

CCWG ACCT Meeting # 38 (30 June)

Attendees:

Members: Alan Greenberg, Alice Munyua, Athina Fragkouli, Becky Burr, Bruce Tonkin, Fiona Asonga, Izumi Okutani, Jorge Villa, Julia Wolman, Leon Sanchez, Mathieu Weill, Par Brumark, Robin Gross, Roelof Meijer, Samantha Eisner, Steve DelBianco, Tijani Ben Jemaa (17)

Participants: Avri Doria, Chris Disspain, Christopher Wilkinson, David McAuley, Farzaneh Badii, Finn Petersen, Gigi Johnson, Greg Shatan, Kavouss Areteh, Malcolm Hutter, Sabine Meyer, Seun Ojedeji, Sivasubramanian Muthusamy, Tom Dale, Vrikson Ivan Acosta-Velasquez (15)

Legal Counsel: Holly Gregory, Michael Clark, Miles Fuller, Rosemary Fei, Stephanie Petit

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

Apologies: Eberhard Lisse, James Bladel, Jordan Carter, Martin Boyle, Thomas Rickert

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

Transcript

- [Transcript CCWG ACCT #38 30 June.doc](#)
- [Transcript CCWG ACCT #38 30 June.pdf](#)

Recording

The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p19fd78fy6n/>

The audio recording is available here: <http://audio.icann.org/gnso/gnso-ccwg-acct-30jun15-en.mp3>

Proposed Agenda

1. Welcome, Roll Call & Sol
2. Action items from [Buenos Aires](#) (see below)
 - *Independent counsel will review both the empowered SO/AC membership model and the empowered SO/AC designator model in order to inform the discussion that will take place in Paris;*
 - *Take into account the drastic constraints on timeline and the requirement for minimal changes, a work party will be constituted to address the "emerging" issues outlined in the "discussion starters" papers;*
 - *Rapporteurs to organize work on WP1 & WP2 issues that need further discussion and are not dependent on the Model discussion;*
 - *CoChairs to coordinate with ICG and CWG to prepare a response to the NTIA letter;*
 - *Bylaw drafting process to be discussed on the list and considered at the next CCWG meeting;*
 - *WPs to make sure all comments in the public comment tool have responses for publication, no later than publication of PC2;*
 - *Rapporteurs to coordinate work in respective WPs.*
3. Review of [CCWG scorecard](#) (see attached)
4. Emerging issues : WP3 terms of reference, scoping & call for volunteers (see attached)
5. Bylaw drafting process (see attached)
6. A.O.B
7. Closing remarks

Notes

Welcome, Roll-Call, SOI

Roelof Meijer and Alice Munyua are on the phone only

Please fill in your SOI.

- No time to conduct early review of models. Outline of membership problems would be useful.

--> We are not reviewing models on this call - it is a reference to an action item.

Action items from Buenos Aires

1. Lawyers have been tasked to review both empowered SO/AC membership model and empowered SO/AC designator model to inform our Paris discussions. We will be having a thorough discussion in Paris so we can flesh out details.

2 Establish WP to address emerging issues

Leon will be work party Chair. Alan Greenberg has volunteered for this effort and we are seeking more volunteers.

ACTION ITEM: Review emerging issues and papers circulated by Mathieu

3 Rapporteurs to identify areas which are not dependent on model so we can advance on work that needs to be done regardless of the model.

4. CCWG to coordinate with CWG to respond to NTIA letter. This will be discussed in today's AOB.

5 Flowchart has been distributed - it assesses Bylaw drafting process. We are willing to shorten it.

6. WPs to make sure all comments are addressed no later than PC2 publication

7. Rapporteurs to coordinate work in WPs

- Which Bylaws? We have not agreed on models/IRP Bylaws. We first need to meet CWG requirements that were sent to the ICG.

--> We need to discuss where we are to discuss when we want to go. This is planning.

CCWG Scorecard

- Our departure is the report we filed for comment. We are now reconsidering certain aspects of model based on comments received. Let's not start from scratch.

Goal of scorecard is to check where we are based on initial report and the feedback received and determine which items need to be further investigated. Mission: comments made on balancing core sections and there is disagreement on private sector wording. Governments raised concerns. Rest of issues were highlighted in BA session. Fundamental Bylaws: support except for disagreement about HQs in US should be fundamental Bylaws. That may be pushed to WS2. IRP: feedback about constructive engagement proposals, about process, type of arbitration and comments on number aspects that need refinement. Overall process is supported but point of discussion on Col for Board members. On community powers: there is a discussion on model but one point among many. Various powers need some refinement such as need for strategy veto does not create endless loops. How caretaker mechanism would work out if Board recall. AoC reviews are supported and that is a CWG requirement. Feedback to add and refine new stress tests. Staff accountability, diversity enhancements, Board responsibilities are new issues. We will start with initial report we have and edit it. Scorecard is designed to track work towards PC2.

- As ICG liaison, we have to finalize assessment of three proposals and ensure accountability is properly assessed by CCWG. It is an important element in order for our proposal to go to NTIA. How can we ensure accountability is properly addressed without difficulty? One suggestion: take budget and put it directly in Bylaws. These are the most urgent issues.

- What are we trying to accomplish by Paris and what are we deferring to Paris? Most contentious issues we need to work on. Too many conference calls before we leave.

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> Rapporteurs are already working on building agendas scheduling their calls. We have issues that need to be considered before first meeting. Suggestion would be to begin discussing issues that are apparently issues to take on. Based on compromises in BA, we set out issues that different stakeholders have in mind. Rapporteurs will be reaching out to WPs.

- 14 July meeting was rescheduled.

- If you read invite carefully - it is specified that old hour was changed to new hour.

ACTION ITEM: Staff to double-check on scheduling of meetings and inform group of next calls before Paris meeting

- What are the priorities we need to address first in the CCWG scorecard? Shortcoming is membership. Why do we need to go further into budget plan etc. Important issue is to address accountability. Consider difficulties in membership

- We have a list of requirements from CWG. All these items in scorecard need to be fulfilled if we want to meet requirements. Without IRP, budget powers, Board removal etc, there is no meeting these requirements. We were informed of CWG requirements and community expectations that clearly say we need a consistent accountability framework. Some of these items still need work. What are the items we need to drop in this scorecard?

--> State which items are CWG and give them priority.

- Suggestion to take this offline

ACTION ITEM: Cochairs to provide clearer view of how each of these items relate to CWG requirements, provide more substance, share with Kavouss, interact, and provide update to group during call #39

WP3

An item that was concluded in Buenos Aires. We received a number of comments during PC asking us to consider a set of issues that were not outlined in PC1. These issues include staff management accountability, who watches watchers, diversity and Board duties. Timing is of essence. We recognized that those concerns were valid. We need a small group to determine what would be our recommendations with a need to sort out what is WS1 and what isn't. Core essence of group will be to try to find what needs to be work stream 1: mechanism that will provide community with confidence that any further mechanism would further enhance ICANN's accountability. See whether we need something in WS1.

- Who watches the watchers is opening Pandora's box. It will create difficulties. In some SO/ACs, there is no mechanism to watch. GAC e.g. represent governments, there is no watch, they are responsible to governments.

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> This point has been raised from start by Advisors and Charter states that group has requirement to consider Advisors' input. There is more than our report shows on accountability for SO/ACs. They are subject to regular reviews (except GAC). They have transparency requirements and operating rules. We need to be able to explain how this community mechanism is accountable because the model we are creating is a mutual accountability model.

- Do we need to assume the ability for community to generate a Bylaws changes proposal post transition and what mechanisms do we need to fulfill that.
- Mechanism currently proposed for WS2 is a transitional article for Bylaws that recognizes that further changes to Bylaws will be considered to address a number of issues.
- Who watches watchers is a misstatement. We have established core values we believe the organization should hold to and have established IRP. Ultimately the community is the guardian. It provides important mechanisms by which watchers watches himself. We are repeatedly focusing on WP1 and are failing to focus on WP2 because that is not a controversial area. It is leading to error in discussions. Remember the importance of what was achieved in WP2.
- Determine what needs to be included in WS1, if necessary. Key point is to ensure we launch WP3 and task group to come back by July 14 with proposals we can discuss in Paris.

Volunteers: Alan, Leon, Greg, Giovanni, Avri, Keith

ACTION ITEMS: Circulate a WP3 call for volunteers, set up mailing list and provide required support to get to a point where we have proposals for discussion in Paris.

- Board duties was raised by Larry Strickling. Feeling there is a need to clarify what is expected from Board and what fiduciary duties refer to to avoid any confusion.

Bylaws Drafting Process

Approach from Bruce Tonkin was refined. We have to find common grounds. Approval and decisions when kicking off Bylaws changes and moving to public comment are requirements on CCWG side. The view of independent counsel on Bylaws changes was a CCWG requirement but Board was bound to ask for ICANN legal views. It is a collaborative effort and drafting effort based on specifications. Specifications are based on public comment report. CCWG clarifies that can move forward with Bylaws drafting once it is ready. Drafting and refining is by ICANN legal in collaboration with counsel. CCWG subgroups would review language to make sure it meets the specs. We will turn to counsel to get advice on whether can proceed with changes. Full CCWG consulted in case of conflicts of interpretation. Incorporate AoC reviews into Bylaws would be candidate for Bylaws drafting process.

- CCWG drafting bylaws makes me pause. First draft by lawyers. ICANN legal should draft bylaws. When it comes to operate let's leave it to those who can do so.
- This is not going to be collaboration. We need to look to our counsel for legal advice on how that works
- There is no intention that our group drafts initial bylaws. Bylaws drafting is legal matter. In favor of independent counsel to draft initial Bylaws. Second choice is having ICANN.
- ICANN attorneys have to sign off on them. Why don't we trust counsel to identify where there is a problem. It is up to CCWG to tell ICANN legal that we do not believe Bylaws are acceptable. We have ultimate approval on this proposal. Should we trust lawyers that words are good.
- We need to make sure we manage our counsel cost effectively. Appropriate management of lawyers. This is not time to cut corners.
- Important to have independent counsel to do drafting Bylaws. Fine for ICANN to review. If ICANN lawyers do drafting, we are always going to be reactive mode and having to argue and convince why we need language change. It should be our lawyers representing our interests. ICANN legal can convince us. Other way our own independent counsel holds pen.
- We are going to be very clear about what should happen. It should not be negotiations. It is more cost effective to have ICANN do initial draft and our lawyers to comb through changes.
- Bringing AoC review into Bylaws - 11 pages of comments - can we finalize specs or do we need to keep debate alive?
- Suggestion to have a dialogue with ICANN legal and client. Come to terms on fundamental terms while drafting documents is way to draft key issues. Key issues are better left at first level.
- Discussion has proceeded as though clear between expressive work as to what we would like to achieve and alien world as to text that would need to be implemented that we could not engage with ourselves. Lawyers have magical ability to turn into language. There is too much deference. We will need to keep close eyes on item. We are not working from huge degree of consensus. Have our own lawyers achieve what we are trying to achieve vs. ICANN lawyers
- Involvement in WPs subgroups: clarify what specifications are. It is what matters in this process more than holding the pen. We need to set expectations right.
- It needs to be a collaborative process.
- Proposed way forward: we need to be clear on specifications - it is the key success factor. We need to kick it off the ground. Suggestion would be to take section of report on AoC reviews which is well advanced in terms of clarification of specifications. We would then test system where ICANN legal holds pen and based on experience it will be easier to determine whether this works out. This creates right incentive. It will be a first data point.

ACTION ITEM: Jordan Carter/WP1 to come back to group with clear specifications by next week for drafting to be handed over to lawyers.

AOB

Reply to NTIA lawyer: incorporate different comments received, send to COs and vote approval by Dublin. It also touches on implementation issues and timeline we can foresee.

- It should mention what plan is.

ACTION ITEM: Amend draft letter to plug in timeline and leave it up to NTIA to decide whether extend contract to a certain date or not.

ACTION ITEM Steve del Bianco to wordsmith letter.

We were informed that a public comment period is running on reviews. This has triggered debate. Suggestion would be to capture exchanges we have had on list and recap them as contribution to public comment showing there are diverse views on how to proceed with reviews in light of our upcoming recommendations.

ACTION ITEM: Mathieu to draft cover letter that captures comments for PC organizer

Do we have plan in place to respond to questions to Board or at least incorporate them in follow on work.

--> we did not formally assess how we would respond. #1 - many of questions are already taken on Board while discussing model. Questions have been transferred to external independent counsel model can rely on. It was suggested that it could be useful if Sam could start looking at the questions and point out most relevant ones and answering them.

ACTION ITEM: Sam to look at Board questions, identify most relevant ones and answer them.

Concluding remarks

We are aware of work ahead of us - focused on priorities - glad we didn't spend time on model.

There will be a number of good discussions in Paris – our goal is that this discussion takes place on informed papers we have all read so that we can make discussions in reasonably informed manner.

We need legal advisors to come up with clear descriptions of model

Action Items

ACTION ITEM: Review emerging issues and papers circulated by Mathieu

ACTION ITEM: Staff to double-check on scheduling of meetings and inform group of next calls before Paris meeting

ACTION ITEM: Cochairs to provide clearer view of how each of these items relate to CWG requirements, provide more substance, share with Kavouss, interact, and provide update to group during call #39

ACTION ITEMS: Circulate a WP3 call for volunteers, set up mailing list and provide required support to get to a point where have proposals for discussion in Paris.

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ACTION ITEM: Sam to look at Board questions, identify most relevant ones and answer them

Chat Transcript

Kimberly Carlson: (6/29/2015 07:09) Welcome to CCWG Accountability Meeting #38 on 30 June! 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>

arasteh: (23:45) Hi Kim good morning Geneva time

Kimberly Carlson: (23:45) Hello!

arasteh: (23:46) Why we need to review the Member Model and Designator Model again

arasteh: (23:47) We were reviewing these for two months and several comprehensive assessments were available

arasteh: (23:47) I have doubt that we repeat and repeat this exercise

arasteh: (23:47) Dear co-chairs

arasteh: (23:48) Before starting we MUST agree on the agenda

arasteh: (23:48) Pls do not push us to do something which is repetitive

arasteh: (23:49) I disagree with the agenda

Kimberly Carlson: (23:49) I will make sure to direct the Co-Chairs to your comments once they join

arasteh: (23:50) We know that the Member model is the most powerful, appropriate and most valid

arasteh: (23:50) However, we have to buy this model .

arasteh: (23:50) Except a minority there is no buyers

arasteh: (23:50) Why we have to waste time and discuss pros and cons again

arasteh: (23:51) We must be effective, efficient and mindful of time

Holly Gregory (Sidley): (23:51) Good (early) morning from New York

arasteh: (23:52) Good morning Holly

Keith Drazek: (23:53) Kavouss, I think we're at a point where the "Empowered SO/AC" model could support either Member or Designator. Member gives enforcement to 6 community powers. Designator gives 4. The CCWG needs to decide whether we can live without enforcement of budget approval and strategic plan approval if we're to accept the Empowered SO/AC Designator + Contract model. I think that's a critical and necessary discussion.

Holly Gregory (Sidley): (23:53) Good morning Arasteh

arasteh: (23:53) Pls kindly note that I have no objection to the valuable analysis that you have done .But we do not need to go through it again

Alan Greenberg: (23:53) Very loud typing!

arasteh: (23:54) We have roughly two weeks to decide what to do

arasteh: (23:54) Before starting we need first talk about jurisdiction that many many concerns were expressed\$

Rosemary Fei (Adler & Colvin): (23:55) Good night all

arasteh: (23:55) Then we need to talk about the IR mechanism , number of panelist ,their geographical divergence and their decision making status binding or not and if binding the jurisdiction

arasteh: (23:56) Then we need to seriously consider the degree of complexity of the works

arasteh: (23:56) Pls kindly be pragmatic, practical

Chris Disspain: (23:57) Greetings All

arasteh: (23:57) Good morning Alan sorry if my typing disturb you Alan

Leon Sanchez (Co-chair ALAC): (23:58) Hello everyone

arasteh: (23:58) Leon

Leon Sanchez (Co-chair ALAC): (23:58) Kavouss, we are not discussing the models in this call

arasteh: (23:58) GOOD MORNING

arasteh: (23:59) PLS KINDLY NOTE THAT THE AGENDA MUST BE APPROVED EITHER UNANIMOUSLY OR BY CONSENSUS

arasteh: (23:59) I DISAGREE WITH THIS AGENDA

Alan Greenberg: (23:59) @Kavouss, it was not disturbing me. Was just a comment to pass the time (in the middle of my night!).

arasteh: (23:59) DONOT BE SURPRISED

Leon Sanchez (Co-chair ALAC): (23:59) it is in the agenda just as a follow up to action items from Buenos Aires but not happening on this call. Lawyers have been tasked with that issue and will provide more detailed views for our Paris meeting

Bernard Turcotte Staff Support: (6/30/2015 00:00) hello all

arasteh: (00:00) WHO TASKED THEM

arasteh: (00:00) IT MUST BE US

Chris Disspain: (00:00) Kavouss, even though we don't have a lot of time, we do need to allow our lawyers to work on the models so they can advise us properly

Leon Sanchez (Co-chair ALAC): (00:00) Yes, that is correct. In our third meeting, lawyers were tasked by the group

arasteh: (00:01) WE NEED TO TALK ABOUT THE PARIS MEETING AND NOT THE LAWYER

Chris Disspain: (00:01) I agree Kavouss...I believe that is what we are going to do

arasteh: (00:01) PLEASE BE CAREFUL

Pär Brumark (GAC Niue): (00:02) Good Morning/day/evening everyone!

Robin Gross [GNSO - NCSG]: (00:03) Hello

Becky Burr: (00:03) good day all

Sabine Meyer (GAC - Germany): (00:03) good morning everyone.

Konstantinos Komaitis: (00:04) good morning all

Farzaneh Badii: (00:04) hi

Keith Drazek: (00:04) I'm getting static on the line...anyone else? Please mute phones and computers when not speaking.

Mathieu Weill, ccNSO, co-chair: (00:04) Hi everyone, joining AC room late but I'm here ;-)

David McAuley (RySG): (00:04) Yes static and breakup here

Farzaneh Badii: (00:05) i hear someone whispering

David McAuley (RySG): (00:06) silence again

Keith Drazek: (00:06) Thanks for that clarification Leon. Good to see the action items from BA.

Rosemary Fei (Adler & Colvin): (00:07) I got kicked out of AC for a bit; back now.

David McAuley (RySG): (00:07) me too Rosemary

Alice Jansen: (00:08) Please mute your line if not speaking

David McAuley (RySG): (00:08) typist please mutre

David McAuley (RySG): (00:08) mute, that is

Rosemary Fei (Adler & Colvin): (00:08) Glad it wasn't personal, David.

arasteh: (00:08) Working Parties should only do something that is agreed at this meeting and nothing else

arasteh: (00:08) Pls confirm that

Keith Drazek: (00:08) I would be happy to volunteer for WP3.

Malcolm Hutty: (00:09) I will volunteer to join WP3

Mathieu Weill, ccNSO, co-chair: (00:09) WP3 is one of our agenda items today

arasteh: (00:09) what are the emerging issues

arasteh: (00:09) Pls list them

Rosemary Fei (Adler & Colvin): (00:09) The one-pagers from Mathieu

Steve DelBianco [GNSO - CSG]: (00:10) Mission for WP3: Propose recommendations for the CCWG, and sort out between work stream 1 and work stream 2, taking into account the very short timeframe available for work stream 1 and the requirement to avoid unintended consequences (minimal changes).

Mathieu Weill, ccNSO, co-chair: (00:10) @Kavouss: SO/AC accountability, diversity, staff accountability, Board responsibilities

Mathieu Weill, ccNSO, co-chair: (00:11) And that will be discussed in more details on agenda item 4

arasteh: (00:11) emerging issues ?

arasteh: (00:11) WHAT bYLAWS?

Keith Drazek: (00:11) PLEASE MUTE PHONES AND COMPUTERS

arasteh: (00:12) BEFORE WE AGREE ON THE MODEL AND irp WHAT DOES IT MEANS drafting bYLAWS?

Chris Disspain: (00:13) Kavouss, we are not starting to draft by laws yet...we are discussing the process for drafting them

David McAuley (RySG): (00:13) is anyone else still having connection drops

Malcolm Hutty: (00:14) Only options 1 and 6 on the flow chart can be considered - ultimate approval of the CCWG's proposal must rest with the CCWG

Becky Burr: (00:14) the community was clear that accountability with respect to the IANA functions was inadequate

Malcolm Hutty: (00:14) We cannot delegate the right to approve our final proposal

Leon Sanchez (Co-chair ALAC): (00:19) @Malcolm I don't see where we delegate approval of our final proposal in the flowchart

Greg Shatan: (00:20) In virtually every situation where you have two sets of lawyers/clients "across the table" from each other, the lawyers take turns holding the pen on the drafts, reviewing and revising the other side's work, until both sides are satisfied. No need for us to invent a different approach.

Chris Disspain: (00:22) Greg + 1

Malcolm Hutty: (00:23) @Leon: flowchart says "A" indicates "approval"; and is in the column for CCWG in options 1 and 6 only

Mathieu Weill, ccNSO, co-chair: (00:24) @Malcolm: please standby on this discussion until we reach the appropriate agenda item

Malcolm Hutty: (00:24) sure

Sabine Meyer (GAC - Germany): (00:25) I thought the conference call for the 14th was simply rescheduled, not added.

Mathieu Weill, ccNSO, co-chair: (00:26) Sabine, this is the case indeed

Steve DelBianco [GNSO - CSG]: (00:26) Some Scorecard items are quick. 2nd item under Fundamental Bylaws is either a Yes or No.

Sabine Meyer (GAC - Germany): (00:26) admit it: you want to party that night, Mathieu ;)

Mathieu Weill, ccNSO, co-chair: (00:27) Nope, I will be travelling ;-)

Mathieu Weill, ccNSO, co-chair: (00:27) And the best parties at on the 13th in evening

arasteh: (00:27) Leon

arasteh: (00:27) You are kindly requested to listen to everybody

Chris Disspain: (00:27) many of us will be travelling and the new time means that I will miss the call!

arasteh: (00:28) I do not agree with the way that you proposing

Keith Drazek: (00:30) The scorecard list reflects the public comments. It's an important tool.

Chris Disspain: (00:30) Kavouss, what do YOU think the most important items are that we need to address now...??

Chris Disspain: (00:31) Ah...Kavouss are you suggesting that we should discuss things in a certain order to build a picture step by step?

Chris Disspain: (00:32) In other words agree the model first and then work out which powers we want to put under that model...is that what you mean?

Keith Drazek: (00:33) The model dictates the powers to a certain degree, no?

Chris Disspain: (00:34) Keith - yes...just trying to get clear on what Kavouss has a problem with

Keith Drazek: (00:34) Agree, thanks Chris.

Keith Drazek: (00:37) We're responsible for more than the subset of requirements outlined by the CWG.

Mathieu Weill, ccNSO, co-chair: (00:37) I can certainly explain how each item is related to CWG requirements in the scorecard

Becky Burr: (00:37) Yes, let's get to substance please

Keith Drazek: (00:37) +1 Becky

Mathieu Weill, ccNSO, co-chair: (00:38) Almost all of them are related (unfortunately)

David McAuley (RySG): (00:38) Kavouss, it sounds like you prefer that we rein in accountability changes to address items from CWG, but we have larger remit I believe

arasteh: (00:40) Yes but what are the priorities

arasteh: (00:40) we could transfer some of them to WS 2 AS SECOND PRIORITIES

Leon Sanchez (Co-chair ALAC): (00:41) @Kavouss the priority is to build our proposal in a way that meets NTIA requirements while taking care of the community's expectation for accountability and addressing CWG's dependencies

Alice Munyua (GAC): (00:44) Watching the watchers for me applies to IRP as well

Chris Disspain: (00:44) Absolutely Alice

Chris Disspain: (00:46) It's a knotty problem....if the IRP is binding (and I'm not saying it shouldn't be) then what do you do with an obviously ridiculous decision?

Becky Burr: (00:47) Kavouss, if the GAC participates in the community voting structure, won't it need to be "accountable" in the sense of needing to cast votes in a timely manner, etc.?

Chris Disspain: (00:47) IAs Larry Strickling has said...if we are going to hand over ultimate power to a panel of 3 people who are not part of the multi-stakeholder community we'd better be sure that they can and will make decisions that will not be help up to derision

Greg Shatan: (00:47) Mucho distortion....

Greg Shatan: (00:48) Steve, via Darth Vader

Chris Disspain: (00:48) 2Steve, isn't that dealt with by a fundamental bylaw

Greg Shatan: (00:48) Only comparing voice, not message.

Chris Disspain: (00:49) @ Greg...thank a god for that - I'd hate to think Steve was your father

Leon Sanchez (Co-chair ALAC): (00:49) LOL!!!

Leon Sanchez (Co-chair ALAC): (00:49) you read my mind Chris :P

Greg Shatan: (00:49) Relationships in the CSG are rather complex.

Sabine Meyer (GAC - Germany): (00:50) so I take it none of you has seen the Scream movies?

Steve DelBianco [GNSO - CSG]: (00:50) That was not my point, Kavouss. I am asking HOW we change bylaws after transition

Keith Drazek: (00:50) I think Steve was asking the question about what mechanism we'd need to ensure future bylaws changes could be affected.

Sabine Meyer (GAC - Germany): (00:50) also: only talking about voice, not content

Steve DelBianco [GNSO - CSG]: (00:50) Assuming that we will need to change bylaws for WS2 items

Chris Disspain: (00:50) Steve...didn't we discuss having a fundamental 'temporary' bylaw covering the topics that would be in stream 2?

Chris Disspain: (00:51) as per Mathieu

FIONA ASONGA (ASO): (00:51) Kavous, how then do we begin implementation if the bylaw changes haven't been incorporated?

Steve DelBianco [GNSO - CSG]: (00:51) Possibly, Chris.. I'm not recalling that

Greg Shatan: (00:51) On a more serious note, perhaps the ridiculous IRP issue should be dealt with by thinking about appeal and about how we structure the IRP, before knocking the binding nature out of it.

Chris Disspain: (00:51) that is what Mathieu was just saying I think

Leon Sanchez (Co-chair ALAC): (00:52) @Chris I believe we spoke about a transition bylaw

Chris Disspain: (00:52) @ Greg..not suggesting we should knock the binding nature...

Chris Disspain: (00:53) correct Leon

Bruce Tonkin: (00:54) Following the various discussions in this working group about putting in place a standing panel for the IRP process, I have sent through a draft public call for expressions of interest on the CCWG mailing list. I have worked to incorporate as much as possible into the text from the CCWG draft report, and identify proposed changes in the IRP as part of the call for expressions of interest.

Greg Shatan: (00:57) I will volunteer for WP3.

Bruce Tonkin: (00:57) @Greg - just an observation on the use of independent panels. Any of the Reconsideration requests have been to ask the Board to overturn the decision on an independent panel as part of the new gTLD process. When the Board doesn't overturn the panel, the process goes to another independent panel as part of the IRP process. The Board then gets asked again to ignore the decision of that independent review panel. So from the Board's perspective it makes it easier for the independent panel decisions to be binding - but the group probably also needs to think about any possible appeals process - as inevitably there will be parties unhappy with the outcome of an independent review panel :-)

Avri Doria: (00:57) please add me to the group of volunteers for WP3

Steve DelBianco [GNSO - CSG]: (00:58) Could WP3 generate a draft document before we get to Paris? Would prefer to read that instead of having to listen to WP3 calls and follow their email list

Bruce Tonkin: (00:58) Regarding WP3 - Board duties -- there are quite comprehensive documents available already that set out the duties - so a review of the CCWG of these documents would be welcome.

Malcolm Hutty: (00:59) @Bruce, question of appeals in IRP is a very serious point. So far we erred on the size of simplicity; perhaps not appropriate for a binding process. Please do raise this more formally so we don't forget to review this

David McAuley (RySG): (01:00) There is much detail left for IRP and look forward as part of WP2 in getting at it

Greg Shatan: (01:00) Thanks, Bruce. Frankly, I think the bigger issue is the limitation to matters of process and not substance. It becomes an exercise in looking for procedural errors, which is reductive and nitpicky.

Leon Sanchez (Co-chair ALAC): (01:00) @Bruce could you kindly point us to those documents on Board duties?

Steve DelBianco [GNSO - CSG]: (01:00) Please remember that we proposed IRP could only do 2 things: ratify or reverse a board decision. IRP cannot stray into "ridiculous" decisions

Bruce Tonkin: (01:00) Board governance guidelines are available at: <https://www.icann.org/resources/pages/guidelines-2012-05-15-en>

Bruce Tonkin: (01:01) Board code of conduct is available at: <https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en>

Holly Gregory (Sidley): (01:02) Steve, a CWG contingency is also that the IRP can cause initiation of separation process

arasteh: (01:02) Mathieu

Bruce Tonkin: (01:03) @Malcolm - one of the key lessons learnt for me from the new gTLD process is we did not build in an appeals mechanism into the process for the independent review panels..

arasteh: (01:03) what are the time lines for doing the Bayws changes?

Chris Disspain: (01:03) @ Holly...that would be a decision of IRP leading to community starting separation process..no?

Malcolm Hutty: (01:03) Will we be writing a written brief to the lawyers?

Holly Gregory (Sidley): (01:03) yes

Holly Gregory (Sidley): (01:04) Yes was directed to Chris

Chris Disspain: (01:04) :-)

Chris Disspain: (01:05) Greg +

Chris Disspain: (01:05) 1

arasteh: (01:05) Mathieu

Robin Gross [GNSO - NCSG]: (01:06) I think we want our independent counsel to make the first draft of the bylaws.

arasteh: (01:06) The meeting is pushed by few people in favour of drastic changes and possibly full membership and full IRP

arasteh: (01:07) What we intend to do is ambitious

Holly Gregory (Sidley): (01:07) Agreed Greg. We are happy to hold the pen or to defer to ICANN legal or their outside counsel re holding the pen in the first instance. While we greatly appreciate the multistakeholder contributions of CCWG, we think it will add considerably to the expense if CCWG drafts bylaws and we react

Roelof Meijer (SIDN, ccNSO): (01:07) I suggest ICANN legal counsel makes the drafts, which are then evaluated first by external legal counsel

arasteh: (01:07) We can not achieve that

Roelof Meijer (SIDN, ccNSO): (01:07) @Mathieu and Leon: I have to leave the call

Greg Shatan: (01:08) I see that in #2.

Chris Disspain: (01:08) I must say I'm a tad perplexed that we imagine that in house counsel and CCWG counsel would be at loggerheads over by-laws - there may be discussion on nuance but this should not be an adversarial process

Greg Shatan: (01:08) "initiates bylaw drafting" sounds like DIY.

Leon Sanchez (Co-chair ALAC): (01:08) @Roelof, thanks for letting us know

Holly Gregory (Sidley): (01:08) Chris, agreed.

Mathieu Weill, ccNSO, co-chair: (01:08) @Greg : will correct

David McAuley (RySG): (01:09) I hope you are right @Chris, but even so this is a painstaking work

Keith Drazek: (01:09) Perhaps the bylaws could be divided in two, with each legal team taking the first crack at half.

arasteh: (01:09) What is the time frame in which we intend to redraft Bylaws?

Samantha Eisner: (01:10) @Greg, are you suggesting the DIY is ICANN Legal, and the professionals are the external counsel?

Chris Disspain: (01:10) it is David and for that reason I favour ICANN legal holding the pen and explaining to CCWG lawyers why they've done what they've done....

Greg Shatan: (01:10) Getting to yes is not really an adversarial process, but there is still a certain sense of roles.

Mathieu Weill, ccNSO, co-chair: (01:10) @Kavouss : basically until mid-nov for approval

Chris Disspain: (01:10) but then 'I would say that' wouldn't I :-)

David McAuley (RySG): (01:10) @Kavouss, I think plan is to have drafts for inclusion in proposal

Samantha Eisner: (01:10) I Agree with Chris that I don't see the Bylaws drafting as an adversarial process

Greg Shatan: (01:10) The pen has to go back and forth. When one side holds the pen on every draft, it really doesn't work well.

Keith Drazek: (01:10) It's all at ICANN's expense.

Holly Gregory (Sidley): (01:10) Alan, we agree. Happy to comment on drafts provided by ICANN legal.

Chris Disspain: (01:10) Greg - I agree

David McAuley (RySG): (01:10) Fair point @Chris

Bruce Tonkin: (01:10) @Samantha - I think Greg was referring to Step 1 - where the usbgroup is providing requirements. In that step there is some draft language for some bylaws in the CCFWG report - so I had assumed that would be conveyed as part of the requirements - not as the initial language.

Becky Burr: (01:11) I don't think that is what Alan said

arasteh: (01:11) Mathieu

Bruce Tonkin: (01:12) Step 2 in the process was intending to be the first professional set of drafting - I believe that Greg wants it the other way around - ie ICANN legal a "C" and Independent Council as a "R". That is a choice to be made.

arasteh: (01:12) This is not top priority as we do not need it for Paris

arasteh: (01:12) Pls concentrate on the top priority

Mathieu Weill, ccNSO, co-chair: (01:12) This is Kavouss, very very tight timeline, and needed for ICG as well

Samantha Eisner: (01:13) I disagree that ICANN would only be in a position of "commenting" on its own Bylaws - that does not meet with ICANN's obligations

arasteh: (01:13) Mathieu

Greg Shatan: (01:13) Believe me I have seen many attempts to experiment with the process of getting two parties to one agreed text. If we invent a better process than back and forth, with each side holding the pen, we can bottle and sell it and retire to a mansion in the South of France.

Chris Disspain: (01:13) Sam is right...

arasteh: (01:13) Pls do not further discuss this issue in the conference call

Keith Drazek: (01:13) I'll repeat my suggestion above...in the interest of time, perhaps the proposed bylaw edits could be divided up between the two legal teams, each taking the first cut at half. Then the exchange can be made, with each reviewing the others' half. I would prefer the CCWG counsel hold the pen on the first draft, but I could accept a variation.

Greg Shatan: (01:14) No one will be "commenting" -- both "sides" need to be satisfied.

arasteh: (01:14) Pls create a discussion document and put it on mailing list

Leon Sanchez (Co-chair ALAC): (01:14) @Kavouss, you asked for everyone to be heard, please abide to your request and let everyone speak

Mathieu Weill, ccNSO, co-chair: (01:14) @Keith, got it thanks !

Greg Shatan: (01:14) Keith, are you angling for that mansion in the South of France?

Greg Shatan: (01:15) I would only go that way if we are running out of time....

Becky Burr: (01:15) we need to treat this as a normal drafting negotiation. I can certainly see why ICANN would want to take the first cut at the organization's bylaws, send them to ccwg counsel for review, comment, redraft, etc.

Greg Shatan: (01:15) I think we need to trade the pen for this to be a reasonable process.

Avri Doria: (01:16) Sam is a member of our team and of ICANN label. She has worked bylaws plenty of times. Can't she work with our lawyers to get it done? not sure I understand why that would be a problem.

Chris Disspain: (01:16) agree Avri

Chris Disspain: (01:16) and agree Greg

Bruce Tonkin: (01:16) @Aln - actually with respect to ceremonial contracts - it is always good to agree a term sheet with key terms - before you jump into the legal drafting process.

arasteh: (01:16) Alan +1

Greg Shatan: (01:16) Our team will review AND revise the first draft, if ICANN legal takes the first draft. And vice versa.

Athina Fragkouli (ASO): (01:16) agree with Alan

Becky Burr: (01:17) agree Greg

Greg Shatan: (01:17) @Bruce -- agree 1000%, and that's what we hope the specs are. Perhaps we need to trade specs before we get to the "definitive" bylaws.

Bruce Tonkin: (01:17) Yes step (1) is the most important step to get right.

Alan Greenberg: (01:18) @Bruce. Yes, definitely a good idea. But not how it always happens!

Izumi Okutani (ASO): (01:18) I also support Alan's approach as the draft will be reviewed again by a third party

Becky Burr: (01:18) mic's still too loud Steve

Izumi Okutani (ASO): (01:18) So I don't think it affects the contents

Alan Greenberg: (01:19) And as Greg says, our job is to get the "terms sheet" right.

Keith Drazek: (01:19) Robin's earlier comment referred to the Board's list of 88 questions to the CCWG. Do we have an agenda/action item to discuss how we intend to consider and respond? Apologies if I missed it.

arasteh: (01:20) I strongly suggest that ICANN legal Department and our Legal Counsels plus any other volunteers draft the revised Bylaws and bring it to CCWG for consideration

Leon Sanchez (Co-chair ALAC): (01:21) lawyers+beer seems like an Action Item

Mathieu Weill, ccNSO, co-chair: (01:22) Queue is closed, thank you

Greg Shatan: (01:22) The better agreed the term sheet, the easier the definitive document drafting is. Negotiating big points while drafting the document will be harder.

arasteh: (01:22) We have still several points to decide

Greg Shatan: (01:22) Absurdum in extremis will not help. That's not what I suggested. Clearly the lawyers and the client will be conferring with each other.

Bruce Tonkin: (01:23) @Malcolm - in my experience in dealing with complex agreements - both sides end up having to rein in their lawyers at times :-)

Chris Disspain: (01:23) and Malcolm, with all due respect, how will you know? I am a lawyer and a Board member and I have to resolve to accept the changes and I would be a complete fool if I decided that I was the best judge of the drafting of the bylaws!

Alan Greenberg: (01:23) @Bruce. You bet!

arasteh: (01:23) Then what will happen on the draft we are discussing if these pending items have impact on those drafted

Bruce Tonkin: (01:23) ie you need to always keep in mind the objectives - and not get into arguments of whose language is the most elegant.

Leon Sanchez (Co-chair ALAC): (01:24) there seems to be an open mic

Malcolm Hutty: (01:24) @Bruce: Yes!

Greg Shatan: (01:24) Elegance is not the benchmark -- clarity and fitness for purpose is.

Chris Disspain: (01:25) correct Greg....if you were a Board member would you sign off on a bylaw change if your general counsel and your external lawyers were unhappy with the drafting??

Jonathan Zuck (IPC): (01:26) agree

arasteh: (01:26) Unless we start drafting only for those items that yet to be decided

arasteh: (01:26) Mthieu

Malcolm Hutty: (01:26) @Chris, you cannot delegate your responsibilities to professional advisors: if they produce something that looks wrong to you, one needs to seek explanation until satisfied, because it's not the lawyer who lives the consequences

Alan Greenberg: (01:27) Our legal counsel has agreed that they can comment on a first ICANN draft. Why don't we trust them? And a whole bunch of people on this CCWG with Bylaw experience will be reading the drafts as well.

arasteh: (01:27) why people insist to create a CCWG SUBGROUP

Leon Sanchez (Co-chair ALAC): (01:27) @Alan +1

arasteh: (01:27) WE do not need that subgroup

Mathieu Weill, ccNSO, co-chair: (01:27) Not creating an extra subgroup Kavouss. Will rely on WP1/WP2

David McAuley (RySG): (01:28) Keith's idea of dividing work looks better and better

arasteh: (01:28) pls assign it to ICANN Legal + Legal Counsels and few volunteers

Chris Disspain: (01:28) Malcom...people rely on their lawyers every day...it's why lawyers have indemnity insurance

arasteh: (01:28) Pls kindly respect what was discussed at BA

Greg Shatan: (01:29) David, you must like those juggling acts where both sides are throwing pins at each other.

Malcolm Hutty: (01:29) going to have to leave for my next meeting, apologies. good luck all.

Chris Disspain: (01:29) agree mathieu

Greg Shatan: (01:29) The pen needs to move back and forth.

Chris Disspain: (01:30) Correct Greg....it's called writing :-)

Keith Drazek: (01:30) lol

arasteh: (01:30) Mathieu

Robin Gross [GNSO - NCSG]: (01:30) I disagree with having ICANN legal hold the drafting pen.

arasteh: (01:31) It is not appropriate to establish a CCWG sub group to draft Bylaws

Greg Shatan: (01:31) I shall be clearer. The pen needs to be exchanged. One-sided pen-holding is not a good idea, and not good optically. Also it sounds wrong.

Chris Disspain: (01:31) Kavouss - we are not

Leon Sanchez (Co-chair ALAC): (01:31) @Kavouss, no one is establishing a new sub-group for bylaw drafting

Greg Shatan: (01:31) Each side shall then move the pen back and forth to form letters, which wil turn into words and so forth.

Chris Disspain: (01:31) Greg I agree....I think we are merely talking about who starts!

Avri Doria: (01:31) and since the ICANN legal team will be the ones working withthe Board to actually insert these in the bylaws, they reallyy should be part of team doing it.

Greg Shatan: (01:32) Chris, if that is right, then count me satisfied enough.

Chris Disspain: (01:32) and, frankly, if this actually going to be done with a pen then we'll all be here for months

Greg Shatan: (01:32) Everyone will get their turn....

Keith Drazek: (01:32) For AOB, have we discussed our approach for considering and responding to the Board's 88 questions?

Greg Shatan: (01:32) I suggest a quill pen and parchment.

Avri Doria: (01:32) doing it with a pen would seem quicker that this conversation.

Chris Disspain: (01:32) lol

Greg Shatan: (01:32) Not when you stick the pen in your eye out of frustration.

Chris Disspain: (01:33) I use a fork

Sabine Meyer (GAC - Germany): (01:33) that sounds like a tedious way to write, Chris ;)

Chris Disspain: (01:33) :-)

Chris Disspain: (01:35) I must love you and leave you all now...try not to spend too much time wordsmithing the letter to Larry:-)

Steve DelBianco [GNSO - CSG]: (01:35) Letter does not mention this, but NTIA can relinquish the IANA contract sooner if all is ready and approved

Greg Shatan: (01:35) Dear Larry,

Chris Disspain: (01:36) HAHAHA

Keith Drazek: (01:36) NTIA asked the CCWG for our estimated timeline, to include implementation.

Bruce Tonkin: (01:36) @Stevbe - yes the NTIA can give an extensions of 1 or 2 eyars, and the agreement can be terminated by mutual consent.

Bruce Tonkin: (01:37) I think it would make little sense to extend it for a few months, and then have to go back through the US political process to get another extension of a few months etc.

Avri Doria: (01:38) i think the timeline in the letter is as good as we are going to get. agree on the need for copy editing.

Keith Drazek: (01:38) +1 Avri

Steve DelBianco [GNSO - CSG]: (01:39) Sure

Mathieu Weill, ccNSO, co-chair: (01:39) Native Washington congress speaker

Greg Shatan: (01:40) My attempts to write a Hispano-Franco-Germanic letter have been utter failures, so my hat's off to you for dallying in the only language in which I can even attempt to be coherent.

Leon Sanchez (Co-chair ALAC): (01:40) Thanks Greg! :-)

Greg Shatan: (01:41) And coherence at 3:40 am is a distant goal....

Leon Sanchez (Co-chair ALAC): (01:41) @Greg imagine at 4:40 am :-)

Leon Sanchez (Co-chair ALAC): (01:41) still in Buenos Aires

Greg Shatan: (01:42) Hard to muster too much sympathy.

Greg Shatan: (01:43) Simple yes or no answers is one possibility.

Alan Greenberg: (01:43) @Leon, are you to be congratulated for chairing this teleconference on your vacation, or have your sanity questioned? Or both?

Leon Sanchez (Co-chair ALAC): (01:44) @Alan both!

Bruce Tonkin: (01:44) One thing to understand will be the time-frame from the chartering orgnaixzdations to approve the final document. ie DOes it makes sense to have some form of face-to-face meeting for SO and AC Coucnils to endorse the report before the Baord meeting in DUblin around 22 Oct 2015.

Keith Drazek: (01:45) Thanks Matthieu, that's helpful. I think responding to the Board questions will be important for establishing the public record, per the comments from Larry Strickling. Agree with your proposal.

Izumi Okutani (ASO): (01:45) + 1 Keith thanks for confirming this point

Samantha Eisner: (01:46) I am happy to try to identify some of what may be higher priority questions. Many of the questions may help guide the further deliberations

Mathieu Weill, ccNSO, co-chair: (01:47) Thanks Sam

Bruce Tonkin: (01:48) @Samantha - I think some prioritisation of the Board questions would be helpful.

Sabine Meyer (GAC - Germany): (01:48) maybe my email from this morning can serve as a jumping-off point :)

Sabine Meyer (GAC - Germany): (01:48) (for the model discussion)

Keith Drazek: (01:48) Thanks all

seun: (01:48) bye

Jonathan Zuck (IPC): (01:49) I'll take it

Leon Sanchez (Co-chair ALAC): (01:49) thanks everyone!

Holly Gregory (Sidley): (01:49) We are working on describing the two models described in Buenos Aries

Rosemary Fei (Adler & Colvin): (01:49) Thanks. Good night.

Pär Brumark (GAC Niue): (01:49) THX! Bye!

David McAuley (RySG): (01:49) Thanks all

Bruce Tonkin: (01:49) Thanks for the rare meeting that is a t a good time of day in Australia :-)

Izumi Okutani (ASO): (01:49) thanks all

Bernard Turcotte Staff Support: (01:49) bye

Holly Gregory (Sidley): (01:49) By all

Greg Shatan: (01:49) Good night all!

Athina Fragkouli (ASO): (01:49) thank you :)

Robin Gross [GNSO - NCSG]: (01:49) thanks and bye

FIONA ASONGA (ASO): (01:49) Thank you bye

Alice Munyua (GAC): (01:49) Bye

Michael Clark (Sidley): (01:49) night

Avri Doria: (01:49) bye

Sivasubramanian M: (01:50)