ST-WP Meeting #7 (3 June)

Attendees:

Sub-Group Members: Avri Doria, Cheryl Langdon Orr, Jonathan Zuck, Par Brumark, Steve DelBianco

Staff: Adam Peake, Alice Jansen, Kim Carlson

Apologies:

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

Transcript

Transcript ST-WP 3 June.doc

Transcript ST-WP 3 June.pdf

Recording

Adobe connect recording is available here: https://icann.adobeconnect.com/p3a3ck1av55/

The audio recording is available here: http://audio.icann.org/gnso/gnso-stress-tests-03jun15-en.mp3

Notes

Stress Test WP Meeting #7 - 3 June 2015

This call is being recorded

Links

Public Comment Period - https://www.icann.org/public-comments/ccwg-accountability-draft-proposal-2015-05-04-en

Draft Report - https://www.icann.org/en/system/files/files/cwg-accountability-draft-proposal-without-annexes-04may15-en.pdf

Chat sessions are being archived and follow the ICANN Expected Standards

of Behavior:

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

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.

Public comment is starting to come in: there is a need to articulate additional stress tests: Mathieu, Avri

Stress test text was sent to Chris Disspain. We reframed it based on dicussion last Wednesday. Two stress tests:

1) In line with Chris Disspain

2) In line with Jonathan Zuck

1) ATRT recommendation does not require PDP, it can be implemented. Scenario where Board rejects implementation. We have a recourse where we can recall Board, we can block budget or strat plan but a change to expenditures does not solve problem. You could go to Court to force ICANN to follow decision. How does the Court get involved in the first scenario?

2) Board follows community recommendation which is reversed by IRP. IRP has standard of review - it could cancel decision. We have ability to recall Board but we could block next decision. We could go to California Court and enforce the IRP recommendation.

In neither of these cases is the Board involved in interpreting bylaws, it's implementing IRP decision.

Nuances might still need to be discussed.

- Underlying concern is that creation of members would give extra standing to go to Court directly and bypass IRP

- What would Court say if ignore it?

- Becky's slides show that use of IRP can be a binding part of membership with ICANN instead of going directly to Court

--> Concerned that we have to keep doing tie-offs to avoid being overly Court driven.

- We need to start ensuing that between BA and Dublin, anyone who flags a stress test should articulate it

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Mathieu's proposed stress test:

You may think I am obsessed with recent news, but with the recentspotlight on the FIFA scandals, I think we can reasonably expectquestions regarding how our proposed measures would avoid such a situation.

Have we covered corruption?

--> p 70 paragraph 439

Under proposed measure we could force the Board

If the Board was involved in the corruption, can remove Directors or entire Board.

ATRT2 recommendation on serious review about process was ignored.

The measure reads quite well but would it be efficient? 442 is a weak point in measures.

--> we can surface 442 information through ATRT3

Existing accountability measures are not adequate if ignored.

ACTION ITEM - Steve to flag that paragraph 439 addresses FIFA scenario.

SO would inform members of community that votes were improperly cast (against instructions). That would have impact on vote that just took place.

--> The association between SO and AC is one of them having legal relationship between them. It's the UA that is member not the SO.

Voting of cross-community WG, members, not clear who would monitor that

Where Board control AC/SO

SO
/ACs are defined and controlled by Bylaws. Any changes would go through review as part of accountability. The notion of UA is that it is an independent person but an independent actor. If the SO would become UA we would move its Bylaws -

--> The UA is bound by ICANN Bylaws

There aren't new individuals who would ignore will of AC SO they are representing

- If it ignores articles or Bylaws we don't have recourse today but with enhanced IRP we do - if Board ignores IRP it can lead to Court and will lead to them complying i.e. following articles of incorporation

- There' is a difference between establishing the court as the underlying authority and establishing the court as the mechanism for redress which we have studiously avoided

Transparency needed on how votes are being cast.

- Tools need to be applied hypothetically

- Spilling the Board wont work if Court not behind you.

We have created a system for better or worse. The multistakeholder process gets strong through reviews of each other in transparent way. The membership structure has created very to use legal opening so that when things go wrong: do you continue to go through hard process and finding consensus or do you take it to Court? It will change direction of system and makes it far less multistakeholder because it gives us an authority. It acts as a foil to multistakeholder processes.

- It is my understanding that there is a great deal of frustration over process that exists because there weren't ways to review. We are creating more mechanisms for redress and more authority. There is less incentive. There is a growing frustration that Board doing something else.

- You don't get to IRP if you did not participate in public comment process. IRP is key solution, not Court

ACTION ITEM: Steve to check that Court is not in ST document

- Concern of whether we need to have a catching net approach to everything

Agrrieved parties abuse a new membership structure or community powers - We should expand it to suggest that they can't go to Court but rather news IRP.

ACTION ITEM: Steve to expand on stress test #13 to underline specificity of using IRP.

ACTION ITEM: Send draft to STWP list followed by CCWG

ACTION ITEM: Cancel June 17 call

ACTION ITEM: Respond to couple additional scenarios Steve is putting forward

Action Items

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Chat Transcript

Kimberly Carlson: (6/3/2015 04:21) Welcome to the Stress Test WP Meeting #7 on 3 June at 11:00 UTC. 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

Cheryl Langdon-Orr: (05:03) Great Thabnlks Steve

Cheryl Langdon-Orr: (05:04) Thanks   (sorry about the extra letters)

Avri Doria: (05:05) i do not hear anything so will have to dial in.

Pär Brumark (GAC Niue): (05:11) No sound! Nevermind, have to run for another meeting. Check it later. Regards, Pär

Cheryl Langdon-Orr: (05:13) Sorry about the gremlins Par

Steve DelBianco   [GNSO - CSG]: (05:29) You may think I am obsessed with recent news, but with the recentspotlight on the FIFA scandals, I think we can reasonably expectquestions regarding how our proposed measures would avoid such a situation.

Alice Jansen: (05:31) :)

Cheryl Langdon-Orr: (05:31) muting now again as the BG noise here is increasing around here again''

Avri Doria: (05:32) re 442 the ATRT2 recommended that this needed serious review to see if it worked, since i was almost never used. this is a recommendation that i have not seen done yet.

Avri Doria: (05:32) .. since it was almost ...

jonathan Zuck (IPC): (05:36) or they just really need to know that we could

Adam Peake: (05:39) There are notocies in common areas of every ICANN office for hotline and whistleblower programs

Adam Peake: (05:39) I will send you pictures I took in the DC office.

Adam Peake: (05:40) don't know

Adam Peake: (05:40) but these are CA standard processes

Adam Peake: (05:41) ill send the pics :-)

Steve DelBianco   [GNSO - CSG]: (05:46) Alice -- could you please put up the Articles of Incorporation that you displayed yesterday?

Steve DelBianco   [GNSO - CSG]: (05:47) thanks

Cheryl Langdon-Orr: (05:47) Thnks for that Avri

Cheryl Langdon-Orr: (05:49) Yes please go ahead Avri/Stree

Steve DelBianco   [GNSO - CSG]: (05:51) Avri -- what about section 2 of the AoI on the screen

jonathan Zuck (IPC): (05:56) I think the underlying issue is that nearly everything is ultimately envorceable in court. every contract wit hICANN is like that as well.

Avri Doria: (05:56) but this create a new mechansims that has no accountabilty mechansims other than court.

jonathan Zuck (IPC): (05:56) that doesn't mean anyone wants to go to court nor that it is likely but it's there to provide the underlying authority. I don't know of an alternative.

Avri Doria: (05:57) ok.

Avri Doria: (05:58) we accountabilty mechanisms - even today

jonathan Zuck (IPC): (05:59) I think there's a difference between establishing the court as the underlying authority and establishing the court as the mechanism for redress which we have studiously avoided

Avri Doria: (05:59) who fnds this day in court?

jonathan Zuck (IPC): (06:01) probably no one because the court is so limited in it's powers in this case. they are not the finders of fact

jonathan Zuck (IPC): (06:01) getting a call out

Alice Jansen: (06:01) We are dialing out to Jonathan

jonathan Zuck (IPC): (06:03) they specifically are not. they enforce the powers that have been given the community and IRP processes. they do NOT get to make substantive decisions

jonathan Zuck (IPC): (06:04) in fact, the courts are MORE involved now because they represent the ONLY recourse for disgruntled parties with these new mechanisms, we specifically limit the oprrortunities to go to court because there are alteratnives

Avri Doria: (06:06) i see it just the oppposite, but that is not a stress test problem. the stress test works becasue we have the courts installed as a regualr feature of the system.

jonathan Zuck (IPC): (06:07) courts WANT to decide as narrowly as possible

Steve DelBianco   [GNSO - CSG]: (06:10) Avri -- when you say 'take it to court' are you also including the IRP?

Adam Peake: (06:10) Organizations have taken ICANN to coirt before, no

Steve DelBianco   [GNSO - CSG]: (06:10) Alice-- could you please put up the slides Becky used last CCWG call?

Steve DelBianco   [GNSO - CSG]: (06:11) I should have said, Alice or Adam

Cheryl Langdon-Orr: (06:11) agree wth you here @Avri

Cheryl Langdon-Orr: (06:17) gOK thanls for the heads up oin that Steve

Avri Doria: (06:18) please do not put my words in my mouth Steve. i d on not fear going to court today!

Steve DelBianco   [GNSO - CSG]: (06:19) Okay, avri

Avri Doria: (06:19) i would have prefered a multistakehholder system that was internally consisten tnad did not rely on US courts.

Avri Doria: (06:20) i think that is what ICANN was building. I see this as moving in the opposite direction. but i accept i may be wrong and time will tell.

Steve DelBianco   [GNSO - CSG]: (06:20) the slides on the screen show that members do NOT get to go to court to challenge the board.

Steve DelBianco   [GNSO - CSG]: (06:22) See slide 4, please

jonathan Zuck (IPC): (06:24) i think it's LESS likely, in fact

Avri Doria: (06:24) i guess time will tell.

Avri Doria: (06:25) hey one consolation. the us congress will be happy to see it will be handled in US legal system.

Alice Jansen: (06:30) June 17

Adam Peake: (06:31) got you -and thanks

Alice Jansen: (06:32) There already are stress test related comments

Steve DelBianco   [GNSO - CSG]: (06:32) I saw that, Alice.   Lots of work for ST team

Adam Peake: (06:32) hand up!

Adam Peake: (06:33) ok. I'll write

Adam Peake: (06:34) you will see the compilation of those stress-test responses in the PC tool.

Adam Peake: (06:35) no, all good :-)

Steve DelBianco   [GNSO - CSG]: (06:36) Thanks, all

Cheryl Langdon-Orr: (06:36) bye all

Kimberly Carlson: (06:36) Thank you, bye all