so many new questions over night - haven't had time to read them all yet.

Holly Gregory: (10:08) Thank you Athena, greatly appreciate support for the notion of greater coordination respect to the questions

Rosemary Fei: (10:09) Then why were both firms given some of the same questions?

Robin Gross [GNSO - NCSG]: (10:09) for breadth of answers - different specializes can bring different emphasis

Leon Sanchez (Co-Chair-ALAC): (10:09) @Rosemary because the legal sub-team wanted to have input from both firms on those questions

Rosemary Fei: (10:10) Do you want one voice, or two? Happy to coordinate with Holly, but wasn't clear you wanted that!

Becky Burr: (10:10) seems to me that we should do more talking and less question formulation

Holly Gregory: (10:11) so to clarify, When we get questions from an individual -- such as David's or Ed's excellent question, the lawyers are not to address until the legal sub team organizes and sends to us. Is that correct?

Holly Gregory: (10:11) sorry for the misspellings

Rosemary Fei: (10:11) That's what I understood as well

Leon Sanchez (Co-Chair-ALAC): (10:11) That is correct Holly

Holly Gregory: (10:12) The lawyers can be helpful in guiding your thinking about what you need -- if allowed.

Rosemary Fei: (10:12) I doubt a Q&A format will result in a solution

Robin Gross [GNSO - NCSG]: (10:12) there are so many of us with different voices, you'd be constantly peppered with questions, some of which are not as much in scope as others

Leon Sanchez (Co-Chair-ALAC): (10:12) We will be going through that in a minute @Rosemary

Leon Sanchez (Co-Chair-ALAC): (10:13) Agree @Robin

Holly Gregory: (10:13) Agreed, Rosemary!

Edward Morris: (10:14) Agree with Greg's problem definition

Holly Gregory: (10:15) Concern is about meeting time line and avoiding inefficiencies given that many of the issues we look at for CWG are now coming up for CCWG

Holly Gregory: (10:16) We have shared our responses to questions with one another as between Sidley and Adler -- to assure no great disparities but if we are to speak with one voice you need to build in extra coordination time

Robin Gross [GNSO - NCSG]: (10:17) I don't want "one voice". I want breadth of experience.

Samantha Eisner 2: (10:18) @Leon, isn't there a role of the subteam to make sure that the questions raised are applicable to the work at hand?

Holly Gregory: (10:18) Agree Robin

Athina Fragkouli (ASO): (10:18) Agree Leon

Holly Gregory: (10:19) Is there a role for the Legal Sub Team in establishing priorities in workflow re addressing questions

Robin Gross [GNSO - NCSG]: (10:20) That is my understanding, Holly.

Leon Sanchez (Co-Chair-ALAC): (10:20) Yes @Holly

Athina Fragkouli (ASO): (10:20) mine too

David McAuley: (10:20) Mine as well - triage good word Greg

Robin Gross [GNSO - NCSG]: (10:21) yes we have a new timeline

Steven Chiodini (Adler & Colvin): (10:23) I think that our concerns are being well described here. It was unclear to us whether we would be responding to a series of new questions and suggesting tools, as we did last week, or whether we would be expected to contribute to constructing a coherent, holistic model. The tight timeline over the next few weeks amplified this concern.

Greg Shatan: (10:23) I'm talking about substantive working methods, not procedural working methods.

Greg Shatan: (10:24) Do we get to vote on 4, 6 and 8 hour calls as well?

Holly Gregory: (10:24) Not sure 2 hour calls are the solution -- if there is not greater focus on the coordination of a working plan

Edward Morris: (10:24) We may want to have part of the call just with subgroup members

Cheryl Langdon-Orr: (10:25) LOL

Robin Gross [GNSO - NCSG]: (10:25) good idea, Ed.

Greg Shatan: (10:25) Timeline????!!!!

Greg Shatan: (10:25) +1 to Holly

Athina Fragkouli (ASO): (10:25) +1 to Ed suggestion

David McAuley: (10:25) Agree w/Holly - I think we as sub-team need to coordinate separately (open to list review) and "triage" as Greg says beforehand to communicate to lawyers what we expect

Holly Gregory: (10:26) +1 David and Ed

Greg Shatan: (10:26) I'm not against working it out with the lawyers present.

Holly Gregory: (10:27) We set this time to meet some of other time constraints -- we are available first hour, not sure about second

Joshua Hofheimer: (10:27) Request for clarification @Leon -- Should Sidley and Adler endeavor to respond only to the questions posed to us through updates to the scoping memo? Does that mean if it is on the Wiki page we might see it, but not respond to it until it is added to the memo?

Athina Fragkouli (ASO): (10:28) That is my understanding too

Athina Fragkouli (ASO): (10:29) (my comment was for what Leon was saying at that time)

Greg Shatan: (10:29) Have the counsel been given formal access to the current working documents? Should they be looking directly at the working documents?

Holly Gregory: (10:30) Not sure that Sidley team is available for second hour. need to check calendars

Cheryl Langdon-Orr: (10:30) I assume lawyers could join the 1st hour but that would be for 'entertainment only' ;-)

Holly Gregory: (10:30) Cheryl +1

Joshua Hofheimer: (10:30) Perhaps the call could start 1 hour earlier, and then the lawyers could maintain the time currently reserved.

Rosemary Fei: (10:30) WE have access to the subteam wiki

David McAuley: (10:31) +1 Joshua but need to check on impact on others on call

Steve DelBianco [GNSO - CSG]: (10:33) There was also a suggestion that the 'Community' be able to vote for a line-item veto of an ICANN proposed annual budget

David McAuley: (10:34) Holly, Rosemary spoke of the timeline to do that last night, what is your estimate for a "holistic" approach

Cheryl Langdon-Orr: (10:34) That would be a sunset of the discussion on 2b then @Steve?

Cheryl Langdon-Orr: (10:34) argh auto correct sunset = SUBset

Holly Gregory: (10:36) I suggest that the Legal sub team task the lawyers with taking the four empowerment mechanisms and providing a more detailed discussion of how one might implement.

Leon Sanchez (Co-Chair-ALAC): (10:36) Right @Holly

Leon Sanchez (Co-Chair-ALAC): (10:36) That will be done

David McAuley: (10:36) any rough idea on how long it would take

Holly Gregory: (10:36) not as a structure -- but as information about the options and the details

Rosemary Fei: (10:36) Agree with Holly

Holly Gregory: (10:37) +1 Rosemary

Jonathan Zuck (IPC): (10:37) Agree

Michael Clark: (10:37) makes sense to me

Cheryl Langdon-Orr: (10:39) Agree makes good sense

Rosemary Fei: (10:39) Should all questions about what's viable assume that we have exactly the existing ICANN structure?

Robin Gross [GNSO - NCSG]: (10:39) yes, we are groping in the dark, otherwise. Agree with Holly.

Athina Fragkouli (ASO): (10:40) agree

Edward Morris: (10:40) Thanks Holly. Very useful.

David McAuley: (10:40) I like Holly's suggestion, one week, and would ask that in addition to the four items maybe also a discussion of how to make IRP binding in some way in that reply

Samantha Eisner 2: (10:40) @Steve, I don't recall hearing the conversation on the line item veto in the discussions I attended remotely from Istanbul - did I miss discussion of it?

Becky Burr: (10:41) the IRP question is very simple - how and to what extent can we make decisions of the IRP binding on ICANN

Robin Gross [GNSO - NCSG]: (10:41) Right - don't want to forget IRP binding issue

Rosemary Fei: (10:41) I believe achieving some of what you've asked for may require structural changes.

Samantha Eisner 2: (10:41) @Rosemary, I think that the viability would include recommendations of where the structure needs to change

Steve DelBianco [GNSO - CSG]: (10:41) @Sam -- Alan Greenberg suggested it

Edward Morris: (10:41) I agree Rosemary.

Cheryl Langdon-Orr: (10:42) Yes @Sam it was discussed though not in great detail =? rational was to focus on an issue of concern as opposed to "ditch the whole Budget"

Becky Burr: (10:42) there was some discussion of line item veto in the aftermath of the general budget veto discussion

Samantha Eisner 2: (10:42) thanks Steve and Cheryl

Holly Gregory: (10:42) lets keep focused for the project in one week and not get deep into structure

Rosemary Fei: (10:42) Helpful, Leon.

David McAuley: (10:42) I agree Leon that reconsideration process is important but as between it and IRP I see IRP as more so and would recommend that reconsideration be a necessary precursor before filing IRP

Athina Fragkouli (ASO): (10:42) +1 Leon that is in line with my understanding

Rosemary Fei: (10:43) Holly, are you saying we should answer assuming existing structure only?

Holly Gregory: (10:44) No -- but not getting deep into structural change provide information about what the possibilities are with respect to the four mechanisms.

Becky Burr: (10:44) +1

David McAuley: (10:44) +1

Cheryl Langdon-Orr: (10:44) Exactly @Holly +1

Rosemary Fei: (10:45) Understood. Thanks for clarification, Holly.

Athina Fragkouli (ASO): (10:45) +1

Holly Gregory: (10:46) We think that it is very likely that CA provides what you need given the flexibility under state corporate law.

Holly Gregory: (10:46) The political issue is another matter

Rosemary Fei: (10:47) I'm not sure I understand what you mean by "jurisdiction". Do you mean domicile of corporation? Where HQ is based? ICANN operates internationally, of course., and in all 50 US states.

Rosemary Fei: (10:47) Agree with Holly

Rosemary Fei: (10:50) The questions we were asked and answered last week were not only about where incorporated. Questions included being subject to laws of jurisdiction.

Rosemary Fei: (10:51) What Holly's saying is essentially what I'm saying in the chat

Robin Gross [GNSO - NCSG]: (10:51) We know about rat holes at ICANN. ;-)

David McAuley: (10:51) In a digital world I would imagine ICANN will be subject to dispute jurisdiction in many places around the world so I doubt we need to address this

Rosemary Fei: (10:51) Can lawyers have a role in clarifying the questions, BEFORE we're asked to answer them?

Jonathan Zuck (IPC): (10:52) definitely. let's get the questions clear first

Athina Fragkouli (ASO): (10:52) @Rosemary that makes sense to me

Robin Gross [GNSO - NCSG]: (10:52) Yes, David. I suspect ICANN could be subject to legal jurisdiction just about everywhere on the planet.

Robin Gross [GNSO - NCSG]: (10:52) I like that suggestion, Rosemary.

Samantha Eisner 2: (10:52) @Rosemary, I would encourage any efforts to clarify the questions prior to responding to them

Holly Gregory: (10:52) +1 Rosemary

Robin Gross [GNSO - NCSG]: (10:52) so we could have a discussion to go over the questions

Athina Fragkouli (ASO): (10:53) +1 Robin

Michael Clark: (10:53) Robin's suggestion would be very helpful.

Rosemary Fei: (10:53) Yes

Holly Gregory: (10:54) agreed robin and michael and rosemary!

Joshua Hofheimer: (10:54) In the remaining time, can we clarify the timeline for the most immediate action items?

Holly Gregory: (10:55) Would be good before the hour is up to clarify the specific tasks.

Holly Gregory: (10:56) for discussion notes, please adjust to indicate that jurisdiction can mean different things -- where incorporated, where headquartered, what laws apply

Edward Morris: (10:56) WE're also still looking at statutory membership, statutory delegates etc.

Holly Gregory: (10:56) Would be good before the hour is up to clarify the specific tasks.

Rosemary Fei: (10:57) I'm not sure if "supervisory board" means what's available in European law, or the "superboard" concept we raised in our initial answer.

Holly Gregory: (10:59) Question re GAO interview: how much of the emerging thinking is likely to be discussed and would it be helpful to have some assistance/insights re the process from Sidley

Robin Gross [GNSO - NCSG]: (10:59) Will the "delegate" and "true membership" model be evaluated? I would think community members are looking to see that.

Athina Fragkouli (ASO): (10:59) I would suggest us to collect our questions and send them to the lawyers in writing

Rosemary Fei: (10:59) Should we look at only some of the many, many templates, i.e., the ones on the specific 6 topics in the notes?

Robin Gross [GNSO - NCSG]: (10:59) +1 Athina. And then have a quick call with them for the clarifying questions.

Athina Fragkouli (ASO): (11:00) agree

Edward Morris: (11:00) +100 David

Robin Gross [GNSO - NCSG]: (11:00) Agree with David - let's sort it out first.

Holly Gregory: (11:01) I still don't have a clear understanding of what you want us to work on. Should we start working on the empowerment mechanisms?

Leon Sanchez (Co-Chair-ALAC): (11:01) @Holly we will provide you with specifics later today

Robin Gross [GNSO - NCSG]: (11:01) Thanks to our independent lawyers for indulging this messy multi-stakeholder method. I know we are rushed, and a bit messy, and on the fly. Appreciate your continued patience with us.

Leon Sanchez (Co-Chair-ALAC): (11:02) +1 Robin

Holly Gregory: (11:02) OK, but rather than address questions we think that taking us with fleshing out what is possible would be important as a priority and in the course of that many questions will likely be answered

David McAuley: (11:02) Suggestion – any chance the subteam can get together again today and then Leon instruct lawyers at end of day as to what focus is needed

Robin Gross [GNSO - NCSG]: (11:02) let's do that, David.

Leon Sanchez (Co-Chair-ALAC): (11:02) I can do that

Edward Morris: (11:02) Agreed David

Becky Burr: (11:03) i am on the call

Holly Gregory: (11:03) We greatly enjoy this Robin -- the project is intellectually stimulating, the process is refreshing and the work is vitally important. We want to make sure we give you our best advice in the most efficient way possible and our comments are meant in that light.

David McAuley: (11:03) good point Greg about coordinating work with Jordan, Becky

Athina Fragkouli (ASO): (11:04) @David, this wouldn't be possible for me..

Rosemary Fei: (11:04) I have no idea what the CWG's work is and how it intersects with this. What doc should I look at to figure that out.

Holly Gregory: (11:04) Rosemary, we are advising the CWG and can call you and give you a summary

Samantha Eisner 2: (11:05) @Rosemary, I'd recommend starting with the Sidley memo in response to the CWG's questions

Stephanie Petit: (11:05) +1 Holly

David McAuley: (11:05) +1 Holly - Rosemary I would suggest not doing anything on CWG yet except for what Holly suggests, IMO

Samantha Eisner 2: (11:06) ICANN staff or some of the community members here could also help point you to specific items within the CWG work that you might need to look at, once you talk to Holly

David McAuley: (11:06) yes Leon - would have to be recorded good point

Rosemary Fei: (11:07) That's a call without lawyers, correct?

Brenda Brewer: (11:07) WP2 is at 21:00 today for 1.5 hours

Samantha Eisner 2: (11:07) @rosemary, that's my understanding as well

David McAuley: (11:07) yes

Brenda Brewer: (11:07) that time is out

Edward Morris: (11:07) WP1 call at 21:00

Holly Gregory: (11:08) Thank you all. Again -- the project is intellectually stimulating, the process is refreshing and the work is vitally important. We want to make sure we give you our best advice in the most efficient way possible and our comments are meant in that light.

Brenda Brewer: (11:08) sure

Alice Jansen: (11:08) we will look into this and be in touch shortly - what about 20:00-21:00 UTC?

Athina Fragkouli (ASO): (11:08) I may not be able to make it

Alice Jansen: (11:08) (apologies, not on the phone)

David McAuley: (11:08) Thanks Holly, Rosemary, and both legal teams

Cheryl Langdon-Orr: (11:08) Finding times will be a challenge and of course I assume that the community will be told it is on and when (with insufficient notice by definition)

Greg Shatan: (11:09) The Pre-Istanbul timeline is file:///C:/Users/Gregory/Documents/IPC/CWG-CCWG_timeline_20150320.pdf. The draft proposal completion on that list has now been pushed out from early April to approx. April 20th.

Cheryl Langdon-Orr: (11:09) Thanks everyone good call...

David McAuley: (11:09) Thanks Leon

Rosemary Fei: (11:09) Happy to be working with you. Very interesting work.

Robin Gross [GNSO - NCSG]: (11:09) thanks, all, especially our independent lawyers!

Cheryl Langdon-Orr: (11:09) Bye

Alice Munyua (GAC): (11:09) Thank you!

Athina Fragkouli (ASO): (11:09) thank you

David McAuley: (11:10) thanks all