Day 1 Meeting #55 AM Session (25 September)

Attendees:

Members: Alan Greenberg, Athina Fragkouli, Becky Burr, Cheryl Langdon-Orr, Donna Austin, Eberhard Lisse, Jordan Carter, Mathieu Weill, Fiona Asonga, Izumi Okutani, James Bladel, Jorge Villa, Leon Sanchez, Mathieu Weill, Olga Cavalli, Pär Brumark, Robin Gross, Samantha Eisner, Sébastien Bacollet, Steve DelBianco, Suzanne Radell, Thomas Rickert, Tijani Ben Jemaa   (23)

Participants: Allan MacGillivray, Akinbo Adebunmi, Amitra Choudhury, Anne Aikman-Scalese, Avri Doria, Brett Schaefer, Carlos Raul Gutiérrez, Christopher Wilkinson, David Cake, David Maher, David McAuley, Edward Morris, Erika Mann, Farzaneh Badii, Finn Petersen, Fiona Alexander, Greg DiBiase, Greg Shatan, Guru Acharya, James Gannon, Jeff Neuman, Jonathan Zuck, Jorge Cancio, Kavouss Arasteh, Keith Drazek, Kieren McCarthy, Larry Strickling, Marilia Maciel, Mark Carvell, Megan Richards, Michael Niebel, Mike Chartier, Nathalie Coupet, Niels ten Oever, Nigel Roberts, Olivier Crepin-LeBlond, Olivier Muron, Pedro Ivo Silva, Phil Buckingham, Philip Corwin, Qusai AlShatty, Rafael Perez Galindo, Rinalia Abdul Rahim, Sabine Meyer, Selina, Seun Ojedeji, Snehashish Ghosh, Stephen Deerhake, Tapani Tarvainen, Tatiana Tropina, Thomas Schneider, Tom Dale, Young-Eum Lee   (52)

Board Members: Asha Hemrajani, Bruce Tonkin, Cherine Chalaby, Chris Disspain, Fadi Chehadi, George Sadowski, Jonne Soininen, Kuo Wu, Markus Kummer, Mike Silber, Ram Mohan, Ray Plzak, Steve Crocker, Suzanne Woolf, Wolfgang Kleinwaechter (15)

Advisors: Jan Scholte, Ira Magaziner

Legal Counsel: Edward McNicholas, Greg Colvin, Holly Gregory, Josh Hofheimer, Michael Clark, Rosemary Fei, Stephanie Petit (7)

Guests: Adiel Akplogan, Ahmed Osama, Akram Atallah, Albert Daniels, Alex Deacon, Amirita, Ana, Anne-Rachel Inne, Ariel Liang, Bret Fausett, Carl H. Schrita, Carlton Samuels, Christopher Mondini, Chuck Motter, Claudio, Daniel Fink, David Conrad, David Olive, Dagezelle Wim, Dave King, David R Johnson, Dexter Gerig, Duncan Burns, Eduardo Diaz, Eleeza Agopian, Emily Pimentel, Emylle Varela, Gisella Gruber, Gordon Chillcott, Graham Schreiber, Heidi Ullrich, Jamie Hedlund, Jenifer Chung, Jim Prendergast, John Demco, John Jeffrey, John Poole, Jonathan Robinson, Joseph Wright, Joy Liddicoat, Justin, Kevin Espinola, Kevin Murphy, Karen Mulberry, Karine Perset, Karyn Menck, Kate Wallace, Konstantinos Komaitis, Lisa Pearlman, Louise, Mariano Mejía, Mary Uduma, M Ermert, Michele Neylon, Michelle Bright, Mohamed El Bashir, Mongi Marzoug, Naela Sarras, Ole Jacobsen, Patricio Poblete, Patrik Fältström, Philadel Yeo, Reg Levy, Rodrigo de la Parra, Rubens Kuhl, Sara Bockey, Scott Harlan, Sean Wilke, Tapani Tarvainen, Tarek Kamel, Taylor Bentley, Teres Elias, Theo Geurts, Vicky Risk, Wim Degezelle   (75)

Staff: Alain Durand, Alice Jansen, Bernie Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamad, Hillary Jett, Laina Rahim, Marika Koning, Nancy Lupiano, Theresa Swinehart, Trang Nguyen

Apologies: Paul Rosenzweig, Matthew Shears, Julie Hammer, Ken Salaets

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

Transcript

- Transcript CCWG-Accountability Meeting - Day 1-EN.pdf
  AM Session: pages 1 - 131
  PM Session: pages 132 - 285

Recording

- **The Adobe Connect recording is available here: Part 1 and 2:** https://icann.adobeconnect.com/p2kxd5nnyk4/
- **The audio recording is available here: Part 1:** http://audio.icann.org/gnso/gnso-ccwg-acct-25sep15-en.mp3   **Part 2:** http://audio.icann.org/gnso/gnso-ccwg-acct-2-25sep15-en.mp3

Proposed Agenda

Welcome:

- Opening remarks and housekeeping
- Define meeting goals, outcomes

General Trends

Review of Memo prepared by Legal Counsel - *Comparison of CCWG CMSM Proposal and ICANN Board MEM Proposal*

10:30-10:45 – Coffee break

Community Powers

12:30-13:30 – Lunch break

Notes

Day 1 Session 1

Introduction and Opening Remarks (Leon/Thomas)

Use of slides to discuss scope, requirements, and areas of consensus based on PC2.

Presentation from the lawyers

- No better model, but need to see what works best within requirements
- What achieves consensus?
- How do you share power?
- How do you insure that community powers as implemented in ways that do not paralyze the Board?
- How do we assure that any exercise of statutory rights is within remit?
- Room for revisiting the thresholds?
- In your thinking, divorce the decision mechanism from the model
- Need to clarify what mechanisms are wanted/needed, because until that is clear, we will keep debating models.

Elements from the slides:

- degree of change
- degree of experience and community preparedness to take on a new role
- how to ensure SOAC are accountable
- how should community decisions be made
- voting / allocation of power, is it sufficiently inclusive, is influence is diminished for the GAC
- avoid paralysis to the Board / fiduciary duties, don't bind the hands of the fiduciary
- How do we ensure stature powers are appropriately constrained?
- How do you ensure the community powers are enforceable without leading to undue litigation?

Day 1 Session 2 was dedicated to resolving issues and addressing concerns identified by contributors. We will revisit support/divergence to see if we can move disagreement to consensus.

On power to reject budget/strategic plan/operating plan

We suggest separating powers to have budget described separately. There is a time limit with budget that does not apply to strategic/operating plan. We note similarities between what the Board is proposing and what the CCWG is suggesting i.e. both believe there should be limit.

On PTI: budget needs to be operated effectively. By separating two vetoes, IANA budget is protected whatever happens to ICANN budget. Ringfencing will provide assurance. It will be clarified that PTI is separate.

The CCWG suggests hard coding the mandatory consultation process into escalation path. Ensure we reduce risk of friction by decreasing chances.

Board suggests that: *In the event the Budget cannot be adjusted to take into account the community's view, the Board may proceed to approve a Budget.*

The budget accepted over that community concern may not include new, substantial items not accepted by the community, and may

not represent an increase of more than 10% over the previous year's Budget (taking into account any inflation at the time). This suggestion will be taken on.

Feedback:

- The operating plan is consistent with budget and attached to the strategic plan. This implies that strategic plan is attached to budget as well. We should be mindful of interrelation.

- IANA budget needs to be preserved at all costs. Failure to understand why control needed on ICANN budget when it does not affect transition. The budget is a proxy measure. CCWG is encouraged to value control point of operating plan.

- Has the CCWG considered logistical challenges? Concerns about impact on timing.

à The CCWG has not worked through the steps in process with financial staff. This – however – was not conducted in context of Board comment either. Action should be taken to discuss with financial.

- How do you prevent the mechanism being used to block a budget line item for one SO/AC?

à This would have consequences on overall community. It relates to how you create a threshold.

- There should be a process where veto can be overruled. We are looking at disagreement between community and Board. What assurances do we have ICANN as organization will not dysfunction because the budget has not been approved?

- With respect to ICANN budget, there was disagreement on unlimited time of rejection. The logic wants ICANN to reconsider budget. Why do we need to put it in ICANN Bylaws? It is impractical to implement.

- Suggest obtaining language from accounting people so accurate description can be provided. The Community can only do a veto if the specific item that is concerning has been raised in earlier processes.

- There are differences and similarities between power under Board's intervention and under our proposal.

- When asked for budget to be subject to community approval, does it cover IANA budget and overall ICANN budget? What do you understand the requirement to be? If we are saying that we should wait until we get a nod from community, it's impractical. Approval is struck out from requirements.

- Budget must sting. It must force ICANN to consider.

- Examine whether or not the budgetary requirement imposed by the CWG is for a successful transition. How solid is the support?

à We have a limit of two vetoes and there is no suggestion to increase it. The CWG did confirm our proposal meets their requirement. If change is required, it will need to be crosschecked with the CWG.

- Uncomfortable having budget decisions made by anybody that does not ultimately have a fiduciary duty.

à We structured power very carefully so that it did not see the community mechanism making budget decision. It is explicitly not a line item veto. The power contemplates returning the budget to the Board to reconsider its position.

- Why do we need enforcement then?

à What would be enforceable would be that the caretaker is determined in Bylaws and gives effect to fiduciary duty. All these community powers require discussion in community forum before the veto is exercised. Work stream 1 is to provide a situation of accountability the community to be comfortable with. It goes beyond the narrow tick-box.

- Any approach taken by CCWG needs to meet requirements of CWG mentioned in paragraph 6. It is fundamental and should not be changed.

- With respect to unintended consequences, vetoing budget will have other consequences. If you freeze budget, what happens if reserve fund is depleted over time? Who will be responsible for it? Who is accountable for consequences?

à Disruption is intended consequences of veto. If there is a veto, the Board causes that disruption. It is the Board's responsibility to create responsible budget.

- Community forum you will need for exploration of issue of contest over budget. It is an instant where community discussion will be important.

Conclusion:

 - We will come back with suggestion to move forward

On power to remove individual Director/to recall ICANN Board

- There has been a question of whether removing Board Directors should be made by the appointing body or made broader.

Feedback:

- Once you are past a certain number of Board members, you are removing the whole Board – e.g. if you remove 14 Board members using the individual mechanism. There is a tipping point. A higher threshold should apply.

- Need to define a minimum number of Board members you must leave or have a higher threshold to throw whole Board.

- Language could be added to note that it could be done between one and x Board members.

- ICANN is responsible for day-to-day of Internet. It would be vacuum we cannot afford. There could be interest in hijacking process.

- To invoke community power of whole board is substantially higher. There is a need to name replacement director.

- This power is a crisis mode. There would need to be multiple failures for removal to occur. Ultimately it comes down to trust. Do we trust them to act in a way that is for good of broader community?

- Existence of community powers to spill Board is indisputable. We should discuss whether we need to make any improvement to process.

- Not in favor of removal of Board member. It is in contradiction to collegiality. Interest is to satisfy public interest, not of that designated authority. We should consult.

- It surreal that removal of entire Board is demanded by CWG. Board encompasses IETF, RIRs, digital assets etc. It is destabilizing. Why should any of three IANA customers put up with that? Reexamine.

- The CCWG consistently has made statement that future SO/ACs is the problem. We have got to be accountable. This question needs to be dealt with. To whom are you accountable is a question that has not been dealt with. We are all part of same community. Concerns about equity.

à Mutual accountability will be discussed. The community does have redress with IRP.

- ICANN Board is a governing body of corporation. It is not right to say that SO/AC need to be held in account. Keeping SO/AC framework open is very important.

- If we accept principles that community is one who can remove individual Board member, there is possibility to remove whole Board. Spill the whole Board will be failure of MSM.

- Individual Board Director recall is one of most basic tools of holding people accountable. California corporates code is set up such that you can remove your directors. It is standard. We should not open up this issue again.

- ICANN is accountable to all users. Limiting ICANN to this community is incorrect.

- If look at comment tool there is no resistance for this community.

- Concerns about process selected to remove i.e. without cause. This is going to create three unintended consequences: 1) It is going to create a dysfunctional Board. Two classes of Board members will be created: a) acting in public interest; b)

acting in collective interest of all stakeholders; 2) It will weaken the governance of ICANN because the Board deliberation and decision would be at risk of being drive to a large extent by the subjective goals and personal compromise; 3) In the long term, it would create a negative change in Board member behavior because the threat of removal without justification runs the risk of having individual Board members feel the loss of their seat. This could turn the Board into a representative body where opposing interests crash.

- There has to be justification. It is important to have receipting mechanism. We need to be cognizant that too often removal of Board members is abusing mechanisms. Seek other ways. What is there to stop us from moving with our number issues to a different entity with IETF and continue running our operations? Let's make sure we are able to be simple, clear and accommodate everybody.

- All users who want to have an input into policymaking can be involved through policymaking at global level. If that linkage is broken, we can't solve ICANN's accountability through any ICANN internal process. There needs to be an external source of accountability.

<u>Conclusion:</u>

- Leadership team will try to come up with suggestions on how to address this. We have heard a lot of concerns and wish to discuss concrete measures.

Action Items

Documents Presented

- CCWG LA Intro.pdf
- CCWG - Set Up Slides.pdf
- Memo - Comparison of Board Proposal to CCWG 2nd Draft Proposal.pdf

- Memo Comparison of Board Proposal to CCWG 2nd Draft Proposal_corrected version.26 Sept 2015.pdf

Chat Transcript

ICANN RP:Welcome! Scribe Stream Text:http://www.streamtext.net/player?event=25Sep15CCWG

Mathieu Weill, ccNSO, co-chair:Hello LA from Paris !

Edward Morris:HI Mathieu. Greetings from Leeds.

Sabine Meyer:Hello everyone! Greetings from Bonn :)

Leon Sanchez (Co-chair ALAC):Hello everyone!

Athina Fragkouli (ASO):Hello from Amsterdam :)

Megan Richards, European Commission:best from Brussels.

Nathalie Coupet:Greetings from New York

Young eum Lee:Hi, from Seoul.

Simon Jansson:Greetings from Sweden

Niels ten Oever:Hello from Ottowa

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Hi all I trust we are all looking forward to a day of positive and productive dialogue

Akinbo A. A. Cornerstone:From Nigeria, greetings.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Remember we ar using the hashtag #CCWGLA for your/our comments on our work in your social media

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Greetings Akimbo

Leon Sanchez (Co-chair ALAC):That is of course a local joke between Chairs

Jordan Carter (.nz, WP1 rapporteur):and if you write it #ccwgLA its a little easier to see :-)

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:of course it was Leon ;-)

Akinbo A. A. Cornerstone:@Cheryl: Notice a participant using '.' for his name. Is that approved?

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:OK Jordan happy to do that (see I am flexible after all ;-) #ccwgLA   BUT I admit I do tend to CAPitalise quite a BIT :-)

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Akimbo we will ask (as we always do for that '.' participant to declare their identity,

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:as well as K, KMc. SFO etc.,

Megan Richards, European Commission:thanks Cheryl. important for transparency

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:oh and guest 11

Megan Richards, European Commission:right.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:indeed it is Megan => remembering I traditionally am just @CLO in many rooms but here I go for the full nomenclature, I call on others to also either do that or at least declare here in the chat (which forms part of our records as well of course)

Akinbo A. A. Cornerstone:So many articles this last feew months on the transparency in the process. I would like it enforced as soon as possible before another erticle comes up claiming they did hide and no one raised an eyebrow.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:We are also keen to ensure that our remote participants are well integrated into our meetings here in LA   so please feel free to call on any of us in the room here to help your voice be heard, so call out here is you have a cmment or question here in Chat using the usual <COMMENT> or <Question> / <Q>   tag to we can nte it sppropritly as an intervention and integrate it into any que we are managing ...

Mathieu Weill, ccNSO, co-chair:Point is taken. Staff is currently reaching out to these participants.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Akimbo, I trust that is a desire of many (if not all of us) engaged in our CCWG work...

Seun Ojedeji:Can someone direct me to where the document currently projected is shared?

Young eum Lee 2:https://community.icann.org/x/EZlYAw

Young eum Lee 2:Is there a link to the download site of the current presentation?

Seun Ojedeji:Looks like its not on that list @Young

Jordan Carter (.nz, WP1 rapporteur):I don't think so

Young eum Lee 2:Seun, the link I posted is the 'reading list' site, no the site for the current presentation

Seun Ojedeji:Okay

Seun Ojedeji:I was asking for the link to the current slides.

Olivier Crepin-Leblond:I really do not think the second column should be called "show stoppers": they are issues to be resolved. A show stopper is an unsurmountable issue, isn't it?

Avri Doria:are we allowed to speak?

Akinbo A. A. Cornerstone:No audio

Mathieu Weill, ccNSO, co-chair:Correct Olivier, please ignore the header

Olivier Crepin-Leblond:ok. thanks :-)

Jordan Carter (.nz, WP1 rapporteur):Agree with Avri

Olivier Crepin-Leblond:I am impressed with the quality of the video.

K:Who keeps kicking me from the room?

Young eum Lee 2:Connection service is much better than what we had yesterday at the ccwg-ig.

Megan Richards, European Commission:who is speaking now please?

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:We are trying to ensure better integtsion with remote participants , and yes Olivier I personally think the good use of Video helps that...

Mathieu Weill, ccNSO, co-chair:This is Jonathan Zuck

Seun Ojedeji:Can scroll be enabled for the presentation (if the document can't be shared)

Alice Jansen:The slides projected in the meeting room can be found at: https://community.icann.org/download/attachments/56135590/CCWG%20-%20Set%20Up%20Slides.pdf?version=1&modificationDate=1443197229056&api=v2

Mathieu Weill, ccNSO, co-chair:(smile) from a distance

Edward Morris:Strongly agree with Jonathan concerning the relative equality of importance between WS1 and WS2 issues.

Megan Richards, European Commission:nice smile Mathieu :-)

Brett Schaefer:Agree with Jonathan. Issues like improved DIDP are very imporatant even if they are in WS2.

Greg Shatan (GNSO./CSG/IPC):Agree with Ed and JZ; I was not sure if the word "charming" was being used ironically or sincerely....

Megan Richards, European Commission:we do not consider WS 2 less important than WS 2 just that timing can be extended beyond exact timing of end of IANA contract with NTIA

Jonathan Zuck (IPC):We have an agenda, can we stick to it?

Megan Richards, European Commission:sorry less important than WS1 of course

Avri Doria:BTW, i do not think of Human Rights as merely another issue. I think it is a showstopper and required, or rather freedom of expression and free flow of information, are required by NTIA, and are showstoppers.

Jonathan Zuck (IPC):Of course, Megan!

Fadi:but the first question is, are these areas with difficulty REQUIRED for work stream 1?

Avri Doria:Fadi, some, yes.

Fadi:so let's identify them and address in good faith

Jonathan Zuck (IPC):it's certainly an important question but one without a straightforward answer, Fadi

Greg Shatan (GNSO./CSG/IPC):The "kumbaya list" may be a bit premature....

Jonathan Zuck (IPC):Wer'e getting caught up on the wrong details. it was just an intro. let's get to work.

Robin Gross [GNSO - NCSG]:yes, let's get to work.

Seun Ojedeji:+1 to Jonathan, i think we are getting into details and not in the Agenda order

Athina Fragkouli (ASO):I agree with Fadi. Let's identify the areas with difficulty required for WS1 and address them

Jordan Carter (.nz, WP1 rapporteur):Chris - what you just said sounds like paras 1031-2 in the Second Draft Proposal

Chris Disspain:in effect, that is correct Jonathan

Avri Doria:the problem is that the ATRTx is not necessarily implemented completely or with alacrity.

Avri Doria:we have no evidence of proper impleentation of ATRT recommendations.

Greg Shatan:I am fairly confident we were referring to Work Stream 2 of this CCWG, not providing a "to do" list and then evaporating.

Greg Shatan:Continuous improvement can come after that (and certainly should).

Brett Schaefer:Agree Avri, the Board's comments undermine the likelihood of realizing WS2 items.

Edward Morris:Correct Greg.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:I agree Greg but we do need to get the foundation work sorted and committed to...

Chris Disspain:Could the chairs please be kind enough to reintroduce the upcoming session so we can ll be clear on what is happening next

Jordan Carter (.nz, WP1 rapporteur):the transitional bylaw we proposed could do any of the above

Jordan Carter (.nz, WP1 rapporteur):it could dedicate some topics to ATRT3

Greg Shatan:@CLO , I don't think those are mutually exclusive. As a matter of fact, I thought that was our plan all along.

Jordan Carter (.nz, WP1 rapporteur):it could continue a CCWG process and specify how the Board had to deal with the output

Hillary Jett:A quick reminder that if you are tweeting about the meeting today, please join the discussion on #ccwgLA

jeff neuman:One of the issues is that the Board very rarely makes its rationale known as to why it accepts or rejects recommendations. Often times they are heavily redacted

jeff neuman:So its one thing to say that you go through this process, but since its all behind closed doors, how do we know

Avri Doria:so in other words everyone elses viewpoint on the recommendations of the ATRT take precendence in implementation.

Greg Shatan:Seems like Work Stream 2 is being diverted into a reservoir in that plan. Not sure that is a dam good idea.

Chris Disspain:that is not what he said Avri

jeff neuman:I believe the community can be just as reasonable as the Board....once all the facts are known to the community

Avri Doria:the is the reasoning used to overrule most any recommendation. something can alwasy be found that is hard to do or easy to twist the meaning of.

Jordan Carter (.nz, WP1 rapporteur):Of all the things we need to tie off, surely the future of what happens with the items we don't deal with prior to transition is something we don't need to be focused on right now?

Avri Doria:some other opinion can alwasy be found, even if that opinion was already taken into acount, to nullify the recommendations. we see it over and over and over again.

Greg Shatan (GNSO/CSG/IPC):Jeff -- I think that belief is the cornerstone of multistakeholder-based accountability.

Jordan Carter (.nz, WP1 rapporteur):we have a workable model in the proposal, if we don't change it it remains workable...

Chris Disspain:we seem to be diverting from the specific point which is that we can creat a process that ensures that recommedntions will be implemented either becuse of the presumption that thebiard will do so and in the event that 75% (suggested) of the Board votes not to then by the community using its empwerment mechanisms

Brett Schaefer:Jordan, I agree.

Avri Doria:as i say recommendaton is just another word for advice.

Avri Doria:and advice can be ignored

Greg Shatan (GNSO/CSG/IPC):Whatever we do , there will need to be processes to implement our proposal. That's not the same thing as taking some of the topics that we had designated as our next phase of work and put them into a future process.

Avri Doria:i am saying that the ATRT process has not been proven to work well enough to use it as a substitutue for WS2

Akinbo A. A. Cornerstone:Substituting recommendation with resolution in any empowerment process can capture the action. Fine tuning the ATRT into WS2 should be workable.

Bruce Tonkin:Actually in a way this is an ATRT process

Robin Gross [GNSO - NCSG]:it is my understanding that many ATRT recommendations have not yet been implemented, so it would seem that process is insufficient for our purposes.

jeff neuman:I agree with Greg. I understand the Board's view that it is hard to agree in advance to implement what the community comes up with before knowing what they come up with.....Actually, the contracted parties understand that well, since we have all agreed in our registry agreements to do just that (by agreeing beforehand to accept consensus policies). If we can agree to that, perhaps the Board can as well

Jonathan Zuck (IPC):is there a setting whereby we can manipulate the screen layout of adobe connect? The chat is waaay to small and for those of us in the room, we don't need video

Fadi:don't we first need consensus on what the community believes is necessary for work stream 1? this way we can advance towards our common goal...

Keith Drazek:Agree we need a bigger chat pod.

Avri Doria:at a suffiicient level of abstraction every process is like every other process.

Bruce Tonkin:Well @Robin some of the AERTR2 recomemdnations are actually being worked on by this group.   ie review of IRP, reconsideration etc.

Bruce Tonkin:Ombudsman is yet to be reviewed by this group in any significant way yet - but that is also part of ARTR2

Edward Morris:THis is worriesome. Some of the WS2 issues - transparency, for example - are just as important for ICANN's accountability as some of the WS1 issuess. They were deemed not essential to do prior to the transition but ONLY if they to be considered, solutions drasfted and implementation guaranteed shortly after the transition. I hope we are not backing away from that committment.

Avri Doria:Yes Bruce ATRT made a recommendation that those be worked on and this group is working on. That does not make this an ATRt, but rather some parts of this are outcome of ATRT.

Brett Schaefer:Ed, +1

Bruce Tonkin:I suspect those with a legal degree are in the majority in this room.

Sabine Meyer:Sorry for being a bit foggy on the WS2/ATRT3 issue - have there been any comments yet addressing WS2 being part of the chartered scope of the CCWG?

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Perhaps change the layout to have the Agenda in the smaller pod space and extend the chat pod wider at least...

Mathieu Weill, ccNSO, co-chair:Not sure I understand your question Sabine

Akinbo A. A. Cornerstone:<R> Can i get a dail in, please. +2348064464545. thanks.

Robin Gross [GNSO - NCSG]:A larger chat would be very helfpful.

Avri Doria:also for bandwidth sake, do the people in the room all need to have the video running. i recommend people stop it if they are in the room.

Jordan Carter (.nz, WP1 rapporteur):Fadi - we have defined the WS1 agenda in both proposals and there's a reasonable degree of demonstrated community consensus around the set of proposals/issues set out in the second draft proposal.

Carlos Raúl Gutiérrez:it is not only in the room

Carlos Raúl Gutiérrez:it breaks constantly from aborad as well

Kavouss Arasteh 2:Secretariat, There is one Kavouss Arasteh and not two.Pls then delete figure 2 followed by arasteh as not to read Arasteh 2

Avri Doria:i expect that the AC traffic in the room is not local. so the bandwidth we are using is as much abroad as any.

Kavouss Arasteh 2:There is best model.

Carlos Raúl Gutiérrez:kavouss, you may be connected in two webpages or two devices

Jordan Carter (.nz, WP1 rapporteur):Kavouss: you can do that.

Akinbo A. A. Cornerstone:@Kavouss. Its your end.

Kavouss Arasteh 2:There models and we need to opt for the one which workable, implementable and does not cause any legal or administrative problkem

Greg Shatan (GNSO/CSG/IPC):Switching chat and agenda at the break might be helpful.

Kavouss Arasteh 2:Sorry I correst my statement as folow ,there is NO best Model BUT a workable, implementable model

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:We will try that Greg

Kavouss Arasteh 2:The Legal team is expected to advise the legal validity of MEM

jorge cancio (GAC Switzerand):form should follow function :-) and let's not forget about the possibility of gradual change

Avri Doria (atrt, participant):yes, if we can find closure, it will be on a model that satifices. or to put it in our vernacular, something that covers all the issues people are willing to die in a ditch over.

Mathieu Weill, ccNSO, co-chair:"die in a ditch". Is the bingo on ? ;-)

Kavouss Arasteh 2:Does the MEM Issue Group requires to establish an unincorporated assoiciation among themself to be able to have a personhod character

Avri Doria (atrt, participant):the DID factor

Sabine Meyer:okay, everyone who coins a new acronym should buy the group a round in Dublin.

Kavouss Arasteh 2:If we could address the legal validity of the MEM and resolve some of the questions/concerns raised thereto , it may be a workable solution as it does not involve major changes compared to the existing governance but we need to address the shorcoming, legal status, defficencies of MEM

Jordan Carter (.nz, WP1 rapporteur):Chris: that's the crystallisation of the fiduciary point I was failing to make clearly on the email list

Greg Shatan (GNSO/CSG/IPC):This is a critical point about the use of a membership structure.

Steve DelBianco [GNSO - CSG]:Does JD and ICANN Legal agree with Holly on that point? (only Members have statutiry power to veto a budget)

Kavouss Arasteh 2:Some views expressed that voting approach may resulkt that the mechanism would not be acceptable to NTIA as it provides new power to ACs

Kavouss Arasteh 2:By the way GAC has not yet decided whethefr it opermenantly will not participate at voting or it participate on a case by case basis

Kavouss Arasteh:With MEM iit s more easy to proceed if and only if all its defficiencies, shortcomings and legal aspects are duly addressed

Bruce Tonkin:@Steve - in most non-memebr based governance governance structures - disapproval of the budget/financials is normally through removal of direvtors. So assuming the bylaws can give pwoer to the communiyt to remove direvtors - that woudl be ultimate way for the community to disapproapve of a budget.

Greg Shatan (GNSO/CSG/IPC):Dealing with the member statutory powers has been in the minds of others besides the (external) lawyers.

Kavouss Arasteh:Lewgat team is expoected to clearly determine whether MEM issue Group (composed from chairs of SOs and ACs) needs to form an unincorporated association in order to have a legal standing

Bruce Tonkin:At a bylwas level though I think we can clearly agee a process for developing a budget to ensdure there is consensus between the managhement, board, and communiyt members.   It is an extreme situation when the Board goes agains thte communitie's weill and there are a number of steps the communiyt could take - without having to have a statatory memebrshiup power.

Robin Gross [GNSO - NCSG]:Individual board recall power was signficantly curtailed in the board's proposal, so relying on 'remove the bad director' argument is weak.

Greg Shatan (GNSO/CSG/IPC):Kavouss, it's either a UA or the people in the MIG have to use their standing/capability to sue as natural persons (i.e., human beings).

Bruce Tonkin:@Robin - in what way was the power reduced?

Fadi:we clearly have no answers for the questions on the board yet. how long will it take to button this up so these very important powers are safeguarded?

Robin Gross [GNSO - NCSG]:only a very limited narrow set of circumstances permit a SOAC to recall their director

Greg Shatan (GNSO/CSG/IPC):@Bruce, the answer to this is in my chart, among other places.

Brett Schaefer:How would removing a director remedy community concerns over a budget? Wouldn't the budget already be in place?

Kavouss Arasteh:Another question with MEM is the way the issue is discussed at any So .and how would be the outcome. Board, s View is that the outcome would be a resolution but how that resolutionb to be adopted Full Consensus, Soft Consensus and what else.

Robin Gross [GNSO - NCSG]:CCWG proposal allows for a SOAC to recall their director without restraints on why the removal happens.

Greg Shatan (GNSO/CSG/IPC):Also, it relies on a petition to the Board to exercies the preservice letter, rather than a statutory right.

Kavouss Arasteh:Moreover it is said that the outcome should not have any objection from any AC, does it mean that an AC would have a VETO power?

Robin Gross [GNSO - NCSG]:it is fairly common in corporate governance that those who appoint the director have the right to remove them. Not just under a narrow set of circumstances (like criminal activity).

Jordan Carter (.nz, WP1 rapporteur):The Second Draft proposal dealt with the statutory power of members; see paras 317-318 if that's your issue.

Bruce Tonkin:Ah OK @Robin - the board believes that there shoudl be aappropraite due process and standards.   This shoudl also apply to the Board's aability to remove a director as well to ensdure it is balanced.

Robin Gross [GNSO - NCSG]:Due process is great - but not limited the reasons for removal to narrow set of circustances.

Bruce Tonkin:@Robin - the board wasn;'t restriciting it to crinimal activity - it jsut recommended that the community work to develop a set of stnadards.

Kavouss Arasteh:If that is the case , the whole process is captured/highjacked by one AC, say SSA? IVCANN mentioned that the MEM Issue Group will submit the outcome of the Group / Issue to a standing Panel. Is that standing Panel different from IRP?

Bruce Tonkin:We have some documents as a starting point - but they could certainy be refined further.

Kavouss Arasteh:I have many questions in regard with MEM. If they are properly addressed then we many consider to opt for that MEM

Greg Shatan 2 (GNSO/CSG/IPC):I don't think anyone is arguing against "appropriate due process and standards."   That goes to the point that these are the endpoints fo escalation paths, as Thomas sagely noted in his opening remarks.

Robin Gross [GNSO - NCSG]:Bruce, there are only 3 reasons permitted for individual board recall in board's proposal.

Bruce Tonkin:@Riobin - examples of cause to remove a Board director that we suggested included: Refusal to abide by the processes set forth to enable new community empowerment areas.ô¸ Failure to abide by outcome of Multistakeholder Enforcement Mechanism.

Kavouss Arasteh:In the ICANN MEM approach, it is only possible that SO raise the issue and noit any AC?

Kavouss Arasteh:Why

Bruce Tonkin:@Kavouss - an AC can raise an issue under the MEM model.

jeff neuman:@Bruce, why do you need a concept of for cause here? Just like an employee can be hired or fired for any reason or no reason at all (except for an illegal reason), why should the community have to have "a cause" for removal? If the communty is not satisfied with the performance of a director and it is as a last resort, not sure why we need "for cause"

Bruce Tonkin:@Robin the Board used the language "including". when listing reasons.   It was not intended to be a definitive list - just give clear examples that are relevant.

Keith Drazek:I thought Holly's opening remarks on their role were very clear...they are responding to the input received from the CCWG and now the public comments.

Bruce Tonkin:@Jeff - probably different cultures here.   In AUstrlaia you certainly can't fire without cause.

Jordan Carter (.nz, WP1 rapporteur):You can certainly fire a director without cause, Bruce.

eric brunner williams:i'm not thrilled with making "right to work" (arbitrary fire) apply to members of the board.

jeff neuman:I just dont see a Director appointed by a community needing "due process". The community is not putting the Director on trial for a crime?

Greg Shatan 2 (GNSO/CSG/IPC):A process doesn't necessarily require 'due process' in the fullblown legal sense in order to be appropriate and legitimate.

jeff neuman:@Greg - Understood, but that is the implication of the Board's proposal by implementing a "For cause standard"

Greg Shatan 2 (GNSO/CSG/IPC):Jeff, agree and I am opposed to that standard.

graham Schreiber:Hi Byron @cira001 & @CircleID fellow Canadian's.<><>@JebBush has #CDN ally wanting @ICANN to remain u/#USA @FTC #antitrust law.#SCOTUS 14-1480<><>FYI Bryon @Cira001 & @CircleID<><>@JebBush the #USA has Court of competent Jurisdiction, where Pro Se can fight @ICANN.<><>.@JebBush as member of what @ICANN_President calls "Civil Society" this #CDN appreciate's thoughtful #USA #ACPA Laws. <><>Cc @Cira001 @CircleID

Greg Shatan 2 (GNSO/CSG/IPC):As long as we are not arbitrary and capricious, and we have safeguards against capture, the methods proposed by the CCWG are appropriate.

Robin Gross [GNSO - NCSG]:I got kicked out of the Adobe Connect Room in the middle of typing a chat msg and couldn't get back in until now. AC seems slow and flakey.

Seun Ojedeji:@Legal, How can they be issues for board to discuss. We need legal to confirm if those powers are possible in MEM how not and how

Seun Ojedeji:Edit: @Legal, How can they be issues for board to discuss. We need legal to confirm if those powers are possible in MEM or not AND how

Avri Doria (atrt, participant):too many people watching the video in the room is contributing to the the load i expect.

Robin Gross [GNSO - NCSG]:it is the issue of needing one of these 3 narrow "causes" to be able to remove a director. It is common that a nonperforming can be removed by those who appoint. It is the most basic form of accountability. I don't understand the board's rationale for wanting to limit the SOACs to pre-determined "cause" for board removal.

Avri Doria (atrt, participant):like any facebook or twitter videoeo you can stop it by clicking on it. save that bandwidth for the non f2f participants

Seun Ojedeji:I guess those in the room could pause their Video (hopefully it makes difference)

Robin Gross [GNSO - NCSG]:Thanks, Avri. Just paused it.

Chris Disspain:Thomas...isn't what you just asked of the Board in effect comparing the models which you don't want us to do

Thomas Rickert, CCWG Co-Chair:No. I am not asking for models, but for underlying concerns. We tried to capture those on the slide in the AC room

Jordan Carter (.nz, WP1 rapporteur):Indirect enforcement means in this context that if you can't see the power followed, you can enforce your right to replace a director

Brett Schaefer:But is it realistic to rely on removing the Board to resolve every dispute? That was referred to as a nuclear optionin earlier sessions. Now it is to be the routine enforcement measure? Talk about setting the stage for a hostile Board/community relationship. There needs to be otehr means for enforcement.

Jordan Carter (.nz, WP1 rapporteur):No, it's not in my view reasonable to rely on that

Jordan Carter (.nz, WP1 rapporteur):I think that is why the proposal settled on membership as an option in draft 1, and then refined it in draft 2

Keith Drazek:That was a very helpful explanation from Rosemary and Holly. It really underscores potential pros/cons/concerns of membership. There are tradeoffs to be considered and made, regardless of option.

James Gannon [GNSO-NCSG]:Yes an excellent overview.

Carlos Raúl Gutiérrez:@Keith +1

Seun Ojedeji:I think this legal summary on fiduciary duties helps. The fact that no body is responsible untilamtely is a huge concern.

Carlos Raúl Gutiérrez:it was an excellent hands on example

Leon Sanchez (Co-chair ALAC):WE WIILL BE CLOSING THE QUEUE WITH GREG SHATAN

Jordan Carter (.nz, WP1 rapporteur):Seun, didn't get that from anything that is said?

Alan Greenberg:The difference is that in the sole member (regardless of member designator or alien), the "person" can be an emploee as opposed to a volunteer.

Greg Shatan 2 (GNSO/CSG/IPC):A UA formed by the MIG would not have the powers of a member.

Anne Aikman-Scalese:IN Work Stream 1, the power needs to be created to enforce. Agree unincorporate association would have to be created in Work Stream 1 to be effective. It is certainly not fair or advisable to ask individuals to proceed as plaintiffs.

Seun Ojedeji:@Jordan well i saw you nodding when it was said so maybe i should ask you a question, who has the fiduciary duties when powers are assigned to members?

Jordan Carter (.nz, WP1 rapporteur):the Board always has fiduciary duties, the point is when a member has a right to make a decision, it can make that and the Board can't second guess it

Jordan Carter (.nz, WP1 rapporteur):it can't use its fiduciary duties as a reason to not follow the community's directive in terms of the narrow powers set out

James Gannon [GNSO-NCSG]:+1 Jordan, and only in those areas that the member has the reserve right to do so

Edward McNicholas, Sidley Austin:FAQ 3 is the statement in the Board's comments regarding what type of conduct can be challenged through the MEM.

Jordan Carter (.nz, WP1 rapporteur):yes

Jordan Carter (.nz, WP1 rapporteur):the Board still directs the operation of the organisation and is responsible for that

Robin Gross [GNSO - NCSG]:arguably many community complaints stem from the board "upholding its fiduciary duty". Too much protection to the corporation and not enough to the "good of the Internet". The two things are not always aligned, and the fiduciary duty requires the board to put the good of the corporation ahead of the good of the Internet.

Steve DelBianco [GNSO - CSG]:That's my understanding, too, Robin.

Greg Shatan 2 (GNSO/CSG/IPC):For a public benefit corporation, shouldn't the board be considering the public interest as well as the good of the corporation?

Seun Ojedeji:@Jordan you seem to not be answering my question, at that point when board excercise those rights what is the status of board at that instance? Legal said at that time NOBODY has fiduciary duty (including the board)

Mathieu Weill, ccNSO, co-chair:Fiduciary duty is never black nor white. Was clearly outlined by Rosemary. The duty is to the Mission of Icann, not only to the corporation

James Gannon [GNSO-NCSG]:As defined in the core values yes as far as I am aware Greg

Greg Shatan 2 (GNSO/CSG/IPC):Mathieu and James -- true in theory, but in practice, some may doubt that is always the case.

Jordan Carter (.nz, WP1 rapporteur):Seun, I don't understand your question.

Mathieu Weill, ccNSO, co-chair:People may doubt, because as I said it's neither black nor white. despite what we tend to say

Samantha Eisner:@Robin, the fiduciary duty goes to upholding the organization's mission, so I don't think that the good of the organization can be divorced from upholding the mission of the organization

Chris Disspain:Avri...correct in the case of both models

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Well said Avri ;-)

Chris Disspain:Hold on...I thought H & R said the members have NO fiduciary duty

Samantha Eisner:But SHARING power doesn't mean that the member has any duty when it acts in the sharing of the power?

Chris Disspain:so how can it be shared

Wolfgang:@ Avri: Indeed, sharing is the key word. It is not "who blinks first" will loose.

Jordan Carter (.nz, WP1 rapporteur):Sharing decisional rights isn't the same thing as fiduciary responsibility

Chris Disspain:How does Rosemary's example differ in the sole mem model

eric brunner williams:@chris: that's my understanding also.

Kavouss Arasteh: There is no need to overregulate that aspect relating to rejection of Budget

Robin Gross [GNSO - NCSG]:On the one hand, California corp code requires directors to act in best interests of the corporation, on the other hand, the ICANN mission should be considered. The problem is, on balance, the board errors on the side of protecting the corporation over the other factors, like mission.

Seun Ojedeji:@Jordan i am just trying to get the effect of fiduciary duties on board when members excercise powers, does it reduce the fact that board still ultimately decide on such powers? If no that we are in agreement. I will appreicate a Yes or No on this.

Avri Doria (atrt, participant):Wolfgang, well that may be the case only if the Board is willing to share. if not, then blnking does come into play.

Kavouss Arasteh:Question to Legal Team

Nigel Roberts:Leon: I fixed this by grabbing an iPad for the purpose. thanks for your vigilance in spotting my non virtual raised hand so far.

Keith Drazek:I'm not a lawyer, but aren't there member powers and fiduciary powers? Fiduciary powers are delegated powers, no? So a member would still have powers, but not technically fiduciary powers because they're not delegated?

Jordan Carter (.nz, WP1 rapporteur):When a member makes a decision, the Board would be obliged to act in accordance with it. That's the basis of a membership model.The member has the authority, and that trumps the Board's perception of what should be done.

Nigel Roberts:Keith .. that's pretty much where I was going ..

Edward Morris:That's what I understand Keith. Apples and oranges.

Jordan Carter (.nz, WP1 rapporteur):Fiduciary obligations of Board members exist all the time, whether there are members or not

Jordan Carter (.nz, WP1 rapporteur):without members deciding on the powers, the board has to judge the "request" it is getting from the community with its fiduciary obligations in mind

Greg Shatan 2 (GNSO/CSG/IPC):But that doesn't mean that the member has an inalienable and illimitable right to go crazy.

Keith Drazek:Correct Jordan. I was trying to explain/understand the point of members not having a fiduciary responsibility. It's because they haven't delegated those particular powers.

Nigel Roberts:As I understand it, in I anns case currently, the board members are the corporations member, no?

Jordan Carter (.nz, WP1 rapporteur):Indeed not, but nobody's proposed anyone going crazy in any of this so far

Jordan Carter (.nz, WP1 rapporteur):Keith: yeah, it's because they don't have responsibility for governing the organisation.

Jordan Carter (.nz, WP1 rapporteur):Nigel: nope, there are no members today.

Seun Ojedeji:@Jordan so its a Yes to my question then. It then mean at that point we are putting the fate of the organisation in the hands of members without giving the opportunity for board to excercise their fudiciary duties on overseeing the organisation. I don't know how this can build a sustainable ICANN community and organiation as a whole

Jordan Carter (.nz, WP1 rapporteur):Seun: no, we aren't doing that, because the member doesn't govern the organisation.

Nigel Roberts:maybe that's apples and oranges again then, my understanding goes back to ICANN's original incorporation so I'm possibly relying on an incorrect understanding and am happy to amend myself.

James Gannon [GNSO-NCSG]:Seun: Thats just not correct.

Seun Ojedeji:Greg Shatan 2 (GNSO/CSG/IPC): But that doesn't mean that the member has an inalienable and illimitable right to go crazy.   Me: Don't know what gave you that assurance Greg, that you will still be strong to ensure that throughout ICANN lifetime?

Jordan Carter (.nz, WP1 rapporteur):all that the CCWG's proposal does is give members authority in a few narrow areas. The rest of the system is unchange.

Seun Ojedeji:@Jordan thats intresting, like saying we are not touching the building but just removing the pillars to the building. How helpful for the structure itself

Jordan Carter (.nz, WP1 rapporteur):no it's not like that at all. it's about putting a fire alarm in, if you want to try a more accurate metaphor. And making sure the fire alarm is connected to a fire service that has some hoses connected to water (the powers).

Jordan Carter (.nz, WP1 rapporteur):the pillars, the core, of ICANN are the multistakeholder policymaking that it does

Kavouss Arasteh 2:We should avoid overregulating all issue beyound those required. We should avoid to put the issue raised by Rosemary that the approval of the previous year budget with not more than 10% should be included in the bylaws. She mentioned that as a necessity I am not convinced by that as ICANN has clearly repled that they will do that

James Gannon [GNSO-NCSG]:Seun in that analogy should we allow the board to create policy as we cant seemingly trust the broad community to be responsible

Jordan Carter (.nz, WP1 rapporteur):on George's point, one of the later comments put it like this: the transition removes top-down external accountability

Jordan Carter (.nz, WP1 rapporteur):that comment suggested we need to replace that with bottom up community accountability

Avri Doria (atrt, participant):this process is one that can either build trust or make things worse

Jordan Carter (.nz, WP1 rapporteur):and that in a low trust environment, those need to be formalised accountability tools

Greg Shatan 2 (GNSO/CSG/IPC):It's inevitable in discussing a governance method to dwell on worst case scenarios and risk mitigation. Let's keep in mind we are talking about the endpoints of escalation/resolution paths.

Wolfgang:As Avri has said sharing is possible only on the basis of trust. But you need two for a Tango. George has raised a key point.

Kavouss Arasteh 2:Having said that, I have no objection to put it in BYLAWS that is noit a contencious issue

Avri Doria (atrt, participant):trust is based on expereince. the board does not turst the community and the community returns the same amount of trust for the Board.

Kavouss Arasteh 2:CO Chairs

Greg Shatan 2 (GNSO/CSG/IPC):World's slowest ram....

Kavouss Arasteh 2:Unfortunatelky the discussion is now opened in all directions.

Jordan Carter (.nz, WP1 rapporteur):I don't see anything in the CCWG proposal, or in the MEM idea, that results in "3.0"

Avri Doria (atrt, participant):this process could have given us new reasons for trust. instead it may be hurting trust's chances.

Kavouss Arasteh 2:It woulkd be more productive if we concentrate on a given issue at a given point of time

Greg Shatan 2 (GNSO/CSG/IPC):I don't think this is fundamentally about "distrust." Which doesn't mean that "trust" is a non-issue.

Anne Aikman-Scalese:TRust is built through experience. The need for increased Accountability appears to have arisen from experience. Stockholders have options to hold or not hold stock Stakeholders in the ICANN Community have apparently experienced issues which motivate them to ask for additional accountability mechanisms in order to be in a position as Stakeholders to support the transition.

Jordan Carter (.nz, WP1 rapporteur):Stakeholders have no choice about engaging in ICANN if they want to do domain name policy.

Seun Ojedeji:@James and Jordan I don't think I have said that, using my metaphor, i will see the MS community as the ingredents for building the Pillars. The poeple elected/selected board members are from the community and i guess it finally comes back to whether the pillars we build (the board) are not trust worthy for us to withstand the enormous workload on it

Brett Schaefer:Disagree with Chris, the isssue is not what is the minimun necessary to get the transition done, it is getting done what is necessary for proper stewardship and accountability in order to be comfortable with the transtion.

Robin Gross [GNSO - NCSG]:Can we change the sound of the timer? It is rather grading. Thank you.

Jordan Carter (.nz, WP1 rapporteur):I have a different view of what the Board is and what it is for, Seun - they are / should be the group that keeps the corporation going and providing the support to the community so it can do the work of policymaking

Jordan Carter (.nz, WP1 rapporteur):the sort of limited role Larry talked about in Buenos Aires

Kavouss Arasteh 2:If we do not address the Board,s concerns , nothing prevent them to submit them to NTIA, thus it is more logical to duly address them with a view to reach an agreement before the proposal is submitted to NTIA

Alice Jansen:We are now on a coffee break and will be back at 11:05 AM local time.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:15 min break... Back soon go stretch your legs :-)

Los Angeles Video:We will be adjusting the Adobe Connect room

Sabine Meyer:thanks guys!

Los Angeles Video:Hopefully this is better for everyone!

Marilia Maciel:Much better, thanks!

Carlos Raúl Gutiérrez:the worst side is the microfones of the Chair and lawyers in the front table

Carlos Raúl Gutiérrez:has a highe altency

Carlos Raúl Gutiérrez:huge latency

Carlos Raúl Gutiérrez:try to fix them

Los Angeles Video:unforutantly we cannot fix the delay between audio and video due to the phone bridge connection.

Keith Drazek:Much better chat pod placement....thank you!

David McAuley (RySG):agree w/Keith - this adobe layout is much better

Alice Jansen:Thank you for your feedback!

Alice Jansen:we will reconvene in 2 minutes

David McAuley (RySG):Thank you Thomas

Jim Prendergast, The Galway Strategy Group:we can see them

David McAuley (RySG):Can see room and general lack of response

Olivier Crepin-Leblond:Authority in LA sometimes involves more than just a microphone

David McAuley (RySG):We remote participants are at our desks

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Well so are 'some' of us here David :-)

David McAuley (RySG):Good point Cheryl

Chris Disspain:Jordan, can you clarify how the ultimte decision is the members unde the member model please?

Jordan Carter (.nz, WP1 rapporteur):oh sorry didn't see that

Chris Disspain:no probs

Jordan Carter (.nz, WP1 rapporteur):a decision to "veto" would be the member's decision in the membership model

Jordan Carter (.nz, WP1 rapporteur):let's tease it out in the discussion Chris?

Chris Disspain:yup

Jim Prendergast, The Galway Strategy Group:for approimately 75 days, ICANN operated under the FY2014 budget until the FY 2015 budget was approved in September. They organizations seems not to have suffered undue harm from this. https://www.icann.org/resources/board-material/resolutions-2014-09-09-en#3.c

Keith Drazek:Thank you Cherine, good clarification regarding the connection between budget and ops plan.

Anne Aikman-Scalese:Budget accountability to community is a requirement of CWG - Stewardship for transition - don't think it can be "removed" from Work Stream 1

George Sadowsky:@Ane, but whats the logic of the CWG-1 claiming that the entire ICAN budget be so strictly controlle. Surely it's the IANA peice that matters tothem.

Mathieu Weill, ccNSO, co-chair:@george : that is a question for the CWG I suppose.

George Sadowsky:@Mathieu, I think it also should be a question for the CCWG in terms of what is really important now and what can be put off to WS2,

Keith Drazek:Are there existing examples of how ICANN's budget line items apply to one SO or AC?

Anne Aikman-Scalese:One SO or AC cannot block a budget under the proposed Sole Member Model. Threshold is definitely the issue.

Keith Drazek:Is this concern, for example, that the GNSO and ccNSO could decide to gang up on ALAC and stop the entire ICANN budget because of ALAC travel and RALO meeting funding?

James Gannon [GNSO-NCSG]:So can I just put something out there for people to consider when they are discussing this issue, we are not creating a new power in corporate governance here. THis process is used in many other corporations, including those with interested and vocal members, and with members that like to flex their muscles. And it works.

Mathieu Weill, ccNSO, co-chair:@George: the CWG final report is very clear that their conditions must be met in WS1. And this report has been approved by all SOs and ACs. I understand your question but question whether this is the most appropriate to address here and now

Phil Buckingham:George , I agree . There should be two completely separate budgets . The IANA budget sjhould be fixed with an incremental yearly increase. Nobody should be able to veto the IANA budget.- it an absolute critical cost function .

James Gannon [GNSO-NCSG]:Seun, as stated on the CWG list today we came to a strong agreement on the wording and the requirement was ratified by the chartering organisations.

Greg Shatan 2 (GNSO/CSG/IPC):I don't think we have proposed an approval right on budget. Have we?

James Gannon [GNSO-NCSG]:If we want to go back to reopening the CWG requirements we are starting down a dangerous path.

Bruce Tonkin:Whil;e Greg is correct that there is a different between the Baord and the CCWG i the enforcement mechansism for the budget - I thinki it is worth at least getting agreement o the budget approval process.   I don;t see a huige difference betwen the CCWG and the suggestions from the Board with respect to the Budget.   The 10% was just to account for general increases in costrs - e.g increases in supplier costs, inflation costs etc.

Bruce Tonkin:Lets focus on agreeing our approval process first.

Christopher Wilkinson:I said a long time ago that the IANA budget should be ring-fenced. However, Single Member veto of the whole ICANN Budget would be a very blunt instrument, which I do not support.. CW

Seun Ojedeji:@Greg maye you should go back to read the CWG comment to 2nd PC

Bruce Tonkin:TO me there is a simple esclation mechansims that we can build into the bylaws - first step is a bylaws process, second step is a dispute process if the community feelsd that the Board has not followed the process in the bylaws, third step an enforcement mecvhansism for that dispute mecvhansims, 4th step removal of direvtorsd or the whole board.

Greg Shatan 2 (GNSO/CSG/IPC):Bruce, that's a very important point. We are once againt talking about endpoints, rather than resolution paths. If we get the paths right, the power at any endpoint should be rarely if ever reached. This is not a horror movie where worst case scenarios occur every 15 minutes.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:So true Greg

Greg Shatan 2 (GNSO/CSG/IPC):Let's hear from Holly and Rosemary, then.

Greg Shatan 2 (GNSO/CSG/IPC):I think there was a hand raised by Holly to respoind.

Holly J. Gregory (Sidley):@Chris: the edirect enforceability point we made was with respect to the community's ability to enforce the 2 veto rule and the limitation to the prior year budget

Bruce Tonkin:Agree @Greg.   The benefit of understanding a clear esclaation path - is that often the path never needs to be exercisesd as people knwo the next step.   e.g pay your speeding fine, or go to court and go to jail -- most pay the speeding fine.

Jordan Carter (.nz, WP1 rapporteur):Seun I just remembered your other point about the CWG - they have said just veto is OK

Jordan Carter (.nz, WP1 rapporteur):(that no "approval" is OK)

James Gannon [GNSO-NCSG]:CWG Requirement Text for reference: CANN Budget and IANA Budget.   The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community.

Bruce Tonkin:@Holly - I get that a memebr has a statyrory pwoer to directly control the budghet.   However the model that the Board contempalted was that there are clear esclaation mechnasims to resolve community concerns.   I would expect 99/1000 that the process will work.   If it doesn't - then just make sure the communit y has the power to remove the Baord.

Chris Disspain:Jordan, the actual words from the charter are Work Stream 1: focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;

Greg Shatan 2 (GNSO/CSG/IPC):Bruce -- maybe even 999/1000 !!

Greg Shatan 2 (GNSO/CSG/IPC):Discussing these "last resort" powers without the multiple failures that would be needed to reach them is a form of FUD.

Seun Ojedeji:Okay @Jordan thanks for confirming that. When i raised it on the cwg list, it seem some CWG members still thought approval was part of it.

Jonathan Zuck (IPC):Approval has NEVER been proposed

Holly J. Gregory (Sidley):@Bruce, was that a question?

James Gannon [GNSO-NCSG]:Seun: Please thats just not correct, myself johnathan and greg replied to your CWG mail and none of us had that misconception. Unless you recived offlist emails that is not reflective of that discussion.

Greg Shatan 2 (GNSO/CSG/IPC):Seun, I'm on that list. Which emails are you referring to? I did not see any.

Jordan Carter (.nz, WP1 rapporteur):Seun - have a look at their submission to this group

Holly J. Gregory (Sidley):@Chris, can you point us to where that proposal was made in the Board matrix?

Chris Disspain:will check Holly

jeff neuman:There should be a time component as well then (i.e., 6 Board members within a 12 month period)

Seun Ojedeji:@James here is your response to the specific thread. I guess i will just assume when you say "requirement" you were referring to one of my points and not both: http://mm.icann.org/pipermail/cwg-stewardship/2015-September/004292.html

Seun Ojedeji:Anyway events has gotten passed this

James Gannon [GNSO-NCSG]:My response was clear, the position of the CWG was clear. Lets not try and muddy waters here.

Keith Drazek:I strongly disagree that spilling the Board would end ICANN as we know it. ICANN's strength and legitimacy is rooted in its multi-stakeholder community, which is supported very ably and professionally by ICANN staff.

Keith Drazek:There....I said it.! ;-)

Robin Gross [GNSO - NCSG]:Agree with Keith.

jeff neuman:Removal of the Board should not impact day to day activities. That is one of the problems with the current ICANN Board. It is too involved in day to day activities...that should be the role of staff

David McAuley (RySG):Holly, Chris - check 3rd full paragraph on page 71 of board matrix (in section 42)

Jonathan Zuck (IPC):I've been saying we should just spill the board to show that the sky wouldn't fall ;)

Rinalia Abdul Rahim:Is that responsible?

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:no hardly

David McAuley (RySG):2nd full paragraph rather

Seun Ojedeji:@Keith i don't think we should disagree that spilling the entire board is indeed a very nuclear approach, a lot would have gone so wrong that there may be no need for ICANN. I don't even think we will have the opportunity to do that as the board to be removed may most likely have humbled himself/herself by resigning

Ray Plzak:Members are not selected by a variety of mechanisms to provide representation but rather to provide diversity of source. Once selected members have a responsiblity for the entire organization and are not representative of the appointing entity

avri doria (atrt, participant):i have personally alwasy thought it was enough to spill the chair.

Robin Gross [GNSO - NCSG]:it seems like we are re-opening the issue of whether we want the power to spill the board. I don't understand why though.

Chris Disspain:@ Holly see http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/pdfUA1xX00VoF.pdf page 71

avri doria (atrt, participant):becasue that is what this session is about, lets reopen anything the Board did not agree with.

James Gannon [GNSO-NCSG]:Agreed Robin, I thought that we had agreed on the community powers.

Seun Ojedeji:@Avri the chair is just a mouth piece of the board. i.e Assuming board works as it should

jorge cancio (GAC Switzerland):the recall of the entire Board parts perhaps from the premise taken from politics which is the existence of a homogeneous Board - and this will normally be not the case in ICANN where the Board is per definition heterogeneous

avri doria (atrt, participant):trues it is not like a government that gets no confidence. though they do tend to vote as a block.

James Gannon [GNSO-NCSG]:Thank you Thomas!

Holly J. Gregory (Sidley):Aprreciated @Chris and @David!

Jordan Carter (.nz, WP1 rapporteur):just to note that I haven't been able to monitor this chat at the same time as being up front, sorry :(

Robin Gross [GNSO - NCSG]:yes, thank you, Thomas, let's not get side-tracked here.

Brett Schaefer 2:This discussion is rather pointless,. If we get to teh point when the community is trying to dismiss a majority of the Board, then there will almost certainly be enough support to reach the higher threshold for spilling the entire Board.

jorge cancio (GAC Switzerland):They may vote as a block (which I do not know), but the difference with the motion of non-confidence which exists in political systems where the government is usually homogeneous should be taken into account

James Gannon [GNSO-NCSG]:Disagree with Kavouss, designators even have that power, its an extremely common tool.

Anne Aikman-Scalese:Doesn't PTI have a separate Board? That Board cannot be "spilled", right?

jeff neuman:Where can the gTLD Registries go?

Jordan Carter (.nz, WP1 rapporteur):nowhere

jeff neuman:exactly

Jordan Carter (.nz, WP1 rapporteur):Anne: indeed, nobody has suggested that

Mark Carvell GAC - UK Govt:Agree very much with kavouss's poitn that regarding individual board members, the nominating community should not have sole say in such exercise of this power. It should be a collegiate decision.

Seun Ojedeji:+1 to Kavouss as well

Bruce Tonkin:Also worth considering that ewvery year a third of the Board is up for election, and afte two years - it is possinble to repalce 2/3 of the board usig normal processes. So I expect that in most sitatuions the normal election /election process will be used to replace Boaird memmbers.

Kavouss Arasteh 2:Thomas, You said that there was a broad support for the removal of the individual Board Member by the designating constituency appointed /selected that Board Member, Then if we can not discuss that issue , based on the ICANN comment, why we are here?

Kavouss Arasteh 2:Please clarify the matter

Christopher Wilkinson:@Chris Dispain. Finally we are getting to the heart of this question. CW

Kavouss Arasteh 2:I request you to reconsider your ruling by allkowing to discuss all comments.

Alan Greenberg:Stating cause is *VERY* different from having to choose from a predetermined list of valid causes.

Bruce Tonkin:One approach is simply to allow the Board members to be removed without cause - but also have guidelines for both the Baord and communiyt on expectations.

Mathieu Weill, ccNSO, co-chair:@Chris: the SO/AC accountability issue is a key issue. Have you considered my question on the list re: enhancements we could consider / set up. I think we need to work on that

Anne Aikman-Scalese:AGree with Thomas - Board should propose some "cause" conditions.

James Bladel:Equity?

jeff neuman:There is a HUGE difference between getting a Board of 20 people agreeing to something than getting LARGE communities of SOs and ACs to agree to something. I do not see that as apples to apples

Bruce Tonkin:ANy removal of directors should have appropraite due process, and full exdplanation. Uoltiamtely this woudl be added to the guidelines if it was there already.

James Gannon [GNSO-NCSG]:I dont see why there should be equity no, as jeff says these are two different bodies

Kavouss Arasteh 2:The issuye of individual removal by the designating community is unconstitional as it is against the collegiality duty of the Board. It introduces certain degree of destability into the process.

James Bladel:Agree with Jeff. This is not a direct comparison

Mathieu Weill, ccNSO, co-chair:I think Alan made a great distinction here between removal for a serious cause and removal for a cause that MUST fit into a predetermined list

Robin Gross [GNSO - NCSG]:yes, Mathieu.

James Bladel:The responsibilities btw. Board & SOs/ACs are not equal now, and will not be equal post-transition. Why should they be subject to equivalent accountability thshhlds?

Kavouss Arasteh 2:The individual board Member shall safeguard the interest of the entire community and public as it does not only represent the community that designated him or her but the intertrest of the entire community

Robin Gross [GNSO - NCSG]:it is like we are back in Frankfurt with the board trying to talk us out of having the power to remove them.

James Bladel:Agree Robin. It's as if a politician is asking who holds voters accountable....

Greg Shatan 2 (GNSO/CSG/IPC):The myth of the unaccountable community needs to be disspelled. That does not mean that there's room for improvement. But if we can't transition accountability to the "global multistakeholder community," there won't be an IANA transition and our work will still be a work in progress.

Robin Gross [GNSO - NCSG]:good analogy, James.

jeff neuman:Again I will state that if the community decides that a gTLD Registry/registrar should do something, the contracted parties are BOUND to that. The registries and registrars cannot ask "Who is the community accountable to?" The contracted parties MUST implement it. If registries and registrars can sign on to this based on a leap of faith, then why cant the Board

Kavouss Arasteh 2:Pls allow us to express our views openly and freely.

Greg Shatan 2 (GNSO/CSG/IPC):Sorry -- does not mean there's NO room for improvement.

James Gannon [GNSO-NCSG]:Who holds the community accountable? We do.

avri doria (atrt, participant):some of us are will to subject the community mechanism to the IRP review for cosnistency with the bylaws. would that be enough?

Kavouss Arasteh 2:There was no consensus in CCWG for the removal of the individual Board Member by the designating community of that Board

Greg Shatan 2 (GNSO/CSG/IPC):James, we are an unruly and hirsute mob.

Steve DelBianco [GNSO - CSG]:Tijani, you are arguing caution about Exercising the power. We are talking about creating the power so that it may one day be exercised

jorge cancio (GAC Switzerland):SO/AC are not the voters or the people, but also institutional powers - and the trick is to establish the right balance between the institutions existing in this ecosystem

jeff neuman:@Kavouss, do you mean there was not unanimity? I thought there was consensus...just not unanimity

Jordan Carter (.nz, WP1 rapporteur):the mutual accountability side of this is all v important too

Chris Disspain:@ Robin, I agree....but I think cause is needed

Jordan Carter (.nz, WP1 rapporteur):that's the best in that I can see to the "community accountability" side of things that I can think of

James Gannon [GNSO-NCSG]:Greg- Quis custodiet ipsos custodes? "it is better for everyone to be ruled by divine reason, preferably within himself and his own, otherwise imposed from without."

Kavouss Arasteh 2:If we can not reopen the issue, why we are here?

Mathieu Weill, ccNSO, co-chair:@Chris : are you in favour of a serious cause being provided or in favour of a cause within a predetermined list ?

Chris Disspain:I am not interested in 'keeping my seat'

Stephen Deerhake (.as):Chris, you want a specific list of "for cause" examples?

jeff neuman:@Chris - Can the CEO be removed by the Board without Cause?

Mike Silber 2:Chris +1. Remove - but give the reason. Otherwise the board cannot be accountable

Edward Morris:Sometimes it seems here that black is white and up is down. As Robin says, removal of individual board members by the appointing group is normal, basic statutory law. Not to do it would be extraordinary.

Chris Disspain:needs ot be discussed Mathieu but in principle either

InPa:can he speak into the mic

Mike Silber 2:@Stephen - NO need for a list

Keith Drazek:I have no problem with requiring a demonstration of cause in removal of Board members, individually or collectively. I don't support a pre-defined "list" of causes.

James Gannon [GNSO-NCSG]:Agreed Keith.

Mathieu Weill, ccNSO, co-chair:ok thanks. because I think we could get broad support for "stating the cause" (which may not have been clear enough in the report)

Seun Ojedeji:@Steve i guess Tijani is saying the fact that such power is there could give avenue to various gaming within the community. Like someone said, lots of other registries like to be in ICANN shoes as well. Distabilishing ICANN from inside is a perfect way of achieving that.

Mariano Mejía:The board must

Chris Disspain:I don't believe so Jeff

Ray Plzak:Should the board have the power to remove Community Leaders who are not performing "up to snuff"/

Mike Silber 2:and equity would dictate that there would be an accusation and an opportunity to respond ....

avri doria (atrt, participant):Ray, no, but those in the SO/AC who pick them should.

Mathieu Weill, ccNSO, co-chair:@Ray : I think it's a good question.

Steve DelBianco [GNSO - CSG]:@Seun -- Are you concerned that someone can game in a way that wins agreement from a supermajority of our AC /SOs? That seems a pretty remote possibility

Greg Shatan 2 (GNSO/CSG/IPC):Have we yet discussed any comments other than those of the Board? Just sayin....

Robin Gross [GNSO - NCSG]:I thought we said this mtg was not going to be an arm-twisting by the board to remove our powers

Edward Morris:+1 Greg and Robin.

Jan Scholte:@Jordan. If the SOs and ACs will be able to block the exercise of board powers (budger, strategic plan, etc.) then in effect the SOs and ACs will have powers significantly to disrupt ICANN operations. Can such significant increase of SO/AC powers be granted without accompanying increase of SO/AC accountabilities? Agreed that SOs/ACs will not have equivalent powers to the board, but they will have significantly greater powers than now, and not just the board but also the wider public of Internet users which has only the most tenuous of say in the SOs and ACs will want assurance that those powers are exercised accountably.Why is this an unreasonable suggestion?

Seun Ojedeji:@Steve, the last time i checked, individual removal does not require supermajority

Greg Shatan 2 (GNSO/CSG/IPC):It's a nice warm hug of trust, Robin.

avri doria (atrt, participant):this is a dialogue, a dialogue is between two parties. in this case two halves of the community, the Board and the rest of us.

Mike Silber 2:Greg +1

Keith Drazek:Community leaders serve at the pleasure of their communities. I could be removed by the RySG if they no longer supported my chairmanship. That is bottom-up accountability.

Robin Gross [GNSO - NCSG]:SO-ACs are accountable to their members - not the board, Ray.

Kavouss Arasteh 2:Thomas, the removal of the individual Board Member may only be done by the community and not by the designating community of that Board Mmember

Rinalia Abdul Rahim:Agree that removal of SO/AC leaders is up to the respective SO/AC. That is the chain of accountability.

Keith Drazek:+1 Rinalia

Kavouss Arasteh 2:Dear Thomas,

Kavouss Arasteh 2:Pls kindly read my comments in Chat ,

jorge cancio (GAC Switzerland):+1 Jan Scolte

Ray Plzak:Board members are responsible to the entire scope of ICANN and are not representative of who placed them there whether that be an SO, AC, or the NomCom.

James Gannon [GNSO-NCSG]:I dont think anyone disagrees with that continung to be the case Ray

jeff neuman:I dont understand how the power of dissolution of the organization can realistically EVER be exercised. If that happens, then what happens to the contracted parties? How do they continue to operate registries and registrars without a body?

James Gannon [GNSO-NCSG]:Jeff: MAD Doctrine.

Kavouss Arasteh 2:We are here to consider the ICANN comments and we must freely and openly discuss that the removal may only be done by the enitre community decision AND NOT BY THE DESIGNATING COMMUNITY of that Board Mmember

jorge cancio (GAC Switzerland):there needs to be a right balance - the legislature (which is what the SO/AC would resemble most) has to exercise its new powers subject to accountability

izumi Okutani:The need for justification for removal of an individual Board member makes sense to me

Keith Drazek:I fully support enhanced SO/AC accountability where necessary. That has been recognized and anticipated by the CCWG for Work Stream 2.

jeff neuman:There is NO risk of the Contracted Parties moving to another entity. It simply can't

Greg Shatan 2 (GNSO/CSG/IPC):There is a spectrum here, with "removal for no reason" at one end, and a narrow "for cause" removal limited to specific causes at the other. I personally believe that the appointer should have free rein to remove the appointee, but if we want to discuss alternatives, let's recognize there's a spectrum of alternatives.

avri doria (atrt, participant):Fiona's rant was a very good one to go to lunch on.

James Gannon [GNSO-NCSG]:Where?

Greg Shatan 2 (GNSO/CSG/IPC):"Rant" in the best sense of the word.

James Gannon [GNSO-NCSG]:Where are the registries going to go?

Holly J. Gregory (Sidley):the dissolution power can be easily constrained as a legal matter so that the likelihood of it being exercised in close to nil by requiring unanimity among Sos and ACs; we may also be able to require that the community could only consider dissolution upon the board requesting it -- need to check that last point from a legal perspective. and you could even

Kavouss Arasteh 2:There is NO CONSENSUS for the removal of the individual Board Mmember by the designating community of that Board Member.

avri doria (atrt, participant):of course. i think of it as a good thing

Greg Shatan 2 (GNSO/CSG/IPC):Where would the non-contracted parties go?

avri doria (atrt, participant):DNA

jeff neuman:There is not dissolution option

Kavouss Arasteh 2:That is not the issue Thomas

jeff neuman:It simply cannot exist unless every registry wants to breach its agreements and have ICANN/IANA shut them off

Kavouss Arasteh 2:The question is that due to the collegial aspect and responsibilty of the Members of the Board the entire community must be invloved in that removal

Samantha Eisner:@Jeff, dissolution is a statutory right of a member, which could possibly be constrained as Holly suggested

avri doria (atrt, participant):Jeff, it would take less than that for a coup against ICANN to fly.

Samantha Eisner:But cannot be removed

jeff neuman:Sam....it is an illusory option

James Gannon [GNSO-NCSG]:Sam the point is that the member would never be placed in a sitation where that would happen.

Seun Ojedeji:@Greg the point is that when an appointer appoints a board member, its not to represent her SO/AC but the entire community. So how do you remove such board member without reason that affects the entire community and why won't you want to give the entire community the opportunity to confirm that the reasons for removal are indeed valid!•••••••••••••••••••••••••••••••••

jeff neuman:Billion dollar companies cannot vote to wilfully breach its agreements with ICANN simply to dissolve ICANN

Kavouss Arasteh 2:The chair should allow the free discussion of the matter and not sticking to what was included in the first or second propoisal

Ray Plzak:@Jeff The GNSO should be separate and distinct from ICANN. It should have its own executive board and should have its own source of revenue and be the contracting party.

Cheryl Langdon-Orr (CLO) ALAC AP-Regional Member:Back in an hour...

jeff neuman:@Ray - Is the Board willing to do that? If contracted parties had the same options as the IETF and numbers community, then I am all for it

Mathieu Weill, ccNSO, co-chair:Enjoy lunch !