

IANA CWG Meeting #47 (14 May)

Attendees:

Members: Avri Doria, Cheryl Langdon-Orr, Donna Austin, Eduardo Diaz, Elise Lindeberg, Greg Shatan, Jonathan Robinson, Lise Fuhr, Seun Ojedeji, Wanawit Ahkuputra (11)

Participants: Alan Greenberg, Allan MacGillivray, Brenden Kuerbis, Chuck Gomes, Gary Hunt, Martin Boyle, Mary Uduma, Milton Mueller, Nathalie Coupet, Sabine Meyer, Suzanne Woolf, Tomohiro Fujisaki, Yasuichi Kitamura (13)

Legal Counsel: Holly Gregory, Josh Hofheimer, Sharon Flanagan

Staff: Bernard Turcotte, Marika Konings, Berry Cobb, Brenda Brewer, Kim Carlson

Apologies: Olivier Crepin-Leblond, Andrew Sullivan

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

Proposed Agenda

1. Opening Remarks
2. Public comment
 - FAQ – update
 - Any other points?
3. Update from Sidley
4. Key design team issues
 - DT SR
 - Other?
5. Punch List Review
6. Forward planning – timeline
 - Overview and next steps
 - Critical milestones & targets
 - Towards conclusion of design team work
7. AOB
8. Closing Remarks

Notes

1. Opening Remarks

- Continued co-ordination with CRISP team - call between chairs earlier this week.

2. Public comment

Action item (staff): Update public comment review tool, including comments received to date as well as draft responses to be shared with the CWG by next meeting

FAQ – update

- Proposal to hold off publishing FAQ as it needs further polishing and consider publishing after public comment forum closes, if still deemed helpful. It could accompany the final proposal for example.

Action item (all): Continue to review FAQ and consider publishing as part of final proposal (supporting documents)

Action item (staff): Post FAQ on wiki page so it allows for comments / editing

- Any other points?

3. Update from Sidley

- See Post-Transition IANA Board Stress Tests memo circulated by Sidley - insider board (made up of a majority of directors that are employed by ICANN) v s. outsider board (majority of directors not employed by ICANN). Outsider board could create more issues than it would solve for, based on Sidley's analysis.

PTI board would have fiduciary duties to PTI so would be required to act in the best interest of PTI. Insider board could also have directors not employed by ICANN - influence could be introduced that way should it be deemed appropriate in the future? Direction could also be given to ICANN as to how board should be filled with regards to ICANN appointed members. Are there any objections to focusing on internal board and develop further clarifying questions

that may need to be addressed? PTI would be governed by contract - shouldn't be able to go against those agreements.

- See PTI Entity Structure memo (LLC or nonprofit public benefit corporation). LLC would allow for more flexibility, mainly governed by a contract. Tax favors

LLC, bankruptcy favors non-profit status. Non-profit status could have advantage of directing PTI Insider Board concerning its fiduciary obligations to PTI. Consider obtaining ICANN input on tax exempt status and how PTI finances would look. Some questions may need to be asked, but

there appear to be advantages of the non-

profit public benefit corporation status over an LLC, taking into account the direction towards an insider board. If

it is a non-profit PTI is not a subsidiary but an affiliate (not owned by ICANN). LLC would make it more internal as a subsidiary. Suggestion to move forward with insider board as a non-profit public benefit corporation.

4. Key design team issues

- DT SR - one of the issues that is pending is, if the separation process that is triggered, is it the IFR that carries it out or is it another entity (e.g. CWG) that carries it out. Other issue is the trigger (s) for separation review. IFR could trigger it, but what happens if it is not approved by the Board, would it go through accountability mechanisms. Could it be triggered by supermajority vote of ccNSO / GNSO, or majority vote of RySG and ccNSO? Separation is divestiture (termination of contract / RFP), sale of assets or if ICANN decides for someone else to perform the technical functions. Is that covered in the document? Yes, is considered in the range of possible outcomes of separation review. If team is good, but ICANN oversight not functional, PTI should be divested. If IANA function isn't working, but ICANN oversight is, then ICANN terminates contract and initiates an RFP. Consider scenario mapping.

Action item (all): Review latest version of the document (see https://docs.google.com/document/d/1WvBqtgXJ7rNrbN-5Tjf5-gi80aZ2oRYDtF_JLrETRqg/edit?usp=sharing) and provide input

Action item: need clear definition of terminology, for example 'separation'

- Other?

5. Punch List Review

Action item: Continue conversations via mailing list - note updates made by DT C.

6. Forward planning – timeline

- Overview and next steps
- Critical milestones & targets
- Towards conclusion of design team work

Action item: documents to be shared on the list for further review and discussion during next week's meeting.

7. AOB

Action item: Add DT F to the agenda for Tuesday

8. Closing Remarks

Action Items

Action item (staff): Update public comment review tool, including comments received to date as well as draft responses to be shared with the CWG by next meeting

Action item (all): Continue to review FAQ and consider publishing as part of final proposal (supporting documents)

Action item (staff): Post FAQ on wiki page so it allows for comments / editing

Action item (all): Review latest version of the document (see https://docs.google.com/document/d/1WvBqtgXJ7rNrbN-5Tjf5-gi80aZ2oRYDtF_JLrETRqg/edit?usp=sharing) and provide input

Action item: need clear definition of terminology, for example 'separation'

Action item: Continue conversations via mailing list - note updates made by DT C.

Action item: documents to be shared on the list for further review and discussion during next week's meeting.

Action item: Add DT F to the agenda for Tuesday

Transcript

[Transcript CWG IANA #47 14 May.doc](#)

[Transcript CWG IANA #47 14 May.pdf](#)

Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p3c7wmnssfi/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-cwg-iana-14may15-en.mp3>

Chat Transcript:

Brenda Brewer: (5/14/2015 05:43) Good day and welcome to the CWG IANA Meeting #47 on 14 May.

Lise Fuhr: (05:55) Hello everyone

Bernard Turcotte - staff support: (05:56) hi all

Lise Fuhr: (05:56) It is a holiday in DK and sunny so this is a bit cruel...

Bernard Turcotte - staff support: (05:56) ouch

Martin Boyle, Nominet: (05:57) hi

Marika Konings: (05:57) I know how you feel Lise... ;-)

Martin Boyle, Nominet: (05:57) what's the holiday, Lise?

Bernard Turcotte - staff support: (05:57) Price of fame

Marika Konings: (05:57) Ascencion

Martin Boyle, Nominet: (05:58) Ah, of course

Lise Fuhr: (05:58) Yes Ascension Day I had to look up the English translation

Martin Boyle, Nominet: (05:58) it's not a holiday here and it's raining, if that helps you feel bad ;-)

Marika Konings: (05:59) LOL

Lise Fuhr: (05:59) He he - feel bad for you

Seun Ojedeji: (05:59) Hello everyone

Martin Boyle, Nominet: (06:00) in Danish and dutch it is something along the lines of heaven-wards journey?

Lise Fuhr: (06:00) But the holiday might have the effect that fewer is participating

Marika Konings: (06:00) correct, 'hemelvaart' in Dutch

Lise Fuhr: (06:00) Yes Kristi himmelfart in Danish

Eduardo Diaz - (ALAC): (06:02) ¡Hola a todos!

Mary Uduma: (06:02) Hello Everyone

Sabine Meyer (GAC - Germany): (06:02) Himmelfahrt in German.

Sabine Meyer (GAC - Germany): (06:03) sunny weather here, too :)

Sabine Meyer (GAC - Germany): (06:03) hi everyone!

Cheryl Langdon-Orr: (06:03) Hi all

Allan MacGillivray: (06:07) Hello to one and all

Milton: (06:10) Agree with Jonathan about that

Milton: (06:10) It will not have time to disseminate

Eduardo Diaz - (ALAC): (06:10) Agree too. We are to close to the PC deadline

Eduardo Diaz - (ALAC): (06:11) It may confuse the PC process

Brenden Kuerbis: (06:11) Already enough to digest, don't want to introduce potentially confusing information

Greg Shatan: (06:12) Agree with Jonathan.

Martin Boyle, Nominet: (06:13) good approach

Seun Ojedeji: (06:18) •Do i get the "outsider board" to mean that the CCWG accountability mechanism may not apply to them hence there may be need to have a separate accountability mechanism for the PTI board?

Milton: (06:19) But the whole point of separating PTI is to focus accountability more on IANA functions themselves

Milton: (06:20) Exactly. The accountability comes from the contract

Sabine Meyer (GAC - Germany): (06:20) but what if that contractual tie is severed? please forgive me if that is an ignorant question.

Milton: (06:21) ICANN can enforce its contract.. If it does not like the job the PTI is doing, it hires a new IANA functions operator

Lise Fuhr: (06:21) @Milton the legal separation was to have a contract, ringfence the IANA function and enhance the separation of policy and operation

Milton: (06:22) yes, Lise

Jonathan Robinson: (06:22) @Sabine. I don't see that as ignorant but the scenarios associated with separation are a separate set of issues

Brenden Kuerbis: (06:22) @Sabine Then we're in a process of creating a new PTI

Seun Ojedeji: (06:22) While the contract is a measure...i guess the question is about the PTI board operations itself. Afterall ICANN had a contract with ICANN but then we still have all the ICANN board accountability calls

Milton: (06:22) contract, ringfencing are all ways of focusing accountability on IANA

Seun Ojedeji: (06:22) Edit: While the contract is a measure...i guess the question is about the PTI board operations itself. Afterall NTIA had a contract with ICANN but then we still have all the ICANN board accountability calls

Avri Doria: (06:23) not only is there the contract, there is the IFR and the possible separation process

Seun Ojedeji: (06:23) So IMO there is still need to have PTI board accountability beyond the contract

Brenden Kuerbis: (06:23) Barely

Josh Hofheimer: (06:23) @Alan, true ICANN employees. You can have some PTI employees on the Board,

Lise Fuhr: (06:23) Yes but this is legal structures - the accountability is ensured by the CSC and IFR and the CCWG measures

Chuck Gomes (RySG): (06:23) Would ICANN directors be considered insiders or outsiders?

Brenden Kuerbis: (06:24) A little better

Lise Fuhr: (06:24) legal structure

Lise Fuhr: (06:24) Can't hear Milton

Sharon Flanagan (Sidley): (06:24) insiders

Milton: (06:24) ok sorry

Marika Konings: (06:24) @Milton - let me know if you need a dial-out

Chuck Gomes (RySG): (06:24) Thanks Sharon.

Seun Ojedeji: (06:25) @Avri i believe IFR is a trigger group and not a standing group

Lise Fuhr: (06:27) @Seun IFR has a planned function every 5 years and a trigger function

Avri Doria: (06:28) and how about a hybrid board with some insiders for contact and some outsiders for independence.

Seun Ojedeji: (06:28) @Lise correct that's noted but that periodic event. My point is about the happening within the PTI board itself. If a board member is not performing, who brings him/her to seat up? As i don't think that should warrant an IFR trigger

Josh Hofheimer: (06:29) @Avri, your suggestion is noted at the beginning. An "insider" board can still have some non-ICANN employed directors, but the difference is that ICANN controls a majority of the directors.

Holly Gregory (Sidley): (06:29) a ride, with either the insider or outsider boards the board could be a mix. inside or outsider refers to the majority make up of the board.

Greg Shatan: (06:30) If we want ICANN to be accountable for (and held accountable for) IANA performance, the outside board seems to break the chain.

Josh Hofheimer: (06:30) If ICANN has the ability to select a majority of the directors, regardless of who it selects, we consider that an "INSIDER" board for this memo

Cheryl Langdon-Orr: (06:30) indeed @Greg

Milton: (06:30) No need to replicate budget oversight at the PTI level - ICANN negotiates with PTI

Holly Gregory (Sidley): (06:30) That was response to "Avri" before auto corrected into "a ride"

Seun Ojedeji: (06:30) @Lise correct thats noted but thats a periodic event. My point is about the happenings within the PTI board itself. If a board members is not performing, who brings him/her to seat up? As i don't think that should warrant an IFR trigger. Especially if IANA operation is still meeting the IANA contract terms

Milton: (06:31) Greg: We don't want ICANN to be held accountable for PTI performance directly, we want PTI to be held accountable. If they dont do it well, you change providers.

Milton: (06:31) ACcountability needs to be as close to the performing entity as possible

Lise Fuhr: (06:31) @Seun a good question - that could be asked to Sidley

Greg Shatan: (06:32) I don't think we want PTI acting at "arm's length" with ICANN as if it were an independent entity..

Milton: (06:32) why don't we want that, Greg?

Avri Doria: (06:32) so there is no real notion of hybrid becasue insider/outside is determined by who has the majority.

Jonathan Robinson: (06:33) @Avri. I am not sure I agree re hybrid.

Seun Ojedeji: (06:33) @Milton that direction of accountability may not work especially if ICANN is expected to sub-contract the numbers and protocol contract to PTI (re: accountability direction)

Josh Hofheimer: (06:33) @Sean, if a Board member is not performing, then whomever appointed should replace him /her.

Greg Shatan: (06:34) Because then ICANN is not really responsible for PTI except to the extent of contractual oversight. This was supposed to be an affiliate relationship wit an intracompany agreement-- not an arms' length relationshipp with am arms' length agreement.

Lise Fuhr: (06:34) @Avri the notion of hybrid is the legal separation not necessarily the board composition

Avri Doria: (06:34) would a board picked by SOAC, or members council, would that be insider or outside.

Avri Doria: (06:34) i understand Lise.

Avri Doria: (06:35) my view is we can't have an insider board, almost like status quo.

Seun Ojedeji: (06:35) @Josh so it comes to requiring some accountability mechanism for that....and what i understand with outsider is that the CCWG board removal process may not work (in the outsider board scenario)

Jonathan Robinson: (06:35) @Greg / Milton - It seems that we want PTI acting at arms length if and when a separation occurs but not otherwise?

Brenden Kuerbis: (06:35) @Josh, Who is whomever? What bodies actually do selection of board? If that was somehow grounded in the community (e.g., SOs) then I would be more comfortable.

Greg Shatan: (06:35) Jonathan, that is what I believe we want.

Josh Hofheimer: (06:36) @Avri, if the majority of the Board directors are determined by ICANN, and can be removed by ICANN, then it is an "insider" board, under this memo

Avri Doria: (06:36) Brenden, that is my question, if the SOAC pickes them, is it outsider.

Greg Shatan: (06:36) and that is typically what happens when a subsidiary is divested or "spun out."

Lise Fuhr: (06:36) @Avri we still have more functions to ensure the IANA function is performing according to e.g. SLE by CSC and IFR

Seun Ojedeji: (06:37) Exactly @Avri and the understanding right now is that the CCWG board member removal/redress process would not apply to them (PTI)

Josh Hofheimer: (06:38) I think Sharon is making some points worth listening to.

Josh Hofheimer: (06:38) they relate to some of this discussion

Martin Boyle, Nominet: (06:38) @Milton: I think the model works if icann has in its power the ability to require the PTI board to take corrective action (including sacking the insider Board). That's why we asked for IFRs to go to the ICANN Board.. I see the outsider Board model as an issue, because icann will be told to re-contract the IFO but not have the power to deal with the key decisions

Avri Doria: (06:39) is the distincion ICANN employees or ICANN picking

Greg Shatan: (06:39) @Seun, board member appointment/removal would be dealt with in the PTI bylaws.

Josh Hofheimer: (06:40) @Milton, agree. If there is an outsider Board, then the CCWG accountability mechanisms have to be replicated at the PTI level.

Martin Boyle, Nominet: (06:40) In other words, the problem might be in a PTI Board imposed from outside. I'd see that we would then have created a PTI without any accountability: would we need to do the same things that are in discussion in the CCWG

Josh Hofheimer: (06:40) @Martin, agree.

Avri Doria: (06:41) and by ICANN we mean ICANN Board?

Avri Doria: (06:41) not ICANN CEO?

Martin Boyle, Nominet: (06:42) @Josh: when you say ICANN designates, you actually mean the ICANN Board?

Sharon Flanagan (Sidley): (06:42) in effect, yes

Seun Ojedeji: (06:43) okay @Greg...thanks for that. So i guess we still need to look at the details of that bylaw then. We may then need to go through a lightweight CCWG process of developing proposal in that regard

Jonathan Robinson: (06:43) @Avri. It seems that it is ICANN picking although it is likely that ICANN will pick "designate" ICANN employees / insiders

Avri Doria: (06:43) in effect?

Avri Doria: (06:44) ok, i was just getting to the question of a bylaw to determine the composition.

Avri Doria: (06:44) thanks

Avri Doria: (06:45) ok, so an insider board whose composition is determined by bylaws.

Chuck Gomes (RySG): (06:45) @ Avri: Why can't we have an insider board?

Brenden Kuerbis: (06:46) If we wanted (and ICANN, Inc agreed) SOs to seat PTI board, could ICANN, Inc. change that?

Avri Doria: (06:46) i just came around to agreeing as long as its composition was determined by bylaws to include SOAC &c.

Josh Hofheimer: (06:46) @Avri -- Still, to be an "insider" as we suggest here, a majority of the seats are filled by ICANN's selection

Sharon Flanagan (Sidley): (06:46) @Brenden - not if it's a "fundamental bylaw" of ICANN

Brenden Kuerbis: (06:46) thx

Avri Doria: (06:46) exactly Sharon.

Seun Ojedeji: (06:47) If i may ask, which of the bylaws will be in effect for an ICANN board member on PTI. i.e If ICANN board member gets removed by ICANN community, what happens to his/her status within PTI?

Avri Doria: (06:47) it is becoming a spider web architecture

Sharon Flanagan (Sidley): (06:47) @Seun - we could link that and require an ICANN board member to resign from PTI at same time

Milton: (06:48) I have been cut off for some time

Milton: (06:48) Marika I have given you a number to call, can you please call it

Marika Konings: (06:48) @Milton - yes, we are trying the number you sent now

Seun Ojedeji: (06:48) Okay Sharon, and if the other way round same can be done as well? Does it make any conflict that the contract awardee is also operating the contract?

Sharon Flanagan (Sidley): (06:49) @Chuck - doesn't have to be driven by entity structure

Avri Doria: (06:49) i am comfortable with an insider board whose composition and method of selection is determined by fundamental bylaws

Marika Konings: (06:49) @Milton - we can hear you

Alan Greenberg: (06:50) we could hear you Milton

Mary Uduma: (06:50) @ chuck, +1 your last statement. I would help to first decide the type before dealing with the Board model.

Mary Uduma: (06:51) It*

Greg Shatan: (06:52) I don't think anyone said "entirely."

Greg Shatan: (06:53) as the only option for an insider board.

Seun Ojedeji: (06:53) @Sharon i am still expecting a response to those questions

Seun Ojedeji: (06:53) Here it is again: Okay Sharon, and if the other way round same can be done as well? Does it make any conflict that the contract awardee is also operating the contract?

Greg Shatan: (06:53) Impatient>

Milton: (06:53) insider v outsider board is very dichotomous

Lise Fuhr: (06:54) @Jonathan I agree

Milton: (06:54) i don't think it represents the actual issue

Greg Shatan: (06:54) Milton, not necessarily. An insider board can have "outside" members as long as they are not a majority.

Greg Shatan: (06:57) With an outsider board, ICANN is no longer managing ICANN, except to the extent any contracting party manages the other. Contracts generally assume that each party manages itself subject only to contractual oversight provisions.

Seun Ojedeji: (06:57) @Co-Chairs, could you kindly read out my question: Based on the "insider" understanding; If PTI board member is removed does it affects his/her ICANN board seat as well? Secondly, does it make any conflict that the contract awarder(ICANN) is also operating the contract?(as PTI board)

Milton: (06:57) yes Greg. That is exactly how it should be

Greg Shatan: (06:57) Milton, I disagree.

Sharon Flanagan (Sidley): (06:57) @Seun - I don't understand the question. Is it whether when PTI Board member resigns he/she must also resign from ICANN?

Milton: (06:57) IETF does not control ICANN's board, it just contracts with it to do the protocols registry

Greg Shatan: (06:57) This is beyond structural separation.

Milton: (06:58) that IS structural separation.

Martin Boyle, Nominet: (06:58) @Milton: I'm getting confused on how we divide responsibility between two Boards in the case of an outsider Board

Greg Shatan: (06:58) Structural separation on steroids, perhaps. We clearly have a range of choices that can all be dubbed "structural separation."

Seun Ojedeji: (06:59) @Sharon you indicated that if ICANN board gets removed from its seat, he/she can also be removed from PTI and i am also asking whether the other way round would also apply....including the second question about conflict

Milton: (06:59) Greg, tell me what value is added by considering the entire ICANN board the "manager" of the IANA functions rather than PTI itself

Milton: (06:59) @Martin - I am confused about how we divide when you have an insider board ;-)

Greg Shatan: (07:00) It's not just the ICANN board that currently manages IANA. ICANN's management structure over IANA should stay the same after the transition.

Avri Doria: (07:00) if the insider board is determined by a bylaw that includes direct customers as well as other SOAc, it is still an insider board with the connection that is needed.

Martin Boyle, Nominet: (07:00) @Milton: isn't it that the ICANN Board is accountable (and able to instruct) the PTI Board

Milton: (07:00) outsider board, the division is very clear. PTI board manages the IANA function according to SLA and contract, ICANN enforces the contract when PTI does something wrong and also controls the review process. PTI ensures that ICANN holds up its end of the bargain.

Lise Fuhr: (07:00) @Seun I will read your question

Milton: (07:02) Now, Martin, I have described division for an outsider board. Tell me how they are divided with insider?

Martin Boyle, Nominet: (07:02) @Milton: I see all of that as possible with an insider Board

Jonathan Robinson: (07:03) @Milton. Insider board should also enforce. As PBC they will have a fiduciary duty to do so and as LLC we may require similar obligations. If they do NOT then we escalate via accountability

Martin Boyle, Nominet: (07:03) But with the advantage that the outsider Board re-creates all of the problems we have seen with accountability of the ICANN Board

Milton: (07:03) really? A board entirely controlled by ICANN can enforce a contract that is breached on the ICANN side?

Greg Shatan: (07:03) So then the PTI Board becomes the focus of accountability for IANA Functions, and not ICANN. I don't think that's what we were aiming for.

Milton: (07:03) that is exactly what we were aiming for

Martin Boyle, Nominet: (07:03) @Milton: yes

Seun Ojedeji: (07:03) Thanks Sharon and to the second question?

Sharon Flanagan (Sidley): (07:04) @Seun - What is the second question?

Seun Ojedeji: (07:04) does it make any conflict that the contract awarder(ICANN) is also operating the contract?(as PTI board)

Martin Boyle, Nominet: (07:04) and if not it would be picked up by the CSC or others and lead to the special IFR

Milton: (07:04) outsider board could have insiders on it

Josh Hofheimer: (07:04) @Sean, it's not uncommon to have inter-company contracts between related parties.

Martin Boyle, Nominet: (07:04) and vice-versa

Martin Boyle, Nominet: (07:05) but if ICANN is responsible for the performance of its subsidiary, we then have the ICANN accountability mechanisms and the IFR

Sharon Flanagan (Sidley): (07:05) @Seun - PTI Board members still need to exercise fiduciary duties to PTI even if also employed by ICANN

Sharon Flanagan (Sidley): (07:05) @Martin Boyle - correct

Greg Shatan: (07:06) Probably too close to mic....

Holly Gregory: (07:06) an outsider board will require redundant accountability mechanisms and significant additional complexity. the ICANN accountability mechanisms under development should be designed to hold ICANN accountable in its oversight of PTI

Greg Shatan: (07:06) Or maybe I'm just muffled this morning.

Greg Shatan: (07:07) I think an all-insider board is a little too cozy. There should be outsiders there.

Seun Ojedeji: (07:07) @Josh and @Sharon okay, thanks. It just seem weird arrangement and i wonder what all the PTI independence is all about. If its then about separation...isn't it then more appropriate to get that done with a mere department within ICANN instead of the wholesome PTI that is still controlled by ICANN

Greg Shatan: (07:08) Not saying anything is "instead of" the contract.

Martin Boyle, Nominet: (07:08) so we go back to a by-law based solution?

Milton: (07:09) No

Josh Hofheimer: (07:09) @milton, take the example of an IFR review. Let's say that iIFR recommends structural changes to ICANN. ICANN may agree those changes are important, but if the independent PTI Board rejected those recommendations, then PTI is not bound to accept the recommendation of the community

Milton: (07:09) we consistently carry out the legal separate solution

Martin Boyle, Nominet: (07:09) simpler and no worse than the current proposal

Greg Shatan: (07:09) Without legal separation, we have no contract.

Milton: (07:09) @Josh: PTI has no ability to resist those recommendations if it doesn't want to get fired

Milton: (07:10) Martin: not simpler. All the moving parts are the same

Milton: (07:10) it's just that the incentives and focus are lacking

Martin Boyle, Nominet: (07:10) but the PTI Board might have reasons for wanting the PTI to get fired

Josh Hofheimer: (07:10) @Milton (contd), we would need to add some accountability mechanisms to PTI that enabled ICANN to drive behaviour as the member.

Seun Ojedeji: (07:10) @Martin +1 (re: bylaw route)

Greg Shatan: (07:11) An outsider board is a much more complex moving part than an insider board.

Milton: (07:11) A contract makes sense only between two relatively independent parties

Lise Fuhr: (07:11) @Jonathan and @Chuck agree on these reasons

Milton: (07:11) Greg: no its simpler because its a contractual arrangement

Brenden Kuerbis: (07:11) @Agree Chuck and parties ability to act in the best interest of each organization.

Greg Shatan: (07:11) Bylaws don't contain the level of operational specificity that a contract would. They are governance mechanisms.

Greg Shatan: (07:11) It's a contractual arrangement either way.

Greg Shatan: (07:12) The difference is whether we want an independent PTI or a subsidiary PTI.

Milton: (07:13) haven't heard why we want a subsidiary PTI.

Milton: (07:14) @josh: no you don't need to add accountability mechanisms with an outsider board. You have a review process and a contracting process

Martin Boyle, Nominet: (07:14) I have serious concerns on accountability of an independent board

Martin Boyle, Nominet: (07:14) independent subsidiary

Greg Shatan: (07:14) Agree with Josh, an independent board needs accountability mechanisms an insider board does not.

Milton: (07:14) I have serious concerns about the accountability of an ICANN board

Milton: (07:14) with respect to the IANA functions

Martin Boyle, Nominet: (07:15) but then we can hold the icann board to account for its failing

Jonathan Robinson: (07:15) @Milton - we make our proposal expressly conditional on enhanced accountability as put forward by the CCWG Accountability.

Milton: (07:16) So tell me, why does the IETF not insist on appointing a majority of ICANN board members when they rely on it to perform its IANA functions?

Milton: (07:16) Jonathan: enhanced accountability comes from the contract and the review process

Milton: (07:16) that's enough. no need to complicate further

Greg Shatan: (07:16) Because IETF isn't responsible for the IANA function.

Jonathan Robinson: (07:16) @Milton. Agreed. AND CCWG outcomes

Milton: (07:17) Right. Most of what CCWG does pertains to the policy making functions, which is where the really complex accountability issues are

Milton: (07:17) IANA accountability is relatively simple: a severable contract and a review mechanism.

Lise Fuhr: (07:17) @Milton if not linked to the CCWG accountability we would need to make parallel accountability measures that is overlapping the CCWG measures

Milton: (07:18) And...I have always supported having some "insider" board members from ICANN on PTI board

Milton: (07:18) but all of them? or most of them? makes no sense to me

Brenden Kuerbis: (07:19) In the first instance, it seems to me that LLC form requires much more work defining, debating, and agreeing on constraints, responsibilities of PTI.

Milton: (07:19) Greg: Sorry but that is an ignorant statement. IETF is fully responsible for the maintenance of its own registries

Milton: (07:19) Lise: no, that is just a mistake.

Milton: (07:19) a mistaken assumption I mean

Greg Shatan: (07:20) Milton, not ignorant -- let me clarify. IETF is not responsible for the management of the IANA group within ICANN or PTI, except to the extent of their MoU.

Brenden Kuerbis: (07:21) If PTI takes LLC form, is there risk that ICANN could fundamentally alter, abridge or even eliminate PTI board or management responsibilities?

Greg Shatan: (07:21) And at some point, they hand over functional control of that to the IANA group and then the RZM, even if they retain overall contractual oversight.

Seun Ojedeji: (07:21) @Greg, actually their MoU is what determine how IANA staff manages protocol side of the function

Martin Boyle, Nominet: (07:22) @Jonathan: indeed I would be concerned if PTI were accumulating surpluses

Brenden Kuerbis: (07:22) Agree with Jonathan on this.

Greg Shatan: (07:22) No, Seun, not how they manage -- only the expected outcomes.

Lise Fuhr: (07:22) Loosing you Jonathan

Josh Hofheimer: (07:22) @Brendan, the LLC agreement can be relatively simple, or complex, however desired. And ICANN could be restrained from amending the LLC Agreement through the ICANN Bylaws.

Milton: (07:23) Greg: of course that is true, but the point is they define what they want from ICANN in a MoU and SLA and let ICANN perform it. they hold ICANN accountable through annual negotiation of the SLA and a termination clause. that is ALL

Milton: (07:24) IETF sees no need to appoint board members to keep ICANN's performance of its IANA functions accountable.

Martin Boyle, Nominet: (07:25) @Milton: no, but IETF can call in their MoU, can't they?

Seun Ojedeji: (07:25) @Greg maybe you should have a look at the IETF SLA requirements....its quite procedural than just the outcome

Milton: (07:25) exactly

Milton: (07:25) they can call in their MoU, just as IFR could call in ICANN's names contract with PTI. this is not so complex

Sharon Flanagan (Sidley): (07:26) We should get ICANN input on tax exempt status and how PTI finances would look

Martin Boyle, Nominet: (07:26) but icann would have a problem calling in its contract with ptl and going off - oh, let's say - to an internal unit

Martin Boyle, Nominet: (07:26) it needs to go through an extra process

Avri Doria: (07:26) i am going to drop out now.

Bernard Turcotte - staff support: (07:27) Jonathan off

Milton: (07:27) The extra process being the review process?

Seun Ojedeji: (07:27) Has it been considered as well that PTI may also go bankrupt (if sued directly on implementation). By bankrupt i mean exhausting its reserve

Sharon Flanagan (Sidley): (07:28) Yes and there is a benefit to PTI if it is in a corporate structure rather than an LLC

Greg Shatan: (07:28) @Seun, regardless of the amount of procedure, that is not the same thing as management.

Jonathan Robinson: (07:29) @Lise. I am back on

Brenden Kuerbis: (07:29) Are there restrictions on what can be done with assets of a dissolved nonprofit PBC?

Sharon Flanagan (Sidley): (07:29) @Brenden - yes, cannot be sold for value

Seun Ojedeji: (07:30) Yes i agree @Greg; its still IANA staff that does the actual job. As a matter of fact, IANA staff doe more of the protocol than any other 2 operational communities

Chuck Gomes (RySG): (07:31) Flexilbiity can be a plus and a negative. I personally think that flexiblity could be a problem down the road because it might be too easy to change.

Brenden Kuerbis: (07:32) That's my concern too Chuck

Brenden Kuerbis: (07:32) An operating agreement leaves too much to be defined, redefined. IMO

Donna Austin, RySG: (07:33) Agree with Chuck on flexibility concern.

Milton: (07:33) But Sharon, most of us don't want it to be internal

Chuck Gomes (RySG): (07:33) @ Sharon: What is the significance of ownership?

Milton: (07:33) it was always supposed to be an affiliate

Martin Boyle, Nominet: (07:35) @Milton: I thought we'd left it open for this sort of analysis

Greg Shatan: (07:36) Not sure anyone can speak for "most of us." In any even, I agree (and think many of us do).

Greg Shatan: (07:36) with Martin, at a minimum.

Elise Lindeberg GAC: (07:36) We need to have something more explaining about the "ownership struncture" - the difference between the subsidiary and affiliate. For the community to know what we are creating

Chuck Gomes (RySG): (07:37) Could the PBC with an insider board be an intermediary step before separation and a PBC with an outsider board be the next step before separation?

Greg Shatan: (07:37) That would essentially BE separation.

Jonathan Robinson: (07:37) @Chuck. Exactly. That speaks in part to spearation mechanism. Which is another key question we need to deal with.

Nathalie Coupet: (07:39) What are the parameters set by the USG. Shouldn't we discuss with NTIA to know what they will allow before we go further?

Nathalie Coupet: (07:40) We might also need to take the US Congress into consideration too.

Greg Shatan: (07:42) Facts are not advocacy.

Milton: (07:43) I didn't hear any fact

Milton: (07:43) I heard an interpretation

Greg Shatan: (07:43) I'll let Josh speak to that.

Seun Ojedeji: (07:43) I agree with Martin; Contract requirements can be meet but other operational expectations may not. There should be a way to keep the PTI management in check PTI beyond just operating IANA as per the contract. However i note that those would reflect in the PTI bylaw

Chuck Gomes (RySG): (07:45) Thanks Sharon.

Seun Ojedeji: (07:45) @Nathalie, i think what NTIA requirements are is already published. Perhaps discussing with ICG to know if we meet that requirement may be appropriate procedurally

Avri Doria: (07:46) Insider but only with fndaments bylaws defining its composton

Avri Doria: (07:46) ?

Josh Hofheimer: (07:47) @Milton, I am not advocating one way or the other. I was trying to point out that the CSC review, IFR review, and other accountability mechanisms may need further work to ensure the enforceability of the community views

Brenden Kuerbis: (07:47) Agree with Alan, I don't think we're quite settled on board, but I do think we've heard support for PBC form.

Sharon Flanagan (Sidley): (07:47) @Avri - bylaws can defined, but to be "insider" in the model, would still be ICANN employees in majority of seats

Milton: (07:48) but they are enforceable. you implied that they were not. "may need further work" is not a "fact" as Greg said, but an intepretation. I appreciate the advice regarding enforceability, i think it does draw attention to a real issue, but I do not think it is that much of an issue

Greg Shatan: (07:48) @Sharon -- ICANN employees or ICANN appointees?

Avri Doria: (07:48) i thought it wasn't employees but who picked. t hat made it indider.

Seun Ojedeji: (07:49) @Sharon so in summary PBC = Subsidiary, while LLC = Affiliate?

Sharon Flanagan (Sidley): (07:49) Literally, ICANN picks, but in our "stress tests" we were highlighting advantages of ICANN employees with oversight

Sharon Flanagan (Sidley): (07:50) @Seun - PBC = affiliate and LLC = subsidiary. PBCs don't have "owners", so not a subsidiary

Seun Ojedeji: (07:50) Thanks!

Sharon Flanagan (Sidley): (07:53) That's a new contract and IFR should be able to recommend that

Milton: (07:54) Separation should not mean divesting PTI, it should mean firing it and using another provider

Martin Boyle, Nominet: (07:54) @Milton: I agree

Sharon Flanagan (Sidley): (07:54) If team is good, but ICANN oversight not functional, PTI should be divested. If IANA function isn't working, but ICANN oversight is, then ICANN terminates contract and initiates an RFP

Martin Boyle, Nominet: (07:54) we are separating because they are doing a bad job

Milton: (07:55) @Sharon got it, thx

Milton: (07:55) @ martin But there is also the option to divest

Martin Boyle, Nominet: (07:56) why? If they are performing badly we will need to replace

Marika Konings: (07:56) @Avri - could you post the link to the document here so I can include it in the notes?

Eduardo Diaz - (ALAC): (07:56) @Sharon: So , in your first scenario - If team is good, but ICANN oversight not functional, PTI should be divested - the stewardship is moved out of ICANN. Is this correct?

Sharon Flanagan (Sidley): (07:57) @Eduardo, right

Martin Boyle, Nominet: (07:57) and if it is icann's oversight is bad then they should be held to account via ccwg mechanisms

Avri Doria: (07:57) https://docs.google.com/document/d/1WvBqtgXJ7rNrbN-5Tjf5-gi80aZ2oRYDtF_JLrETRqg/edit?usp=sharing

Sharon Flanagan (Sidley): (07:57) @Chuck - we have meant both of these alternatives

Chuck Gomes (RySG): (07:57) Thanks Sharon.

Martin Boyle, Nominet: (07:57) @Sharon: surely that is only reasonable if icann can actually exercise control over the subsidiary/affiliate

Sharon Flanagan (Sidley): (07:58) @Martin B. - that's also right. The oversight should be able to be remedied short of divestiture.

Marika Konings: (07:58) @Avri - thanks

Eduardo Diaz - (ALAC): (07:59) @Avri: So the question that I asked last time - separation includes separation of the stewardship is included in the separation. I thought you answered that it was not

Martin Boyle, Nominet: (07:59) but increased independence of the PTI board starts to really confuse that accountability

Alan Greenberg: (08:02) Short AOB item please

Avri Doria: (08:03) Eduardo, the Dt has not been dealing with change of stewardship only of IFO

Cheryl Langdon-Orr: (08:04) Lots of important issues covered in today's call ... Thanks everyone... Much to consider and still discuss...

Chuck Gomes (RySG): (08:04) Very good meeting.

Lise Fuhr: (08:04) Thank you all for good discussions

Seun Ojedeji: (08:04) Nice and more informative

Seun Ojedeji: (08:04) thanks everyone

Bernard Turcotte - staff support: (08:05) bye all

Seun Ojedeji: (08:05) bye all

Alan Greenberg: (08:05) We were under on the last meeting - it averages out.

Brenden Kuerbis: (08:05) Thanks everyone

Milton: (08:05) bye

Avri Doria: (08:05) thanks

Sabine Meyer (GAC - Germany): (08:05) thank you everyone, bye!

Cheryl Langdon-Orr: (08:05) bye

Allan MacGillivray: (08:05) Bye all.