CCWG Meeting with Advisors (31 August @ 13:00 UTC)

Attendees:

Members: Alan Greenberg, Becky Burr, Bruce Tonkin, Cheryl Langdon-Orr, James Bladel, Julia Wolman, Julie Hammer, Leon Sanchez, Robin Gross, Roelof Meijer, Samantha Eisner, Steve DelBianco, Thomas Rickert, Tijani Ben Jemaa   (14)

Participants: Allan McGillivray, Avri Doria, Barrack Otieno, Erika Mann, Farzaneh Badii, Finn Petersen, Greg Shatan, Kavouss Arasteh, Keith Drazek, Olivier Muron, Paul Szyndler, Peter VanRoste, Phil Buckingham, Rinalia Abdul Rahim, Sabine Meyer, Tracy Hackshaw   (16)

Advisors: Jan Aart Scholte, Lee Bygrave, Nell Minow, Valerie D'Costa, Willie Currie

Legal Counsel: Holly Gregroy, Michael Clark, Rosemary Fei, Stephanie Petit

Staff: Alain Durand, Alice Jansen, Bernard Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamad, Hillary Jett, Laena Rahim, Marika Konings, Theresa Swinehart,

Apologies: Eberhard Lisse, Mathieu Weill, Pär Brumark, Jordan Carter

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

Transcript

- Transcript CCWG Meeting with Advisors_31 August.docx
- Transcript CCWG Meeting with Advisors_31 August.pdf

Recording

- The Adobe Connect recording is available here: https://icann.adobeconnect.com/p4ir99u2by2/
- The audio recording is available here: http://audio.icann.org/gnso/gnso-ccwg-acct-31aug15-en.mp3

Notes

NOTES & ACTION ITEMS:

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

Advisors on call:

- Nell Minow
- Lee Bygrave
- Willie Currie
- Jan Aart Scholte
- Valerie D'Costa

Questions/Feedback

- How does the feedback from Jones Day fit into the CCWG-Accountability process? Was it requested by the CCWG-Accountability?

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> The analysis was requested by the ICANN Board. The paper is intended to inform the Board but does not represent the Board's views. We have asked our legal counsel to look at the analysis and will examine the paper to see if there are areas that require action. A
call with ICANN Board, NTIA, legal counsel is scheduled for today at 22:00 UTC. A second call will take place on 2 September at 22:00 UTC

- On overall presentation of community mechanism: could it interfere
in everyday operations or not? It is referred to as the ultimate authority: if there are no effective checks and balances on that mechanism, could it go out of hand? There still is unclarity
in the content as well as presentation. Those who will inherit the mechanism could inherit something you had not intended. There is ambiguity.

- If you look at social theories of contingency, there are concerns about how to balance sanction based accountability and trust based accountability. You can' t predict future. It is important to have accountability sanction for referral.

- Happy with general framework of community mechanism. Escalation in terms of sanctions is very graduated. Litigation is CA courts is very unlikely unless we have stakeholders who wish to undermine balance. Agree that there are some ambiguities that need to be explained (voting mechanisms, balance of powers between SO/ACs).

- Concerns about setting up a mechanism that will be so specifc it will be restricting instead of enabling. Concerned about
implementation and ambitiousness of proposal for getting it on time. Concerned about transparency: actions and roles of ICANN and various supporting entities is unclear. Emphasis on outreach is needed.

- Empowered community is ambiguous. Empowered community as SO
/ACs doing activties on one hand and there is empowered community as community mechanism. Is it the mechanism as legislator or is it the activities within ICANN?

--> Whoever is interested in the ecosystem can join respective SO/ACs - SG/Cs. Good point we need to be clearer about what we mean.

- Fundamental Bylaws is a good approach.

- On IRP, ambiguity on what ICANN is: is it Board/Staff, community empowerment, SO
/ACs? Could it be used when community mechanism violates mandate for instance?

--> IRP focuses on Board/staff actions/inactions. We should specify.

- On standing: could the Board use an IRP to hit back at the community mechanism? More details need to be put into explanation.

--> Voting threshold

- There is a conflict of interest between Board nominating panelists. IRP should nominate panelists for true independence.

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> The panel would be nominated by community and confirmed by Board under current proposal. Individual decisional panel: claimant would choose one member, ICANN the second one and both ICANN and claimant would choose third member. Panelists would be accepted by community and Board.

--> Standing panel is selected by community and Board. There is no conflict.

- In favor of request for reconsideration enhancements

- How to get a widespread representation of community into this mechanism remains a challenge

--> The whole community will be represented. This will need be addressed in implementation

- Is it safe to send to NTIA without specifying voting process? We want to make sure there is no capture. There are gaps that might make the proposal vulnerable. Process of voting - paragraph 310 seems to imply it will be worked out.

- In favor of model. It resolves a lot of concerns that have been raised in public comment.

- Jones Day states the Sole Member is not a tested model, however these social models are not something you can test like a scientific model and instead this should be a constitutional moment for a new model

- How would decisions be taken concretely. What would be relationship between community forum and empowerment mechanism?

- What would the voting structure look like?

--->SO/ACs to define voting mechanism in their own manner and representatives to report voting.

- Should there be a threshold for mechanism to come into play? Would it be capture if not enough SO/ACs?

- · - Will GAC listed as voting mechanism open up concerns of capture?

- Stress tests are a way of conducting impact analysis.

Documents Presented

XPL_CCWG Proposal_Visual Summary_FINAL (1).pdf

Chat Transcript

Brenda Brewer: (8/31/2015 07:25) Welcome to the CCWG Meeting with Advisors on 31 August @ 13:00 UTC!   Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: http://www.icann.org/en/news/in-focus/accountability/expected-standards

ARASTEH: (07:55) hI eVERY BODY

Sabine Meyer (GAC - Germany): (07:55) hello everyone!

Alice Jansen: (07:57) Hello all! Please remember to mute your lines :-)

Bernard Turcotte Staff Support: (07:58) hi all

James Bladel: (07:59) Good morning!

Holly J. Gregory (Sidley): (07:59) Greetings all!

ARASTEH: (08:00) hI hOLLY

Asha Hemrajani: (08:00) Good evening

Holly J. Gregory (Sidley): (08:01) Hi Kavous

Becky Burr: (08:01) good morning from DC

Thomas Rickert, CCWG Co-Chair: (08:01) Hello all!

Cheryl LangdonOrr: (08:02) hi

Leon Sanchez: (08:03) There's someone speaking German that doesn't have its line muted

Roelof Meijer (SIDN, ccNSO): (08:04) Hello all!

Bruce Tonkin: (08:05) Good evening all

Rosemary Fei (Adler Colvin): (08:05) Hello, all. Sorry for joining a bit late -- I had an incorrect calendar entry that sent me to the wrong number and AC room. Very odd.

Avri Doria: (08:06) isn't that a majority of the advisers?

Avri Doria: (08:06) or do we have how many?

ARASTEH: (08:07) Who are there prelvelaged personality

Grace Abuhamad: (08:07) The list of Advisors is here: https://community.icann.org/display/acctcrosscomm/Advisors

Grace Abuhamad: (08:07) There are 7

Avri Doria: (08:07) so we need one more for having a majority of the advisers.

Grace Abuhamad: (08:08) Jan has joined so we have 4!

Bruce Tonkin: (08:12) The Board requested the Jones Day feedback.

Bruce Tonkin: (08:12) It is input to the Board in forming its public comments to the CCWG.

Keith Drazek: (08:13) The cover note to the J-D advice said the Board would consider it as one input to its considerations.

Bruce Tonkin: (08:13) Correct Keith.

ARASTEH: (08:13) Bruce

ARASTEH: (08:13) Where I can find that document

Holly J. Gregory (Sidley): (08:14) We are undertaking a review of the Jones Day impact analysis and will have our preliminary comments to circulate tomorrow

Grace Abuhamad: (08:14) Hi Kavouss, the document was posted to the Public Comment forum here: http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/pdf5bBqNGP8Fj.pdf

Sabine Meyer (GAC - Germany): (08:14) Thank you for that information, Holly!

Cheryl LangdonOrr: (08:14) thx Holly

Rosemary Fei (Adler Colvin): (08:14) Missing "not" in the notes.

Grace Abuhamad: (08:15) @Rosemary -- thanks

Rosemary Fei (Adler Colvin): (08:15) No problem. Happens to me all the time.

Keith Drazek: (08:15) Willie has concerns about the JD impact analysis.

Keith Drazek: (08:16) Willie is difficult to hear/understand. Coming across muffled.

ARASTEH: (08:18) The audio quality is poor

ARASTEH: (08:22) I really do not understand the comments

Phil Buckingham: (08:22) sorry I am late on the call

ARASTEH: (08:22) What issues are too detailed and ...

ARASTEH: (08:23) I do not understand the questions?

Alan Greenberg: (08:23) There is no question that the THREAT to use any of the powers (or an initiation of using them from one SO/AC could impact std operations, regardless of the chance of success.

Rosemary Fei (Adler Colvin): (08:24) Provisions to address unintended statutory powers of the member will be addressed in implementation phase.

ARASTEH: (08:24) The questions raised by the advisers are not clear

Jan Scholte: (08:25) @Rosemary I think Congress etc will not want to wait until the implementation phase and will want the assurances before they give their blessing?

Keith Drazek: (08:26) @Alan, no one SO or AC can initiate the powers without support of others. Isn't the threat of powers exactly the point?

Alan Greenberg: (08:26) As far as I know, there are no sanctions built in to limit attepts to use the poers, or to judge motive (if that were even possible).

Holly J. Gregory (Sidley): (08:26) The concern about statutory powers is addressed in the Second Proposal by the requirement that the Sole Member only acts at the direction of a majority -- often supermajority -- of the community

ARASTEH: (08:26) Who is able to provide assurance for something yet to be implemented

Brenda Brewer: (08:26) Her line just disconnected

Nell Minow: (08:26) I am trying to speak -- I will call in gain by phone

Rosemary Fei (Adler Colvin): (08:26) @Jan, we can certainly describe what they might be now.

ARASTEH: (08:27) Such as what?

ARASTEH: (08:27) What are those details ?

Alan Greenberg: (08:27) @Keith, I don't agree. I am bnot sure we could do anything about it, but any SO/AC can start the process - not at he threshold that triggers the official action. But just raising the possibility that the group would try to gather interest from others wil have an effect.

ARASTEH: (08:27) Advisers are kindly requested to be more specific and not general

Keith Drazek: (08:28) @Alan: Do you see that as a positive or negative?

Steve DelBianco [GNSO - CSG]: (08:28) Just a monor point, but we really shouldn't use therm 'Sanctions' for the community accountability measures.

ARASTEH: (08:29) What are those hamonious balance that existzt now .It seems that advisers repeat the same concerns of Board

Steve DelBianco [GNSO - CSG]: (08:29) Aside from board removal, the measures either approve or overturn a decsion of ICANN.

Alan Greenberg: (08:29) Probably negative, but it would depend on the circumstances. If there is a major issue that will ultimately result in exercising powers, then SOMEONE has to start the process. BUt if it is done purely as sabre-rattling just to alter the outcome of a discussion, then it is negative.

ARASTEH: (08:30) Why not the adviser kindly do not speak more openly and clearly about the so-called balance that may be dsirupted by the community mechanism

Jan Scholte: (08:30) @Arasteh. I do have around 40 detailed comments related to specific paragraphs but don't want to clog the discussion with those now. Will submit them to the public comment.

ARASTEH: (08:31) It would be good to give some especific examples

Keith Drazek: (08:31) That outreach issue is probably for staff to address, no?

Tijani BEN JEMAA: (08:32) who will move the slide deck forward?

Keith Drazek: (08:32) Thanks Alan, makes sense.

ARASTEH: (08:32) If the distinguished adviser do not wish to share some of their concerns with us and just want to send it to public comments which fair but what is the usefulness of this call?

Alan Greenberg: (08:33) @Keith, the upper-left diagram looks like it has numbered halos over the heads of the community. Not sure if they are there in reality ! ;-)

ARASTEH: (08:34) Yes .Many people have asked about the scope and the meaning of the Community

Keith Drazek: (08:34) :-)

Keith Drazek: (08:35) Not enough halos to go around...

Alan Greenberg: (08:37) @Keith, Isn't that always the case?

Farzaneh Badii: (08:37) minor note : slide 7 "b" for bylaws is missing.

Rosemary Fei (Adler Colvin): (08:37) Another "not" missing in notes, re: CA litigation likelihood

Jan Scholte: (08:38) @Arasteh. Unclarity of meaning of 'the community' for example at paras 6, 11, 130, 142, 310. Detail!!

Becky Burr: (08:39) enhanced, but not "new"

ARASTEH: (08:40) One of the Adviser replied to my question to give examples of detailed r inconsistencies, as he had some 40 comments.

Becky Burr: (08:40) ICANN, including staff and Board

Becky Burr: (08:41) not SOs/ACs

ARASTEH: (08:41) Would it be possible to share them with us as we have only few days to the end of public comments?

Becky Burr: (08:41) the use by Board to challange single member is interesting

Becky Burr: (08:41) Board and staff explicit in proposal

Avri Doria: (08:42) I think Jon makes a good point about the community SM not being challengeable in an IRP proceeding.

Becky Burr: (08:42) material harm - current standard for standing retained

Jan Scholte: (08:42) @Arasteh. I have wanted to have these consultation discussions before submitting my comments formally, but will do so in the next days. Apologies for delay.

Becky Burr: (08:42) except community IRP is threshold based

Avri Doria: (08:42) apologies, i meant Jan.

Becky Burr: (08:42) voting threshold

ARASTEH: (08:43) I think Beckie is expected to answer that question

Farzaneh Badii: (08:44) I didn't know we are going to hold the community accountable through IRP. Did you mean that? Isnt community accountability another issue?

Becky Burr: (08:44) judges choosing themselves?

Leon Sanchez: (08:46) @Farzaneh IRP applies to Board's and Staff's actions or inactions

ARASTEH: (08:46) It seems to me that CCWG is expected to enhance the community accountabilty and NOT ICANN ACCOUNTABILITY?

Alan Greenberg: (08:48) But similarly, the community doing the sole selecting might result in a predjudice against the Board. It goes both ways.

Becky Burr: (08:48) I agree Alan.

Holly J. Gregory (Sidley): (08:49) I have concerns about the panel becoming self selecting. Input from community and board in selecting panel is important - and independence issue is addressed by having community propose all the candidates. Selection is in hands of community and board ratifies -- but if they don't accept someone, community goes back. Goal is to get concensus but to have active control by community in finding the panelists that it finds acceptable before the board weighs in

Farzaneh Badii: (08:49) Thanks Leon. you might need to add staff on the third sentence, page 9

Avri Doria: (08:49) a self selecting panel would tend to become self similar

Holly J. Gregory (Sidley): (08:49) I agree Alan

Avri Doria: (08:49) but it is true that an impasse between community and Board could develop on nominations to the panel.

Holly J. Gregory (Sidley): (08:50) Avri, we can build in a mechanism to break an impasse -- good idea

ARASTEH: (08:52) How to get a widespread representation of community into this mechanism remains a challenge

ARASTEH: (08:53) this is a very valid question

ARASTEH: (08:53) The question raised as to whether the Board could invoke IRP against the community was also a valid question and was not answered

Thomas Rickert, CCWG Co-Chair: (08:55) @Kavouss, we are primarily here to liseten to the advisors's views. We will take the questoins back to the CCWG to take a look at.

ARASTEH: (08:55) Ch-Chairs ,several specific questions raised by one adviser which are quite revleants and have NOT BEEN ANSWERED

Avri Doria: (08:55) Arasteh, i think the issue of SM and it being subject to IRP, if ican be, needs to be discussed.

Avri Doria: (08:55) I think we need to take the issue away and come with an answer.

Avri Doria: (08:56) ..., if it can be ... tinking of the surpeme authority issue that was alwasy complained about with the Board about no one being able to tell it what to do.

ARASTEH: (08:57) rEQUEST TO ADVISERS

Thomas Rickert, CCWG Co-Chair: (08:57) Jan, the perceived lack of detail on the processes was not a random omission, but part of our plan. WS 1 says "implemented or committed to", so we can have the commitment based on the main ideas and define procedural niceties later.

Thomas Rickert, CCWG Co-Chair: (08:57) I agree, however, we should strive to have more details soon.

ARASTEH: (08:57) iS IT POSSIBLE THAT ccwg GETS AN ADVANCE COPY OF ALL YOUR QUESTIONS, CONCERNS BEFORE BEING FOMALLY SUBMITTED TO THE PROCESS?

Jan Scholte: (08:58) Thomas, that position of deferring these details might be fine with you and me, but will it be accepted by the Senator from Texas?

ARASTEH: (08:58) tHE AUDIO LEVEL AND THE QUALITY OF THE AUDIO IS TOO POOR

James Bladel: (08:59) Need to drop at the top of the hour.

Thomas Rickert, CCWG Co-Chair: (08:59) I agree, Jan, there might be an issue. However, we have been working on the basis of the WS1 definition provided by NTIA.

ARASTEH: (09:02) Thomas,

ARASTEH: (09:03) Your expectations from Chartering Organizations are a very ambitious one.

Thomas Rickert, CCWG Co-Chair: (09:03) Thanks, Jan!

ARASTEH: (09:03) They may not have time, expertise, and sufficient legal backgorund to answer all questions and concerrns raiseds

Keith Drazek: (09:04) If the Community, the Board and NTIA are aligned on the recommendation, I'm not worried about the congressional review process. Just my two cents.

ARASTEH: (09:06) It is a work stream 2 activities

ARASTEH: (09:06) we may not need that details now

Keith Drazek: (09:07) very difficult to understand

ARASTEH: (09:07) we can not hear the audio clearly

Rosemary Fei (Adler Colvin): (09:07) Role of representative of SO or AC is not to decide the vote, but to communicate the SO/AC's vote to the community. Each SO/AC determines how votes will be decided.

Rosemary Fei (Adler Colvin): (09:08) how ITS votes

ARASTEH: (09:08) Leon

ARASTEH: (09:08) Time is almost ended

ARASTEH: (09:09) WE HAVE OTHER COMMITTMENTS

Alan Greenberg: (09:11) I was going to answer Jan's question on details of voting.

ARASTEH: (09:12) GAC is not the only Advisory body considred to be empowered to vote knowing that GAC has not yet decided on how to participate in voting or even whether it participated at all

Steve DelBianco [GNSO - CSG]: (09:12) Listening carefully, but not really understanding you, Willie

Cheryl LangdonOrr: (09:12) notes   Willie

Alan Greenberg: (09:12) Although I hesitate to use the example because I think it has many problems, this is like voting for the President in a US election. The actula rules for casting votes is set by each state according to its own rules. The results are then cast on their behalf to actually elect the president.

Jan Scholte: (09:13) @Arasteh the question might be whether NTIA and Congress would accept even the possibility that GAC could become a voting party

Cheryl LangdonOrr: (09:13) argh auto correct   should read noted Willie

Steve DelBianco [GNSO - CSG]: (09:13) That's right, Willie. The Stress Tests are not a comprehensive Impact Analysis. They test selected scenarios to assess whether the proposal give the community the ability to challenge (and overturn) ICANN actions in response to those scenarios

Rosemary Fei (Adler Colvin): (09:14) I had difficulty understanding audio for Willie

ARASTEH: (09:14) Once again, advisers are kindly requested to share their detailed questions and concerns with CCWG as soon as possible

Alice Jansen: (09:14) Link to PC period - https://www.icann.org/public-comments/ccwg-accountability-2015-08-03-en

ARASTEH: (09:15) Thomas

Farzaneh Badii: (09:15) thanks alot

Nell Minow: (09:15) Can I ask that we get copies of the response to the Jones Day memo?

Cheryl LangdonOrr: (09:15) thanks everyone... bye for now then

Robin Gross [GNSO - NCSG]: (09:15) Thanks, bye all!

Bernard Turcotte Staff Support: (09:15) bye all

Avri Doria: (09:15) bye, and thanks