

**Answers to Pending Questions for Bylaws Coordination Group
14 April 2016 CCWG leadership meeting**

Question 33 reframed on email by Rosemary Fei to the list:

On the call this past Tuesday morning (Pacific time), Becky and I were unable to recall the issue for CCWG consideration that was raised on one of the slides. We have now retrieved a more complete description of the issue, regarding Section 4.1, on the process for initiating mediation as the first step toward a Community IRP, and again request CCWG clarification.

OPTION 1 - CURRENTLY IN THE DRAFT BYLAWS

=====

During the LA meeting, counsel identified that

the process to initiate mediation, if the Board fails to comply with an EC decision, was not described in the Proposal. Section 4.1 was introduced during the Bylaw drafting stage at the request of the Bylaws Coordination Group to address this, and describes a new escalation process, following all typical steps (petition, community forum, etc.) in order for the EC to proceed to mediation. (This is the Current Draft Option.)

OPTION 2 – Recommended by CCWG Counsel

=====

An alternative that would be entirely consistent with the Proposal’s silence, would be to mandate the EC Chairs Council to give notice to initiate mediation automatically, in order to streamline the process, eliminating any escalation to commence mediation, and then authorize the EC Chairs Council to participate in the mediation in consultation with the Decisional Participants following their internal processes. (A full escalation process would still be required after mediation, to initiate an IRP.) (This is the Streamlined Option.)

CCWG counsel prefer the Streamlined Option, if it is acceptable to the CCWG. ICANN Legal has also agreed to it.

Answer from the CCWG April 14:

- Co-chairs and rapporteurs considered the fact that the CCWG participants in email responses supported the Streamlined Option which is also preferred by CCWG counsel. As such the Co-Chairs support the Streamlined Option as the response from the CCWG.

Additional Questions

6. AoC Review Team Draft Reports - Section 4.6

Draft bylaws Section 4.6 a (vii) B states that “Each draft report of the review team shall be posted on the Website for public review and comment.”

In the CCWG final proposal, we stated “The draft report of the review will be published for public comment.” (para 76, Annex 9). That was in keeping with AoC review team practice.

We realize that a review team may decide to publish several iterations of its draft reports for public comment. But we do not want to imply that each and every internal draft report must be posted for public comment.

We recommend this change to draft bylaws Section 4.6 a (vii) B:

(B) The review team may post its draft reports to the Website for public review and comment. ...

We note that final reports of the review team must be posted for public comment:

(C) Each final report of a review team shall be published for public comment in advance of the Board’s consideration.

Answer from the CCWG April 14:

- The recommendations (B and C) are not inconsistent with the CCWG recommendations or discussions on this topic and should be included in the Bylaws.

7. Confirm approval of the concept of the EC Council

During drafting, the concept of the EC Council was introduced. This construct was needed to allow the Bylaws to be clearly drafted (and then followed!). Our group supports the introduction of that concept.

Answer from the CCWG April 14:

- Co-chairs and rapporteurs considered the fact that the CCWG participants did not comment on this as a remaining question and recommend that the term EC Council not be used and be replaced with the term EC Administration (ECA).

14. 1.1(d) is apparently the section that got added in order to deal with the CCWG worry that the various agreements already in place might not be in conformance with the clarified Mission.

- I. Is it ok to have the references to external agreements in the Mission? They can change under (F). It seems strange that the terms of the Mission could effectively be modified by these external agreements. I note that the same reasoning led external agreements to be excluded from the text in earlier negotiations.
- II. I have a lot of doubts about this section because some of the documents to which it refers aren't finished or else aren't yet written. It's especially not clear what to do about the

possibility that the documents could end up inconsistent with one another, in which case there'll be a serious problem (which will be hard to correct, since this is a fundamental bylaw).

III. The section seems quite a lot broader than the CCWG proposal Annex 5 (at line 48) contemplated in its instructions. I am particularly worried that the strategic plan and operating plan are both explicitly included here. Especially given the clause F, which explicitly permits renewals, including the plans as permitted means that anything at all can be allowed under this section. I think this is a fatal flaw in the proposed text and in my opinion it must be fixed. Otherwise, the whole point of having the clear, narrow Mission would be vitiated by this text.

Answer from the CCWG April 14:

- The CCWG cannot conclude on this topic until it feels more comfortable with the potential issues. As discussed on April 12th the CCWG believes a meeting of the interested and involved communities with lawyers, especially ICANN legal, and key ICANN staff involved in these areas is the only way to seek a solution to this question.

16. Use of Global Internet Community

Throughout, in several places, there are references to the "global Internet community". It appears that this was to identify a class of interests that need to be represented (and it appears in older bylaws in that use). But in the current proposals, there are several places where the global Internet community needs to be consulted, to develop a process, and so on. There's even a reference [in 4.3(n)(i), for instance] to the "members" of the global Internet community; it's extremely hard to know how one would determine such membership. If this term (or some other) is to be used, I think it needs to be defined. Alternatively, where action is needed, the parties that are to act ought to be identified.

Answer from the CCWG April 14:

- Co-chairs and rapporteurs considered the fact that the CCWG participants did not comment on this as a remaining question and recommend that the term Global Internet Community be used for truly open processes such as public consultations but that, as suggested in the question, where action is needed, the parties that are to act ought to be identified

30. IRP consideration which last longer than 6 months

The CCWG recommendations Annex 7 paragraph 35 states:

“The panel should complete work expeditiously, issuing a scheduling order early in the process and in the ordinary course, and should issue decisions within a standard time frame (six months). The panel will issue an update and estimated completion schedule in the event it is unable to complete its work within that period.”

The last part of this statement is not included in the current draft Bylaws and represents a serious gap.

Answer from the CCWG April 14:

- The CCWG has considered this and agrees that this is an issue and instructs the drafting team that the Bylaws should properly reflect its recommendations.