

Comments on certain outstanding issues arising from the CCWG Report

- additional comments from Christopher Wilkinson -

1. Inappropriate working methods

The CCWG and CWG working methods have involved such a large commitment of time and an unmanageable flow of documentation and comment that it has become almost impossible to keep track of the process let alone influence it constructively. Although ostensibly 'transparent' it has become obvious that a small number of Members, together with ICANN staff have monopolised the drafting process. On occasion, conference calls have been asked to review and endorse large documents on-screen sometimes at 48 hours notice.

In the circumstances, I have doubts as to the nature of the approvals that have been obtained and whether or not large numbers of 'Participants' in these Working Groups actively share the final outcomes, to date.

2. The 'Community'

The Internet Community is a vast concept particularly if one includes, as I do, the final users in all their manifestations.. Even the ICANN community is a broad and complex entity. One may also recall that the IANA transition is to the “global multistakeholder community”. However, in practice in the CCWG context, the community has been re-defined, indeed reduced, to the few active Members representing the interests of the ICANN Supporting Organisations and Advisory Committees.

Also, apart from a few exceptional individuals, the dimension of global diversity has been weak if not lacking. I am not sure to what extent the wider global community will recognise the outcomes of this exercise as reflecting their participation and interests.

3. The balance of power within the ICANN organisation

CCWG clearly seeks a significant shift in the balance of power within the ICANN organisation, in favour of the 'community' at the expense of the Board of Directors. Although this is quite understandable in the light of certain ICANN decisions in recent years, it is not at all clear that the proposed changes will achieve a desirable shift in the public interest. In particular, the proposed Single Membership Model risks becoming dominated, not by the community, but by a few representatives of the Supporting Organisations, notably GNSO.

A fortiori, should GAC decide not to join the Single Member as a voting participant, then the current proposal would veer dangerously towards the Single Member becoming a cartel of Registries and Registrars. That would not be acceptable.

- one may recall in this context that the SO/ACs already appoint/elect most of the Board of Directors and the members of the Nominating Committee, who appoint the other Board Directors. Why then, has it become so critical for CCWG that the same Directors can be recalled by the SO/AC who appointed them?

- The Nominating Committee was created in 2002 as a replacement and surrogate for

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the direct election of independent Directors. For the correct balance of power within ICANN it is essential that Directors appointed by NomCom are and remain independent of the SO/AC who appoint the rest of the Board.

Thus, in the light of the proposal to facilitate the recall of Directors it is entirely inappropriate that SO/ACs could initiate the removal of a Director appointed by NomCom with whom they disagree. That would fundamentally prejudice the independence of the NomCom appointees and the economic and political balances within ICANN.

- more generally, it would appear that the CCWG proposal fails to ensure that the underlying geographic and gender balances in the Board would be maintained and enhanced, notably in the context of recalling Directors.

4. ICANN's Regulatory responsibilities

ICANN was created not only to take over the IANA functions, but also to regulate the conditions of competition in the DNS markets. The latter responsibilities remain crucial. However there are increasing indications from the GNSO members and ICANN staff that they are reluctant to continue to fulfill this responsibility.

The CCWG report reflects this tendency when it suggests that new Core Value would be *“depending upon market mechanism to promote and sustain a healthy competitive environment ...”*

Clearly that would set the bar too low. A successful Registry effectively becomes the dominant operator, if not the monopolist, in its relevant market. Market mechanisms alone will not correct the risks of abuse. It is ICANN's responsibility to ensure, notably, that the interests of users and consumers are adequately protected, if necessary through regulatory means.

I doubt that ICANN will be able to fulfill its responsibility in this respect if (a) its competition policy is reduced to 'market mechanisms' and (b) the organisation is controlled by the commercial operators in the Supporting Organizations. In this context, certain aspects of the new gTLD program should be re-visited, notably the 'vertical integration' decision.

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Much more could be said about these and other issues but we are told that time is pressing, and as noted above, the volume and presentation of the material subject to public comment has become unmanageable. I suggest that the CCWG public comment period should be extended until after the outcome of the forthcoming meeting between CCWG and the ICANN Board has been reported and published.

Roy, 6900 Belgium, 12 September 2015