

**Transcription ICANN London
Further Discussion NTIA
Sunday 22 June 2014**

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Volker Greimann: ...in line on while non-Councilors get their fill so to speak will delay us and we are already 20 minutes behind schedule. So I would appreciate that

Finally, I've been receiving comments that currently - I mean many people in here find it too hot. This is due to the air conditioning being off. It only has two settings; freezing, which we experienced yesterday and off, which we are experiencing now.

I'm told that that side of the room is cooler. So if anybody feels too hot then that's the way to go. Thank you very much.

Jonathan Robinson: Thank you Volker. Everyone has an opinion about air conditioning. My opinion right now is it's just right. So it must be somewhere between freezing and too hot. But there you go.

We have a session now, which is nominally timed from 11:30 till 12:15. So we've got approximately half an hour remaining of that session, which is to deal with - it's titled Further NTIA and Accountability Discussions.

Now we've had some pretty meaty discussions this morning in and around the issues. I've actually been asked to go together with Byron Holland of the

ccNSO - Chair of the ccNSO to go and talk briefly with the GAC at midday; so in ten minutes now about our intentions on the CCWG on the IANA stewardship transition.

So I'm going to have to leave partway through the session. To me some of the critical - I mean there's a couple of very practical issues that have to be sorted out.

We need - to the extent that we've got this drafting team - to form this drafting team to draft a charter for that Cross Community Working Group, we need four participants from the GNSO. I think it's perhaps natural to assume one from each stakeholder group. But I think I'd like to hear any thoughts or comments on that.

How - who are we going to put forward as the GNSO or what do we think is right for constituting that drafting team? And are we going to participate? We have an - in effect an invitation from ICANN to join the Coordination Group for two seats from the registries and three from the rest of the GNSO. How are we going to constitute those seats?

So to me those are the two practical issues that seem relatively urgent to discuss. I don't know if there's any - I'd love to hear some comments rather than hear my own voice and echoing my own opinion.

But I - just to warn you before you do that, I am going to have to walk out and go and do this session with GAC. So I'm going to let Volker and (David) continue with running the meeting and lead into the - with the EWG work for which I hope to join as soon as possible.

One final comment that EWG work is - and this is for you Volker and (David) to recognize is to the extent that we can in that discussion and it's very early days. I'm not sure we can expect to do much but it should help prepare us for

any discussion we might have initially with the Board about how the GNSO might respond to the work of the EWG.

And it may well be too early and that might be our message for the Board. But just to recognize that. So - but right now we're on NTIA - further NTIA accountability discussions and we have a hand up from Avri.

Avri Doria: Thank you. Yes. I think that your instincts on what seemed obvious is certainly what I would agree with. That given that the Registry Stakeholder Group has already been assigned two slots that the other slots be given to each of the other three stakeholder groups.

I do think though that we should remember that they are GNSO representatives even though they would come from the separate groups and I would suggest that it (beats) the GNSO Council but basically passes them on.

I'm not saying that the Council should have to agree to them or what have you, you know. And so I'm not also saying it needs to be a rubber stamp. But it needs to be something that's coordinated by the Council and that they basically whoever the Council passes through from the stakeholder groups be representing the Council and not just the stakeholder groups.

Jonathan Robinson: That's a really good point Avri. And one other point that the Council might want to make in that communication is that we would like to see those representatives or participants coordinate amongst themselves and perhaps even link back to the Council so we work in a coordinated way. I think it's a really, really valuable point and much appreciated.

Avri Doria: Just to add to that. That's the same issue that's been coming up in IETF and other discussions is that they're putting people forward to the Coordination Group but that they are really to be connectors to the communities that they're from and not steering group, which is not what it's called. Thanks.

Jonathan Robinson: I don't want to shortcut the discussion but the logical thing that cascades after that for me would be to write to the SG leadership or for a Council to communicate - for me to communicate on behalf of the Council and say this is where we've got to. Please send us your volunteer. Then to make sure that we record that intention on communication and interlinking. Any other comments or thoughts on this?

No dissent. Volker, I'm going to have to leave.

Volker Greimann: No comment other than I agree with Avri's comment here. I think that's the best approach and a more sensible way to go about this.

Jonathan Robinson: Just make sure that our helpful policy stuff; oh you've captured that. Good. That's great to the extent that there's no dissent. But the other issue is also - so that - I mean they're two different things. There's the drafting team for the Cross Community Work Group for which we will need four participants. And there may well be some overlap and the representation on the Coordination Group.

And maybe one - someone might like to speak to the overlap on that. Maybe these are one in the same group of people. Maybe they're completely different.

(Thomas): So following up to the discussion that we had with Fadi a while ago, I was wondering whether it would be worthwhile for us to give another signal to Fadi directly as to where our unhappiness with the scope question stems from.

I think he has not defended the discussion that we had with Theresa for that. But I think that the scope issue is one that's great importance. And I'm just wondering whether we should just leave that twisting in the wind, you know.

I guess Fadi was seriously unhappy with the distrust thing. But I think that this group sort of has (obtained) weak evidenced to you that there have been multiple comments suggesting that the scope should not be limited. And Theresa answers well that we keep the scope limited with no substantive response or rationale for the decision that has been made.

And then I think it's a legitimate question to be asked of Fadi where that comes from and who has instructed Theresa to take that decision to Fadi. And I'm not suggesting that there is some evil power in the background but I think there is just serious disconnects where as I put it, staff is not always acting in the best interest of the community.

And I think that this process, you know, using Fadi's words that this is - if we're acting at (world stage), something along these lines is in fact. I think these are the very moments where the (world) that is attending or observing deserves an answer.

Volker Greimann: These are excellent points and I think we should also perhaps not limit ourselves to participation in these groups but also discuss on the list what we want to - what we want the future ICANN to look at. I think Avri wants to speak to this as well.

Avri Doria: Thanks. In terms of the point people were making about the scope, I have the fortune or misfortune of having a different perspective on it again. I think that what they've done is basically put that scope question in the accountability issue and that the accountability group is the one that can say for this to be accountable it needs to be separate. For this to be accountable it needs this kind of oversight. For this to be accountable, et cetera.

And I think that that was - and the intention of this is that one part of the ICANN accountability has to do with how is IANA held accountable - I mean how is ICANN held accountable once the IANA stewardship transfer happens.

And that becomes - because in terms of the SSR notion there's not really a notion of where do we move IANA to in the next year. I think very few of us would say moving IANA elsewhere by September 15 was an easy thing to do.

So I think within the accountability issue they sort of answered that. Here's your opportunity to make that declaration. And that's the way I've been hearing the issue.

Volker Greimann: I would love to keep the queue and then I put (James) in after Steve.

Steve DelBianco: Steve DelBianco, Business Constituency. Avri, I agree with you for the most part. The scope concerns that we expressed were about the broader questions of ICANN accountability and the absence of the IANA contract leverage.

And you're right. They reluctantly and very only recently created the new track for accountability conversation to happen. So I'm agreeing with you there.

But there may be from other participants in GNSO - there may have been other scope issues where they are picking a point that was in that tight little scoping document. So I'd love to hear from other members and the comments that you submitted on IANA transition to see whether scoping was more than just the accountability question.

And in case it isn't - in case the scoping question was resolved, I still think to (Thomas)' point, we could bring it up as an example. The conversation that we had this morning was an example of disconnect which can lead to distrust between community. Because if in fact the create of the accountability track was entirely responsive to our scoping concerns then staff should have said that. And they didn't.

It simply said we're not changing the scope document. Next question. And that's non-responsive, disrespectful and it was not good for any of us in the room on that conversation.

So (Thomas), it's a good example but it isn't the best example because on a substantive basis we may have gotten most of what we wanted in the scope creation by moving accountability to its own track.

Volker Greimann: Thank you Steve. I may just follow up on that. What in your opinion is our best way forward then to call them on this and to make sure that the community concerns are heard?

Steve DelBianco: Well since you asked, I would suggest we dig a little harder on this distinction between the corporation and the community. It's clear that the CEO has no idea what we mean by that. And he's far too bright to just not get it. We can make that point clearer. We should talk about some examples of Chuck Gomes. They've given some fantastic examples in Durbin and a follow up letter to the CEO.

But it's mostly about pointing ways in which the bylaws require allegiance to the interests of the corporation, not the community. Dan Reed brought this up. Brett Fausett brought it up yesterday. And let's have some of the lawyers in the room explain that.

And the other would be if you think about the community versus the corporation, there have been a lot of behaviors over the last ten years. I don't want to call them original since. But behaviors where the corporation seeks to limit its exposure by shunting off liability and responsibility to its contract parties by minimizing the amount of obligations and compliance that it has.

And I'll just give you one example that's near and dear to the Business Constituency. When the objection process was created so where governments could do early warnings to new top-level domain applications,

initially that was a bilateral arrangement where a government would negotiate with and applicant and they would work something out.

But the BC raises concern is that that government would later come to ICANN saying that the applicant's not following the agreement and ICANN couldn't enforce it. It would put ICANN in a terrible position.

So we tried to prevail. And it took well, better part of a year to get ICANN's legal staff to agree that public interest (convince) and negotiations that were made by applicants should be enforceable by ICANN and that's what has given us the pick speck.

And that may give a lot of headaches to applicants and I'm sorry for that. But that headache doesn't even compare to the complete brain cramp we'd have gotten if we didn't put ICANN in a position of enforcing agreements.

So that's a long answer to you but I believe a corporation versus community is a distinction we should explore and have concrete examples and that would be more responsive than anything else I heard this morning.

Volker Greimann: Thank you Steve. Next I have (Thomas) and anybody else (I'll jump).

(Thomas): I can keep this very brief because Steve has said most of what I wanted to say. But let me just add that I'm not one of those who brings in this top down or distrust thing whenever the community doesn't get its way.

I think this was more a way of how the questions that came have been answered. And there was no rationale from Theresa. Had she said that the information is there where Avri and Steve you now have rightfully pointed out, I think it would have all been good.

But the tone, you know, so you're not going to change this. You've not - you've received a lot of public comment so you're not going to change it and

the answer is just no without an (interesting) explanation. I think that's bad interaction. And I think that deserves improvement.

Volker Greimann: Thank you (Thomas). Moving down the table, next is (Dan).

(Dan): Sorry to pick up again on this distinction because I think it is important. And I think part of what we're - there are many issues I'm struggling with. But one of them is that we're unclear on what ICANN means. And it clearly means very different things to different groups.

And there are collisions of interest but there are also collisions of reality. I think - because one of the things I think Fadi was trying to say is that staff has to execute on stuff and there are real world constraints about that. Right.

And anybody who's been in any sort of position of decision-making knows at some point you have to act. Otherwise you're just paralyzed. And not acting is often worse than almost any decision. At some point you got to do something. And that collides with sort of broader desire to have broad input and consultation and transparency.

And so I think anything we could do to make clear what the distinction of roles are and the distinct responsibilities would probably lower everybody's blood pressure some because there are some things that the staff and the Board legally have to do and responsibly have to do to be responsive to day-to-day interests of the international community business and not commercial.

And the things that the rest of us care about that are important in the broader community sense that we have to weigh in that have different time scales, different constraints. And where those intersection points can be clear, that will lower the friction and allow a more effective process to take place.

But the fact that all these things are mixed together means that we talk past one another and ICANN means different things to different people. We got to clarify that. And that will make a lot of things much simpler.

Volker Greimann: Thank you (Dan). Ladies first. Avri then Keith.

Avri Doria: Thank you. I wanted to go to the question of - and by the way, (Thomas), you're right. They could have answered a whole lot better. But I wanted to go to the question of what is ICANN.

Remember that ICANN is a corporation in the public interest and that it has a structure that defines these bottom up structures. I will continue to use the refrain I've always used, which ICANN is us and create a dichotomy so that when ICANN takes a legal advice that is perhaps contrary to the community's advice, that's an error.

That is not the corporation versus the community because the community is indeed an integral part of the corporation. And I think creating this dichotomy is a lot of the place where we have problems. There should not be a dichotomy. ICANN is us. Thanks.

Volker Greimann: Thanks Avri. Keith and if I can take in the meantime further requests for comment.

Keith Drasek: Thank you Volker. Keith Drasek, Registry Stakeholder Group. I just want to go back to the discussion about the scoping and maybe just clarify a little bit or at least introduce my thoughts or perspective.

I don't think the scoping issue was exclusively about accountability. There were many in the community - you look at the inputs and comments from the ccTLDs and various groups. But it was more about sort of what was on the table.

In a sense it was - and this goes back to Fadi's discussions and comments with the community in Singapore about saying what's on the table, what has NTIA in a sense put on the table with this announcement, this invitation for ICANN to convene a multi stakeholder process for figuring out what comes next.

And is it just what replaces NTIA and their role as far as the steward or is it something bigger? And there were many in the community - if you look at (Milton)'s proposal and some from the ccTLDs (.nzeb) specifically and others around the community who said it shouldn't be limited to just what replaces NTIA.

It should actually be about looking at the IANA functions and questioning should those remain with ICANN if NTIA's stewardship goes away. Or could there be an alternative proposal?

And when we saw the scoping document first come out, it was very, very limited. It was an assumption that of course ICANN would retain all of those functions. And the only think up for community discussion was what replaces NTIA.

And there were those in the community that said that's way too narrow, that the scoping issue should be up to the community and should not be dictated by ICANN staff in a top down manner.

And I think a lot of the follow on comments that were submitted to the scoping document reflected that. Said wait a minute. That's way too narrow. Let the community decide.

And when we saw the latest announcement, it was still the very narrow scope that said the only thing up for discussion is the accountability or the stewardship sort of segments and everything else - of course ICANN will continue to operate these functions.

And my sense is that it's probably likely that ICANN will continue to operate these functions, right. But it's - from a procedural perspective and this issue of, you know, sort of top down versus bottom up or how it's being characterized is problematic. And I think we, you know, in the exchange that we had today we pretty much saw that it was no, no, we're sticking with the very narrow scope.

I do agree that the accountability discussion is to me - to my mind the accountability track is far more important to us as a community than the more narrowly focused IANA transition.

The accountability part provided it is a prerequisite to the outcome of that and implementation of recommendations on accountability were at large provided that's a prerequisite to any transition, that's where we need to be focusing most of our energy. Thanks.

Volker Greimann: Thank you Keith. Having no one at the table, yields to Phil.

Phil Corwin: Thank you. Phil Corwin speaking solely in a personal capacity and not for any hidden interests.

I just want to pretty much echo what Keith just said. You know, looking at this from a, you know, trying to parse this scoping document as an attorney, the final paragraph is the key one where it says the dialog and resulting proposal are to focus on defining accountability mechanisms that would serve to replace the current stewardship role played by NTIA to ensure ICANN's performance of the IANA functions.

That's the key phrase. It presumes that the end of the transition discussion process will award the IANA functions to ICANN. And that's always been an open question when the U.S. - and we saw a few years ago the U.S. kept it

open the possibility that ICANN might not get the IANA functions if they didn't put it forward and accept the (unintelligible) proposal.

To my own mind I think it's quite likely and I'd probably have no objection to ICANN permanently performing the IANA functions but it should be left to this community formed transition group to decide that.

And for the life of me I can't understand why ICANN in response to unanimous comments on the scope saying it's too narrow, let the transition group decide that question, refused to change the scope and refused in the session we had this morning provide a good answer for doing that.

And I think it's very important for the GNSO to insist on this point because it's - to me it's much more important - the scoping question for the coordinating group, whatever the label's going to be, is much more important than the composition of that group.

And again, agreeing the accountability of ICANN, the other part of this process is a much more important question than the IANA transition although I personally believe that the transition should not occur before there's an acceptable accountability plan.

And I think that's going to be the message that both the NTIA and the U.S. Congress get on a continuous basis in Washington. It is disturbing that ICANN would not listen to the community on the scope question. Thank you.

Volker Greimann: Thank you Phil. Next I have Steve and Keith again.

Steve DelBianco: Thank you. Keith Drasek brought up a couple of examples of places where the community asks for scope increases and that was not accommodated. It was ignored. And that's precisely the kind of answers we need because it's clear that examples are very instructive to the current leadership of the company. So let's continue to do that with examples.

And then Keith at the end of your intervention I believe you went to the top down versus bottom up. And (Thomas) had asked about it too. I think examples there will be instructive. And I would encourage us to be able to quickly respond with examples that unequivocally show the distinctions between top down and bottom up so that you can have a conversation about when it was appropriate as opposed to whether it exists at all.

The high-level strat panel I think Marilyn Cade pointed out this morning were unequivocally top down in terms of the initiatives, how they staffed and paid for and then how the results were simply dumped on us. That is one.

And in particular one of the high level panels is on the evolution of the ecosystem. And while it was full of people that are very experienced, they in fact came up with some ideas for ICANN accountability. The web of affirmation of commitments is one of their ideas.

And frankly that may be completely the opposite of what the Community Working Group is going to conclude for ICANN enhancing its accountability. We may not decide that the affirmation of commitment needs to be signed by a web of entities around the world.

A second example that John Berard tried to give to this morning was NETMundial. We heard that representations today that NETMundial was an externality that was imposed upon ICANN.

And frankly I thought when we met in Buenos Aires we learned that management and the Board instructed our CEO to fly to Brazil and set up a NETMundial conference, which is not the same thing as an externality that came out of the blue. So I'm very confused about that. And John didn't get an answer to that question.

And then if you need a less controversial example of top down, let's look at the Expert Working Group on directory services or Whois. You know, God knows Whois needs to be fixed. I realize that. But it was in fact a CEO driven process to create EWG, to staff it and to launch it. So let's come up with examples wherever possible.

Volker Greimann: Thank you. And I would suggest that we continue that on the list and form our response with those examples and formulate the next plan from what we've discussed here. Keith and then Chuck.

Keith Drasek: Thank you Volker. And just again thanks for indulging me one more time here. Two quick points. One, the issues that I discussed earlier and that we've talked about here I think are the perfect example.

The scoping issue is the perfect example of the organization's self interest in limiting scope versus the community's preference or desire to have a possibly broader scope to allow for a more broad dialog and alternatives.

The organization obviously ICANN wants the IANA functions. It does not want to risk allowing the IANA functions to be divided up and potentially sent in different directions. And I completely understand that.

But the community spoke and said don't limit it. Don't limit it. Let the community decide. And the organization instead decided to limit the scope, constrain the discussion in its own self-interest.

And so following on just very quickly, I would fully support (Thomas)' recommendation about a follow up communication, a letter, something so it's not left hanging out there.

I think there's an opportunity here for the Council and the community to clarify our concerns, to put some examples down, to Steve's point, in writing and to

be very direct but maybe not confrontational but just direct and explain the concerns. Thanks.

Volker Greimann: Thanks Keith. And I think the final comment goes to Chuck.

Chuck Gomes: Chuck Gomes in response to Steve. I would discourage us from citing the Expert Working Group as a problem with top down. It was top down. Totally agree. And it probably would have been better if the community was involved.

But I actually think that having an expert group like that do some heavy lifting prior to getting in the policy development stuff is a practice that might actually help us with PDPs going forward, in particular with regard to Whois that's been such a difficult issue.

So my suggestion is don't use that as an example because I actually think it's a model that might be useful to help us in PDPs going forward especially on very complex issues.

Steve DelBianco: If I can follow up Volker. Chuck, I brought it up for that reason. I do think EWG is doing some good work. So when you do examples of top down, it's great for one of the three examples to be one that seems to be working okay, that might be productive.

That's the point of it. You don't want to make every top down example be one that was substantively wrong or processed wrong. It's fine to bring up an example if you think it'll work.

The point we're trying to make is that there is such a thing as top down. It happens. And when it happens, let's identify it clearly and try to limit the number of times that we do it.

Chuck Gomes: In that context that's fine.

Volker Greimann: Thank you Chuck. I'm very pleased to see that the Council seems to be of one mind with regards to the issues that are identified - have been identified and discussed. And that an actual plan needs to be formulated and issues need to be illustrated so we can move ahead and showcase what our issues are better than we've been doing so far with more examples and with hope for a better implementation and taking care of our concerns.

Conscious of the time and seeing one last comment.

Man: Sorry. Sorry. It's actually a question. What is our immediate next step as a Council, as a community? What's the next right now to do list that we can do on this issue? Because it seems like we've got a lot of - first of all we've got the really amazing level of unanimity if, you know, if not consensus. And secondly, you know, too like we all agree that we need to really get on this. So what do we, you know, what do we need to do?

Volker Greimann: I hope I summarized the previous discussion correctly now. The - we need to formulate an action plan. The earlier we can do so the better. Part of that action plan needs to be a list of examples and illustrations of where we see a breakdown of - as a trust the distinction between community and corporation as well as what we see as the scope should be, where the accountability problems lie and where improvements need to happen.

I think as a Council we should be as - one voice as possible on this and on target as possible. And I think there's a lot of work before us before we can send out that letter. But we have (varied) tools available. And if we put our minds to it, then we can have a result pretty soon.

But we're not a point yet where we can send out this letter, send out the communication right away. But we have I think formulated the work plan already. And we just need to get to it now.

No further questions. Then I would like to ask to close the recording. We now have a working lunch with the Expert Working Group.

END