
ICANN81 | AGM – Empowered Community Approval Action Community Forum
Thursday, November 14, 2024 – 9:00 to 10:00 TRT

OZAN SAHIN:

Good morning, everyone. Hello and welcome to Empowered Community Approval Action Community Forum. My name is Ozan and I'm a participation manager for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior and the ICANN Community Anti-Harassment Policy. During this session, questions or comments will only be read aloud if submitted within the Q&A pod. Interpretation for this session will include Arabic, Chinese, English, French, Russian, Spanish, and Turkish. If you would like to speak during this session, please raise your hand in Zoom.

When called upon, virtual participants will be given permission to unmute in Zoom, onsite participants will use a physical microphone to speak. Please state your name for the record, the language you will speak if speaking a language other than English, and speak at a reasonable pace. I will now hand the floor over to Greg DiBiase.

GREG DIBIASE:

Thank you, Ozan. My name's Greg DiBiase. I'm pleased to welcome everyone to this community forum. I'm joined by Tripti Sinha, the ICANN Board Chair, and Samantha Eisner from ICANN Legal, who will be

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speaking on why we are here in the Empowered Community Administration.

We also have the members of the Empowered Community Administration who have been designated by their respective communities. German Valdez from the ASO, Alejandra Reynoso from the ccNSO, Jonathan Zuck from ALAC, Nicholas Caballero from GAC, and the GNSO representative is Tomslin Samme-Nlar, but he was unable to make it, and so that is why I'm filling in for him on behalf of the GNSO.

So just a quick background on why we're here. This is an approval action to introduce a fundamental bylaw amendment proposed by the Board. When a fundamental bylaw amendment requires the support of the empowered community in order to be effective, and this is kind of the first step in this process. So I think maybe I'll hand it over to you, Sam, for some further background on what we're proposing here.

SAMANTHA EISNER:

Thanks, Greg. And hello Samantha Eisner from ICANN Legal. I'm here today to explain to you the bylaws amendments that the Board has approved and that we're asking the empowered community to consider.

If we can go to the next slide. So the fundamental bylaws amendments, and we'll show the language specifically in a minute, the fundamental bylaws amendments are Article Four, sections 4.2 and 4.3 of the ICANN bylaws. That's the reconsideration process and the independent

review process, the key accountability mechanisms that are set out in the ICANN bylaws. The purpose of these bylaws amendments are to introduce exclusions to both that reconsideration and IRP process to say that each shall not be used for claims or disputes relating to decisions to approve or not approve an application to the ICANN grant program.

There is no other change alteration amendment of ICANN's core accountability mechanisms through these amendments. It's just to add that specific exclusion. And the reason for this exclusion, it's a direct implementation of a recommendation that the Board received from the Cross-Community Working Group on auction proceeds that as we move forward with the ICANN grant program, that there was a determination by that group that grant applicants and others should not be able to make challenges on decisions on individual applications within the program, even though ICANN in other ways has these robust accountability mechanisms.

They wanted to preserve the grant funds for actually doing good work and not for defending against accountability mechanisms that wouldn't be available in other types of grant making programs. And so the Board approved the exact language that was posted for public comment on August 7th, 2024. Within that public comment, all of the commenters that participated were supportive of the amendments as presented.

They did not request any changes to the bylaws as presented, and there was no need to make those. And so it was exactly as presented within

that public comment proceeding. And just for clarification, there was an earlier related amendment to the fundamental bylaws that was trying to address the same issue, but in a different way that was posted for public comment in February of this year. That is off the table.

And so this is the only part that the empowered communities asked to take a look at. So here are the two specific changes that the Board has approved and that we're asking the empowered community to approve. So you'll see 4.2 is a reconsideration process, a lot of detail that's been removed. But the specific portion of that is that notwithstanding any other provision of the section 4.2, this is the exclusion section that was already there. We added in a new exclusion that said the reconsideration process is not available for disputes relating to decisions as I read to you earlier.

And then if you go to the next page of this, so then we move to section 4.3, which is the IRP. It has the same language included for the disputes. Whoever's running this can scroll to the next page. But it's the same exact language included in the IRP exclusions. But I don't think we actually need to wait for that because it really is the same. Oh, there we go. Thank you. Yeah, so you'll see it's that same exact language that was put under the IRPs exclusionary language. So with that, I'll turn to Tripti Sinha from the Board.

TRIPTI SINHA:

Thank you, Sam. So I'm delighted to be here and be part of this approval action community forum on behalf of the Board. Last year, I had the opportunity to join the Approval Action Community Forum as

the empowered community was considering a fundamental bylaws amendment to the IANA naming function related bylaws.

The participants there stressed the value of remaining true to the empowered community process, even when the amendments at issue appeared non-controversial. Today, we have another set of bylaws before you for Empowered Community Approval, updating ICANN's accountability mechanisms regarding the ICANN grant program. The backstop of the empowered community has already impacted this issue, even though this is the first time we're presenting this specific proposal to you.

Earlier in 2024, the ICANN Board initiated a fundamental bylaws amendment process that proposed to introduce a general process for how cross community working groups in ICANN could limit access to ICANN's reconsideration or independent review processes.

The public comment revealed that the community did not agree with this proposal. One of the decisional participants in the empowered community noted that it would object to the amendments if the Board proceeded to approval. The Board heard you. We went back to the drawing board and looked at how we could better meet the community's expectations, even without formally initiating the empowered community process.

The Board respected the power of the empowered community. As Sam just presented, the proposed bylaws amendment now before the Empowered Community, are focused on narrow exclusions from the reconsideration and independent review processes relating to

decisions to approve or not approve an application to the ICANN grant program. Our core accountability mechanism would not be changed in any other way.

The Board considered the public comment on this updated proposal and was glad to see the clear support from the commenters. We were also glad to see that no decisional participant within the empowered community raised an objection to the updated bylaws as presented, and hope that's a signal of your future approval of these amendments.

On behalf of the Board, I thank all of you for the time and dedication across the bylaws change process and for convening this community forum. The story of the evolution of these bylaws amendments is the multi-stakeholder model in action. You have already been a powerful backstop for the Board in carefully safeguarding the ICANN bylaws. Thank you for your dedication and time as you consider and vote on this action. Thank you. Sam.

GREG DIBIASE:

Thank you, Sam. Thank you, Tripti. As one of the members of the Empowered Community that had a back and forth on the earlier amendment, I appreciate the work that has gone into this. At this time, I'd invite other EC admin representatives to comment, if you would wish. No. Then I'd like to invite attendees in person or remote to ask comments or questions if they have them. Please.

STEVE DELBIANCO: Thanks, Greg. Steve DelBianco with the Business Constituency. I applaud the candor with which we described what happened earlier this year and how community pushback resulted in a better one, that's the way it's supposed to work. But my question would be, it says to approve or not approve, and does that cover the field of all possible problems that could occur with a grant application? For instance, if it were late and deemed incomplete or otherwise disqualified, does all that fit into the do not approve category so that we don't leave a loophole for someone to pursue the mechanisms for something other than approval and non-approval? Thank you.

SAMANTHA EISNER: Thanks, Steve. It's a really good question. Based on the design of the program, it really is a binary decision at the end, approve or not approve, even if it's about a late submission and eligibility issue or something, there are only two possible outcomes, you get it or you don't. And so we're comfortable that this fits. Thanks.

GREG DIBIASE: Great. Thank you. Does anyone else have questions or comments? Okay. Seeing none, I think I'll just touch upon what the next steps are. With the Board's notification to the Empowered community, we are now in the midst of the bylaws mandated 30-day approval period. When that period ends on December 11th, the five empowered community participants will have another 21 days to inform the administration whether they support the bad action-- bad action, the Board action. In other words, this starts in the notice period. The

Empowered Community will go back and consult with their respective groups and we will return with feedback on approval. So I think that pretty much covers it. Anything else from your perspective, Sam or Tripti?

SAMANTHA EISNER:

Thanks, Greg. If I can add one thing. We recognize that the timing of the ending of the approval period, when you vote, hits on the 1st of January. And so, from the ICANN side, we've proactively offered, if you'd like, an extra seven days to conclude that so that you don't have to try to get that done during that holiday period, and it's after people are actually starting to get back to work. We understand that and would be happy to include that in the process.

GREG DIBIASE:

Great. I'm guessing that will be appreciated from our respective groups. Okay. Anyone else with any other questions? All right. Well thank you everyone for the great discussion. Thanks for the collaboration and the work here, and I'll bring this meeting to a close.

OZAN SAHIN:

Please stop the recording.

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