Comments

Colleagues

First, my congratulations to Steve for doing such an effective job of creating our working catalog.  In response to the call of the chair (“ACTION: review the inventory list compiled by WA2 and suggest either additions to or deletions from the list”) herewith my general thoughts on our draft paper, along with some specific things worth considering.

First, and foremost, the list, while comprehensive now is far too large to be useful as a guide to implementation.  My concern is that if we throw 50 items at the Board and NTIA they will just throw up their hands and say that there is so much here that we really can’t do any of it.  If you have 50 priorities you really have none.

Comments

I do not agree with that logic..

If we have issues to be raised we should raise it .It is not to the Board or NTIA to be given such an authority to say yes or no to the points that were raised

As a result, I think that part of what we should be doing in the long run is focusing on the core/critical 3-5 items that are absolutely essential to ensuring accountability.  In short, I think there is actually a sub-category of WS1 (call it **WS0** for want of a better term) that would be fundamental red-lines for the community.

Comments

I do not agree with that logic either . Where did you find such numbers 3-5 ?.However, I agree that we should raise fundamentalél issues without putting any arbitrary limit

What is WSO? .

Second, I was surprised to see, on review, that two of the items that I (at least) would think of as a **WS0** requirement are listed as WS2 – prohibitions on fee structure changes without a supermajority and keeping ICANN subject to external judicial review.   I will address those both more below, but call them out here so that you can look for it.  

No comments

With those two introductory points, I now turn to the list of items and offer my reaction to them as part of the review requested by the Chair:

Control of ICANN by Community

Comments

What control, on what subject who is the community ?

       Move AOCs to the Bylaws – This is now in WS1 and is essential to complete as part of the bylaw revision package that must occur before the transition.  Retain as is.

       Create permanent cross community group review structure – This is one of the **WS0** requirements.  The community should absolutely insist on this form of oversight.  Of the powers listed for the new structure, I think some are more important than others.  I would consider WS1 to include appointing an Affirmation review team; and approval of the budget; along with recall of the Board.  Controlling review, funding, and misconduct are the essential components of the review structure.  Other powers, are probably best put elsewhere (dispute resolution should be by an independent arbiter – since even the cross-community structure will be somewhat self-interested) or not appropriate (bylaw changes should be made by the Board, but on a much higher threshold than currently).

       Revise reconsideration process – Delete or move to WS2.  I see no evidence this is really necessary or has been a big problem thus far.

Comments

 It was raised sevralm times. Going to another working group ,causes no problem for me but nozt being necessary .it is your view with which I totally disagree.

       Require Board Supermajority to reject AO advise – Keep in WS1.  This insures that the community is in control

As long as it is studied ,No comments

       Independent adjudicator for disputes – This is another **WS0** requirement.

As long as it is studied .no comments

       Prevent revision of bylaws/mission – Agree.  The best way to do this is as part of the Bylaw revision to require both AC/SO approval and a Board supermajority to change the bylaws.

Comments

Such review could also be part of the Policy( Convention, Charter ) that the Policy making entity should carefully watch to ensure that it is properly implemented by Policy implementor

       Access to internal documents – Yes.  WS2

No comments

       Sunset of original reviews and create new ones – I think this is implicit in existing rule sets.  At most WS2 if not unnecessary.

Comments

It is absolutely necessary

       “Human rights” v. “public interest” – Delete.  As we have seen on the list, the definition of both terms is horribly contested.  Making the change part of the discussion of the transition will stop the transition in its tracks

Comments

As for the DESCRIPTION and scope of Public Interest how you conclude that it was horribly contested?

How have contested that ?why you said that

       Local courts to hear complaints – Delete.  This is just a bad recommendation that would subject ICANN to review by 190+ different legal systems.  As I said at the top, I think that one such system is required … but not a multiplicity.

Comments

Do you believe that one single legal system of usg is the most appropriate?

On what basis such a judgement is made.

We need to address the matter thorougly

Why not to find an appropriate legal framework to put the matter under that system

       Inspector general – Keep in WS2.  A good long term plan.  Should be selected by the cross-community review group.

        Channels for inquiry/complaint --- Delete as redundant to creation of an IG and an independent arbiter and the retention of court jurisdiction.

Comments

Three issues ; arbiters, IG and jurisdiction courts.

Moreover, do you believe that the current Californian jurisdiction authority should prevail ? Why? x

        Recall mechanisms – Delete as redundant to creation of the permanent cross-community oversight structure.

Comments

Creation of an appropriate mechanism for oversighting is absolutely necessary, whether permanent or part time ,it is another issue.

That mechanism should be established within the multistakeholder approach in which the constituencies of that multistakeholders including Governements should be defines with their corresponding footing        Engage with all governments – Delete as redundant.  Governments are already represented in the GAC

Comments

Totally disagree

Governments are not appropriately engaged since GAC is merely an advisory committee the recommendations of which mab or may not be taken by Board and even could be rejected through a simple majority criteria

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        GAC to get 2-4 voting members – Delete.  Inconsistent with the conditions of NTIA transition to avoid governmental control.   Inconsistent with community rejection of GAC proposal Board review proposal.

VComments

Again totally disagree with that.

Your reading of the NTIA conditions is quite narrow as you mixed up a single government or international intergovernmental organization referred to in NTIA with collective representation of the governments.If you are of the view that governmenrts role should continue to be marginalized as it is today, many people disagree with you.By the way you referred to the objection of public to the enhancement of the role of governments, pls advise which public you referring to?

Do you refer to the results of public comments process practiced by ICANN? That does in no way trepresent the views of public due to the fact that the number of comments and the commenting people ARE NOT REPRESNTING THE 3 and half BILLION INTERNET USERS .

Some of these commenters are hostile to have governments on the stake. They prefer to do every thing without the real involvements of governments

As I indicated in my earlier e-mail either we are discussing an issue under multistakeholer model in an inclusive, transparent and democratic or not

Do you believe that governments dare not and should not be counted as one of the constituent of the famous multistakeholder? Why?

What is the democratic elements of the process.

What is the inclusiveness aspects of the process

Are these simply and solely SLOGANS`?

        Ombudsman referall power – Delete as redundant to creation of IG

Comment

Do not agree

We need to address the matter , is that entity useful or mot?

If we create an oversighting mechanism should that be then deleted `?

        Allow NomCoim to select Ombudsman – Delete as reduntant to selection of IG by cross-community review group.

Comments

See above

        Expand grounds to challenge ICANN decision – Delete as unnecessary given proposal to retrict ICANN strictly to limited functions.

Commernts

Pls further clarify the meaning of” **given proposal to retrict ICANN strictly to limited functions” .**

Limits on ICANN Activities

        Require GAC consensus – Keep in WS1.  Essential to preventing government capture.  Consistent with NTIA requirements.  Needs to be incorporated in bylaws.

Comments

What is essential?

What do you mean by “ to preventing government capture”

That is a matter to be further examined    Prevent ICANN from doing non-DNS/IANA functions – Keep in WS1, if not **WS0**.  Almost all problems with ICANN accountability can be traced to concerns about the exercise of non-IANA functions (e.g. specification 11 requirements in the gTLD contracts).  If ICANN is appropriately restricted to the function it needs to do through bylaw amendment, the prospect of mission creep goes away.

 No Comments

        Maintain freedom of expression – WS2. But unnecessary if restricted function is adopted.

  No Comments

        Prevent ICANN acting “ultra vires” – Same as non-DNS/IANA function.  Merge this into earlier recommendation with sam analysis.

Pls kindly clarify what is “ultra vires”

        Registry and Registrar agreements be equitable/non-discriminatory – Should be stated as the principle on which agreements are made and subject to independent review if allegedly breached.  Statement of the principle is WS1 as is commitment to creating review mechanism.  Actual mechanism itself is WS2.

 No Comments

        Supermajority to change fee structure.  This is currently WS2.  I am surprised that the community thinks so.  To my mind the greatest risk in the ICANN transition is not the risk to free expression.  Rather it is the creation of an unregulated monopoly controlling a scarce resource (the domain names).  I would have thought that the community would be deeply concerned about the creation of excess profits that ICANN could devote to other purposes (e.g. the proposal to fund broadband expansion) that would allow it to, in effect, buy support and create independence.  For me, this is a **WS0** requirement or at a minimum a WS1 part of the bylaw revision.

 No Comments

        Term limits for ICANN Board – WS2 or delete.  With a good oversight structure, Board membership limits become less necessary.

 Comments

Should be studied

Moreoverm, the manner in which the Boards members are designated to be carefully examined . In a democratic world a designated person by some individual doesd not have a legal status unless it is an open election by the mlutistakeholders or their legal representations

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        ICANN to remain subject to US law – Currently WS2.  I think it should be **WS0**.  In this I am supported by no less an authority than the CEO Mr. Chehade.  Yesterday in a small meeting he said that one of the reasons that the US should not oppose the ICANN transition is that it would always be subject to legal jurisdiction in California.  This is the ultimate backstop against a rogue ICANN.  Without some guarantee of external legal mechanisms to control we run the risk of ICANN becoming FIFA-like – an unaccountable international body.  We do not want a situation where worldwide bodies like FIFA or ICANN are not beholden to any set of laws or codes other than their own.

Comments

Sorry to disagree with that, how USG could claim that it intends to transfer the stewardship of IANA functions to Global Multistakeholder Community with the provisio that the transferred functions remain to be governed by its own legal system.

Something does not work here as it is legally incoherent

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 Some may suggest that US law is not the appropriate

Comments

No one suggested that as it is inappropriate that any individual could dare to say a given law of a gien country is or is not appropriate.

The issue owas the applicability of the law of a gvien country to some process that has an absolute international multistakeholder nature that was the issue.

backdrop.  Fair enough – but then what is the alternative?  Some might suggest the Swiss, but the reality is that organizations that are based in Switzerland (including the International Olympic Committee and FIFA), are not really subject to control.: “The Swiss government has no interest in being involved in things like this. Switzerland attracts all these sports bodies but doesn’t oversee any of it. These things seem to be related.” ([http://www.nytimes.com/2014/12/19/sports/soccer/fifa-investigator-michael-j-garcias-resignation-ended-an-uneasy-marriage.html?\_r=0](http://www.nytimes.com/2014/12/19/sports/soccer/fifa-investigator-michael-j-garcias-resignation-ended-an-uneasy-marriage.html?_r=0" \t "_blank)).  In short we need a locale that is committed to the rule of law; dedicated to freedom of expression; is transparent; and open to all.  That describes the US legal system pretty well – and it may also describe the one in London.

Comments

I do not comments on your views that “ In short we need a locale that is committed to the rule of law; dedicated to freedom of expression; is transparent; and open to all.  That describes the US legal system pretty well – and it may also describe the one in London.”
This is a very unilateral , one sided, and nowwrrow thinking.

We need to explore all options

        Require supermajority to change incorporation and require cost benefit of leaving California – Delete.  Inconsistent with need to maintain legal presence in US.

 Comments

I do not share those views

See comments made in above paragraphs

        Incorporate as international organization – Delete.

I agree with that

        Limit ICANN executive function to implementation of polies – I don’t understand this one.  As opposed to what?  Making policy?

Comments

Dear Paul

Therer are three distinct functions

Policy making entity (legislative entity)

Policy implementing entity (executive entity)

Policy itself (legal clauses and provisions)

NEVER EVER THESE THING ARE GOVERNED BY A SINGLE ENTITY

Is we do so, it means that there is no separation of powers. This is fundamental of democracy

        Operate under rule of law in jurisdications that support redress – Delete.  Generally covered by independent arbiter idea.  Particularized special request of copyright holders that is outside scope.

Comments

I do not share your views until we clearly define the role of policy making entity clear in establishing a proper and appropriate overnighting mechanism

        One third Board on ICANN full time – Delete.  Barely disguised effort to enable governments to place members on the Board as full time government employees.  Inconsistent with NTIA requirements and with bottom-up community system of review.

Comments

What is the hostility with governments role in ICANN .

Do you want that governmentsd be marginalized as they are today.

Why?

See my comments above relating to multistakeholders and its legitimate constituencies

        Separate policy function from Root Zone Management – Keep as WS1.  A critical structural idea that will go a long way to avoiding mission creep.

Comments

Why? Pls give your valid arguments

Transparency

        Transparency International audit – Duplicative of other audit requriementes.  Delete

 Comments

Disagree to such a radical position.

Audit, arbiter ,oversighting mechanism are essential elements and MUST be retained

        Limit ability to deny transparency requrests/create mechanism akin to FOIA – This is clearly a commitment that needs to be in WS1.  Implementation can be in WS2

Your statement is unclear

 No comments

        Annual audits – WS2 for implementation but WS1 for commitment.  Should be both for transparency (see earlier suggestion) and also forensic financial audit.  Follow the money …..

 No comments

        Board deliberations transparent – Move to WS1 and make part of the Bylaw revision.

 Yes

        SOs to have aligned transparency mechanisms – Keep in WS2

 No comments

I apologize for the length of this note, but I wanted to be comprehensive.  If I could summarize my most important point it would be that there are **five** critical **WS0** items that should be our focus.  You may disagree with which these are, but I really do think that the best approach is to narrow down our focus to be more effective.  My five are:

1.      Create a permanent cross-community review structure

2.      Mandate independent arbiters for dispute resolution

3.      Change ICANN bylaws to clearly prohibit any non-IANA management related activity

4.      Require a supermajority of the Board to raise fees

5.

Comments

May items that you proposed to be deleted need to be reinserted

Totally disagree with such a radical approach

I suspect there will be strong agreement on #1, #2 and #3.  I think #4 is essential.  I realize #5 may get some dispute.

Happy holidays to all,

Paul

Happy holiday to you too

Kavouss