

ST-WP Meeting #6 (27 May)

Attendees:

Sub-Group Members: Avri Doria, Cheryl Langdon Orr, Finn Petersen, Jonathan Zuck, Par Brumark, Steve DelBianco (6)

Staff: Adam Peake, Alice Jansen, Berry Cobb, Kim Carlson

Apologies: Izumi Okutani

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

Transcript

[Transcript ST-WP 27 May.doc](#)

[Transcript ST-WP 27 May.pdf](#)

Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p3jnw2hg2y2/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-stress-tests-27may15-en.mp3>

Notes

Stress Test WP Meeting #6 - 27 May 2015

This call is being recorded.

Links

ST-WP Drafts - <http://tinyurl.com/mye8o3e>

Chat sessions are being archived and follow the ICANN Expected Standards of Behavior:

<http://www.icann.org/en/news/in-focus/accountability/expected-standards>

AGENDA:

NOTES & ACTION ITEMS:

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

Roll call as AC room

Towards the end of the public comment phase. Tuesday's 26 May CCWG call, re-start the stress tests and consider the implications of the different members and UA models on the test scenarios.

Will powers be enforceable, and legal counsel seems to be advising that enforceability comes through California law. A common thread on the stress tests: almost all have the words: block, veto, challenge, binding. Sends a signal that the powers would be enforceable, not to rely on persuasion.

If we look at the stress tests and remove blocking, veto, challenging, binding, do the tests still pass.

When listening to the lawyers, also hear them saying we could take each other to court right now. So this is not a special new power. For those who don't like courts, hear the answer that but that's the answer for the US.

If we created shadow UA, where there is the SO/AC chair or other as the person making decisions, what holds them accountable to the group that sent them? So unless the SO/AC are the UA, you are creating another legal entity that is accountable to another non-legal entity.

Case of the At Large: the existing rules of procedure for the At Large have clear rules for the removal of officers. Can be removed without cause at any stage. This might need to be considered across the SO/AC.

Is a stress test needed: what if the designated member, the UA representative, then what happens if they don't follow directions of their community.

Should the stress test team look at the role of each SO/AC to see if they means to remove their offices. Or produce a normative statement recommending SO/AC action?
See stress test 12.

But stress test group's task is not to produce such normative statements. That's the task of the whole CCWG. Consideration of capture internal to the SO/AC. Might require fine tuning of stress test 12.

Text that when the representative is not heeding the wishes of their SO/AC membership, this should trigger recall of a representative

New stress test that describes the flaw, when creating the individual to represent the membership in the UA, when they are not listening/heeding the membership, that recall and reappointment is appropriate.

They should act as instructed or as agreed by their community.

GNSO has five votes. And if one of the SG believes that the individual holding the vote on their behalf is not acting, behaving ask directed by that SG, then the SG would be able to remove that person.

3 scenarios. An identity between the SO/AC. The other extreme is the chairs are designated as the members of the SO/AC. And fuzzy, when the SO/AC is not an UA or has a UA attached to it.

May 3rd legal memo: 4 stress tests in that document, but only relating to the UA. If a councillor refused to leave the stage, what would we do? May quote from the memo in the new test. See

<https://community.icann.org/download/attachments/52890082/REVISED%20Memo%20on%20Unincorporated%20Associations%20May%203%2C%202015-207411876-v4.pdf>

But, as the US can already take them to court. The end of every process, potentially.

What is special about being members or not members in our test?

Question of winning. Should have standing, and members have that. And winning once there.

Action: answer to Avri's question "What is special about being members or not members in our test." Seek an answer to this

Stress test on budgets: power to veto: veto and block. we are talking of an enforceable power. Without the power, we haven't improved accountability. Have the ability to challenge through an IRP. And might reverse the decision, but when reversed we expect it to be binding, enforceable. So see a weakening of the first bunch of stress tests without enforceability.

And to what degree is enforceability different for each member arrangements?

from ST-WP that the action of comparison of powers from CCWG call of 6 May will be required.

Stress test 9. Corruption/fraud. Force the board. To veto or block a budget tainted by fraud. If board members were involved then they should

be recalled. This requires enforceability.

Go to court, or vote someone out. These are basically two unacceptable ways of achieving a goal. What membership adds, is not acceptable. Why the degree of enforceability rests in a court of law. But doesn't change the answer in a column 3 of the stress test.

For consideration by the lawyers/legal team:

a comparison of enforceability among the different structures. A comparison of enforceability. Standing and the likelihood to prevail

Chris Disspain suggested stress test (email displayed)

1. A vote that directs the board to take an action. The ability to force to board to do something seems to be part of the CCWG myth. The AoC review teams recommend an action, the Board decides not to as it's outside the mission, the rejection of the Board action becomes a reversal of the Board's decision to do nothing. Rephrase 1.

2. A disagreement about whether the issue was outside the scope of the bylaws. Is it directing the board, or canceling the decision?

Action: Steve to write up the scenario, and review on a future call.

Is the court evaluation the authority of the community to make the changes, or is it testing the substance of the issue. The court affirms the community's authority. i.e. ultimate authority is being handed to the members.

If an IRP evaluates a decision and revokes that decision, nothing has changed.

Consideration of the email, analysis of it. Action to re-write a stress test scenario to address the main issues in the thesis. To be sent to Chris and Paul to check issues have been captured. And this may take the group to test 28 (expansion of stress test 12).

First 30 on of the next call to review the rest of the stress test. And the remaining hour for the two new scenarios: Disspain email and the modification of the capture

Invite Chirs and or Paul Szyndler, and Leon if legal input needed.

Action Items

Action: answer to Avri's question "What is special about being members or not members in our test." Seek an answer to this

Action: Steve to write up the scenario, and review on a future call.

Action to re-write a stress test scenario to address the main issues in the thesis. To be sent to Chris and Paul to check issues have been captured. And this may take the group to test 28 (expansion of stress test 12).

Chat Transcript

Kimberly Carlson: (5/27/2015 04:14) Welcome to the Stress Test WP Meeting #6 on 27 May at 11:00 UTC.

Kimberly Carlson: (04:14) Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Pär Brumark (GAC Niue): (04:59) Hi! Not crowded....

Steve DelBianco [GNSO - CSG]: (05:00) We've rarely had a crowded call on Stress Tests. Too stressful

Pär Brumark (GAC Niue): (05:00) True Steve.

Steve DelBianco [GNSO - CSG]: (05:00) Adam -- are you doing a dial-out to Cheryl?

Alice Jansen: (05:00) Cheryl is on the call according to operator

Alice Jansen: (05:00) Kim, could you confirm?

Kimberly Carlson: (05:01) Operator says she is connected

Cheryl Langdon-Orr 2: (05:10) Staff can we give scribble ability to everyone for the shared document please...

Cheryl Langdon-Orr 2: (05:10) thx

Avri Doria: (05:11) not only is it complex and challenging, not a huge problem in itself, but whether those structures are accountable to their stakeholders.

Cheryl Langdon-Orr 2: (05:11) Yes Steve we need to start a double check process at this stage...

Finn Petersen, GAC - DK: (05:20) Yes only normative

Cheryl Langdon-Orr 2: (05:20) We can raise the need in our analysis that is what I was meaning

Cheryl Langdon-Orr 2: (05:22) AND I think a new ST that specifically calls out the details of a 'Failure to comply with community instructions/ desires by a representative / legal entity etc.', as a separate to #12 is my preference

Cheryl Langdon-Orr 2: (05:22) rather than stretch 12 to try and cover this specific issue

Cheryl Langdon-Orr 2: (05:23) Yes I think we are actually all agreeing that we need to highlight the need

Avri Doria: (05:24) assuming we can show that this creates a flaw, yes.

Avri Doria: (05:28) if one of more SOAC member representatives go against the will of the community. they are an elite after all and understand things different than the hoi polloi.

Avri Doria: (05:34) I did not say it was bad for the group, necessarily, it is just not my favorite way to spend effort. I will think of how to break something until it breaks.

Alice Jansen: (05:36) <https://community.icann.org/download/attachments/52890082/REVISED%20Memo%20on%20Unincorporated%20Associations%20May%203%2C%202015-207411876-v4.pdf?version=1&modificationDate=1430694085000&api=v2>

Cheryl Langdon-Orr 2: (05:36) thanks Alice

Cheryl Langdon-Orr 2: (05:36) link to it in the 3rd column

Cheryl Langdon-Orr 2: (05:36) yes

Adam Peake: (05:39) might the difference be that there's a higher chance of winning the court case?

Cheryl Langdon-Orr 2: (05:39) yup Adam

Cheryl Langdon-Orr 2: (05:41) p 69

Avri Doria: (05:41) so a statistacl (?) increase in the ability to win a case? is that measured anywhere?

Avri Doria: (05:42) ... statistical ...

Adam Peake: (05:48) what's your specific request? wording. I think you might be right that concern over the process of asking lawyers might have got lost the action

Cheryl Langdon-Orr: (05:49) I will get Steve ti recap that in a moment Adam...

Avri Doria: (05:50) i some sense this is all suspenders and belts. we can enforce either by voting the bums out or having advantages in court.

Cheryl Langdon-Orr: (05:52) and the expense !

Avri Doria: (05:55) Sidley did comver the expense issue, they said ICANN pays. but then that becomes a for of DOS attack. we can kill icann by keeping it in court paying obht sides of the case.

Avri Doria: (05:55) ... a form of DOS aatack ...

Avri Doria: (05:56) can't type, can only typo

Adam Peake: (06:00) resort to the courts is seen as a very US solution. But spilling boards, for example, is common in large parts of Asia. a former ICANN Director was removed from the Board of Fujitsu by the company's general assembly (he was unlucky, caught in internal politics and remains a good guy :-))

Cheryl Langdon-Orr: (06:00) Exactly Adam

Berry Cobb: (06:02) I need to read about it more, interesting that FIFA execs are being extradited to the USA.

Alice Jansen: (06:02) maybe :-)

Avri Doria: (06:16) i have been convinced. Chris describes a possible scenario.

Adam Peake: (06:17) what would happen with this scenraio without the proposes powers?

Adam Peake: (06:17) (proposed powers)

Steve DelBianco [GNSO - CSG]: (06:20) @Adam -- without binding IRP we can not force the board to implement a reccomendation

Avri Doria: (06:21) i don't quite understand Jonathan's point.

Avri Doria: (06:24) we can't force a bylaw change.

Jonathan Zuck (IPC): (06:24) I agree with what you're saying. I don't think THIS is the scenario that takes us to court. I'm saying that WHATEVER scenario brings us to court hypothetically would not be on the substance

Cheryl Langdon-Orr: (06:25) no we can not it wuyld need wholesale Community support to ensure by law changes

Steve DelBianco [GNSO - CSG]: (06:26) Ågree, JZ. THat's what page 34 says about IRP.

Steve DelBianco [GNSO - CSG]: (06:27) You can go to court to enforce an IRP decision. Court does not decide substantive questions

Jonathan Zuck (IPC): (06:27) Exactly

Avri Doria: (06:27) Be good to hear Steve's views after he has listened to the call.

Steve DelBianco [GNSO - CSG]: (06:29) Assuming I should send the re-draft to ST WP before sending to Chris and the full list, right?

Pär Brumark (GAC Niue): (06:33) Thx all! Bye!

Jonathan Zuck (IPC): (06:33) Thanks

Kimberly Carlson: (06:33) Thank you All

Cheryl Langdon-Orr: (06:34) bye all Thanks everyone!