**ICANN Bylaws input from Chuck Gomes 12 April 2016**

In my personal review of the Bylaws I noted the following issues that I don’t think were covered in the CWG Bylaws Review meeting today:

* There are several acronyms or terms that are used before they are defined:
  + ‘EC’ - I think the first time it is used is on page 6 of the redline version (page 9 overall).
  + ‘Decisional Participant’ - I think the first time it is used is on page 33 of the redline version (page 36 overall).
  + ‘IFRT’ - I think the first time it is used is on page 90 of the redline version (page 93 overall).
* Unless I missed it somewhere, as far as I can tell the ‘Decisional Participants’ are not named anywhere in the Bylaws even though they are referenced dozens of times.
* Section 8.2 on page 54 of the redlined version (page 56 overall) says that one member of the NomCom will be selected by the NCUC.
  + I have no problem with that but I do wonder if it should say NCSG instead of NCUC.
  + I am pretty sure that the original version of this language was before there was a NCSG and before the NPOC existed.
* Section 16.2(a) on page 86 of the redline version (page 89 overall) says: “ICANN, in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and . . .”
  + It is my understanding that ICANN shall elect three of the five directors, not all five.
  + Shouldn’t this be corrected?
* Section 18.7(c) on page 97 of the redline version (page 100 overall) says that the IFRT will contain two (2) representatives from the RySG.
  + Note that it also says that there will be three ccTLD members (two from the ccNSO and one not from the ccNSO).
  + Note also that Section 19.5(iii) says that the SCWG will have three (3) RySG representatives, the same number as for ccTLDs, two from the ccNSO and one not from the ccNSO.
  + Was this just an inadvertent oversight?
  + It seems to me that the IFRT should have three (3) representatives from the RySG.
* Section 22.4(b), IANA Budget, says: “At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual budget of ICANN for direct costs for ICANN’s IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN’s IANA department for the next fiscal year (the “**IANA Budget**”), which shall be posted on the Website.”
  + The recommendation of DT-O regarding the IANA Budget was that it be approved prior to approval of the ICANN Budget.
  + DT-O’s recommendation was made prior to any knowledge that a change to the Bylaws would be proposed to require submission of an ICANN Budget to the Board 45 days prior to the start of the applicable fiscal year.
  + I support the requirement for submission of an ICANN Budget to the Board 45 days prior to the start of the applicable fiscal year but believe that there are advantages to the IANA Budget being approved earlier than the ICANN Budget; having the IANA Budget approved prior to consideration of the final ICANN Budget will:
    - Remove any dependency of IANA services funding from approval or veto of the ICANN Budget
    - Allow more time for resolution of a veto of the IANA Budget
    - Provide increased confidence that IANA services will continue without interruption.
  + My personal recommendation would be that the IANA budget be submitted for Board approval with sufficient time to be approved prior to submission of the ICANN Budget for Board approval.
  + Note that DT-O plans to discuss this issue in its meeting on 13 April 2016.
* Paragraph (e) in Section 3.2 (SO/AC Director removal process) on page 187 of the redline version (overall page 190) requires “a three-quarters majority of an applicable Decisional Participant as determined pursuant to the internal procedures of the Applicable Decisional Participant for the SO/AC Director Removal Petition.
  + If the GNSO is the applicable Decisional Participant, the GNSO does not presently define what a ‘three-quarters majority’ is.
  + Presumably, following current threshold definitions for the GNSO Council, a three-quarters majority would be defined as a three-quarters majority of each house.
  + Is the addition of this definition considered to be an implementation action item for the GNSO?
* Paragraph 1.f in Annex E, The ICANN Caretaker Budget, on page 208 of the redline version (overall page 211) says: “Notwithstanding any other principle listed above, prevents ICANN from initiating activities that are subject to community consideration (or for which that community consideration has not concluded), including without limitation, preventing implementation of the expenditures or undertaking the actions that were the subject of the ICANN Budget that was rejected by the EC and that triggered the need for the Caretaker ICANN Budget.”
  + This clause seems appropriate in a case where the EC rejects the budget because it does not support funding certain actions or thinks that too many funds are allocated to those actions.
  + But what about a situation in which the EC rejects the budget because it believes that insufficient funds are budgeted for certain actions? In a case like that, it might not be necessary to prevent funding of the actions while the dispute is resolved; in other words, it might be fine if the actions proceeded at the reduced funding level until a decision is made on increased funding, especially if taking the actions at the reduced funding level would not negatively impact the actions if increased funding was provided later.
  + I wonder whether this clause should be reworded to accommodate such situations; if so, then a change may also need to be made in section 2.b.v, Examples of expenditures that would be excluded from a Caretaker Budget: “the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.”
* Paragraph 1.f in Annex F, IANA Caretaker Budget Principles, on page 211 of the redline version (overall page 214) says: “Notwithstanding any other principle listed above, prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that are subject to community consideration (or for which that community consultation has not concluded), including without limitation, preventing implementation of the expenditures or undertaking the actions that were the subject of the IANA Budget that was rejected by the EC and triggered the need for the Caretaker IANA Budget.”
  + This clause seems appropriate in a case where the EC rejects the budget because it does not support funding certain actions or thinks that too many funds are allocated to those actions.
  + But what about a situation in which the EC rejects the budget because it believes that insufficient funds are budgeted for certain actions? In a case like that, it might not be necessary to prevent funding of the actions while the dispute is resolved; in other words, it might be fine if the actions proceeded at the reduced funding level until a decision is made on increased funding, especially if taking the actions at the reduced funding level would not negatively impact the actions if increased funding was provided later.
  + I wonder whether this clause should be reworded to accommodate such situations; if so, then a change may also need to be made in section 2.b.v, Examples of expenditures that would be excluded from a Caretaker Budget: “the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.” (Note that a minor edit is needed: it should say Caretaker IANA Budget, not Caretaker ICANN Budget.)
  + Note that DT-O plans to discuss this issue in its meeting on 13 April 2016.
* Note that a glossary of acronyms and key terms would be a very useful aid for community members.