

WP1 Meeting #9 (13 April)

Attendees:

Sub-Group Members: Avri Doria, Athina Fragkouli, Cheryl Langdon-Orr, David McAuley, Edward Morris, Finn Petersen, Fiona Asonga, Greg Shatan, Izumi Okutani, Jonathan Zuck, Jordan Carter, Jorge Villa, Kavouss Arasteh, Laena Rahim, Leon Sanchez, Matthew Shears, Paul Twomey, Par Brumark, Robin Gross, Roelof Meijer, Samantha Eisner, Steve DelBianco, Thomas Rickert, Vrikson Acosta (24)

Legal Counsel: Michael Clark, Rosemary Fei, Steven Chiodini

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

Apologies: Tijani Ben Jemaa

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

Transcript

[Transcript CCWG WP1 Meeting #9 13 April.doc](#)

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Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p20d5z2hebx/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-accountability-legal-13apr15-en.mp3>

Agenda

1. Any top level Q&A for legal advisors on their advice presented over the weekend regarding our proposed community powers - we will do half an hour on this only, and then pick it up after the CCWG fills in the rest of the gaps.
2. Any top level Q&A for legal advisors on their brief memo to us re our draft public comment document content - once again a brief chance for some clarifying questions.

3. Consider content for the public comment document:

- a) the AOC incorporation
- b) other changes indicated by the stress tests

Thanks to drafters these two are attached to this email, in word and pdf.

4. Our work plan

We will need to have another meeting later in this week to discuss what we do next - that could be fairly short but should probably aim for 21h on Wednesday since that slot worked.

Notes

Legal advice. End of each template in blue.

In the discussion of membership, it would be helpful to make clear that this is not full and individual and corporate membership organization.

Point 6 page 4. The community is not seeking oversight over all ICANN business, only some specific areas. The veto powers are for specific issues not ICANN wide. The budget veto for example would be specific once/year. Recognizes that the ICANN board must be able to continue to govern.

Budget veto. Blocking strategic plan or budget. Not to micro-manage. Up/down vote on the budget. Recognize need to bring this into the planning process.

Comment: Page 3. Blue text. Advice on how the proposal might get in the way of budget process. Already part ICANN's process. There is no line item veto or adjustment being requested. Requests revision.

Clarifications appreciated, esp re membership definition.

External counsel finds it hard to know who is to be listened to and who less aware of the issues.

3. Consider content for the public comment document:

-- the AOC incorporation

Document content should be familiar, but the table presentation is new.

Context: 6.6.1 Only some of the AoC would make their way in. Some are preamble, and some are commitments of the US govt.

from articles 3, 4 and 7, taken elements specific to ICANN. Article 3: decisions made in public interest, consider security stability, etc. Some are well covered in mission and core values.

added a new core value, ICANN should ensure that decisions are made in the public interest and are bottom-up s underlined

Article 5. discussing consumer trust in the DNS marketplace and should find their way into the work of WP2.

Articles related to transparency.

Article 7. add in the core values and new section 8.

Article 8. Three issues. Focus on b and c. US commitment to remain HQ'd in the US. And also being addressed in WP2. Suggest that 8.c be added as a new core value, which calls out ICANN's role as a bottom-up multi-stakeholder not for profit corporation.

Item 3, promotion consumer trust and competition. What has happened to the role of the ICANN CEO and Chair of the GAC? Assumed that the SO and AC would decide who populated the review teams, i.e. constant with community empowerment.

Noted a lot of repetition in the possible bylaws revision of reviews, this might be moved to an overview /introduction. And an request for an annual independent report on progress made on ATRT recommendations. Changes in timeframe, 3-5 years. WHOIS, recommendation to reference the OECD privacy standards.

In CWG there is discussion that the periodic review of the IANA function be conducted in a similar way to the SO /AC reviews, and a placeholder added for this.

Review of final mechanisms. 2 further calls this week. Need to finish end of Friday.

Call 15 April Wednesday 21:00 - 23:00. Addition of 19:00 21:00 UTC on 16 April Thursday.

24 hours to review before it is put to CCWG over the weekend.

Action: staff send calendar invites for Wednesday and Thursday calls

Action Items

Action: staff send calendar invites for Wednesday and Thursday calls

Documents Presented

Chat Transcript

Brenda Brewer: (4/13/2015 15:32) Welcome to the Accountability SP1 Meeting #9 on 13 April

Brenda Brewer: (15:33) Chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Jordan Carter (.nz): (15:45) hi folks - Brenda could I have a dial out please?

Athina Fragkouli (ASO): (15:45) hello all!

Rosemary Fei: (15:45) Hello, everyone

Pär Brumark (GAC Niue): (15:45) Hi everyone!

Alice Jansen: (15:45) Please mute your lines

Jonathan Zuck (IPC): (15:46) Muted

Jordan Carter (.nz): (15:46) we will kick the call off as soon as I get online on a dial out

arasteh: (15:46) Hi Every body.

Jordan Carter (.nz): (15:46) in the meantime, thanks everyone for being here :)

arasteh: (15:46) KAVOUSS

Rosemary Fei: (15:47) I'm not in the call, holding

Jordan Carter (.nz): (15:47) Kavouss, you are shouting at yourself? :-)

Paul Twomey: (15:47) Hi Everyone

Thomas Rickert: (15:47) Hi all!

Robin Gross [GNSO - NCSG]: (15:47) should there be audio? I don't hear anything.

arasteh: (15:48) am I shouting?

Jordan Carter (.nz): (15:48) we are just waiting for me to get on a dial out

arasteh: (15:48) If so I apologize

Jordan Carter (.nz): (15:48) at the moment there's no noise

Athina Fragkouli (ASO): (15:48) we hear you

Rosemary Fei: (15:49) I am on the call, though I wasn't due to the silence

Adam Peake: (15:54) Document on screen is available on the wiki

Adam Peake: (15:54) <https://community.icann.org/pages/viewpage.action?pagelid=52890082>

Rosemary Fei: (15:57) Members of a corporation are defined in its bylaws -- could be governments, individuals, entities created for the purpose that currently only exist as internal organizations units of ICANN

Robin Gross [GNSO - NCSG]: (15:58) I'd like to hear more about a designator model (with empowered designators) before I jump on board for the membership org.

Rosemary Fei: (15:58) The membership model discussed in the prior legal materials assume the last option

Rosemary Fei: (15:59) Helpful to understand that widely varying versions of membership have been discussed.

Thomas Rickert: (15:59) sorry - audio issue- pleasemove to Kavouss

Izumi Okutani (ASO): (16:00) I agree Robin, would be interested to hear other options, to understand membership model in perspective

Thomas Rickert: (16:00) I cannot get audio to work. Will go out and back into the AC room

Jordan Carter (.nz): (16:00) That's what we are talking about tomorrow.

Jordan Carter (.nz): (16:00) On the ccwg call. I am simply stating my assumption about what I think the lawyers are going to recommend. Let's not prejudge that.

Greg Shatan (Legal Subteam): (16:01) Coming in from the CWG call....

Thomas Rickert: (16:01) But before I do: We have tentatively agreed that the community shall be empowered and that the community consists of SOs and AC.

Robin Gross [GNSO - NCSG]: (16:01) so if now isn't the time for the lawyers to tell us more about that, I'll take my hand down (since that is what I was going to ask)

Thomas Rickert: (16:02) Therefore, we should be able to say that no natural persons (individuals) are eligible for membership

Thomas Rickert: (16:03) If membershipo structure is what the CCWG favours

Jordan Carter (.nz): (16:03) Robin: now is not the time to talk mechanism, no. That's on the agenda for the CCWG tomorrow.

Roelof Meijer (SIDN, ccNSO): (16:04) @Thomas: are you sure of that? one of the possibilities identified is a community council like structure, where the individual members of that structure are members of ICANN. Not a structure I would prefer, but can we already rule it out?

Robin Gross [GNSO - NCSG]: (16:04) I agree, Steve. Probably my fault to cause the confusion by calling it a "veto" when it is actually a very narrow bylaws mandated reconsideration process (that still leaves ICANN board with the final vote).

David McAuley (Legal Sub-Team): (16:04) Agree w/Steve that plan was never to be able to veto all decisions by board

David McAuley (Legal Sub-Team): (16:04) veto

Michael Clark (Sidley Austin LLP): (16:04) I think the current idea is that the "members" would be the current stakeholder groups acting as unincorporated associations.

Robin Gross [GNSO - NCSG]: (16:05) or the SO/AC could be empowered designators

Samantha Eisner: (16:05) My question may be aligned with that intent, Jordan

Greg Shatan (Legal Subteam): (16:05) At some point, but not now, we need to confront the alchemy required to turn SOs and ACs (and SGs and Cs and RALOs) into members, even if "merely" as unincorporated associations.

Robin Gross [GNSO - NCSG]: (16:05) the comparison of the two is what I'm most interested in understanding.

Roelof Meijer (SIDN, ccNSO): (16:06) @Michael: or a single member, being the stakeholders' representatives group, right?

Robin Gross [GNSO - NCSG]: (16:06) I think we are all clear on the powers we want.

Rosemary Fei: (16:07) Members structure allows budget/strategic plan veto as a matter of corporate law; designator structure would require contractual agreements to give community such powers

Jonathan Zuck (IPC): (16:07) we never would micromanage as a practical matter. that would require ongoing consensus which we'll never have

Robin Gross [GNSO - NCSG]: (16:08) could the designators have bylaws mandated "say" in the matter (that could still leave the board in ultimate control)

Robin Gross [GNSO - NCSG]: (16:08) could the designators have a bylaws mandated "say" in the matter (that could still leave the board in ultimate control)?

Greg Shatan (Legal Subteam): (16:09) I've stopped.

Robin Gross [GNSO - NCSG]: (16:10) I've got lots of comments and questions on the memo. But you said to hold those until tomorrow.

arasteh: (16:11) Jordan

Robin Gross [GNSO - NCSG]: (16:11) I have a question on what is meant on the bottom of page 35 about ICANN officies committing perjury to file articles. How is that?

arasteh: (16:11) what do you mean in rferring to other Mem

Robin Gross [GNSO - NCSG]: (16:12) I don't know if this is type of question sought in this session, but if so. let's do it, if not, I'll hold all my questions to tomorow.

Jordan Carter (.nz): (16:12) Robin: the problem is we've gone through the time for this section of the call.

Jordan Carter (.nz): (16:13) I do think it is a great question

Jordan Carter (.nz): (16:13) would you have time to register these detailed questions by email on the list?

Jordan Carter (.nz): (16:13) (assuming there are more than one :-)

Rosemary Fei: (16:14) We have heard discussion of whether a line-tem veto was a possibility

Robin Gross [GNSO - NCSG]: (16:14) I agree with Steve's comments.

arasteh: (16:14) Jordan

arasteh: (16:14) i am lost

Jonathan Zuck (IPC): (16:14) +1 Steve

arasteh: (16:15) you discussing several Memo at the same time

Robin Gross [GNSO - NCSG]: (16:15) There is no line item veto. No template of such, no proposal of such.

arasteh: (16:15) pls kindly bear with us

matthew shears: (16:15) can you pout a link to this doc in the chat - thanks

matthew shears: (16:15) put

Alice Jansen: (16:15) <https://community.icann.org/download/attachments/52888421/WP1-%20Cover%20Memo%20%28CCWG%20Powers%29.docx?version=1&modificationDate=1428959546558&api=v2>

arasteh: (16:15) Jordan

matthew shears: (16:16) thanks!

Robin Gross [GNSO - NCSG]: (16:16) the short memo basically says refer to sections in the long memo (which we can't discuss).

Cheryl Langdon-Orr: (16:16) CWG has mentioned a Line item Budget Veto option however

arasteh: (16:16) pls kindly consider that we need to focuiss on one doc. at any time

Steve DelBianco [GNSO - CSG]: (16:16) @Kavouss -- go to page 3 and see the BLUE text from the lawyers on item 6.5.2

Jordan Carter (.nz): (16:16) Kavouss: we did one document, we moved on to the other

Jordan Carter (.nz): (16:16) that is the way these calls work, and always have.

arasteh: (16:16) Sorry I HAVE MANY QUWESTION ON THE SAME DOC.

Jordan Carter (.nz): (16:17) on which document?

Jordan Carter (.nz): (16:17) the long one?

Steve DelBianco [GNSO - CSG]: (16:17) thank you

arasteh: (16:18) I AM UNABLE TO FOLLOW THE DEBATE

Robin Gross [GNSO - NCSG]: (16:18) templates are the proposals

Steve DelBianco [GNSO - CSG]: (16:18) what? You're saying we have lots of confusing and conflicting documents? Surely you jest!

Samantha Eisner: (16:19) @Rosemary, Mike, what can we do to help clarify for you? How do we get you the info you need in a timely basis?

David McAuley (Legal Sub-Team): (16:20) That is the point of the legal sub-team to control the flow of questions in a transparent manner. We cannot control CWG queries and there is a lot of content. I think the point is now well made.

Robin Gross [GNSO - NCSG]: (16:20) would it be helpful for counsel if we had a short phone discussion about what some of these templates are actually proposing?

Rosemary Fei: (16:21) Please don't expect legal counsel to reply to questions as they are asked; we will wait until we get formal requests to reply from the legal subteam

Jordan Carter (.nz): (16:22) Absolutely. I am talking about the raising of questions, more than the answering.

Greg Shatan (Legal Subteam): (16:23) Kavouss, This second document was produced under a very short time frame, and this is what was possible.

Steve DelBianco [GNSO - CSG]: (16:23) Kavouss -- you're really going to love the next part of this call, where we have... multiple documents to review

Rosemary Fei: (16:24) +1, Greg. We could not have responded in time available without referencing work product in other documents.

Rosemary Fei: (16:26) Are legal counsel excused? Sorry, I wasn't sure.

Rosemary Fei: (16:26) Thank for the clarifications; it will improve the final product.

Jordan Carter (.nz): (16:26) Steve, can't heard you

Jonathan Zuck (IPC): (16:26) yes

Rosemary Fei: (16:27) I'm signing off

David McAuley (Legal Sub-Team): (16:29) yes Matthew

Steve DelBianco [GNSO - CSG]: (16:29) arguing, I think you said. Good word!

Jordan Carter (.nz): (16:30) We have about five - six mins on this document

Steve DelBianco [GNSO - CSG]: (16:31) WP2 just circulated their proposed changes to Core Values. See <https://community.icann.org/download/attachments/52891651/4-13%20ICANN%20Mission%20-%20Proposed%20Changes%20.pdf?version=1&modificationDate=1428959975299&api=v2>

Samantha Eisner: (16:33) What does 'non-commercial' mean here?

Steve DelBianco [GNSO - CSG]: (16:33) Sorry if we based this table on an older version of Core Values, but we worked with what we had available yesterday

Avri Doria: (16:35) Sam, concerns that are not financial, for example rights.

Steve DelBianco [GNSO - CSG]: (16:35) the full WP2 Core values draft is here <https://community.icann.org/download/attachments/52891651/4-13%20Annotated%20Commitments%20and%20Core%20Values%20Language.pdf?version=1&modificationDate=1428959995171&api=v2>

Samantha Eisner: (16:36) Maybe we can consider a better word that is clearer

David McAuley (Legal Sub-Team): (16:36) Agree that AoC 8b needs to be addressed in WS1 -Fadi was emphatic in his comments about HQ and it was in response to an early question from the senate. There is a firm expectation set and to not address would seem to be a big risk IMO for getting a proposal accepted.

Avri Doria: (16:37) we have not covered the rest of the changes.

Steve DelBianco [GNSO - CSG]: (16:37) its okay. I'll go next

Samantha Eisner: (16:37) For the budgetary issue, could we consider making some sort of requirement for community input and consideration of that input explicit in the Bylaws, so that there's some requirement for people to participate in the budget process/ICANN to consider those inputs as a lead-in to using the end right of budget override?

matthew shears: (16:39) Avri has not walked through the other changes and table

Thomas Rickert: (16:39) Steve, we have discussed this a couple of times and I thought there was no objection to that approach.

matthew shears: (16:40) + a Steve

Jonathan Zuck (IPC): (16:40) agree Steve

matthew shears: (16:41) that surprises me - as AoC 8 was in an earlier draft

David McAuley (Legal Sub-Team): (16:41) agree w/Steve

matthew shears: (16:41) we do need to agree where this sits and address it

Jonathan Zuck (IPC): (16:41) and ICANN is subject to legal jurisdiction all over the world now

Finn Petersen, GAC - DK: (16:42) GAC should not have a special role in appointing members til RT

Steve DelBianco [GNSO - CSG]: (16:43) @Thomas -- this is NOT a discussion of "Jurisdiction". It is following thru on our goal to bring the AoC into the Bylaws. And that includes 8B

Thomas Rickert: (16:43) I was referring to who puts individuals on the ATRT

Jordan Carter (.nz): (16:45) can staff note an Action Point please - to ensure this paper is sent to WP2 ASAP by Steve, to ask them to look at it in terms of their core values work?

Thomas Rickert: (16:45) Not the "jurisdiction" question, Steve

Robin Gross [GNSO - NCSG]: (16:45) ICANN is bottom-up, which means all stakeholders appoint their own representatives.

Steve DelBianco [GNSO - CSG]: (16:45) @Thomas -- ???

Jordan Carter (.nz): (16:45) Thomas is talking about the idea that SOs and ACs put their own reps on ATRT reviews

Jordan Carter (.nz): (16:45) he notes it hasn't been contentious

Jordan Carter (.nz): (16:46) he wonders why we are discussing it again

Thomas Rickert: (16:46) Thanks, Jordan!

Jordan Carter (.nz): (16:46) (unless I totally misread him)

Steve DelBianco [GNSO - CSG]: (16:46) Ah, then you are echoing the answer I gave Kavouss

Thomas Rickert: (16:47) @Steve: Exactly! I was supporting you :-)

Jordan Carter (.nz): (16:47) We need to draw this to an end

Greg Shatan (Legal Subteam): (16:47) Ooops

Jordan Carter (.nz): (16:47) Yes, we do all do that ;)

Steve DelBianco [GNSO - CSG]: (16:47) Good idea to move common Review text to a chapeau, Avri

Jordan Carter (.nz): (16:48) I think this document is shaping up well.

Jordan Carter (.nz): (16:48) All, we are over time

Jordan Carter (.nz): (16:48) We will cut this debate and talk about next steps in a moment

Greg Shatan (Legal Subteam): (16:49) I'll just say in the chat that the removal of 8(b) has me extremely concerned. If this is a decision it needs to be revisited. If it's not really a decision it needs to be unwound.

Jordan Carter (.nz): (16:49) Greg it's on the agenda tomorrow (CCWG)

Steve DelBianco [GNSO - CSG]: (16:49) @Kavouss -- ICANN can cancel the AoC at any time. We are making this part of the Bylaws.

Greg Shatan (Legal Subteam): (16:50) @Jordan, thanks.

matthew shears: (16:50) + 1 Greg

Steve DelBianco [GNSO - CSG]: (16:50) @Kavouss -- we can do reviews more frequently if WE want to do that. Our draft text says no less frequently than 5 years.

Thomas Rickert: (16:50) I think we need to have a discussion on 8b with the whole group. it is extremely delicate.

matthew shears: (16:50) (cannot imagine it was a conscious decision

Izumi Okutani (ASO): (16:51) I agree Thomas about 8b

David McAuley (Legal Sub-Team): (16:51) weekend doc freeze good idea

Athina Fragkouli (ASO): (16:54) +1 Thomas

Greg Shatan (Legal Subteam): (16:55) @Matthew, it seems to have been someone's conscious decision.

Pär Brumark (GAC Niue): (16:55) Txh!

David McAuley (Legal Sub-Team): (16:55) thanks Jordan and all

Cheryl Langdon-Orr: (16:55) Bye

Leon Sanchez: (16:55) Thanks all

Athina Fragkouli (ASO): (16:55) bye all