

[James]:

It marries together the original framework as well as the revised recommendations as we've discussed based on some discussions with Berkman folks as well as late night drafting sections with most of working group four. The first section is the Statement of Purpose and that is lifted directly from A0C9.1 A. The last bullet point.

Next moving into the factual statements, the relevant provisions of the bylaws. These have not changed from the original framework. They are a restatement of the bylaws describing each accountability mechanism. The Ombudsman per our discussion yesterday was questionable as to whether it was indicated in the bylaws as an accountability mechanism but it is mentioned in the jurisdiction statement so we included it here.

Scrolling down to the uses, each mechanism has been used, some more than others. The independent review mechanism is one single instance where it was invoked. The next section is community feedback. We received numerous comments during the public comment period and during ICANN.

There's a footnote there linking to a list of the comments, many of which indicate that they would like to see an accountability mechanism that was independent and binding on the Board. The next draft of this, I'm going to put a placeholder here that we will actually quote the

relevant comments in this document and that's in line with what some of the other groups are doing.

Questions for review is next. Each mechanism we've developed some of the questions according to the hypothesis generation that was doing prior to Beijing. Some of these have been answered through the research. This section has not changed from the original framework. Scroll down a little further to the questions from the IRP.

Here we list review materials and Brian and I were discussing whether of not this was conforming to some of the other group's reviews and bylaws and the staff are by response which includes questions, the Ombudsman attaches as an annex to the report. Reconsideration analysis which was prepared by Fiona's team.

We should probably pretty that up a little bit and we can include that as an annex as well. Burgen case centered studies and we'll go back and link to each of these individually. Now we look at the finding and the recommendations.

This is through all of our discussions yesterday. The working group of C community feedback regarding the effectiveness of the Ombudsman and conducted two interviews with the Ombudsman directly. So we know here that the Ombudsman is not perceived to be a fully

independent mechanism for accountability. In fact its operational framework may not be consistent with internationally recognized standards.

The purpose of the Ombudsman is to ensure fair treatment and we've linked that to their jurisdiction statement. So for the Ombudsman there is one recommendation and that is the ICANN's Board to review of the office of Ombudsman to address real or perceived deficiencies, independence or effectiveness.

Review should reference standards adopted by the international Ombudsman association and such as its standard of practice. This was through discussions yesterday. We were able to reference some of the independent outside standards for this function.

The ICANN bylaws authorize the Board governance committee with the management of reconsideration requests because the BGC is composed exclusively of Board members. This is where we have a brief note referencing the issue of California law and we link to the ICANN memoranda that states their position.

The next paragraph is a brief analysis of the information gathered by the NTA folks showing that there have been 44 requests for reconsideration, 32 rejected or denied or recommended that the Board take no action. One case was

withdrawn. One was found to be groundless. Six cases were approved by the BGC and adopted by the Board and there were several cases we can see that there was action by the BGC but we cannot link that to the Board of action.

I sent off a message yesterday to ICANN staff and they mentioned that this should not be the case and follow up message this morning is that they are looking into these cases. I did ask this question. Is it possible some requests were rejected without publication due to ineligibility?

ICANN staff replied that even in those cases they would still publish the reconsideration requests. In other words no one is denied access to the mechanism because of eligibility or standing. So that's an update from midnight last night. Here are the recommendations for reconsideration requests.

The first one is to improve independence of the mechanism. The committee or group responsible for reviewing recons requests should be independent of the Board. The second one is to clarify language that establishes eligibility. The third recommendation is to improve transparency.

Published reconsideration requests committee recommends Board reconsideration outcomes on the webpage in a timely manner. This goes back to our inability to follow some of

these cases from the time that they were raised through the process. The final recommendation came from a discussion with Oliver Goodnuff, which was this idea that there is this legal limitation relative to California law but there's nothing to prevent ICANN from declaring its commitment to this model by voluntarily agreeing to hearing reconsider requests if an independent body has accepted it.

Of course we would have to provide for an exception case in those situations where ICANN felt that it reconsider one of its earlier decisions might be in contrary to the best interest of the organization. Even in those cases ICANN should provide justifications for why it has gone against recommendations of the independent committee.

Larry Strickling:

Question: At this point are you proposing a standard of how reconsider requests are to be evaluated and if not how is this now different from the independent review Board that comes out later? Have we just created a second independent review Board?

Unidentified:

The key thing here is that the IRP reviews the substance of Board decisions whereas the reconstruction requests essentially just reviews whether or not the decision making process was intact and whether or not the facts that led to the original decisions were still valid and whether or not the Board should revisit that decision so not diving into the substance of issues of the decision itself.

Chris Disspain:

Larry's rationale behind it is something like this. We don't know whether the IRP can deal with heavy issues and we don't know whether it's structured in a way that would be feasible for people to use it for small issues. One of the reasons for recommending a review of that is to find it out.

If we could introduce a level of independence at an earlier stage of this sort of step process, we could introduce a level of independence at that stage that would go to some way to dealing with feedback and input from the community about their feelings.

What happens is a request for reconsideration goes in and the BGC decides whether it should or should not be reconsidered and we felt that was open to criticism because it's effectively a portion of the Board deciding whether the Board itself should reconsider. So if you have an independent view of whether it should be reconsidered or not that would be helpful.

Rob Faris:

Ok, but my problem is that I'm now a party who had a matter before ICANN and a Board decision affects me and I disagree with it. If this is a direction that we're going to go and by no means am in indicating any support for it yet. Somehow the two lanes of this highway have got to be clearly delineated so I know which place I'm supposed to go to because if we're not distinguishing it just seems to me

that all we're doing is creating a 2nd structure that's really no different from the first. I think a lot of what this comes to is what is the standard for reconsideration?

When is it to be applied and James just gave us a formulation and it may be that if we can figure out what is the standard to be used on reconsideration requests that could then guide us as to how important it really is for it is to really independent or not.

If it's an issue that there is a fact that you didn't take into consideration or some other flaw in the process; If it is procedural I'm less concerned about empowering a group of independent people to come in and deal with those as opposed to letting the Board governs committee. On the other hand if you want a more expansive role for the reconsideration requests maybe it calls for independence but then I think you start bumping into the IRP in terms of what's the confusion that we create by doing that.

Brian Cute:

Rob, I've got a number of things the report doesn't establish. That if there is anything wRobg with what the reconsideration crisis is done simply because of the independent point. Doesn't actually analyze whether that's had any impact of the 44 or 62 number of decision is. It's not the independence or not of the reconsideration. There's a problem with it. And simply making it an independent crisis won't change it.

All this has done is pump for independence instead of what's actually wRobg. You ask the people what's actually wRobg with the reconsideration decisions that have been made. The grounds on which they are brought are hopeless. No one has actually succeeded on an application for reconsideration that I can tell.

There doesn't seem to be much analysis. No substantial requests because the terms and condition of reconstruction that you have to bring forward information that the Board doesn't have. And that's wRobg with reconsideration.

Rob Faris:

The record tends to reflect that there's clearly a documentation issue. Minor point and I think it's reflected in one of the recommendations that there ought to be a clear trail in that to show that the Board did take their requests. There may be 4-6 cases that the Board did follow on so that piece of it seems to be working.

It's documented as followed. The BGC has only proposed a change in an outcome less than 10 times in the 44 cases. Really there is no indication that if this is an effort to provide an opportunity for people to petition a Board seems to be working alright.

Brian Cute:

In all the crucial decisions that come before the Board the trees have been beaten and the bushes have been scared and

we've had 25,000 and it's impossible for an applicant to find a piece of information that wasn't actually known as part of the decision. So the test is wRobg. It needs to be that the Board needs to reconsider this because it got it wRobg or because there's another view that's what missing. And it's really got nothing to do with the independence of the body doing it.

Unidentified:

I'm in agreement with Peter. If you change this to create independence here it would simply lead to the creation of a 3rd device which would be a way for the Board to hear from people and help them correct mistakes which was what this was intended to do to begin with and you're always going to have a process like that in place.

The reason why we worked towards the independence thing last night it was my understanding that there was feedback that was perceived to be an issue. Three members of the Board deciding whether the Board should reconsider doesn't seem to be an issue. I agree that the process of reconsideration needs to be looked at. James, my involvement in working in group 4 has been limited.

Unidentified:

Was the Board reviewing itself?

[James]:

So this is the section on the proposed mechanism the community revote mechanism. It's a question of whether it stays in this document or moves to another section of

report. Mechanism was proposed as part of Board review. Were several comments received from community. Response was that because of those comments there was no consensus as to whether or not this should be adopted. Not because the community was opposed to the idea but just too many vision implementations and what thresholds would be required. So we're wondering if this should be moved to community feedback, working group report, or moved out entirely.

Larry Strickling:

Do we have any guidance from the experts?

[James]:

I had conversation with Professor [Goodnuff] yesterday and he proposed a couple of models we can look at, one being the American Red Cross and the other the Girl Scouts. What it would require is for ICANN to change its structure to include class of membership. There's some discussion in the Berkman documentation about what that would look like and how implemented and some possible unintended consequences.

Berkman has a couple of alternative models that could be part of your recommendation. It is a companion to this piece. It's an internal memorandum but it did not make it into formal recommendation in our own report at this stage. There is nothing in the Berkman report that speaks of this right now. Do we keep this in the working group or where? Does it need to stay or move to community feedback?

Unidentified:

The current status of this proposal is that it is not adopted due to lack of feedback from community. Recommendation is to resurrect this idea. First was that an independent body should be sent out to redesign the review mechanism. There's been feedback from community. There's the issue of review. Well no independent review was the consensus. the recommendation is a review of the IRP.

Unidentified:

Moving down to the IRP. This does not include Board members so it is independent. Decisions are not binding on the ICANN Board so its effectiveness as accountability mechanism is in question. Note that the time dollars and other resources involved in invoking this mechanism are very high. This mechanism is in effect inaccessible to many members of community that seek to use it.

Restate the issue relative to CA law. Boil this down to a single recommend that the Board should review the IRP to determine ways to reduce cost and conclude work in a timely manner, cover a wider spectrum of issues, and genuinely improve accessibility to community. Aligned with the Berkman recommendation for working group 4 regarding getting dispute prevention mechanism. Expert advice should be sought during review process.

Unidentified:

We only looked into the independent review panel process and this goes back to earlier conversations. Is working group 4 focusing more on independent review mechanisms or all the available mechanisms including reconsideration? There has been a previous recommendation that there should be a review. Go back to recommendation and recommend that we should follow that recommendation and in addition, do the following...We can handle it this way.

Larry Strickling:

We're going to submit these recommendations to the Board at the end of the year. What do we expect the Board will do at the end of 6 months? Are we being reasonable here? We've had a year to do this work but all we're going to do is study this further. We need to defer to the Board in certain cases but if the next team comes and says wow, there are a lot of recommendations for lots of studies, what are we accomplishing? We've kicked the can down the road for someone else, not ourselves.

Unidentified:

What could we do with IRP?

Larry Strickling:

Are there things about the IRP that we think as a group and if so we should recommend to the Board that changes be made. At least we've brought issue to closure. Either the IRP needs to be fixed or it doesn't. Why can't we come to a decision on that?

Unidentified:

There should be timelines for every process. If working group said it seems that community would benefit if IRP had process was, we would agree on that.

Unidentified:

Mechanism has only been used once. That one time was costly and time consuming but we can't say exclusively that it is costly and time consuming thing. Someone needs to look at IRP in a three step process.

Peter Dengate Thrush:

Those issues aren't huge if the process and the outcome is good. We need proper review of entire structure, has to be done in an overall review. Are we recommending a review or something more concrete? It seems we need to put timeframes around these recommendations and prioritize them. We owe it to the Board to prioritize. The fear that I have is that three years from now nothing will have changed.

Fabio Colasanti:

I'm concerned about the readability of the final report. We need to have a discussion about that. Regarding language of IRP light. One possibility is to be more specific by providing more options which the Board could look into. 4 options from group 4 have been done. Item that is not addressed here is the CA law.

It is an open question in community's mind. I feel we should address that within the four corners of the report.

Commentary of CA memo, input from Prof. Coates. We need someone to put that together.

Chris Disspain:

Is a broad interpretation of CA law. Question is do we want to? It's good to get a consensus that it can be done. Could have Professor Coates do a draft? Perhaps it's possible through contract mechanism. Give us a fuller view. Best way of dealing with it is if we say we've looked at this, this is our understanding, and this is what we think.

Fabio Colasanti:

We are in a difficult situation. We don't see that we can see anyone more legitimate than the Board to make final decisions. It's a two step process. Any group of people might make wrong decision.

We have identified one possibility for problems in the process in request for reconsideration. Or one possibly for revision of substance of the decision of the IRP. But in both cases don't think it's good to have the outcome of these two processes to have a binding value on the Board because I don't trust that the Board

Peter Dengate Thrush:

Would be the Ombudsman be improved? We need more discussion about independence. Go to the end of page 4 to recommendation. Ombudsman is not set up as an independent mechanism of the Board. Most of the stuff that goes to Ombudsman has nothing to do with the Board. We discussed yesterday about reaching out to the

Ombudsman and getting clarification. Need to get the full picture.

He has been striving to change the rules. Is there a history of setting up of the Ombudsman? His jurisdiction includes Board action in some way. What's the function of Ombudsman? Why is there ongoing disagreement? At some point a conversation with Warren has to be had.

About what has happened this morning and where we've come to. End of working group four. Move on to working group one. Compensation: summary. Recommendation: to leave it to the Board rather than tell them what to do.

Tell the Board to accept the advice of its outside experts and its community and get on with creating a mechanism to pay the Board. Discussion yesterday was to put a clause in saying to Board get it fixed. Suggestion is that we say pay them. The proposal is that we recommend to the Board that directors be paid compensation. Mr. Zhang supports. What is the terminology the Board has been using? Compensation.

[Carlos]:

Compensation would be a good thing to have for the Board. For the ones to be more proactive and to deliver the task that is committed to the Board. When you have someone who is compensated it could be advantageous. I say yes.

Larry Strickling: Yes.

Olivier MuRob: Yes.

Fabio Colasanti: Yes.

Louis Lee: Yes.

Cheryl Langdon-Orr: Yes.

Peter Dengate Thrush: Yes.

Erick Iriarte Ahon: Yes, that will be the recommendation. The vote is unanimous.

Brian Cute: Can we make sure what goes out are just our recommendations? The times and deadlines will be fixed on all our recommendations on our final report?

Peter Dengate Thrush: We can tell them we will prioritize them. It will be in the front of the document.

Brian Cute: We need to change Board members to directors. Scroll back up to the start of those recommendations:

Peter Dengate Thrush: What we discussed in our working group on possible skills sets included finance, strategic planning, and public policy. Just put those in. That's all I've done with that resolution.

Next amendment: One. Benchmarking skill sets against similar and other government structures. That was an amendment that was agreed yesterday.

Two: Recognizing work of the Board governments committee on training and skills building, reinforce review on a regular basis of these programs. This is what we spoke on yesterday. Three: Increase the transparency of the nominating committee to deliberations and decision making process by doing such things as clearly articulating the timeline and skill set criteria at the earliest stage possible. We discussed in detail yesterday.

Don't want to limit the deliberation and decision making processes I want to specifically exclude anything that has to do with candidates. Otherwise, you're going back to the basic default position of secrecy moving toward transparency rather than starting at a point of transparency and then saying why you can't be transparent about stuff.

Subject to the requirement all deliberations and decision about candidates must remain confidential, to increase the transparency. Four: is building, Five is the recommendation that we've discussed: compensation. We move down to area two. Summary of area two.

This first insertion is an attempt to deal with the Board being in charge. Highest level of transparency,

recommendation. Additions: attempting recommendation issue of Board leadership. Through an open process develop a clear document of what issues are considered Board level.

What we agreed yesterday is that is would be changed to clarify what issue should be considered Board level. What we're trying to do is bring into recommendation some words that satisfy the overarching Bergman suggestion and Fabio's input about the Board being in charge and making sure that the Board is not captured by stuff.

John Palfrey:

How can we establish in this review a form of benchmark that might be something to which future efforts might return? One of the things we've identified in our review is that there has been a lot of progress and it's important to find ways to acknowledge that, for the Berkman center to establish in a spirit a grading scheme.

This would take the charge that we had something as simple as the 3 areas transparency, accountability or participation and assign a grade and something that is direction like an up or down arrow. What's important is not the absolute grade today but the directionality and if there's trending that we observe.

No body's perfect so that's the premise of the idea. The purpose of it is to have a similar process run (3 years will

do another review) and the notion that would be that at 18 months that there would be a similar review. This would be extremely valuable.

To propose that at the 18 months timeframe, a similar, simple methodology is employed and the staff is encouraged. Do a similar self evaluation on these lines and outsiders would be encouraged too and put them on a single web page so you could see the views of directionality and so forth.

And when the 3 year mark comes that might show some interim progress and allow for the documentation for the 3rd year review people of the progress we see in that period. Could we do something that is looking ahead to the later process that would be helpful in grounding and setting a benchmark against which we explicitly have somebody else looking?

Brian Cute:

How does that interplay with the work that the review team is doing? We've drawn some conclusions and done fact finding. Those have meaning and how would that interrelate with the grading scheme? We as a review team are likely in our final report provide some recommendations to the Board about future reviews.

Peter Dengate Thrush:

I would be very scared by some of that. The objectivity would have to be extremely secure and I doubt that you'd

get it right. More importantly, one always has to struggle in this business between accountability and a popularity contest and we are under huge pressure from interest groups all the time. As soon as you start subjecting making decision making to mob vote; what it looks like is you threaten the performance of the directors.

Cheryl Langdon-Orr:

I see where you're coming from and what it's intended to do and understand about the popularity issue. If we can establish what these metrics are and how they can be measured in principle, they would need to be looked at carefully. We toyed with the idea of doing more of a public survey but they're limited by what value you can take from it.

Brian Cute:

I'm hearing some gut reactions and caution. No guarantees that we will incorporate it into our final report but you can develop that in written form and come back to us with the concept on paper and we will certainly look at it and consider it.

John Palfrey:

I'm not going toward direct democracy in this and I really appreciate the popularity issue. This is a traditional metrics as a means of review and to give a sense of directionality that people could respond to and understand.

Chris Disspain:

Number 3 is another attempt to deal with an issue raised by Fabio. Established protocols for insuring veracity break in

materials. This relies upon the Board's decision making. This includes advice from SO's independent reviews. This comes from the conversation yesterday about capture. I don't put this on the table with ringing endorsement from me. I simply say that's the best I can do in finding a way to tackle the issue.

Brian Cute:

Regarding capture. The Board be in charge. I'm not so sure how they could battle for protocol to ensure the veracity of these materials.

Unidentified:

I'm comfortable to taking that out.

John Palfrey:

Four: Reduction and risk assessment. Reduction materials should be kept to a minimum.

Louis Lee:

Do we mean just soon or do we even want before or as the Board receives it? Does anyone want the material to be distributed to the community the same time as its given to the Board or soon after the Board receives it or soon after the meeting has happened already? Six: Amendments discussed yesterday.

Seven: Back to Fabio's discussion yesterday. Establish internal review to ensure transparency, action plan of the Board to be prepared in three years time. I'm wondering where this fits. We are going to have to give guidance to the Board and how we expect the next three years to be.

What's going to happen the next 3 years? When we meet in Columbia with all of the public input?

If the public does its job it's going to tell us what is the most important and help us prioritize. Conceptually I don't have a problem with these issues just a question of where it fits in the document. This will be an addition at the end. That's all for working group one. Working group two:

Brian Cute:

We changed frivolous and added Eric's focus on outreach to developing nations. Those were the only two changes to the recommendations. General editorial changes will be made. I just sent Eric and email. The need for multilingualism and geographic diversity the issues.

I ask you to draft that single statement that can go into the introduction part of the report. Orris, if your team could go through entire document and do your standard citation, source materials and footnotes to support some of the statements, that would be enormously helpful.

Working group three: The latest version of this group: Statement of purpose, public input, PDP effectiveness, and timely policy development. Factual statement: captured relevant origin of bylaws. Using a source material is the Berkman centers research on the three separate public comment opp.

Recognizing Board action to assess the policies by which ICANN seeks to increase public participation in the manner in which it receives public input. Here are questions for review which we've modified a bit. We've removed a couple. The draft repose recommendations we really only had disagreements on eight, nine, and ten.

Number 8 is what we came up. The Board should direct the creation of a mechanism and/or support role at the staff level. The purpose of which is to ensure that all policy making processes within ICANN are run in accordance with respect to PDP procedures.

The mechanism and/or support role should ensure that amongst other things all necessary inputs to their respective policy making processes are accounted for and included for consideration by the Board to ensure effective and timely policy development.

Peter Dengate Thrush:

As ICANN grows, it becomes more difficult to keep an eye on everything that goes on. A mechanism, a checklist if you will, by which each process can be checked against to make sure nothing has been missed is not what this is about. It's so that to ensure that when you've got five different policy development processes running at the same time something is not missed. That's all.

Brian Cute:

The problem is, in loose terms, the ping ponging effect.

Peter Dengate Thrush:

Why is multiple consideration a problem?

Brian Cute:

Timing, the consideration of all the inputs at the appropriate time in the process. We don't need this recommendation to the extent that we have another recommendation that talks about doing the consultation better with a comment or a reply and so on. In certain cases a ping ponging will be avoidable, but to the extent that the other recommendation is used correctly it will reduce the risk of later discoveries of additional issues and inputs. Maybe partially but I thought the goal was to get people talking together as early as possible in the process. Is that the goal?

Peter Dengate Thrush:

Yes.

Brian Cute:

A template is fine to use. People will be pleased to be involved early on in the process of policy dev. The interested parties have to play a role. Known inputs in the beginning. If we were to gut the PDP references here in first sentences would that get closer to what we're talking about? In the idea of a template, yes.

Peter Dengate Thrush:

We need to cut out all of it. We've all agreed we don't need it. We're talking about two things here. Ensuring that early input are being taken into consideration and a template at the end of the process is sort of a checklist that all of this

had been done. Number nine: This is new. Forecasting data from the staff to the PPC should be made publicly available. Forecasting in terms of what matters are going to be coming up.

Fabio Colasanti:

Should that not be phrased in a different way?

Brian Cute:

It has been indicated that this data has already been given to the public participation committee.

Peter Dengate Thrush:

My expectation would be that ICANN would adopt a work program. Revise that to Drop the specific staff to PPC but work program forecasting data should be made publicly available.

Brian Cute:

There should be an indication of what ICANN is going to work on over the next 18 months. Make a reasonable forecast. It should exist and be made publicly available. My marching orders on the rapper documentation is to put more early history in there. Basically cut and paste into the public comment document.

We'll want to go through them not just beyond the accuracy and look at them from a stylistic standpoint. In terms of a source document I've got the research on the three public common periods. I sent comments from progress report but we'll want to do another review. ATR team you're going to circulate those documents to the

group. Please go through the case studies and provide feedback to Berkman. Question for review team: Berkman's going to endeavor to finalize report by the 20th. Will we be attaching that as an appendix to the public comment doc?

Brian Cute:

My assumption is that we would. Is there any reason why we would not? We will work to finalize that by the 20th. The only other issue that comes into play is I would like to have this public comment document done by Friday. The goal is to get this out by the 20th and we realize we need 5-7 days for translation of the document. We can finalize by email.

There is a call scheduled for the 18th. We may or may not keep that call. It appears our work is done. Look for re-circulated versions of working group 4's document and please comment. Working group 3 please comment on redrafting on 8. Two is lock down. Working group one is done. Let's finalize agreement on recommendations in each of those documents within 24 hours by email. Each working group editor is responsible for citations, source material and facts being in the document.

--End of Recorded Material--