
LONDON – ATLAS II Thematic Group 4: Transparency & Accountability - Session 2

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HOLLY RAICHE:

First of all, welcome to the second session. Today we have put some stuff on the wall on conclusions we came to yesterday. Where we're picking up now is thinking through the statement that Alan made, which essentially was we're probably going to be lucky to come up with some constraints, and we're just starting to talk about what those constraints might be.

What Alan started off with, and I think I'd like to pursue as well, is it's a larger question of who the stakeholders are. In the two days I've been here, I've heard lots of definitions of who the stakeholders are. Generally they extend far beyond just the ICANN community. If you think about what ALAC is, it's actually representative of a far wider group of people than the actual people who are here. It represents the community.

ALAC is always down as representing the Internet users, so in fact, even if we confine the definition of who a stakeholder is to ICANN, the effect of putting ALAC in ICANN is to say we represent the users. We have a real debate about who the stakeholder is, and we're just following the conversation with Garth.

GARTH GRAHAM:

As I was reviewing the summary of the ATRT 2, what struck me coming fresh to it is how incestuous a document it is. It treats accountability as everybody inside ICANN looking inside to ICANN, answering to each

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other inside ICANN. It strikes me then that ICANN's necessity to achieve global acceptability means a cultural shift of a far greater magnitude than even I had been left to believe, because it doesn't look outward. It looks inward. That isn't going to do it for accountability on a global scale.

The second though I had, when I got to that one, was how important the role of ALAC becomes in relation to the users in the world, the community. When I was asked for an issue – and I presented one for Telecommunities Canada – the issue I identified – and this is as an example of what I mean by an external focus – was the issue of local governments accepting that they have a responsibility for Internet governance in a digital economy. They don't. National governments don't either.

It's ALAC's goal to achieve that in the world. It's not ALAC's role to argue with other constituencies of ICANN about what process is. Somehow, that incestuousness has to turn outward. Even in the discussion that I went through yesterday, it's not yet turning outward.

HOLLY RAICHE:

That is a very interesting thought. Alan, before you head off...?

ALAN GREENBERG:

Your wording implies something, and it implies you're looking at the context of the ATRT in tomorrow's world. That's not its context. Its context is the ATRT is one of the "oversight mechanisms" to ensure that ICANN is meeting the commitments in the AOC, which is a commitment with the NTIA. It very much is an internal document and internal

process. We're looking at a world where there may not be an NTIA. There may not be anyone, or there may be some other group that provides our "threat", as I was using the term yesterday.

The whole issue of accountability and transparency today is two-fold. One is if there's no NTIA to look over ICANN's shoulder, what should make the rest of the world comfortable that somebody is looking over our shoulder, or we don't need anyone to look over our shoulder? That's in the general ICANN context.

In the sense of if ICANN is now given the responsibility without any oversight of running IANA – and right now IANA is a contract issued every five years by the NTIA to someone; currently ICANN – the importance of ICANN's credibility increases, because it's now not just ICANN setting gTLD rules, but it's ICANN running the day-to-day process of IANA.

So the credibility of ICANN, the import increases when you look at the IANA question. What I think we're looking at – it's not well-defined – is what does ICANN need to do to itself, how do we need to reform ourselves, so that we can convince the rest of the world that we can be trusted? Either trusted just to do the ICANN functions and perhaps trusted to do the IANA function. Although, there could be some other mechanism associated with that, in addition to it.

So you're right. The processes that go along with the AOC are internal processes. I don't think that incestuous. That's my design. Family dinners are incestuous. They're designed to be family dinners. We're looking at a different world now.

HOLLY RAICHE: Actually, that is an interesting point. I think where that takes us is to look back, and what did we say about accountability, and are we talking about accountability not to ourselves, but more broadly? We revisit what was first said, which was the ICANN community, and that's where we started with your observation – it's a broader thing. Then if it's a broader thing then it does raise issues of how we do that. We're missing about four people, but that's okay. You have to go?

ALAN GREENBERG: I have to take my leave. I'll join you again at 3:00 PM.

CHRISTOPHER WILKINSON: I have two comments on the discussion so far. The first is with reference to your earlier statement that At-Large represents, in some sense, users at large. This is all very well, and is part of the design, but as things stand at present, in most countries, the numbers of people who would recognize the At-Large and particularly the ALS in their countries, are very small indeed. We do not yet have a degree of recognition and credibility that would contribute very much to the credibility of ICANN as a whole.

There's a lot of work to be done on that front. The second comment would be that in, I would guess, quite a majority of countries, mostly outside Europe and North America, that the vast majority of countries, if they listen to this debate about opening and looking outward would say, "That's okay. The only institution we have that remotely represents

the interests of our Internet community in our country is our government.”

There we move distinctly in the direction that NTIA has already tried to close off with the statement that they do not accept a transition into governmental solutions. For the sake of argument, I support that warmly, but it does aggravate the proposition that we were just discussing, that ICANN as a whole must incorporate into its processes, and even into the IANA processes, a much wider concept of the interested stakeholders than what we’ve got at present. I think on both fronts we have a great deal of work to do.

HOLLY RAICHE:

Let’s just take a little pause. Heidi, are we ready to go? Okay. A couple of issues that we’re going to pick up from yesterday, and some other issues as well. We have accountability and transparency. We have perhaps a recommendation coming out of what was said by Alan and what was also said, which is if the role of ALAC is to be more broadly representative, are there recommendations that come out of that? Maybe we can tease that one out.

Now, where we go from here, I think we’ve talked about accountability. Maybe we should talk about who the stakeholders are. Is Carlos coming? I think we’ll just have to let... I think the next task is, do we actually agree that the ICANN community is defined in terms of the various institutions, or is it a broader community, and how would we define that? We only have about three groups now, I think.

Do you three just want to talk amongst yourselves for five, ten minutes? How would you define the community, and from there then we actually have to look at accountability for what. We've talked about what we mean by accountability now, but then I think we need to drill down a bit and say accountability in what way. We've mentioned finance. What else have we mentioned? Okay. Let's not get there yet.

First of all I just want some thought on stakeholders, and then we're going to list accountabilities. Heidi's going to look at me very strangely if we don't come up with recommendations, so we're going to come up with some recommendations. Can we have about five minutes? We'll have two sides of the table, I think. You guys are charged with being really clever. Actually, [Poa], you can go over on that side. You've just joined that side.

I want to know who the stakeholders are, because when we talked about accountability, we talked about accountability to whom... This started a discussion as to accountability to whom, and if it really is Internet users, then in fact it's probably going to frame some of the recommendations we come up with.

I'll give you guys five, ten minutes, and then we'll start using butcher's paper. Everybody's not awake. Yesterday everybody was buzzy. Today everybody is just, "Oh my God, this is too hard." I wonder, would coffee help? Coffee or a different venue? Sometimes just getting out... Move your chairs into the corner where you can talk in a bit of a circle.

At this late stage I can't change the room, and it may be that at some point we just go downstairs and occupy about five couches and have a conversation. Heidi, can we do that?

HEIDI ULLRICH: Sure.

HOLLY RAICHE: Listen, I'll tell you what, I'm going to go and scout out another... The point is, ultimately, we need to have this recorded.

HEIDI ULLRICH: Let me know what you want to do. How long is the break going to be?

HOLLY RAICHE: Ten minutes? This will help. Heidi, what do I do about the five people... That's a good idea. At this stage, I think we're doing okay with just butcher's paper and people writing. Having said it's difficult, they'll manage. Look, we knew Hong was going to go. We knew Alan was going to go, but the two Jon's aren't here. Tatiana... I'm hearing recommendations though.

[FOCUS GROUP DISCUSSIONS]

HOLLY RAICHE: Heidi, I can use mine. Good morning! How are we this morning? I was thinking we didn't have any Jonathan's and now we've got... The other Jonathan was very sick and had cold sweats and whatever... We can have a recommendation that's crafted around that... If you could join this group? Where we got up to was a discussion about stakeholders.

The comment that Alan made before he left was about the fact that the stakeholders are broader than just the community, unless you say the community is everybody that uses the Internet. That's where we're up to. The groups are now actively awake, sort of. Almost talking. Some of them actually went out to dinner and had this long walk to some unknown place, after too many drinks. Some of us have actually had an eight-hour sleep. We're going to cope today.

I will use my computer to get into the Adobe room. I don't know if the rest of you want to, but Jonathan two is going to be accessing us remotely. I don't want him back here. He'll make the rest of us sick. You can't come into a conference and be sick and then breathe on everyone and say, "It's been lovely seeing you." Right, back to discussion. Now, have we got a link to the Adobe Connect here? There's got to be a better way. I usually just... Wait a minute. Here we go.

SPEAKER:

I thought so too. I guess my point is that I think that there are things that we can do to make participating in the ICANN processes better, and I think comment periods in particular would benefit from an exercise in simplicity, that, "Here are the key issues that are being discussed. This is what's really being decided here," so that you don't need to become an ICANN veteran in order to comment.

HOLLY RAICHE:

Are we listening to him? Are we getting this recorded?

SPEAKER:

I like to be anonymous. I just started in the conversation here but I was asked to turn on my microphone. I think it's a separate effort to make ICANN a more approachable and accessible organization. I think that's a critical effort, for sure, but I think trying to extend the concept of institutional accountability out to the undefined stakeholder, as of the Internet user, is an attempt to boil the ocean, and is impractical.

I think to do those two things in parallel, we just come up with legitimate accountability structures within the ICANN confines – that's one effort that needs to happen. Another one is to find better ways for the average person or small business. Those are the people I represent. I've brought them to ICANN meetings, and it's very difficult to get them to come to a second one, because they find the whole process very obtuse.

I think there's a lot that can be done in how public comments are handled, to greatly simplify the kinds of questions that are asked, and make it easier for people to understand. I think conflating those two things will make this task a philosophical one and not a practical one. That's just my...

HOLLY RAICHE:

I think what you've said is that if we're talking about accountability, it may not equal accessibility, except in the end, if our stakeholders are out there and cannot access us, does that then become an issue of accountability? We are not listening, or we don't make it easy to be listened to?

SPEAKER:

I do think that's a general problem, and again, one that ATRT has struggled with mightily and I don't believe have gotten yet. They haven't really come up with a solution for it yet. Again, I think the solution lies somewhere in boiling things down so that they're more approachable for periodic engagement. What ICANN doesn't really permit now is periodic engagement. You're either all-in or all-out in terms of how you participate.

The notion of periodic engagement I think is how you end up with wider engagement. I think that is a problem that needs to be solved. I think predicating an accountability structure on solving that problem will not happen in the timeframe that we've been given to try and solve during the IANA transition, etcetera. I think we need to find structures of accountability, and then we also need not just transparency but...

As Christopher said yesterday, you can have this obscurity through transparency, where I just throw so much information out at you that your mind has blown and it's functionally opaque. There needs to actually be a proactive effort at functional transparency, which I think comes through simplification. I'm a huge fan of that effort. I do believe that they're related. I think without that you don't have true global accountability, but I think structurally, building that into an accountability mechanism is impractical.

HOLLY RAICHE:

Excellent. Kerry is sitting here very patiently, waiting to talk.

KERRY BROWN: I think you've hit on a key point for me. I think back to the XXX, and when there was a huge public outcry from religious groups and everything. Twitter was full of it. People did not know how to contact ICANN or how to make their opinions known. That's a big part of the accountability – making it known and easily accessible for periodic issues, like he was saying, where somebody's interested in an issue, but not the general picture.

They're just interested in that issue. There needs to be a way for them to get input into the ICANN process.

HOLLY RAICHE: That triggers something this morning. We were talking this morning... I was at the ccNSO. Hands up everybody who does not know what a ccNSO is? Country Code Name Supporting Organization. Those are the .au... Okay? A question from the ALAC Vice Chair was about where can somebody find information in one place about a particular country code?

"How do I complain?" "How do I get a country code something," or whatever. The answer is, "It's publicly available. It's in the IANA site." Now, how many people wanting information about their country code registry are going to immediately spring to thinking, "IANA"?

SPEAKER: I can speak to that. I'm on the Board of Directors of our country code. Honestly, the best place to find out about country codes is Wikipedia. If you type in .ca, or .au, or whatever, you'll find the Wikipedia link to whoever manages it. You'll find the link to their website.

HOLLY RAICHE: Do you find no small irony in it's much easier to go to Wikipedia than it is to ICANN's website?

SPEAKER: Very much. It's ridiculous.

HOLLY RAICHE: Okay, so it's accessibility of information. Participation by issue, as opposed to sitting around this table, wishing that we're not sitting around this table – although I do wish I was sitting around this table. Are those starting to be some of the things we're going to make recommendations about? We still have to come back to accountability, because if we don't talk about accountability and transparency I will have failed.

Can we go back to the ICANN community, and either define it differently or split it into community for what? Everybody is back to being just... I think the only thing to do is be in little groups talking to yourselves. Scott?

SCOTT SULLIVAN: We keep talking about how to represent people. Are the At-Large structures not that mechanism? I'm sorry, but I'm here on behalf of a chunk of constituency that is very localized, that I spend the time to get to know, and know what their needs are, and then I come to these meetings. Yes, there are avenues for it to go in, and as Kerry was pointing out, local-oriented knowledge works a lot better in some cases.

The Wikipedia example. We maintain our own mailing lists and our own information. When you go to ask something a question, you don't necessarily know the words. ICANN doesn't have a meaning to a barber, but he's got a problem with his domain name, so he immediately turns to the first person he thinks might know. This is the degrees of separation problem. How many degrees of separation to the information they need is acceptable?

I don't have an answer, I just want to put that table as something for us to think about. Certainly my organization we get a lot of questions, because we are the people that support the end users. The more information I can put in their hands, when it comes time that the barber is asking, "What do you know?" my users, my professionals, my hobbyists will be able to say, "Go to ICANN and find this."

How do we resolve the problem so that it's easier for them to say that, as opposed to Wikipedia? I think that's a fundamental question here.

HOLLY RAICHE:

Am I hearing any consent, or is that part of our recommendation set? Carlos? No? Christoph?

CHRISTOPH [BUH]:

This is Christoph [Buh 00:41:28] speaking. For our discussion I think it would be helpful to distinguish several kinds of accountability, at least two. One is the accountability that Scott was just referring to, which is in a wider sense an accountability, or transparency also. The other notion, at least in my imagination, is the professional accountability.

It would mean that you have a semi-professional body that looks in more detail at whatever ICANN, or whatever entity is to be controlled does, and is also able to enforce rules, which has an interest in some kind of accountability of ICANN, is not able to do. Maybe we need to think about some terms to distinguish that, because the two discussions constantly overlap.

HOLLY RAICHE: Garth, you're going to write on the butcher paper. Does anybody have legible handwriting? I don't.

SPEAKER: I'll try. I do it in front of a large group of people and they don't complain too much.

HOLLY RAICHE: Okay. I want to put on the board, "Accountability – two kinds," because I think this works. We have the ATRT 2 type, which is an almost internal accountability, or internal to the ICANN community. Do we know? Jonathan one is...

JONATHAN ZUCK: Ironically, I think part of what ATRT has tried to address is in fact external accountability. When you look at how comment periods are handled, are the discussions that take place in the meeting happening before the end of the comment period? Are things boiled down in a way that they're accessible for anyone to try and understand? To me, those

are the mechanisms of periodic access or periodic involvement in the ICANN process.

In that way, ATRT are dealing with external accountability. In fact, this new process that was somewhat motivated by the IANA transition, there's now a separate accountability effort that's taking place, and it's more about what it sounds like you're about to call "internal accountability". I guess I would say that one is a kind of structural accountability, and the other is public accountability/accessibility.

I think it would be easy for ALAC to say they need to go hand-in-hand and that there could be a footnote that says, "Here's the structural mechanisms for accountability that we think ought to be put in place, but we also, as the ALAC, believe that these will not be entirely successful without also improving the organization's accessibility in these areas.

"True accountability to the world and the stakeholders around the globe will come through greater accessibility," or something like that. I guess I'd say structural accountability and public access and accountability. They're maybe the two types.

HOLLY RAICHE: I've got to start talking here.

OKSANA PRYKHODKO: Yes, any judicial mechanism for informational requests to ICANN. To whom can I apply this informational request? Who will control reaction

on this informational request? For example, law on access to information plays a very important role.

HOLLY RAICHE:

I think there are a couple of answers on that one. You can generally, going through the ICANN website, if you're a little bit familiar with it, get an awful lot of information. There's a huge amount of information. If you're talking about the concept of freedom of information, what you're talking is freedom of information in relation to a United States, Californian-based company.

You'd have there the relevant freedom of information laws that would apply. That's a fairly narrow way of looking at the information. Not just what people have to put into the public, but what they do put into the public domain as a matter of course. Every corporation will always have information that is not made available, and that is how it should be. The question is where the line is drawn in terms of, is something commercial in confidence and therefore not available?

There is usually a list of exceptions to freedom of information, under freedom of information laws. That tries to strike a balance between the protection of an organization, as opposed to the sorts of information that should be made public. One's a legal answer and... I think we're not dealing with the legal answer here. I think we're dealing with what information should be made available to the greatest extent possible. Jonathan?

JONATHAN ZUCK:

I guess I'd say that ICANN releases a lot more information than is the norm. There's quite a bit of information. I think one of the questions is how they make that information available. I think what you're asking is, is there a point of entry for the public to ICANN? There are several. You can reach out to staff with a question, by posting it on the website.

You can reach the Ombudsman office within ICANN if you want to provide feedback into the organization, and there are the public comment periods that are published. If you go and look, you'll see the list of open comment periods, and those are in fact open to the public. Whoever responds to them, their comments are incorporated into the summaries that are created by the staff.

There are points of entry into the organization, all of which could be better, but they exist at least. There are ways to get in touch and to get questions answered, if you want to.

SCOTT SULLIVAN:

That certainly addresses transparency, and I think we are right in separating out transparency versus accountability, because I don't think that answers the accountability question, at all.

HOLLY RAICHE:

What I'm going to do is put up a slide that ICANN itself publishes about its accountability. I think we ought to have a look at that and see if that actually answers the questions, or if it raises more questions. That's ICANN's view of its accountability, and we're finding it.

JONATHAN ZUCK:

Just to answer your question, those are meant to be mechanisms of accountability, because they are entry points into the organization – a means to raise an issue with the Ombudsman is a form of accountability, to provide public comment on topics where decisions have been made or are in the process of being made, through the gNSO process... Those are meant to be mechanisms, not just of transparency, but of accountability, because they are mechanisms to take input from the public.

Again, I don't believe that they in any way are sufficient to mechanisms of accountability, because they're a little too insidious in a way, right, but I think that they are meant to be mechanisms of accountability. It's also to request that the Board review one of its decisions. That will be on this slide as well. There's another way to get some form of accountability from ICANN, by asking the Board to read something called a reconsideration request that they have to then decide on, etcetera.

There are mechanisms of accountability that are on the slide, that we're about to see. The question is whether or not something needs to happen that's somehow external, I think, to ICANN, in addition to the internal mechanisms and improving those.

SCOTT SULLIVAN:

Thank you Jonathan. That's a lot more clear. Thank you.

HOLLY RAICHE:

We'll go back to...

HONG XUE:

Jonathan, I have a question for you. At the ATRT group we mentioned external and internal accountability, and [unclear 00:50:28] external accountability primarily means it is handled through external mechanisms like AOC or NTIA stewardship, or even the judicial review by court. That's what I'm understanding the external accountability... Right, so it's external to the ICANN institution.

The internal means like an ICANN Board reconsideration. That's the internal. For the ATRT 2 you talk about many internals. There's reconsideration IRP, did you also talk about the external one? Yesterday I heard from you – you mentioned the judicial. That's quite interesting. You mean in addition to the current jurisdiction that's based on ICANN registration? You mentioned another domain name court, like an international court?

JONATHAN ZUCK:

Right, and it wasn't me. My little sub-group suggested the possibility that an additional accountability mechanism may be some kind of judiciary, if you will. Maybe that's the wrong term to use, because that usually means judges, right? Some kind of judiciary that's made up of the community is what we were talking about with group one. It's the idea of should there be an appeals process above the Board that is in fact back to the community itself?

So a permanent cross-community working group, I think, is a better way to put it than a judiciary, but it could play a judiciary role. That was the recommendation of group one yesterday. That's on top of the mechanisms that currently exist. As you say, you can take them to court in California as well. To-date, only contracted parties have done so,

because they've got a clear path to court because of contracts. In theory though, any of us could take them to court in California, and you don't need to be American to do it either.

In fact, I believe that things like the AOC are more valuable as a commitment than they are as a contract. In other words, when ICANN makes a promise to operate in a certain way, they actually fall into the jurisdiction of all consumer protection agencies around the world, that I can then go to the European Commission, for example, and actually bring about a review of ICANN's adherence to its own commitments under European law, because they made those commitments publicly.

HOLLY RAICHE:

Okay. It's hard to read the script, but I can help you a bit. This is an ICANN chart. This is how ICANN views accountability in its own context. For those of you who are not reading on the screen, it says in the little text up on the upper left, "ICANN has a proven commitment to accountability and transparency in all of its practices, in order to reinforce its accountability and transparency, ICANN has established accountability mechanisms for the review of action or inactions taken by the ICANN Board."

In one sense, this is already limited. This is the context of how the Board sees its accountability. Garth has a comment. Garth?

GARTH GRAHAM:

Early this morning, when we began the discussion with very few of us still in the room, I made the point that ICANN was incestuous, with respect to issues of accountability. Alan chose to inform me that I didn't

understand the concept of ATRT 2, and certainly that document reinforced my sense that ICANN was incestuous. This document really does it for me in spades. That comment about members may raise questions to the Board is a “circular argument of insidious intent” – to quote T.S. Elliot.

It is completely internal, and there is nothing inherent in this process that reaches out to create a climate of global acceptability for ICANN. It’s just not there. I think that some of the notions I’ve heard since then about periodic, or issue-specific kinds of things, actually work towards what I called yesterday “answering before the fact” or “clear statements of intent” or “impact statements”.

They are simple devices that you can use to say what it is you intend to do; what task are you addressing. So people can find that someone is addressing a task and what that task is. After the task is done they can say, “What was the intent, and was the intent achieved?” Those kinds of mechanisms need to be built in when you move towards global acceptability, but this is purely incestuous.

HOLLY RAICHE:

A couple of comments, and then we can go on with the conversation. I think there is a place for internal accountability. I think what I’m hearing you say is this is not the whole story. This is ICANN trying to check on its own processes. We’re talking about something else. We’re not necessarily not talking about this, but if we’re talking about it in the IANA context, then I think we’re talking about something else as well.

The other comment I would have is if you look at the Ombudsman stream, which is the third stream, I once asked the Ombudsman about how many complaints he gets and what happens to them. The interesting thing is that 80% of the complaints he gets are beyond his jurisdiction. He can only handle what's in his remit, which is very small. One of the recommendations of, I think, ATRT 2 was expand the remit, because you'd have to say, "Where else do you go?" because most of the work he does is refer people someplace else.

I said to him it would be interesting to know, even as a research project, what kinds of problems are people bringing to him that they cannot solve. That would be a very valuable resource, for the organization to know what people are troubled about. They see the word "Ombudsman", they go there, and the first thing they're told is, "I can't help you."

Now, he does take the second step and he does then point people to some place else, but if we're looking at external looking at internal, and trying to work out where to go, the obvious channel does not have jurisdiction, most of the time. Maybe one of the recommendations is to look at if his jurisdiction is not being expanded, then how do you handle complaints that people have, if it's not an Ombudsman? Kerry?

KERRY BROWN:

You've hit on a very good point for me, that there needs to be either the Ombudsman or somebody within ICANN that is responsible overall for tracking this type of thing. Then things won't fall through the cracks. There needs to be some sort of mechanism within ICANN that when a complaint or a question or something comes in, that's tracked.

Was it answered? Was it not answered? Where did it go to? How was it dealt with? Then when problems crop up, that things aren't getting handled, ICANN knows about it and can come up with a mechanism to handle it in the future.

HOLLY RAICHE:

Maybe that is one form of accountability, which is when people try to access ICANN, how are they being dealt with?

JONATHAN ZUCK:

The other entry point is contractual compliance. They receive a lot of external inputs as well, again, often things that often fall outside of their jurisdiction. I think that one of the reforms that Maguy is trying to put in place – Maguy Serad is the Head of Contractual Compliance – is to find a bucket, at least for everything that comes in, even if it doesn't fall under their remit.

Kerry's onto something – that there ought to be a global database that both the Ombudsman and Compliance feed into, so that there's some sort of issue tracking even for things that fall out of people's little fiefdoms, but there's quite a bit that comes through Compliance as well, from typical end users. "My registrar wouldn't give up my domain, because I want to change registrars," or, "They expired it and they took it away," or things like that.

They're all things that come through. Those are more typical user complaints, if you will, that are actually coming through Compliance.

HOLLY RAICHE:

Do we have any further...? Maybe one level of accountability is an understanding of the people who approach ICANN, generally online – because there isn't too much else you can do – for what information, and complaints, whatever, and was the issue addressed? We could always just look at the website, the homepage, and see how easy it is to navigate. I think that's already led to a couple of recommendations.

Are we happy with that? That goes to, by the way, accountability to the larger community, does it not? If we're talking about accountability, and we're talking about the larger community, that's one way of being accountable to them. We haven't talked a lot about internal accountability, and maybe I can just... Do people want to go through this chart to see if there are holes in this chart?

Garth, you just gave up. You threw your hands up and said, "This is proof of incestuousness. I won't deal with this."

GARTH GRAHAM:

That would be a conclusion that's different from my point. This is clearly ICANN's statement of accountability. It says, "If a Member has something that bugs them, this is how the Board sets in motion stuff so that they can be answered." To paraphrase. ICANN felt that need and addressed it in this manner. I'm not questioning that. There is a need for internal accountability and this is how ICANN does it. I don't know it well enough to know what the gaps or what the differences are. No, I'm not rejecting this. It's a useful tool for what it does, it seems to me.

JONATHAN ZUCK: ATRT 2, as you said, did go through and look at these internal mechanisms of accountability, and made recommendations for strengthening them. To some extent, that exercise has been gone through, in terms of finding the holes in this. The question is, what are the holes that this leaves in overall accountability? I think that's Garth's point. What do we need to do that isn't even attempted to be covered in this diagram?

HOLLY RAICHE: I think that's the next issue. Do we want to spend 15-20 minutes on saying what we're starting to do is have two streams of accountability? One is to the larger community, and we've started to flesh out what that is. The other is internal, in the sense of ICANN to its own community. We've got to tackle both. I think both are important, or am I wrong? Are people comfortable with working on recommendations for both?

What I'm thinking of doing is saying we can all go and have coffee, because I'm just looking at that cup of coffee going, "Mmm," and saying one side of the table can go, sit and have coffee and work on perhaps internal, and the other external? Or do we just want coffee?

JONATHAN ZUCK: I guess I'd continue to be concerned about that distinction between internal and external. I think what we're talking about are two different forms of external. That's why I was saying structural versus accessibility, or something like that. That's the distinction. This is the internal, and I think we're not trying to rehash the work of ATRT, but instead say,

“What’s necessary beyond what currently says ‘internal mechanisms’, and what should the external mechanisms look like?”

Then there’s this notion of structural, external accountability, and then the more ethereal, but just as important, global accessibility and accountability, through practical transparency, as opposed to impractical transparency. They’re both external, I think.

HOLLY RAICHE:

We’ve got a bit on the butcher’s paper, which we will fill out. We’ve got Hong and then Scott.

HONG XUE:

I think we should follow what Holly mentioned. Let’s see where the holes are in the current picture, presented to us, and are there some gaps about the internal accountability that have not been addressed by ATRT 2? For example, yesterday a young man mentioned the issue of dispute resolution policy. I guess that’s something that should have been addressed by ATRT 2 but has not. Actually, ccNSO made a submission to comment.

How do you improve? The DRP is [outsourced 01:07:52] of decision-making, but sometimes you go back to the ICANN Board. You see the string confusion decision and there’s so much inconsistency. ICANN Board will have to take it back and take some ad-hoc approach to review that. I guess that’s something interesting. Another thing, I think we should go back to is Jonathan’s mentioning about cross-constituency review group.

They review the decision of the ICANN Board. This has been mentioned in the ATRT 2 report already, but that is the cross-constituency working group to review the IRP. In our discussion we want to talk about something new, or we want to talk about to reform and improve the IRP.

HOLLY RAICHE:

Scott has the pen. Now, how are we going to capture Hong's suggestions? They're very good ones. Meanwhile, Garth can talk. Do you have something to add? Then Scott, because you're going to put up Hong's stuff. Hong, can you help him formulate it? We've got accountability...

GARTH GRAHAM:

I feel that I'm repeating myself, and yet I am not sympathetic to the task of filling in the gaps in this, because the problem that confronts ICANN is moving out from under a controlling influence from the US Government, onto a world stage where it has to be, in some sense, accountable in some way. To me, that's the issue that needs to be addressed. That's the area in which we need to make recommendations. It may be ethereal, but it's still the reality.

Splitting it into the two tasks, doing the internal and doing the external, I don't think there is an internal review necessary for discussion in this group. I think it is the external orientation of accountability and transparency that needs to be addressed. I think it's Scott's example of how to make it relevant for the community that he represents. That's where we have to push our thinking, and that's not easy to do.

HOLLY RAICHE:

The only comment I would have at this stage is to point to Hong and some of the things that were in the ATRT 2 about how to handle some disputes and stuff, that are external. How do you deal with, first of all, transparency where you go, and then... Another example, another Working Group I'm in is the IRTPD, and it's about the access of a registrant to a particular DRP.

Now, registrants cannot initiate and cannot be party to it. If a domain name has been transferred wrongly, and their registrar cannot take action, then they really are up the proverbial creek without a paddle. What the group has been saying is that there are two things that need to be done to address that.

One is to say registrars, if they are requested by the aggrieved party who's lost a domain name, Compliance ought to be able to say to the registrar, "Don't drag your feet. You have to initiate a process on behalf of the registrant, because the registrant is not part of this process. They're not a party." The other is to put on the website, in words of the English language, that can be easily translated, how to go about that.

Now, in one sense, that is a very internal process. How many people are going to actually look at the website, the IRTPD? You're not. You're not going to see that unless you're in the community going, "By the way, the internal processes have to be looked at in terms of dispute resolution, for the benefit of the external, who has just been aggrieved." I'm not sure I actually agree that we're looking only outward.

A lot of the inward stuff absolutely impacts on the outer. End of story. Now, are people dying for a cup of coffee? I'm not going to let you go... What task can I assign to you so that the coffee is constructive? We

have to come up with recommendations. I'm already seeing some, but Heidi said we need ten. That's the price for the water.

SCOTT SULLIVAN: I think quality over quantity is preferable here.

HOLLY RAICHE: We'll trade water for quantity, okay? Well, I still think, Hong, can you lead a discussion about your feelings for improvement of internal processes?

HONG XUE: For the internal part, to my understanding, there are two gaps we can attempt to fill. One is the DRP review. It's become quite messy. For the compliance, you raise a very good point. How to make Compliance accountable.

HOLLY RAICHE: We've been trying for months, years.

HONG XUE: Yes, especially for registrants or users. That's a very good point.

HOLLY RAICHE: All right. We're all going to go... Do you want some coffee? We'll bring some coffee. We're going to have some coffee. We'll be back here at quarter past. Now, a couple of discussions – I want at least a look at the internal that impacts on the external. The other is the external, and

maybe we can flesh out along Jonathan's lines, which are the structural and...?

JONATHAN ZUCK: The structural accountability versus the accessibility, or something like that. How do we get external accountability to the people we don't know yet?

HOLLY RAICHE: Scott is probably going to lead that one, because you're the one who has all these constituents who want to know the way in. If we can come back... We've got to come up with some recommendations.

SCOTT SULLIVAN: I don't necessarily want to know the way in. I just want them to be peripherally aware so that they can direct people, whether they know it or not.

HOLLY RAICHE: It doesn't matter. We're following up on, if you will, the accountability of ICANN, in the sense that people can actually understand it's there, understand how to access it, and what recommendations might follow from that. That's broad-brush. Now, we've got to have coffee or tea. Is there coffee down in the...? Downstairs, all right. Otherwise everybody's not going to... That's for ICANN staff.

[TAPE CHANGE TO ATLAS II ACCOUNTABILITY TRANSPARENCY 0800 2]

HOLLY RAICHE: One of the questions I was asked was what does Jonathan mean about structural accountability, and who are the two audiences. I'm going to let you explain.

JONATHAN ZUCK: I guess I'll do my best. I think, just following on what Graham said earlier, this particular accountability exercise has been motivated by an understanding that where before there was some backstop, or mechanism, or external accountability, that was in the form of Department of Commerce, that is in many ways ill-defined – it was the power of the IANA contract – imbued the Department of Commerce with some kind of oversight that wasn't really used in any significant way, but existed.

There was a certain confidence that you had someone you could go to that could exercise some control over ICANN, the ICANN of the future. It's not even about looking back, but about having that backstop. Because that's the motivation of this exercise, I think as Garth pointed out, it behooves us to focus in on what we are trying to do structurally, and responsibly, to replace that albeit abstract external accountability and mechanism with a new one.

Again, I think that there's a lot of very interesting conversations that are coming up about the global stakeholder community and how you become accountable to that broader community that as yet don't even know ICANN exists. How are you accountable to people that aren't on

the Internet yet? How are you accountable to people that use the Internet but don't understand how the DNS itself is managed? Etcetera.

I think that those are big questions and I think they're worthy of some answer, but I guess what I mean by "structural mechanism of accountability" is, as Graham put it, an attempt to create a long-term, formalized replacement for the, as yet, ill-defined role that NTIA was playing. These other questions are broader questions that are very much worth of mention in these recommendations. We need to find mechanisms of greater accessibility that will lead to a more global accountability.

I think that trying to accomplish all of that in this short-term is trying to boil the ocean. If I try to come up with an accountability mechanism that someone that's not on the Internet yet, but will be next year, in an island somewhere, feels very theoretical and impractical. We owe it to ourselves to make concrete recommendations about any structural changes we think are necessary in the near-term. The IANA transition is happening to make sure there's some kind of replacement for the role that they played.

The distinction I was trying to make between what I was calling – and these could be horrible terms, I don't know – structural accountability mechanisms – in other words, what is the actual body, what is the actual process that we use to question the decisions that are the actions of the Board and staff of ICANN Inc?

Then as a separate question that we can suggest needs to also be addressed, but I don't believe that in the next we will address it: how do we make ICANN, the organization itself, more accessible for

participation by the broader global community? Those are the two different kinds of accountability that are both external. One is the structural accountability that comes in the form of replacing NTIA.

The other is this structural accessibility, if you will, that we think will ultimately [unclear 00:15:07] global accountability, that isn't going to be an ongoing challenge for the ICANN community to remain open for newcomers. Does that help?

HOLLY RAICHE:

Thank you. Is everybody clear about that? Good. I didn't hear any dissent. If you talk quickly enough, you don't. I would ask a question: in terms of the IANA transition, do you necessarily need another external body, or are there other ways to build in accountability through MOUs, through report-backs, through whatever? In other words, do you have to create something else, or do you strengthen accountability mechanisms?

The reason I say that is we're talking globally, so you don't have the opportunity of... In a national sense there are always national laws and national governments, readily used forms of accountability and holding people to account if they don't do something. We're talking in a global environment, and if you've got international law – and for the lawyers around here, there are always issues in enforceability for international law, because you're dealing with national sovereignty.

If you take away a contract between a body that's a corporate entity that exists, and a government, and the accountability and enforceability is very clear, take away that relationship. Do you necessarily need to

create something else? If you do, does that solve the issue or does it, in international terms, become very problematic?

Are there other ways to do that? That's just a long-winded way of what I was just saying. Siranush, we've all introduced each other. She's my replacement.

SIRANUSH VARDANYAN: Siranush Vardanyan. APRALO Acting Chair from Asia Pacific region. I'm originally from Armenia.

HOLLY RAICHE: Still from Armenia!

SIRANUSH VARDANYAN: Yes, still from Armenia, but attached to Asia Pacific more, so some kind of intermediary between Europe and Asia. Lovely to be here. I just came from another TG so I'm trying to catch what's going on here. Thank you.

HOLLY RAICHE: Okay. Does anybody want to sum up and not leave it to me? Scott, you can start to sum up. We can then have Garth summing up. Siranush is a stranger to the discussions we've had over the past day and a half. Then we're going to ask you for your input.

SCOTT SULLIVAN: Where to start? We've been working on the issue of accountability and transparency. We've got issues of what does that even mean. We've

got issues of accountability and transparency, which are two different things. One of the definitions we came up with is accountability is the responsibility to answer for how you got done what you committed to do. We're starting to realize that this is a complex definition problem. Our goal, we've decided, is to come up with at least a model at which to judge potential mechanisms for this. Am I correct? Anyone want to correct me there?

HOLLY RAICHE:

You see, they've trained me. We've certainly asked the question in terms of a definition, and we've got... The questions are, accountability, for what? Of whom? By whom? To whom? Then, are there consequences? If you don't do what you're supposed to do, does anything happen, or not? All of those things are tied up in accountability. We've also then, this morning, been trying to grapple with accountability, as in accountability that ICANN has within itself.

What we've thought about is ATRT 2 and the document we're looking at are very internal. It's ICANN's accountability of its actions, for its actions, to itself, and what are those processes. Garth has pointed out that in fact that is almost incestuous. In fact, we're talking about global accountability. Some of the discussion has talked about accessibility of information. How do people get into ICANN?

How do you participate, if you only want to participate on one issue, and you don't want to become part of the whole ICANN circus? Are we bombarded by too much information? All those issues of access for a non-ICANN person to an ICANN process. We've also looked at there are ways in; the Ombudsman, Compliance, and is anybody tracking what

those two avenues bring up in terms of issues raised. Is anybody looking at the data to find out how better to improve ICANN performance to its external stakeholders?

Finally, we've been grappling with the concept of accountability in a post-NTIA contract world, which is what Jonathan was talking about. In terms of, we've had a contract with the US Government. Although that may have been seen as a fail-safe if anything goes wrong, somebody can press a little button and there's a solution – do we replace that with... There's some discussion on the middle sheet on that. Do we replace that with another external body?

This is the question I'm asking. Do you create something else to replace the relationship between the US Government and ICANN, for ultimate responsibility? Is there another mechanism? If so, what is it? We're starting to come up with recommendations in terms of access, ease of access, monitoring, but then we've got the harder questions. Siranush?

SIRANUSH VARDANYAN:

Just coming from the Multistakeholderism Thematic Group – and we were discussing what multistakeholderism is. To my understanding, it's also enhanced cooperation. To that point, probably I completely agree that accountability is responsibility, but it also needs enhanced cooperation of all stakeholders involved. So we should not only ask for accountability from ICANN, but to some extent, being a stakeholder within ICANN, we should also show our accountability towards what different stakeholders are doing.

The transition of this IANA function is also – the basis for this – is enhanced cooperation. We want all stakeholders to be involved in that. Transition period, and then for the final part – we are coming to the point where we all should be responsible for that. To that extent, it's at least my understanding – and it might not actually fit into the whole discussion you've had up to now – but that's how I connect, for now, the accountability and enhanced cooperation and multistakeholderism, in a way.

GARTH GRAHAM:

At this point, I'd like to frame the question of structure a little bit differently, and try something on for size. Elinor Ostrom has defined eight principles for the management of common pool resources. I would argue that in fact ICANN is responsible for the management of a common pool resource, so that all eight principles apply. It would take me half a minute to read all eight of them. They're very simple:

"1) Clearly defined boundaries and effective exclusion of external unentitled parties. 2) Rules regarding the appropriation and provision of common resources that are adapted to local conditions. 3) Collective choice arrangements that allow most resource appropriators to participate in the decision-making process. 4) Effectively monitoring, by monitors who are not part of or accountable to the appropriators.

"5) A scale of graduated sanctions for resource appropriators who violate community rules. 6) Mechanisms of conflict resolution that are cheap or of easy access. 7) Self-determination of the community recognized by higher-level authorities. 8) In the case of larger common

pool resources, organization in the form of multiple layers of nested enterprises with small, local common pool resources as the base level.”

I think that’s a useful checklist to apply.

HOLLY RAICHE:

Some of them may be problematic, because my question was, do we actually talk about... That talks about some higher level. Well, how do you go higher level if you are a global body and you’re already at an international level? Are we talking about that you want the ITU to come in? There will be people who have thoughts about that. If that’s not the case – and I suspect it’s not – then we’re back to my question to Jonathan. What are we talking about?

Are we talking about external accountability in terms of interacting agreements, whatever? Are we talking about creating some overarching body? Nobody has an answer. We can park that one, because Hong, you did some work on internal accountability. Now, before we took a break because we were all frozen, we separated accountability, or at least looked at some of the issues of accountability within ICANN process, that came out of ATRT 2, or other experiences, where in fact there were the gaps that we thought there might be, in terms of accountability.

We’re going backwards here into internal accountability, as opposed to that external accountability that Jonathan was talking about. Hong, we’ve got...

HONG XUE: Okay. We're now going to the most difficult part – NTIA stewardship. IANA stewardship transition. Yes, this is the difficult part, and it seems ICANN's attitude may not be agreed by us. ICANN tried to split the transition from the general enhancement of accountability. This has been made very clear. Before we formed the group we asked ICANN staff why ICANN in that important scoping document believe accountability is a separate but parallel process to IANA transition.

The answer is that the IANA transition is a very specific process, but accountability is a more general one. We would not mix up these two. For the transition, it is a clear targeting day. It's a clear mission. It's its own scope. So for that one, we need to look within that little universe, and not try to dilute in the general accountability mechanism we're considering to enhance or improve. That is ICANN's interpretation.

HOLLY RAICHE: Okay. I think I want to go back though to what you've put on the butcher paper, because that was accountability within ICANN. We will deal with stewardship and stuff, and that's got its own set of issues as well. Can we just see if recommendations come out of the internal workings of ICANN? As Garth said, it's not that the ICANN internal accountability document that we looked at this morning is irrelevant. It's very relevant, because it's how ICANN sees its accountability to itself. In that context, that piece of butcher paper is about that issue.

HONG XUE: Yes. If we're not thinking about NTIA, that's complicated. Let's go back to what we had discussed in the session, before the coffee break. We

went to the pod. It's not being showed on the screen. For example, if the ICANN Board is making a decision that some of us believe is not consistent with ICANN bylaws, is there any appeal mechanism? Where can you get remedy?

Now we have this process. It is existing. It's called IRP. This one, even Fadi mentioned at the opening session. It's very difficult to use. This is really process-heavy. There is actually a logical loophole here. Who is appointing these independent reviewers. ICANN Board makes an appointment and they are reviewing the ICANN Board's decision. Is this the right conflict of interest, or are we circling around?

In the ATRT 2 Final Report, which Jonathan gave us details on, there's actually a recommendation to form a cross-constituency working group to review how to improve this. I don't know if you have the background information for this?

JONATHAN ZUCK:

I wasn't on the ATRT Review Team, but read it. There are some specific recommendations for creating a cross-constituency group for reviewing the IRP process, for example. I think what we were getting at in group one yesterday was the idea of creating some kind of a permanent cross-constituency group, whose purpose was in fact ICANN oversight. That there will always be groups that are set up for a specific purpose, but the idea behind the recommendation was to create something that existed indefinitely and was amended to the bylaws of ICANN in this cross-constituency group.

That would include all the SOs and ACs, etcetera, and would be an oversight committee to which you could easily bring an appeal if you thought the actions of the staff, the Board, were inappropriate or not reflective of the views of the community that they serve. Just to clarify the recommendation, I think that's what the idea was there. The answer to your question, Holly, about whether or not we can set up another body, I think it's possible to set up a body, like a cross-constituency working group, that doesn't trample on international jurisdictions and things like that.

It's still just about organizational accountability. I believe that governments still have a very important role to play in the accountability of ICANN – both as a participation within the community, as an AC, but also through the existing consumer protection mechanisms that they have in place. There are means of appeal around the world, and it's somewhat irrelevant that ICANN is a California corporation for these purposes, because ICANN profits from customers in every single country.

Every domain registration leads to a fee that goes back to ICANN. Any public commitments that they make are in many ways more powerful than any of these previous MOUs, or even the AOC, which with 120 days notice can be walked away from anyway. One of the recommendations we might want to make is about taking the primary tenants of the AOC and building it into the bylaws. Right now it's a bilateral agreement with zero teeth.

The AOC is really just a commitment, so why not make it a structural one? The more that ICANN makes a public commitment to behave and operate in a certain way, they are declaring their jurisdictional liability

around the world to these consumer protection agencies – like the FTC, the European Commission, and the equivalent in Australia and Latin America, etcetera. Those kinds of agencies exist everywhere, primarily to hold corporations to their promises.

The extent to which we get ICANN to make promises about how it will operate, they will create jurisdiction for governments to enforce those promises. I think that role will continue to exist, and be a powerful one. I think the idea here is to create a more streamlined, more accessible process, to do an appeal above the Board, to suggest the community does sit above the Board and not the other way around. I think that's a mechanism that could be a powerful replacement for the more abstract role that was played by NTIA.

HOLLY RAICHE:

Thank you. Do we have any comments? Additions?

[ASHAR]:

My name is [Ashar ? 00:37:36]. To refer to Hong, your earlier comment about the IRP, I was at the meeting yesterday when they were referring to the .africa situation. I Googled it and I found the body that was appointed by ICANN, and it's called the ICDR – International Center for Dispute Resolutions. By their very nature, they are arbitrators, so they have to be neutral, otherwise they're not going to be accountable to their owners. They have to be neutral.

I own a small company. If I had a dispute with someone and I don't want to sue that person in court, I could go to an arbitrator or a mediator. I could appoint an arbitrator company or a mediator company, but

they're not beholden to me, even though I appointed them. In that sense, I'm confident that this body that ICANN has appointed will be neutral. That's my view.

The second point I wanted to mention was I support Jonathan's suggestion of an overarching body, which is cross-constituent, to be the overarching body that would look at, or be, the party to which ICANN would be accountable. I think that's the only way, because we're already at the top. We can't go any higher. We can only form a group that's consisting of people like us, to oversee what the rest of us are doing.

HONG XUE:

Thank you. Three points. First one, for the IDRC, this ICANN Board-appointed dispute resolution service provider, to my knowledge, they are running a DRP, not really an IRP. ICANN is a complicated place. WIPO is also a service provider. This independent review panel is different.

It's only been used once, significantly, for this .XXX. In that case, ICANN Board specifically appoints retired judges and forms a small ad-hoc court to trial whether the decision on .XXX is consistent with ICANN bylaws or not. Eventually, the IRP makes the decision to dictate to the Board to approve .XXX. That's the most significant use of IRP, and [unclear 00:\$0:25]. It's different from dispute resolution policies.

We handle the trademark conflicts. We handle the registrar transfer issue. We handle the public interest commitment. That's different. In

that case, the ICANN Board appoint an organization. It could be WIPO. It could be IDRC, to trial the cases. These are two different processes.

HOLLY RAICHE:

Could I intervene just to say what I think you're saying? I think you're saying we have an IRP, but the process of review is of the Board, by a body that's appointed by the Board. Saying that must get everybody a little bit offside. Essentially, I think what you're saying is we should have a cross-constituency working group that, as a standard body, has that oversight so that it isn't that the Board looking after the Board.

Then it's the whole of the constituency that has a review function, rather than that structure where arguably there isn't an independent review. Maybe one of our strong recommendations would be the Board should not be in a position to appoint the people who are going to arbitrate what it does. Does anybody have a problem with that? Okay?

[ARSHAM]:

May I? I think there are benefits to outsourcing dispute resolution to bodies like the ICDP or many other companies, like WIPO, for instance. There are benefits to outsourcing, because they're experts. They know what they're doing. They are experienced arbitrators. I don't think they're mutually exclusive, to have an overarching body as well as to outsource.

HOLLY RAICHE:

I don't think that's the point though. I think the point is who appoints the arbitrators. If it's the Board I have a problem.

HONG XUE: Let me explain this simply. For the DRP it is below the ICANN Board, even the ICANN Board [like 00:42:58] WIPO to make a decision. The ICANN Board is finally accountable to this. It could be brought back to the ICANN Board to review. For the IRP it's above the Board. It's to review the Board decision. That we're thinking about. This is really hierarchy. It's higher level. Who is overseeing the Board? The Board is the final decision maker within ICANN.

HOLLY RAICHE: I think in the context of what we're saying, we've now looked at the situation where if you remove a contract, which is the Department of Commerce and ICANN, which was the ultimate sanction mechanism, obviously never used, but in people's minds a final arbitrator mechanism – if you take that away, what do you have? What I think Hong is saying is if all we've got is an IRP, which is appointed by the Board, then in fact you're having the Board monitor the Board. That's the problem.

JONATHAN ZUCK: Part of the problem is scope also. The IRP process, at least as is currently defined, can only compare the Board to the articles of incorporation and the bylaws. So it's a fairly narrow scope of review as well. I think the idea is is there a more fluid and dynamic thing to put in place, to provide a dynamic oversight of Board decisions?

It's not really an arbitration in that case. It is in fact an appeal mechanism, which is very different than dispute resolution in the normal sense. It's actually a body that's empowered to be with an oversight,

and therefore overruling capability. It's not about going to somebody and saying, "You make a decision." This abdication of responsibility to a third party is useful in certain instances, to make a decision between two parties.

I think what we're talking about here, accountability is actually an organization of some sort, that has power. It is in fact the new ultimate decision maker, rather than the Board, in some respects. It kicks things back to the community and says, "No, this isn't right." It doesn't necessarily have to do with violation of the bylaws, but instead a decision was made that wasn't reflective of the bottom-up multistakeholder process, that is supposed to be the underpinnings of ICANN as an organization.

I think that's the distinction. The two are not mutually exclusive. This shouldn't go away. It's not a replacement for it. It's really a question that, to an extent, if it's a replacement for anything it's a replacement of the NTIA. Hopefully it's a much better one though, a more interesting one.

NTIA was such an abstraction that while we felt some confidence that they were there, and they provided a discipline on ICANN in a very light-handed way, I think that more so, this is an opportunity to put something in place that's actually more sophisticated, more dynamic, and more responsive than NTIA ever would have been, frankly. I think it's about not missing that opportunity to build some true, external accountability mechanisms in ICANN.

HOLLY RAICHE: Thanks. I've got [Janger 00:46:42].

[JANGER]: This is [Janger]. I'm not so much an expert in accountability and transparency but with my initial experience I think we're in a loop to find out the way. If the Board didn't take the full decision, how can it define accountability? I think we need to point out this decision, this point, that if the community defines the policy or process, or other stakeholders define the process, and prove it or not, then I think that ultimately we [unclear 00:47:22] Board. I think we can find out the way of how we can finalize the decision, with the Board and with our other stakeholders.

We need to adjust the Board and other stakeholders, and then the Board has to define the way to make the policy. I think we're now in a loop and we need to break the loop, because ultimately we're going to the Board decision. They'll discuss it in the Board, and I think we can minimize that and we can define other stakeholders, [unclear 00:48:03] stakeholder define the policy, and define the accountability and transparency. This is my initial observation, actually.

HOLLY RAICHE: Do we have any further comments on that? I think we're at the point of recommending a cross-constituency group, written into the bylaws, that is more an appeals mechanism than just a dispute resolution. Now, do I have that correct?

HONG XUE: Just to try to understand what I've talked about, for this cross-constituency group we've talked about three things, to my understanding. One is independence – who appoints them. The second one is scope. It seems we want to have a global accountability mechanism so they can really review all the decisions. As Jonathan said, currently it's very limited. The third one is this permanent design. So far it's very much ad-hoc. It's case-by-case. If it's a permanent existence... I think these three points could be important.

HOLLY RAICHE: We probably need to say scope, which is the first thing. Independence... Almost by definition, if you're saying this is cross-constituency, and you're saying independence, how do you square that? Theoretically you're saying people are appointed from a constituency. If an individual joins a board, they leave behind their individual loyalties and they're a member of the board. That's just governance training. Does that satisfy what we mean by "independence"?

SPEAKER: I think the point actually is to operate differently and to make these folks be representative of the organizations that they come from, right? If it's a cross-constituency group, these people are in fact representatives of the constituencies, which is distinct from the Board, who has to build an allegiance to the organization – ICANN Inc. – and set aside previous affiliations and allegiances.

I think this cross-constituency group would in fact do the opposite and remain affiliated with those constituencies. Once again, that appeals

mechanism would be intended as a return of decisions back to the community, in a structured way, to potentially overrule decisions by the Board.

HOLLY RAICHE: Okay, that's what I thought you meant, which is why when I heard the word "independence" I thought...

SPEAKER: Independent of the organization, of the corporation.

HOLLY RAICHE: Thank you. I just wanted to clarify. I wasn't sure of the structure. They remain representative of their constituencies, independent of ICANN. That's the way you're putting that? Okay. Do we have any comments on that? We're starting to come up with some very...

SPEAKER: There's a fourth principle. I remember Christoph had a recommendation yesterday that we don't want to lose sight of. It had to do with cross-pollination, and somehow keeping people from bouncing back and forth between the Board and this Review Team. I don't remember exactly what the wording of that was...

SPEAKER: [unclear 00:51:55] the grace period of five years.

SPEAKER: Something, yes, so that it maintains the very independence that Hong is talking about – that you don't make a job out of being part of the governance of ICANN. [unclear 00:52:11] [Laughter]

HOLLY RAICHE: I'm not sure how to word that tactfully.

SPEAKER: That might be a fourth principle, somehow, that there's some grace period that maintains separation between the oversight [unclear 00:52:26] cross-constituency working group and the Board.

HOLLY RAICHE: Is there a more tactful way of saying that? It's a process that ensures rotation of personnel?

[ARSHAM]: Pardon me. This is [Arsham 00:52:46]. Yes, actually, what you just described is very common practice when it comes to how independent a Board Director is considered in the commercial world. If you are a Member of the Board of Directors of a listed company, if you've served past X number of years you're no longer considered independent. We just have to find a tactful way of saying it, but this is very normal.

HOLLY RAICHE: Next was scope. Do we have thoughts on the scope of our cross-constituency... Working group is now the wrong term, because now we're talking about... Yes, when you say "permanent" do you mean

permanent? What do you mean? Do you mean something like a standing committee that will convene if and when there are issues, as defined?

SPEAKER: People would change in it, but it's permanent in that it's not created and destroyed, as the other cross-constituency working groups are.

HOLLY RAICHE: So we're talking about a standing committee. We're talking about independent. We haven't talked about scope, because we've used the word "appeal mechanism", we've said it's not dispute resolution.

SPEAKER: Not confined to legalistic terminology that the IRP is...

HOLLY RAICHE: Can I have some words for scope, since we're talking about this magical little body that's going to make everyone feel happy and comfortable?

SPEAKER: [Fresh and 00:55:02] antibacterial... [Laughter]

SPEAKER: Any decision made by the Board. There's your scope.

HOLLY RAICHE: I like "antibacterial".

SPEAKER: Did we talk about who would be appointing this...?

HOLLY RAICHE: Oksana?

OKSANA PRYKHODKO: Thank you. I would like to strongly support the idea of a standing committee, and the [unclear 00:55:32] of monitoring and service of all gaps in accountability and transparency, with an involvement of RALOs, for example, and regional structures.

HOLLY RAICHE: Do we have any more comments? I think we've got independence of ICANN Inc. We've got scope [is 00:56:02] Board decisions. We're calling is a standing committee.

SPEAKER: Cross-constituency.

HOLLY RAICHE: Sorry. That comes first. Anything else?

SPEAKER: This grace period...

HOLLY RAICHE: Tactfully worded cross pollination issue. What are we going to call this magical... Cross-constituency standing committee.

SPEAKER: Cross-constituency independent...

HOLLY RAICHE: No-no, we've got to have a good acronym. Review committee? We could spend hours with a...

SPEAKER: Can we use the same word that's used here – IRP? Why do we have to...?

HOLLY RAICHE: No, because the IRP exists... That will be confused by something. We're talking specifically cross-constituency. We're not using the term "working group" because they're temporary. We're talking about a standing panel, or committee... It's a standing committee. He wants "activity panel" I think. [Laughs] No, panel is now bad.

SPEAKER: I almost like the word "watch group". It is a little loaded but it's just something that crossed my mind.

HOLLY RAICHE: Wait a minute. Stop, everyone. We have to announce that we're now in session three. Thank you everybody for session two. We'll take a two second pause. Talk amongst yourselves quietly.

HOLLY RAICHE: We've got "crap" and now we've got [unclear 00:59:20]. I'm not sure I'm going to put any of this forward.

SPEAKER: I kind of like the C-C-O-C. It sounds a little rude...

HOLLY RAICHE: It's so dangerous.

SPEAKER: If we get an R in there, it becomes C-C-R-O-C, which is a nasty, evil animal.

[END OF TRANSCRIPTION]