Summary and analysis of public comment during Paris meeting (22-26 June 2008)

Explanation

This is a summary and analysis of comments made during two sessions at ICANN's Paris meeting in June 2008. The first session was held on Monday 23 June, and was a dedicated two-hour discussion forum. The second session comprised a half-hour during the main public forum on Wednesday 25 June.

The full transcripts of both those sessions, as well as the full slide presentations, are available for review online at http://par.icann.org (links given below).

This document is an attempt to provide an objective summary of the comments made during those sessions. It will be made publicly available and posted to the first public comment forum specifically set up for the consultation.

If an individual or organization feels the summary does not accurately represent discussions, they are encouraged to make their views known on the public comment forum in response to this summary (email: iic-consulation@icann.org). All comments made to the public comment period until 31 July will be carefully reviewed in preparing a separate summary and analysis and in the production of revised documents.

SUMMARY OF SESSION

Participants in Paris were encouraged to provide their input on five main areas of discussion that were outlined in a set of three documents provided by the President's Strategy Committee (PSC), which in turn had been derived from feedback provided during the Midterm Review of the Joint Project Agreement in February 2008.

Part of that input was whether the areas of discussion themselves were sufficient to achieve the consultation's aims. As ICANN Chairman and PSC co-chair, Peter Dengate Thrush, surmised: "We have three fundamental questions that we ask all the time in relation to this: Have we asked

the right questions? Have we got the right answers? And how do we consult about implementation?"[1]

The general sense was that the five areas recognized by the PSC were the correct ones on which to focus and direct the IIC consultation.

Those five areas are:

- Safeguard ICANN against capture.
- Be accountable to the multi-stakeholder community and preserve bottom-up development of policies.
- Meet the needs of the global Internet community of the future.
- Be financially and operationally secure.
- Focus on organizational and operational excellence.

A number of specific measures for each area were outlined, and particular proposals for discussion in each case were put forward in order to start the conversation.

This summary and analysis will take those discussion proposals as its start-point and then divide up overall comments into the five areas outlined by the PSC in order to aid efficient and effective understanding of the issues and views.

A full transcript of the session has been posted separately to the public comment period, as well as the full slides used during the presentation. Direct URLs are also provided below.

Transcript of PSC session: https://par.icann.org/files/paris/ParisWSJPA23June08.txt

Transcript of Public Forum:
https://par.icann.org/files/paris/Paris-ICANNPublicForum-25JUN08.txt

Slides: https://par.icann.org/files/paris/JPA_Paris_23June08.pdf

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[1] The full questions, as listed in the Transition Action Plan are as follows: "A. Have the key elements required for an un-capturable, accountable, internationalized, stable and secure ICANN post-JPA been accurately and sufficiently identified?
B. Are the initiatives described sufficient to meet the objectives?
C. Is the timeline set out sufficient to allow sufficient community consultation, and bylaw changes and other implementation steps to occur?"

SUMMARY OF INPUT

CAPTURE

There were two proposals for discussion:

1. ICANN could make bylaws amendments requiring a specific prohibition against voting by the same individual or organizations in more than one of the related Advisory or Supporting Organizations. Should it do so?
2. Participants in councils and constituencies should provide statements of interest to protect against conflict and make them transparent

Participation

People and organizations should be able to participate in multiple parts of the ICANN structure, all commenters felt [MC, JN, RH, MM, VB]. It would be wrong to restrict participation. Additionally, participation across groups may be a good thing as it encourages people to see things beyond their own narrow interests [VB].

Participation levels, both in terms of numbers of people and their active involvement in discussions, need to increase within constituencies however [AP, RH, VB, WS, MC]. Business needed to be involved more [DA, SM, AD, MC]. More participants would reduce the risk of capture.

Voting

While participation should be allowed in all parts of ICANN, the issue of whether they should be granted or denied a vote in each was less conclusive. The PSC was urged to look at the reality of the situation on the ground before it made a decision [JN]. Others argued that ICANN needed to look forward to the future and possible risks of capture and that restricted voting in that case may make sense [MC, PT].

Statements of Interest

There was wide support for public disclosures of participants' statements of interest as a way of avoiding capture and providing transparency in policy processes [MC, JN, RH, PDT, APi].

However such statements would not provide a complete answer and should be just one method for achieving transparency and avoidance of capture [RH, APi].

Other comments

- The issue of capture at the constituency level is less important than looking at how decisions are made at the Council level [MM].

- Lessening the status of non-contract parties within ICANN (re: GNSO review) may remove the useful protection role they play against capture [SM].

- The risk of capture is not only from within ICANN. The organization needs to strike a careful balance with governments so that they participate and assist but do not dominate [SD].

- Improving communications and promoting open and free discussion will improve transparency and reduce risk of capture [WS, APi]. This is particularly important for non-English speakers [WS]. Smaller groups will mean freer discussion [APi].

- More independent Board members with longer tenures may help deal with capture [APi].

Ideas that emerged

Rather than try to find mechanisms to pre-emptively tackle future efforts at capture, ICANN should look at mechanisms that would highlight any attempt at capture and provide the community with a fast and easy mechanism for undoing it [RH, APi].

Supporting Organizations and Advisory Committees should publish their rules for membership and their members [RH, APi]; the Board may occasionally monitor the bylaws and practices of ICANN's constituent parts; the entire community should be able to see the makeup of a constituency [RH, PDT].

ACCOUNTABILITY

Proposal for discussion:

- Establish additional accountability mechanisms that allow the community to request reconsideration of a decision from the Board, and, as an ultimate sanction, to remove the Board collectively and reconstitute it.

Forced reconsideration of a Board decision

There was agreement that a high threshold would be needed to force the Board to reconsider a decision [MC, PDT, RH].

However because of the widely different views and interests of Supporting Organizations and Advisory Committees, the suggested system of having a percentage of all SOs and ACs vote for a reconsideration may not be possible in reality and so may be setting the bar too high [MM].

More focus should be placed on improving accountability at each step in a process, rather than after a decision has been made [BDC].

Removal of the Board

Possible removal ("spilling") of the entire Board found some support, but a number of commenters provided alternatives.

It was suggested that allowing Internet end users to choose Board members (rather than the Nominating Committee) would be a more effective accountability mechanism [MM]. The inclusion of more business-focussed individuals on the Board may also aid wider accountability [RA].

A further solution may be if the Board delegated decisions to individual Councils, forcing them to have to reach consensus [WK].

The issue of whether the whole Board or just individual members could be removed was debated. Some suggested that Supporting Organizations should be able to remove their particular Board members and so avoid the disruption of losing the whole Board [MM], however the wider sense appeared to be that only allowing for the whole Board to be replaced would remove the risk of damaging political battles and targeting of individuals [PT, PDT, RH, RP].

The suggestion that the community be able to remove the CEO [MP] did not find support as it was seen as the Board's duty to hold the CEO accountable and not the community's [PDT, RP].

It was suggested that ICANN may have sufficient measures already in place and that only a fine-tuning of the existing systems may be necessary [JJS].

GLOBALIZATION

Proposal for discussion:

- ICANN should have global legal presences in addition to its headquarters established in the United States.

There was universal support for internationalizing/globalizing ICANN's operations [JJS, YL, RB, PDT, PT, BDC], however, there were some concerns about the legal conflicts that might cause [BG].

A clear distinction was made between meeting the global community's needs by having subsidiaries in countries around the world, and the legal nature of ICANN, which would remain a not-for-profit corporation based in the United States [PT]. A change in the bylaws to state that ICANN would remain headquartered in the United States was described as "inappropriate" however [DJ].

Globalizing ICANN will mean particular emphasis has to be given to language – especially to issues surrounding Internationalized Domain Names (IDNs) - and to ensuring that regional identities are recognised and fostered [RB, JJS, YL, BDC, YJP, KF].

ICANN needs to pay more attention to Latin American, Asia and Africa [YJP].

SECURITY AND STABILITY

There were two proposals for discussion:

- ICANN should adopt alternative sources of funding to lessen dependence on current registry and registrar funding.

- ICANN should maintain and enhance existing operational planning and budgeting mechanisms.

There was no discussion of these two proposals. Instead, a wider perspective of ICANN's role and approach was provided by a number of respondents.

- ICANN needs to ensure it remains stable in the face of increasing work demands and changes in the wider Internet [MC].

- ICANN's mission is currently too narrow and technical, and is rooted in the past. It should consider its role as making the Internet a safe place for all users to communicate and conduct business, and as a "guardian of public trust" [PS]. [2]

- ICANN may need to look at a change in its architecture [BDC]. One suggestion was the creation of a Business Advisory Group [AD]. However, it was suggested that a focus on increasing participation and interaction might be better than creating a new advisory group [MC].

- The stability and security of ICANN is closely linked to the Capture issue [APi].

- ICANN's great strength is in multistakeholder representation. More efforts should be made to ensure parity between stakeholders [AD, VB].

OTHER POINTS, SUGGESTIONS, QUESTIONS

- What actual impact does ending the JPA / transitioning to the private sector have on ICANN's relationship with the United States government? [EN, MS].

- The discussions and consultation process should extend beyond December (when the PSC will deliver its report to the Board) [BDC].

- Providing greater transparency surrounding discussion in the Governmental Advisory Committee (GAC), particularly on public policy issues, would help increase confidence in ICANN as an institution [RG].

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[2] Commenter would like to add that the suggested public trust role should only occur within the competence of ICANN's bi-lateral contracts.

RESPONDENTS

AD   Avri Doria, Luleå University of Technology, GNSO Chair
AP   Adam Peake, Glocom
APi   Alejandro Pisanty, University of Mexico
BDC   Bertrand de la Chapelle, Special Representative to the French government
BG   Bill Graham, ISOC
DA   David Appasamy, Sify
DJ   Dennis Jennings, ICANN Board
EN   Elliot Noss, Tucows
KF   Khaled Fattal, MINC
JJS   Jean-Jaques Subrenat, Member of President's Strategy Committee, ICANN Board
JN   Jeff Neuman, NeuStar
MC   Marilyn Cade, Member of President's Strategy Committee
MM   Milton Mueller, Syracuse University
MP   Michael Palage, [IP attorney]
MS   Mike Sachs, [Software Developer]
PDT   Peter Dengate Thrush, co-chair of President's Strategy Committee, ICANN Chairman
PS   Phillip Sheppard, GNSO Council member (business constituency)
PT   Paul Twomey, co-chair of President's Strategy Committee, ICANN President and CEO
RA   Ron Andruff, RNA Partners
RB   Raimundo Beca, Member of President's Strategy Committee, ICANN Board
RG   Robin Gross, GNSO Council member (non-commercial users constituency)
RH   Rob Hall, Momentous
RP   Ray Plzak, ARIN
SD   Steve Delbianco, Net Choice Coalition
SM   Steve Metalitz, President, GNSO Intellectual Property Constituency
VB   Vittorio Bertola, ISOC Italy
WK   Wolfgang Kleinwachter, University of Aarhus
WS   Werner Staub, CORE
YJP   Y.J. Park, NIDA
YL   Yrjö Länsipuro, Member of President's Strategy Committee, GAC representative for Finland