
MARRAKECH – ccNSO: Council Preparatory Meeting
Monday, June 24, 2019 – 12:00 to 13:30 WET
ICANN65 | Marrakech, Morocco

UNIDENTIFIED MALE: June 24th, 2019. ccNSO Council preparatory meeting, Opale room, noon to 1:30 P.M.

KATRINA SATAKI: Okay, dear Councilors. I think lunch I ready, so please feel free to grab something because this is a working lunch. For others, please wait until Councilors grab their plates because otherwise our meeting will be a little delayed.

Now—

UNIDENTIFIED MALE: Lunch first?

KATRINA SATAKI: I think so, yes. Grab plates and be back to the table. We'll start momentarily.

Okay. I think we can slowly start. This is a Council prep meeting here in Marrakech on Monday, the 24th of June. You see the agenda – [inaudible] just need to prepare for the week and for our meetings with other for everything that awaits us this week.

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While there is probably no news, nothing extraordinary, for our agenda on the Council meeting on Wednesday, one thing that we need to discuss is the guideline of the ccNSO selection procedure for Board Seats 11 and 12. Just to remind you, the GRC submitted the guideline to the Council, the Council approved it. It went to the community and the community kind of did not object. Then, during our Council call in May, all of a sudden Steven objected.

I asked him to provide specific wording for the changes he has in mind. He sent a long e-mail. I didn't see any proposed wording. I responded with an even longer e-mail and, at the end, asked him again to provide exact wording.

Correct me. I haven't seen any – yeah, I see Steven, but I haven't seen any wording. So whenever he's back with his plate, we can—

UNIDENTIFIED MALE: [inaudible]

KATRINA SATAKI: Yeah, but – okay. Let him eat first?

UNIDENTIFIED MALE: Yeah.

KATRINA SATAKI:

Then let's swiftly move to the next agenda item, what we have this week. Tomorrow, together with SSAC, we co-organize a high-interest topic on DoH and DoT. From our side, we'll have a Co-Chair, let's say, of the session. Alejandro will chair the session. Then we'll have a moderator. [Elisa] from .ca will be one of our moderators. There is also another moderator from SSAC. SSAC will give a more technical view on the issue, and the Peter from .de will add some more perspective from our side, including the policy perspective.

So I hope this is going to be an interesting meeting. Therefore, all are welcome to this session and to contribute to the discussions. I'm sure they're going to be very interesting. Even though this topic now is really hot – I think in all possible fora it's been presented and discussed – there's still some relevance to ICANN and what we're doing here.

Again, on the second cross-community session, tomorrow we'll have this evolving fixed effectiveness of the ICANN multi-stakeholder model. Well, at least to me it's still not entirely clear how we're going to proceed, but currently, after some public consultations, there is a list of topics of common pain, of shared pain. Since all SO/ACs apparently have a similar struggle with similar issues, there is an idea that we can actually do something. We must do something to ease the pain.

The idea here is that each group will select a topic they are prepared to work on. For example, the ccNSO can pick something, one of the easiest topics, for example, on the list, and then tell what we need resolve this issue and what research this might need – for example, what staff support or whatever. Then, at some point, the idea is that the group that decides to deal with an issue with propose a solution that would be discussed by other communities.

I don't know how it's going to work. Yesterday, during our meeting with the CEO and Chairman of the Board, Byron asked a legitimate question: how could you possibly tell what resources you need to come up with a solution when the solution is not clear? Later that day, Chérine came up with an example. For example, if we take something, like if we decide to address a proposed solution for one of the issues and then we, for example, realize that we need to run a PDP – definitely not the case, but that was his example – and we realize that we need a ccPDP, that means that we need at least one year or two years and so on and so on. So that's what he has in mind when they suggest that we come up with a timeline and resources that we need. Let's see how it evolves tomorrow during this cross-community session.

On Thursday, we have impacts of EPDP Phase 1 recommendations on other ICANN policies and procedures. The second one is policies around universal acceptance. The

organization of this session was led by Ajay. Currently, again, everything is set: the agenda, panelists. Again, another interesting session, so please join. That's on Thursday.

The main agenda items for our meetings. One is the thing that I hope you noticed. We started discussing what happens with the ccNSO membership when the management of the ccTLD transferred to another ccTLD manager. As agreed on the Council call, we sent a question to ICANN Legal, asking for explanation. The response was that, yes, at the moment, the entity is not in the IANA database as a ccTLD manager. So it automatically ends the membership. That's one thing.

Another thing is that the moment when it happens is not the ICANN Board decision but the moment when it has been implemented in the IANA database. That moment is the ultimate moment when we can say that the ex-ccTLD manager is not a member of the ccNSO anymore.

BART BOSWINKEL:

[inaudible] just for explanation, the rationale provided was – this came up this morning during the PDP Retirement Working Group as well – that the Board decision is effectively a due diligence check of the process. So it's not a real decision in the essence of yes or no. It is just, "You went through the process and everything is in order. Please proceed in concluding the process." The

conclusion of the process is the removal or the change in the IANA database. That's the rationale.

KATRINA SATAKI: Yeah. Yes, [Nick]?

[NICK WENBAN-SMITH]: Are you saying then that the legal advice on the ICANN bylaws under Californian law is that you automatically cease being a member of the ccNSO by virtue of the IANA database change and it's as simple as that? Because the reason we asked the question, if I remember rightly, was that it was not crystal-clear that that was the case. But, if that is the advice, maybe we should try to document that for posterity in a way which we can learn from that because it's a useful reference point and it saves a lot of a discussion if it happens automatically.

BART BOSWINKEL: Yeah. What will happen is we'll introduce the document and [say, after the call, the] Secretariat has prepared and looked at the transfer since 2003 and went through the IANA database and through the ccNSO members database to check whether there's still some entities which do not match. There are 11 cases that we need to look at. We'll inform you after this meeting. After this

meeting, we'll circulate the document, and it will include, say, the e-mail from ICANN and the question as well.

[NICK]: Okay, thank you. I'll just quickly check the IANA database to check that our record is accurate. It's useful because it means we don't have to go through a bylaws change process to clarify that. It seems logical and it's elegant, if that's correct. Good.

KATRINA SATAKI: Thank you. Any other questions about that?

No? We will talk in more details about CSC. We have to launch the member selection process for CSC. We'll need to a new NomCom member and RZERC actually, too. It's not on the list here, but just to flag that Peter Koch's term on RZERC comes to an end. We will need to run another process. He is eligible for reappointment. Again, nothing much is happening at RZERC.

Let's go through our joint meeting with the ccNSO and GSNO. Please note it's on Wednesday after our Council meeting from 6:30 to 7:30.

BART BOSWINKEL: Please note also that drinks will be served.

KATRINA SATAKI:

Sorry? Drink will be served, yeah. Thank you. Duly noted. What are we going to talk about? One is of course the new gTLD auction proceeds. Hopefully they will end their work at some point. On that working group, we have Peter Vergote. I don't know if he's still active. We have Stephen and [Gene], who [was] the Co-Chairs. I hope, again, he [inaudible] really willing to finish the job, the work, on this cross-community working group as our appointed Co-Chair, even though he stepped down as a ccNSO Councilor. So this is one of the topics. We'll see how it goes. It looks like they are in the final stage, but then again, at least my feeling is that they were in the final stage a year ago. I hope that this is the final, final stage.

The next topic is, again, the Customer Standing Committee. As I mentioned, we're going to talk about that during this week. Again, to remind you, we have two members on the Customer Standing Committee. Initially, when we appointed, when this group was created, our two members, just to make sure we can retain institutional knowledge, the idea was that a term of each member is two years. But to make sure that the term does not end at the same time, we selected for one appointed member who had a three-year term and another [a] two-year term. Last year, we appointed a new member to the CSC. This year, the only three-year period ends for Byron, but is eligible for reappointment, and

I hope that – okay, I won't say anything. That's for him to decide. This is for his seat.

The second thing that we need is we'll need to consult with the [RSG] on the geographic diversity of candidates. We currently have North Americans and Europeans.

Then, when we are done with the process, and other appointing organizations have appointed their liaisons – there are only four members; again, two from ccNSO and two from RySG – we will need to approve the full slate. Again, let me remind you that, in order to be efficient, we agreed to have a CSC selection committee that does the approval of the full slate.

Here you see the names of all our members in this committee.

Next one – yes, please, Bart?

BART BOSWINKEL:

What may be important – that's why it's on the agenda with the GNSO Council – is to at least agree on the end phase with the GNSO Council, that they're very aware the ccNSO got this committee in place, but, by mid-September, they need to have their procedure and people in place as well to approve the full slate because that's critical.

KATRINA SATAKI: Is this mid ... okay. The appointment must be done by the 1st of October, if I remember correctly.

BART BOSWINKEL: Yeah.

KATRINA SATAKI: So somewhere around ...

BART BOSWINKEL: The earlier the better.

KATRINA SATAKI: Exactly. The sooner the better. We'll have—

BART BOSWINKEL: They'll need to be aware that [inaudible]

KATRINA SATAKI: Sure. Actually, I spoke to yesterday that, least at RySG, they're pretty much aware of the fact that we need to go through this process.

Next is procedures pertaining to special IANA function review. Again, if you'll remember, in the bylaws, we have the IANA functions review. This is something that we're still struggling

with. In specific cases, the GNSO Council and the ccNSO Council may agree to run a special IANA functions review. It's not something that we do lightly. It's a very serious thing.

The idea in the bylaws is that, when there is no other way to ensure that some PTI-related issues are being resolved, we can initiate this special IFR. But before this, there is the CC (Customer Standing Committee). They have developed remedial action procedures that have three steps of escalation. The first one is they escalate the issue with the PTI director or Board. Then the next one is the CEO. If, again, the issue is still not resolved, then the third escalation step is the ICANN Board. Only if even the ICANN Board hasn't been able to resolve the issue, we start discussing this special IFR.

Currently, the GRC is working together with the GNSO draft team. Basically, the GNSO draft team drafted the procedure to coordinate with us because this must be a coordinated procedure. We have the GRC give some input to the process, so we're trying to come up with a reasonable as-efficient process as possible because, apparently, if, really, things are so bad that remedial actions procedures are not able to resolve it, then we need to be fast. We need to communicate other SOs/ACs and then decide whether we want to move or have a special IFR or now.

The next thing that we're going to discuss is those mutual concerns regarding the evolution of the multi-stakeholder model. Another one is how to structure the joint policy development efforts regarding the confusing similarity of internationalized domain name country-code top-level domains strings and variant management.

BART BOSWINKEL: Or in general TLDs

KATRINA SATAKI: Yeah. General TLDs. It's our IDN ccTLD and IDN gTLD [- basic similarity – management,] something that the ICANN Board asked us to look into.

One important thing here is that, yesterday, during our exchange, apparently the GNSO was more concerned with the variant management.

Giovanni, have you had any exchange with your GNSO counterparts?

GIOVANNI SEPPIA: I did try to reach out, and I didn't receive any response. So that's very short. I think that it's quite important for this community to make sure that there is a uniform and consistent approach

because currently, when it comes to confusing similarity, ICANN policies for the IDN ccTLDs are extremely stricter. ICANN policies for the gTLDs, especially the new gTLDs, including IDN gTLDs, are extremely liberal. Extremely liberal.

So is something that, in some other areas, you'd call discrimination. And it is. In some cases we are presented to express ourselves in our native languages, while in the gTLD world, it's still a bit like the far west.

KATRINA SATAKI: Okay. Thank you. Ajay?

AJAY DATA: Just one small point. Why do we not have names on [inclusion procedures] who are in this particular topic? Are we not addressing it, or nobody's taking care of it? What's the status here?

KATRINA SATAKI: Well, they are addressing it, but, yes, we do not have any particular person responsible for that. We all will be there and every input is welcome.

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: Yes, sure. I will introduce them.

BART BOSWINKEL: You will?

KATRINA SATAKI: Yeah—

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: Yes ... Someone is eavesdropping on us ... It's Danny. I don't know who Danny is, but ...

Okay – oh, yeah. More likely it's [inaudible]. Okay. Then we have scheduled a meeting with the GAC tomorrow, but it turned out that there was some misunderstanding about times. To make it, again, work and more efficient for us, we had to change up the agenda a little.

What we'll do is, instead of – well, initially we wanted to give a presentation on the PDP because the GAC needs to be informed. The second was we wanted to discuss ICANN's operating plan with the GAC and to share our concerns and really ask them

questions and initiate discussion. But there's no point of having this discussion if there are no ccNSO people in the room. Therefore we changed it a little, so we will only give updates to the GAC. It's an update on the PDP and a status report of the ccNSO IDN preliminary review team. Stephen and Ajay will brief the GAC on what's going on.

Are you okay, Bart?

BART BOSWINKEL:

The reason for including the last one is that the GAC is starting really to focus on IDNs. For example, they have, which are still in draft form, their own IDN ccTLD guiding principles, like they have GAC 2005 guiding principles. At one point, they really will get involved into the IDN ccTLD discussion again, so it's better to get them informed so they know what is happening and the direction of travel of the ccNSO before they're here afterwards. That was the reason for suggesting this topic.

KATRINA SATAKI:

Thank you. Does that work for Stephen and Ajay?

AJAY DATA:

When is it scheduled?

KATRINA SATAKI: Sorry?

AJAY DATA: When is it scheduled?

KATRINA SATAKI: It is tomorrow from 11:00 to 11:30.

AJAY DATA: Okay.

KATRINA SATAKI: Ajay, if you can't make it, then probably -- yeah, Alejandra?

ALEJANDRA REYNOSO: Just a quick question. What do I say in the highlights tomorrow? That there will be a joint session with the GAC? Or should I skip it?

KATRINA SATAKI: That there will not be a joint session with the GAC. We will give two updates, but we will stay in our room and we will have discussion. One of the ideas is that the SOPC today will start their discussions on an operating plan. Instead of having the discussion with the GAC, we could first discuss it with our own community and have some questions and some interaction in the

working group – something to understand how our own community sees the operating plan. Then we can, next time, probably talk to the GAC.

BART BOSWINKEL: Maybe in additional to your question, Alejandra, one of the reasons for suggesting this is it is about a ten minutes' walk to get from the ccNSO meeting room to the GAC room. So, effectively, you miss almost the whole of Block 3 just for a half-an-hour.

ALEJANDRA REYNOSO: Yes, it makes total sense. I was just asking if I should mention this. Or should I skip it?

KATRINA SATAKI: I think it because ...

ALEJANDRA REYNOSO: Okay.

KATRINA SATAKI: You can say that we unfortunately had to cancel the meeting, but don't go, maybe, into the details. We will just provide two updates.

Stephen?

STEPHEN DEERHAKE: Thank you, Katrina. Just for a point of clarification, if I understand this new schedule with the GAC, the ccNSO members meeting will carry on, and a couple of us will run over to the GAC and chat with them a little bit and then run back?

KATRINA SATAKI: Exactly, yes.

STEPHEN DEERHAKE: Okay.

KATRINA SATAKI: Ajay?

AJAY DATA: I'll be available at ... We have to do a little bit of work with Bart, and then the presentation will be ready. So Bart will be required to be [there] when we are meeting with the—

KATRINA SATAKI: Bart will be there anyway, yes. Sorry, but we just had to react and cancel the meeting because otherwise it we would have lost the entire block.

BART BOSWINKEL: Just one question.

KATRINA SATAKI: Yes, Bart?

BART BOSWINKEL: Has the GAC been informed about this?

KATRINA SATAKI: They know that it's been discussed now, today, during the Council prep meeting, and that we would inform the afterwards.

KATRINA SATAKI: Will you inform them, Katrina, or—

KATRINA SATAKI: They are pre-warned. Kim pre-warned the GAC Secretariat that—

BART BOSWINKEL: Yeah, but to confirm.

KATRINA SATAKI: Sure. Yeah, we will. Okay, that’s about the GAC. Now we can go back to the guidelines. As I already said, Stephen, where’s the wording?

STEPHEN DEERHAKE: I think the issue here is beyond a wording issue. I have litigated this extensively. The Council is aware of my evolving concerns. I think, in a nutshell, the horse is in front of the cart, to put it one way. I think there’s some genuine privacy concerns, and I think, in effort to avoid potential extensive embarrassment to the ccNSO, that, prior to that we do a final adoption of this, it be submitted to ICANN Legal to see if they’re okay with it.

I would see a result of a submission to ICANN Legal with one of three outcomes. They would decline to review it, in which case we can go ahead and adopt it. They would say it’s okay, in which case we can go ahead and adopt it. They could come back and say, “This has really got some issues.” If they came back and told us that prior to us adopting it, would save this community and this Council a considerable amount of embarrassment.

So I don’t see that a big change in language is required at this point. I think what is required is to have ICANN Legal to a review of it. If they’re happy with it, then we’re happy with it.

KATRINA SATAKI:

I think that's not the right thing – to push everything on ICANN Legal – because, since your concerns, I responded with my arguments. I never heard back from you. I think it's not very productive.

Anyhow, are there views around the table? Basically, if I understand if correctly, Stephen's proposal is that the list of candidates is secret, so nobody knows. When I say nobody knows, it's not that nobody knows. Apparently, somebody had to know because, otherwise – the Secretariat apparently knows. People who nominate and who second know. Nobody else, apart from, I don't know, 20 people.

Yes, please, Stephen?

STEPHEN DEERHAKE:

The proposal is, in a nutshell to essentially have the names of candidates that are properly put forward kept from the community at the close of the nomination period until such time as they can be vetted by [Mintz].

The issue with the vetting by [Mintz] is that they do not simply give you a green light, a yellow light, or a red light with regards to the reputation of the person that's subject to their investigation. They provide rather extensive detailed information. In the case of—

KATRINA SATAKI: That is not correct. Stephen, that is not correct. It's red, amber, green, and I stated in my response to your concerns. It's not detailed information. We never receive detailed information. I don't know where you got that from. It's not in the guideline. It had never been discussed.

STEPHEN DEERHAKE: I got it from a non-ccNSO Board member.

KATRINA SATAKI: And they sent it to whom? To them? Yes, maybe, but not—

STEPHEN DEERHAKE: [inaudible] extensive—

KATRINA SATAKI: The ICANN Secretary never sends the detailed information to anyone, except perhaps the candidates themselves. Can you really imagine the ICANN Secretary sending detailed reports to anyone? Get real.

STEPHEN DEERHAKE: In the case in NomCom, that apparently is the case.

KATRINA SATAKI: We're not NomCom. Yes, they do a very extensive review, but our process is not build on NomCom. It's build on the ASO, again, as I stated in my explanation, which you apparently haven't read.

STEPHEN DEERHAKE: I have read it. You don't need to be insulting.

KATRINA SATAKI: But in that case, we're not discussing any substance. Our process is not based on the NomCom. It's based on the ASO. Again, the process is they do not vet all the candidates. They vet only the winner. They send the name. They get back red, amber, or green. Well, they never got apparently anything apart from green. Their idea was that, if it's red or amber, they would definitely ask for some more information. But they would never question that. That was the ASO's approach. For us, when we discuss this in – I forgot the place again. When we discuss that, there was a requirement. One of the requirements was we vet not the only the winner but we vet all candidates. I'd say that's an overkill, but that was the wish of the Council, and that's in the guideline.

STEPHEN DEERHAKE: At the end of the day, Katrina, my question is, what is your extreme reluctance to run this by Legal to prevent potential severe embarrassment to us?

KATRINA SATAKI: If we had done that a year ago, yes we could do that. But now, when we need the guideline—

STEPHEN DEERHAKE: We still have time.

KATRINA SATAKI: Yes, and can you imagine ICANN Legal answering so quickly?

STEPHEN DEERHAKE: If they have significant concerns, I think they'd get back to us. Yes, absolutely.

KATRINA SATAKI: Okay. Any other views around the table?

Yes, please?

UNIDENTIFIED FEMALE: Thank you. I just don't understand, Stephen, why is it necessarily for us to ask ICANN Legal? It's very straightforward – the guideline – and I don't think there is anything to worry about, honestly, because, if the person is accepting the nomination and accepting the fact that they're going to run a background check, it's because

they know that nothing is going to be found. They're not looking over stuff that is less important, like a parking ticket or something like that. So I really don't understand why is this not so straightforward as to do it as it is.

STEPHEN DEERHAKE: What if, after the fact – after we have adopted this – ICANN takes a look at it and says, “Well, we have real problems with it”? What I'm trying to prevent here more than anything else is the possibility that we incur some serious embarrassment for putting something together that, after the fact, ICANN Legal decides is not correct and not acceptable per ICANN procedure or per ICANN bylaw. And I do not understand the reticence of this group to submit this thing for a priori review to prevent that from happening. As I pointed out earlier, it's likely they'll either not issue an opinion, issue an opinion that says, “Yeah, it's okay,” or go, “No. Actually, we have some problem with that.”

Now, if after adoption, that latter opinion comes out, what do we look like to the rest of the community? That's my primary concern here.

KATRINA SATAKI: If our process is built on something that is already used in the community, what kind of embarrassment could there be?

STEPHEN DEERHAKE: The ASO is a different beast. They barely participate. It's not like us at all.

KATRINA SATAKI: I don't think that's an argument. Byron?

BYRON HOLLAND: My question was going to be around this very issue. Since the ASO already has this process in place and it seems to be working without any issue, at least externally, do we know if they've had any comment by ICANN Legal or if there have been any issues? Or is it a process running fine?

KATRINA SATAKI: I have no information like that. When we started working on this, we reached out to different groups, including the ASO, we got really a very in-depth response from them. They described their process. Probably they are not so heavily described in the guidelines, but they have their own documents. So they described their process. The only thing is they couldn't say what would happen if there is a red flag because it has never happened. The idea was that, if there was then, they'd just take the next runner-up. But it never happened in real life.

What we could do is we could add the list of all the databases that candidates have been checked against in an annex or something.

Bart?

BART BOSWINKEL: To be on the safe side and to move this forward, would it be an idea to say that you adopt it conditionally upon the check by ICANN Legal? Because, that way, you have it in place unless there is red flag because you will not have a Council meeting by the time you need to launch the Board decision. Then we say, if there is a red flag, then it doesn't apply. If there is no red flag, you have adopted it.

STEPHEN DEERHAKE: That works for me, Bart.

KATRINA SATAKI: Okay. Any other comments?

Byron?

BYRON HOLLAND: At the end of the day, I think it's probably overkill. However, in an abundance of caution and, if we do it this way, it will not impede

our timeline whatsoever, I see no harm in doing that way. We still achieve the objective, which is approving it at this meeting.

KATRINA SATAKI:

Okay. Thank you. I think, with that, we've covered all on our agenda. Any other business?

Yeah, actually. Sorry. One other business from me, and that's about the IFR team, not the special IFR but the regular IANA function review team.

What's going on there? Again, as you remember, according to then bylaws, we are asked to appoint three representatives of the ccTLD community to the IFR. Two, according to the bylaws, must be members, and one a non-member. Despite all our efforts, we were unable find a ccNSO member at the time. Therefore, we proposed to move forward with three ccNSO members because we thought that the ccTLD community must be properly represented by three members on the team.

One of the proposals from ICANN was that, since that's against the bylaws, we need to ask all [appointing organizations], which means it also includes stakeholder groups of the GNSO.

If you remember in Kobe, [we] reported back that we haven't received any official objections, but we did receive some indication that one of the stakeholder groups might be objecting.

Nothing concrete, but nevertheless, the process didn't move forward.

During Kobe and after Kobe, it turned out that, all of a sudden, some non-ccNSO members showed interesting in participating. That's one thing. Another thing was that there was a proposal that we move forward with only two members, which we thought is not appropriate because ccTLDs must be properly represented.

Currently, we have several non-ccNSO members that might be interested in joining the team, which would technical solve the issue. But we can't appoint them just like that because there is another requirement in the bylaws that all three of our members need to be from different regions, which means that we cannot run the selection process only for one seat because it might influence other seats. So, in order to have a new member onboard, we have to run all the process – actually the third one, we have to issue a third call for volunteers – and then vet all applications and decide what to do.

What is important, what happened in the meantime? We have sent a letter to the Board, asking to the change the bylaws to make sure that we can appoint the best people. Yes, we still have to try to be as inclusive as possible, but if there is not interest, we would be able to move forward with properly represented ccTLDs on that team.

Currently, you can see that [these bylaw have] changed, as has been proposed, actually. Now you can submit your comments to that.

As you could see in Cherine’s letter to us – I forwarded it to the mailing list – actually, again, it’s clear that, even if the bylaws are changed, they cannot apply the new bylaws to the team that we set a year ago. It means that we will have to run a new call for volunteers in any case. Whether we change the bylaws or not, we’ll have to run a new call for volunteers.

This is one of the questions that I wanted to ask you. What would you prefer? To have a call now or wait for the bylaws change and have a call then?

Stephen?

STEPHEN DEERHAKE: Can we do a call for volunteer under the old bylaw but just hold off on doing anything with them until the new bylaw?

KATRINA SATAKI: I think we can. Why wouldn’t be able to that?

STEPHEN DEERHAKE: I don’t know. I’m just asking.

KATRINA SATAKI: I think we can. Yes, we can do it in any ... Well, technically, the IFR team hasn't convened yet, so basically the entire process is, I don't know, is dragging forever.

STEPHEN DEERHAKE: Fluid.

KATRINA SATAKI: Yeah. Other appointing organizations are getting slightly nervous because their volunteers have been waiting for a year, like, now.

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: Actually, yes, exactly. We have a very strong team. I would be very sorry to lose any of our current members of the team. They are really very strong. Actually, if you remember, in our letter, when we appointed two ccNSO members and one interim member, we said that, if there is a suitable candidate, we will evaluate the candidate and then see if we can change ... well, it seemed a good idea at that point, taking into account this regional requirement. We cannot run the selection process for only one seat because it may influence the others, unfortunately.

Bart?

BART BOSWINKEL:

I think, just looking at it from the Secretariat point of view and the persons you have [reelected] in looking at the process, first of all, you run the risk of again that nobody will, from the non-ccNSO/ccTLD managers, put their name forward if you would run a process again at this time. Maybe it is not as high as previously, but you still run the risk. That's one.

Secondly, I think, because of the geographic requirements and the non-ccNSO member requirement under the current bylaws, it has a knock-on effect, definitely on the ccNSO members. Maybe your strongest candidate cannot be elected because of the reasons of the knock-on effect. You know the bylaw changes is upcoming, so why not wait a few more meetings and then go for the call for volunteers under the assumption at the time that the bylaw change will be adopted and will be approved? Because it's an [inaudible] because, otherwise, you may end up in the same situation that you do right now.

KATRINA SATAKI:

That's absolutely true, yes. Byron?

BYRON HOLLAND: But does that means that the [IFT] will not get started and will be stuck in limbo right now, which is already contravening a bylaw by the fact that we haven't started since last October? We're already in breach of the bylaws.

BART BOSWINKEL: That will happen anyway, if you would start a call for volunteers right now again.

KATRINA SATAKI: But even if we kind of start IFR, the moment there's a bylaw change we will have to issue a new call for volunteers, which means that, even if this team stopped working, our members on the team will get into the process. Then who knows what happens?

Stephen?

STEPHEN DEERHAKE: If we [have them start] and get some body of work before the new bylaw change comes in and throws them all out of office, basically, the new group comes in, which may be the old group constituted as a new group. Do they actually to start from the beginning, or they can turn around [via] some sort of internal process resolution or whatever and look at the work that they did

up to the point where the new bylaw kicked in and say, “We’re going to adopt that work and carry forward from there”? Do you have any idea?

KATRINA SATAKI: I’m not sure I understand your question. For example, our three members start working, and then when they get changed, we ask the new members to interview the old members, just to make sure that they continue their work?

STEPHEN DEERHAKE: Not so much interview. I thinking that perhaps the new members – 90% of them – might be the old members. In any [case], if they’re not, the first group has done some body of work and has gotten somewhere along in this groups. Is there any prohibition that you can think of where the new body would be restrained from turning around and looking at the incomplete body of the work that the first group has done and say, “We’re going to take that, adopt that at our first meeting, and then carry forward,” so they don’t lose that effort?

KATRINA SATAKI: The IFR team is bigger than only our members. If they start working now, not the entire team will have to be changed. Only our representatives. That means, of course, the entire team won’t

start from scratch just because we appointed new members to the team.

STEPHEN DEERHAKE: So the large bulk of the team members will continue on. It's just ours who get tossed out and start over? Okay.

KATRINA SATAKI: It impacts only our members because the bylaws change affect only the ccNSO. Or the ccTLD in this case.

STEPHEN DEERHAKE: All right. Thank you.

KATRINA SATAKI: Nick?

NICK WENBAN-SMITH: It's obvious that the delay to the review is in breach of the bylaws, but I don't really see that there's any particular problem unless somebody is prejudiced by that delay. I mean, it's just another delay, right? So that's the first thing.

I just wanted to know, is there any pressure to pursue this bylaw-mandated review expeditiously, or are people in the community

relatively comfortable with the delay while the bylaw change goes through.

KATRINA SATAKI: I think no one is comfortable with the delay. Byron?

BYRON HOLLAND: It probably doesn't matter unless there's an issue, but imagine if we had to trigger a special IFRT for some reason – your black swan event; low probability, high impact – and we're still stuck in the same position where we can do nothing. I think, to me, that's the concern because low probability/high impact events are, by definition, rare. But a year of waiting in this limbo with no solution that, should we find ourselves in one of those situations, we still have the same problem.

So that's my struggle with it: we're just kicking the can down the road for a year plus and hoping that nothing at ICANN goes wrong over that period of time, or the environment affecting ICANN, because it could be an internally-driven event or an external event for which we have no line of site on right now. That to me is the real concern.

NICK WENBAN-SMITH: I'm a bit baffled myself as to why the review can't start with an incomplete team or with a minor breach in the sense that we have the three cc's who don't match the strict requirement that one of them is a non-ccNSO member. I don't understand why that would be less bad than the current delay and causing everybody inconvenience. But, if that's what the decision is, then I don't really see that we've got that much choice.

BYRON HOLLAND: Just by way of background, at one of the meetings with Goran, I put that very question to him repeatedly – three times – and failed to get a clear answer on why the breach of one bylaw – the absolute “We are in breach today” – is better than a slight fudge of one criteria tomorrow. There was no clear response on that.

NICK WENBAN-SMITH: Then they're bloody stupid and they deserve what they get. It's really annoying, actually.

KATRINA SATAKI: Well, technically we could have avoided that if we agreed to go with only two members. But that would have been against the interest of ccTLD members and non-members alike. That's why we said, “No, we want three members,” because there's one more thing. According to the bylaws, one of our members has to be a

co-chair. A co-chair, again, by definition, needs to be very neutral, which would leave ccTLDs with only hopefully active member, yes. So those were arguments for why we decided to go with three.

Bart, you wanted to comment? No. Young-Eum?

YOUNG-EUM LEE: Because I'm a person without a real legal background, I would just like some clarification of the things that we will have to be expecting. The ICANN Board did not approve of us appointing a ccNSO member in place of a non-ccNSO member, but if the changes to the bylaw happens – maybe in a couple month, in a year – we will have to make a new call for the whole IFR team—

KATRINA SATAKI: No, no, no. Not all. Only our three members [or] our three seats.

YOUNG-EUM LEE: I guess I'm not understanding that part because the first two members that we have selected – I don't see why they would have to be changed.

KATRINA SATAKI: The issue is that, according to the bylaws, we need to appoint three members, and each of them must be from a different ICANN

region, which means that, if we, for example, run a call for volunteers only for one seat, it would mean that, if the strongest candidate is from the same region as one of the members already on, we wouldn't be able to take the candidate.

YOUNG-EUM LEE: Yes, but that is by definition. If we have two very strong members in place, then that would mean that we would want a member from the other regions. So the two members would still stand. Even if we did make a new call and the existing members did apply—

KATRINA SATAKI: They can apply. Existing members can apply. When we vet all the applications, we still can select the three strongest ones.

Ajay?

AJAY DATA: Is it not possible to call for only one more candidate and bypass the regions which are already selected from?

KATRINA SATAKI: Well, that would be another breach of the bylaws. No, we can't do that because the bylaws clearly say that each of our members needs to come from a different region. Actually, I spoke to Donna

from RySG last night. The RySG appoints two members and the ccNSO appoints three members. The bylaws are not entirely clear, but when we discussed it with ICANN Legal, we came up with the understanding that, of our three members, each must be from a different region, and their RySG members need to be from each different region because ... At first when you read the bylaws, you may think that all five need to be each from a different region, and that would be totally impossible. But I spoke to Donna and they actually want to go for a bylaws change for this regional requirement because they are struggling because all their members are – [inaudible]?

BART BOSWINKEL:

I just checked. The bylaws say the public comment closes at the end of July on the bylaw change. The staff report is due by the 9th of August. My rough guess is that it will be on the September Board meeting if all goes well. Then it's an approval action. So, by around Montreal, the bylaw change should be effective. If it's an approval action, yeah. That's the only risk there is, that at least three decisional participants need to approve the bylaw change.

KATRINA SATAKI:

Okay. First we have a remote comment and then Stephen.

UNIDENTIFIED FEMALE: There's a question from Peter Van Roste from CENTR. "Can we restrict applications to those that are not from one of the regions already represented?"

UNIDENTIFIED FEMALE: Exactly.

KATRINA SATAKI: Well, technically we can, but, again, we limit ourselves and ... Surely, we can, technically, but at the same time, even if we change the bylaws ... well, no. I'll try to reply to Peter's question as precisely as possible. If we run a call now – for example, for the third seat – it would mean that we restrict regions first, and then we restrict to non-ccNSO members, which means that it's a restriction on a restriction. If we do a restriction after the bylaw change, technically, of course, it's easier, but, even after the bylaw change, we still need to give people an opportunity to – non-members.

Yeah, we can be very non-transparent and not nice to non-members, so I – wait a minute, Byron. Stephen had a comment.

STEPHEN DEERHAKE: The timeframe that Bart described is as I described as well in a recent posting to the list. This will be a fundamental change. It

will require an approval action from the community. It's a view of the ECA that a fundamental bylaw change requiring an approval action is worthy of a community forum. So it's very likely that community forum will be held at the Montreal meeting at the start of the Montreal meeting. As Katrina pointed out, it requires three positive votes to carry, which gives us the rest of the meeting to lobby and see that we assure that. If we can get that, it would go into effect very rapidly after the conclusion of the Montreal meeting.

KATRINA SATAKI: Thank you. Byron?

BYRON HOLLAND: More a question in terms of the logistics of voting for a non-member. The implication in what you had said is, if a non-member was voted in who was from a region where one of the member candidates had already been put forwarded [and] elected but for some reason the non-member might, for lack of a better word, bounce the member – I'm not sure that that necessarily holds. Could we not have an election that says we already have representation from two regions? In this case, LAC and Europe? And we need non-member candidates from North America, Africa, and Asia?

KATRINA SATAKI: Technically, we can do that. Of course we can do that, I think—

BYRON HOLLAND: Because otherwise it's giving preeminence to the non-member.

KATRINA SATAKI: Yes, but that was the case from the very beginning. If we had—

BYRON HOLLAND: When we had a full slate, we still had options, but if we're only electing one and saying, "We will take that one, no matter what," it could force us to get of one of the two potentially sitting candidates, which doesn't seem fair either.

KATRINA SATAKI: It's not right. I agree. It's not right at all, but it's not that we have a bucket of non-members who are willing to contribute to the work. Therefore, we are, with this bylaws requirement, stuck with that. Yes, we can do that: run elections for one seat and say, "Non-members from Europe and Latin America are not allowed to step forward." I'm not sure it's a transparent and accountable thing, but technically it's possible to do that.

Yes, [inaudible]?

[YOUNG-EUM LEE]: Yeah. Actually, that's my point, too. I think it's transparent because we announce that pre-the-election because just recording the current situation where they have to seat ccNSO member representatives – I think that solution will resolve all the problems.

KATRINA SATAKI: Bart?

BART BOSWINKEL: To complicate the grays a little bit more, what would happen if a non-ccNSO member would apply – they put forward their name – but, during the IFRT, that entity becomes a member?

KATRINA SATAKI: I think we discussed that. I think we even discussed that with ICANN Legal, and they said it's fine.

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: No. They said that, if it happens after we appoint this non-member if they decide to join, and the non-member then [starts]

participating in ICANN and they realize how great it is to be a member and they decide to join, of course they can join. But according to them, the most important thing was that, at the moment of appointment—

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: Yeah. Nick?

NICK WENBAN-SMITH: The bylaw change is in progress and hopefully will come through by November. That's five months, more or less, from now. One route is to wait for that to happen and then have the process [inaudible]. If the bylaw wording is, as I think we suggested, be quite flexible, that we basically appoint the best three people, hopefully we'd try to get some geographic diversity. But supporting there were only three applicants, all from Europe or all from Asia-Pacific, then that might be the best way forward, right?

The other option is, as I understand it, is for us to try to find somebody in the interim to get the review moving faster. So it is

really just those two choices that we're discussing the pros and cons of? Is that right? Is there any other option?

KATRINA SATAKI: But now we got another suggestion, that we run the selection process only for one seat, either now asking for a non-member from Asia-Pacific or Africa because, in North America, I'm afraid we don't have many.

NICK WENBAN-SMITH: So that is an option, isn't it? I mean, it's not crazy and it would allow the review to go forward six months earlier than it might otherwise.

KATRINA SATAKI: I don't know. That's really up to the Council to decide. Young-Eum, please?

YOUNG-EUM LEE: If we are on the topic of making a call for one candidate, we can also decide to wait after the bylaw changes to put out a call for the one candidate, which I think, in my opinion, could complicate matters less because then we don't have to consider the ccNSO member or non-member.

KATRINA SATAKI: Yes, but as Nick said – no, we can do that, too, but as Nick said, if we do it now, then it would help the team to start their work around five months earlier because those five months would be extra to the delay we’re already seeing.

NICK WENBAN-SMITH: And don’t forget, when the bylaw change goes through, it’s not going to be a one-day job to appoint the new ... We would have to have a call for volunteers. That’s stuff would take a couple of months, right?

BART BOSWINKEL: [inaudible]

NICK WENBAN-SMITH: Yeah.

BART BOSWINKEL: Let’s say, in that sense, the call for volunteers will take X time, X months. I would say one-and-a-half or two months. No matter what you do.

NICK WENBAN-SMITH: Well, I think sometimes perfection is the enemy of getting things done. Maybe [that’s the least] bad thing.

BART BOSWINKEL: So, one way or the other, you win. You gain months if you do it now, or you lose five months, depending on how you view it because it's independent of the selection process. You have to do it anyway.

KATRINA SATAKI: Thank you. Any—

BART BOSWINKEL: I'll put it on the agenda.

KATRINA SATAKI: Yeah. Put it on the agenda. We still have time to discuss it and think about it.

NICK WENBAN-SMITH: When you put it on the agenda, could you please make it very clear to have a focused discussion, Option A and Option B, and if there is another one, Option C? But I think it's just two options, right?

BART BOSWINKEL: [inaudible]

NICK WENBAN-SMITH: Okay, thanks.

KATRINA SATAKI: Thank you. Any other business?
No? Nothing? Really?

BART BOSWINKEL: [inaudible]

KATRINA SATAKI: Yeah. Okay, thank you very much. See you around. Tomorrow we start our ccNSO Members Meeting day. Wednesday we have a Council meeting and a meeting with the GNSO afterwards. Thank you very much. See you around. Enjoy the meeting.

[END OF TRANSCRIPTION]