

WP2 Meeting #8 (13 July)

Attendees:

Sub-Group Members: Alain Durand, Avri Doria, Becky Burr, David McAuley, Finn Petersen, Greg Shatan, Izumi Okutani, James Gannon, Jonathan Zuck, Konstantinos Komaitis, Malcolm Huty, Maura Gambassi, Par Brumark, Steve DelBianco (14)

Staff: Adam Peake, Alice Jansen, Berry Cobb, Bernard Turcotte, Brenda Brewer, Grace Abuhamad, Laena Rahim

Apologies:

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

Transcript

- [Transcript WP2 Meeting #8 - 13 July 2015.doc](#)
- [Transcript WP2 Meeting #8 - 13 July 2015.pdf](#)

Recording

- Adobe Connect recording is available here: <https://icann.adobeconnect.com/p893muqfz0c/>
- MP3 recording is available here: <http://audio.icann.org/gnso/gnso-wp2-13jul15-en.mp3>

Notes

Mission Statement

First changes in mission statement were suggested by the IAB and Post-Kiehl comments. IAB suggested that ICANN's mission is to support the policy development for the Internet core registry. Language for coordination has been there for quite a while.

Feedback:

- Suggestion to use IANA registry
- Concerns about IAB's use of "support".
- > Retain coordination language
- Coordination is important. To get it implemented and operationalized.
- Is "coordinate" an attempt to evolve or devolve? We need to understand what they are aiming at.
- Suggestion to use facilitate instead of coordinate
- Request that we remain consistent in language - uniform approach is needed. Support or facilitate should be an open issue that would need to be considered by whole group.
- Existing language has priority
- > *Retain wording that is in current Bylaws.*

ACTION ITEM: Discuss on list whether any discussion needed in Paris

- Objection to "reasonably necessary"
- > It is current Bylaws language. The language is more limited
- Would we rely on this language for IRP?
- Consider contract enforcement and regulation
- Is provision part of ICANN purpose
- Concerns about ICANN compliance enforcing provisions that are not within mission.
- Question raised as to whether ICANN enforcing a contract is regulation.
- > We do not believe that the language precludes ICANN from enforcing its contracts
- A very large number of comments that referred to keeping ICANN squarely within its mission and indeed many that expressly referred to the need not to allow that it's mechanisms in which the contract enforcement would be included to go beyond that into a regulatory space.
- ACTION ITEM: Becky to propose new language to reflect comments and discussions on affirmative constraint.

Core Values

- Commitments reflect ICANN's fundamental compact with the global internet community and are intended to apply consistently and comprehensively to ICANN's activities. In any situation where a core value must be reconciled or - with another, the balancing must further an important public interest goal identified through the multi-stakeholder process.

---> Ok to move on with proposed language.

---> No objection to local law addition

- Suggestion to have indicative list of applicable treaties is for WP3.

- Is unbiased to challenge experts or do we feel there has been biased experts in the past.

- Conflict of interest is given - no need to add it.

- Add in on biased is a risk. It's inherent in system.

--> *Agreement to remove unbiased*

- Suggestion to remove "to the extent feasible and appropriate" and "where feasible and appropriate" without creating unnecessary constraints on ICANN

---> *Remove "to the extent feasible and appropriate"*

---> *Implement paragraph 336 into the language*

- Concerns about "consistent with the mission" and "remaining rooted in the private sector" language

- Suggestion to change "governments and public authorities" to "the GAC

- Suggestion to add "within their own jurisdictions"

---> Include "GAC" and "within their jurisdiction"

--> Include "striving to achieve a reasonable balance between the interests of different stakeholders in the pursuit of its mission."

ACTION ITEM: Becky to circulate a revised doc on IRP.

Action Items

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Chat Transcript

Brenda Brewer: (7/13/2015 06:40) Welcome to the WP2 Meeting #8 on 13th July 2015! 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>

Becky Burr: (06:54) good (whatever part of the day it is for you)

Pär Brumark (GAC Niue): (06:54) Hi Brenda and Becky!

Brenda Brewer: (06:55) Good Day!

James Gannon: (06:56) Morning/Afternoon

Pär Brumark (GAC Niue): (06:57) Afternoon

Bernard Turcotte Staff Support: (06:59) hi all

Adam Peake: (07:01) oops

Bernard Turcotte Staff Support: (07:07) Several people may be upset calling them IANA's registries

Avri Doria: (07:12) it is descriptive language of what seems to be the case.

Berry Cobb: (07:12) As an FYI, Bruce responded to this on the list this morning. <http://mm.icann.org/pipermail/wp2/2015-July/000175.html>

Avri Doria: (07:13) he added the word facilitates

Avri Doria: (07:13) to consideration, not to the list in the mission.

Greg Shatan: (07:15) If it ain't broke, don't fix it.

David McAuley: (07:15) I agree with paraphrase that becky stated of Bruce's mail

Avri Doria: (07:15) the other core is CORRE, isn't it.

Avri Doria: (07:16) CORE

Avri Doria: (07:16) CORE

Avri Doria: (07:16) i see no problem with changing it.

Greg Shatan: (07:17) I see problems with changing things we don't understand and can't justify.

David McAuley: (07:17) I guess I prefer to reserve to CCWG

Konstantinos Komaitis: (07:17) I think that supports is more (technically) accurate for what ICANN does in response to the individual policies set by the 3 operational communities. Coordinates indicates a step further as if ICANN might perhaps be in the position to 'coordinate' some of these policies.

Greg Shatan: (07:17) Once we can undersatand the change and the justifications, I'm all ears.

Jonathan Zuck (IPC): (07:19) shouldn't enforce be in there as well?

Greg Shatan: (07:19) @Konstantinos, do you think ICANN has not been coordinating, but has merely been supporting? Or do you think ICANN has been coordinating , but should be merely supporting?

Avri Doria: (07:19) on the support/coordinate, i think i do understand them, but i agree that there is not a groundswell to change existing langauge. and in a bylaws, existing language has some priority.

James Gannon [GNSO-NCSG]: (07:19) +1 Abri

James Gannon [GNSO-NCSG]: (07:19) Avri even

David McAuley: (07:20) +1 Avri

Steve DelBianco [GNSO - CSG]: (07:20) Bruce Tonkin sent an email suggesting [support and coordinate]/

Becky Burr: (07:21) he didn't say he liked that - just if he had to choose one or the other he would pick both

David McAuley: (07:23) I just spoke in support of uniform approach but on hearing Greg I changed my mind and think he is right about examining each use in context

Greg Shatan: (07:24) Did Bruce say what he thought it did, or was he just being accommodating?

David McAuley: (07:24) becky - by existing do you mean current bylaw

Becky Burr: (07:25) current bylaw

David McAuley: (07:25) thanks

Steve DelBianco [GNSO - CSG]: (07:25) Bruce said, "in most cases I think "coordinates" is probably the right word - but it has a slightly stronger role with respect to gTLDs - perhaps "facilitates" policy development within the community."

David McAuley: (07:26) Agree with that Becky - good language

Malcolm Hutty: (07:29) That was intentional

David McAuley: (07:31) If the word reasonably is not there an IRP panel would add it anyway unless more restrivive language is inserted IMO

David McAuley: (07:31) restrictive that is

Steve DelBianco [GNSO - CSG]: (07:38) @Malcolm -- how about the BC statement about allowing enforcement of obligations that are agreed to by the contract party"

Malcolm Hutty: (07:39) Disagree Greg: I think we're saying Mission can evolve, but only with a Fund. Bylaws change

Malcolm Hutty: (07:40) @Steve: that's too broad: merely being contractual compliance shouldn't per se be enough to bring it within the Mission, it needs to be a term that is legitimate to put in the contract

Jonathan Zuck (IPC): (07:40) agree Greg

David McAuley: (07:40) Not sure I afully agree with Greg. Adding contract terms by adhesion could be regulation and new clauses should jot be added absent a PDP

David McAuley: (07:40) Not be added, that is

Becky Burr: (07:40) yes, agree with that David

Becky Burr: (07:41) but it seems to me that the question is right - is an imposed contract term effectively regulation

Malcolm Hutty: (07:41) Well said James

Jonathan Zuck (IPC): (07:41) but what's the practical implication of that? who will decide what to enforce?

Becky Burr: (07:42) i don't think the question is enforcement - ICANN can enforce its contracts - that is not regulation. But ICANN cannot force people to agree to something outside its mission

Becky Burr: (07:43) agree that it seems out of place in bylaws

James Gannon [GNSO-NCSG]: (07:43) The concern is that ICANN will end up enforcing contract provisions that are outside of its missions via agreement with a registry, that has the risk of having ICANN become a regulator outside of its experience and mission.

Izumi Okutani (ASO): (07:44) I agree with Greg

Greg Shatan: (07:45) @Steve: Sounds like a clear breach of contract, so long as that promise was in the contract.

Becky Burr: (07:45) agree Greg

Greg Shatan: (07:46) I think it's already permitted.

Becky Burr: (07:46) agree

James Gannon [GNSO-NCSG]: (07:46) Agree Malcolm. I think that the current language is permissive enough to allow that litus test (I am not a lawyer)

Greg Shatan: (07:47) Sometimes, getting ICANN to enforce its contracts seems harder than it should be.

Greg Shatan: (07:47) But that is a different problem.

Becky Burr: (07:47) agree on both accounts

Steve DelBianco [GNSO - CSG]: (07:48) ICANN has to stay within its limited mission AND it can enforce contract provisions proposed and agreed to by contract parties.

Steve DelBianco [GNSO - CSG]: (07:48) that formulation does NOT expand ICANN's mission

Greg Shatan: (07:49) Steve -- it does NOT matter who proposed the language. Only that it was agreed to by the parties.

Malcolm Hutty: (07:49) ICANN has to stay within its mission. As part of that, as one of the tools to carry out its mission, it can use contracts and enforce them

Steve DelBianco [GNSO - CSG]: (07:49) @Becky -- if contract enforcement is not restricted to narrow mission, let's please say that as a notation here

Becky Burr: (07:50) i understand the concern Steve i think we can address

Greg Shatan: (07:51) ICANN is able to enforce everything in its contracts. I don't understand the limitation.

James Gannon [GNSO-NCSG]: (07:51) I could live with either

James Gannon [GNSO-NCSG]: (07:52) NOT helpful I know =)

Malcolm Hutty: (07:52) I like the new language Becky proposed

Steve DelBianco [GNSO - CSG]: (07:52) I guess I prefer blue language

David McAuley: (07:52) I don't see a problem with both

Malcolm Hutty: (07:56) Looks good to me

Steve DelBianco [GNSO - CSG]: (07:56) I think the new balancing test is easier to understand

David McAuley: (07:57) I think your effort on balancing, Becky, was good, it is very difficult area to begin with and will be hard to come up with solution that satisfied all

Malcolm Hutty: (07:57) @Greg, again intentional. Commitments expected to be always upheld; they are designed not to need trade-offs. Core Values might entail trade offs

Steve DelBianco [GNSO - CSG]: (08:00) "multistakeholder process AND that is within ICANN's Mission" right?

Becky Burr: (08:00) correct Steve

David McAuley: (08:02) Agree with your formulation re GAC involvement Becky

Steve DelBianco [GNSO - CSG]: (08:03) GAC is part of the multistakeholder process, so they have a role in determining public interest. This is not the same thing as the GAC's role on "public policy"

David McAuley: (08:03) relatively comfortable

Malcolm Hutty: (08:03) comfortable

Greg Shatan: (08:04) Steve, agree 100%. But the GAC paper blurs that distinction to the point of erasing it.

David McAuley: (08:05) applicable local law is the right standard, not a concern

James Gannon [GNSO-NCSG]: (08:05) I would not support adding lists to bylaws, doesnt seem right to me.

Avri Doria: (08:06) plus there are new ones all the time.

Malcolm Hutty: (08:07) agree

Steve DelBianco [GNSO - CSG]: (08:07) @Greg, then its our job to correct the GAC on that (gently)

Steve DelBianco [GNSO - CSG]: (08:09) I don't think [unbiased] is helpful and could create challenges based on this word

Greg Shatan: (08:09) Consider the word "independent" rather than "unbiased."

Jonathan Zuck (IPC): (08:10) transparent experts....ghosts?

Malcolm Hutty: (08:10) @Greg, that's a good suggestion

Steve DelBianco [GNSO - CSG]: (08:11) "independnet" sounds helpful

David McAuley: (08:12) It's gone, good result

James Gannon [GNSO-NCSG]: (08:12) Efficent decision making

Steve DelBianco [GNSO - CSG]: (08:21) AoC Review of new gTLD looks at "a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, "

Greg Shatan: (08:22) Nice hat!

Jonathan Zuck (IPC): (08:22) Indeed. Interesting that Crocker just wrote he wouldn't want to see this review built into the bylaws but cerainly the goals should be

Greg Shatan: (08:23) "Interesting" is a good word for it.

Steve DelBianco [GNSO - CSG]: (08:26) "Public policy" is not the same thing as "public interest"

James Gannon [GNSO-NCSG]: (08:29) Ok my mind is changed, I'll keep current language for govts and pub auth =)

Avri Doria: (08:30) it does not conflict with the TA

Avri Doria: (08:30) this is one of the issues that is creatively ambiguous in the TA

Avri Doria: (08:31) it is less ambiguous and needs to be said.

Steve DelBianco [GNSO - CSG]: (08:31) Sure, Becky

Bernard Turcotte Staff Support: (08:32) Saying within responsibility means there is a test to determine this and govts are usually very touchy about anyone applying this test to them

Greg Shatan: (08:32) Avri -- passes my intentionality test then.

Malcolm Hutty: (08:33) I think I agree with Avri here.

Robin Gross [GNSO - NCSG]: (08:33) I agree with Avri

Malcolm Hutty: (08:33) (See, it can happen!)

Steve DelBianco [GNSO - CSG]: (08:36) "undue impact on others

Steve DelBianco [GNSO - CSG]: (08:37) When we got rid of Domain Tasting, it certainly created expense for domain sepculators.

Steve DelBianco [GNSO - CSG]: (08:38) Do we REALLY need this clause at all?

Malcolm Hutty: (08:38) @Steve +1

Avri Doria: (08:39) exactly, we need something

Steve DelBianco [GNSO - CSG]: (08:39) If we keep it, then let's say "undue impact" instead of 'expense'

David McAuley: (08:39) I think Greg's over/under test for this language will prove prophetic

Avri Doria: (08:39) i think impact is a good word to use here.

Malcolm Hutty: (08:39) "Striving to achieve a reasonable balance between the interests of different stakeholders in the pursuit of the Mission"

Malcolm Hutty: (08:39) ?

Steve DelBianco [GNSO - CSG]: (08:40) I like that, Malcolm

Greg Shatan: (08:40) Agree

David McAuley: (08:41) Agree as well

James Gannon [GNSO-NCSG]: (08:42) +1 Malcom

Greg Shatan: (08:42) Have fun in Paris! Have a croissant for me....

Bernard Turcotte Staff Support: (08:42) bye all

James Gannon [GNSO-NCSG]: (08:42) See you all in APris

David McAuley: (08:42) Thank you Becky - loads of prep work by you

Jonathan Zuck (IPC): (08:42) see you there!

Robin Gross [GNSO - NCSG]: (08:42) Thanks - See you!

Steve DelBianco [GNSO - CSG]: (08:42) thanks, Becky

Malcolm Huty: (08:42) thanks again Becky

Greg Shatan: (08:42) Bye all!