

TRANSCRIPT

Quorum Study Group Meeting Buenos Aires

17 November 2013

Attendees:

Keith Davidson
Sabine Dolderer
Barrack Otieno
Katrina Sasaki
Hong Xue;

ICANN Staff:

Kristina Nordstrom
Gabriella Schitteck

Katrina Sasaki:

Good morning. Welcome to the first, probably, the last face-to-face meeting of the quorum study group. I'm Katrina Sasaki. I'm chairing this group.

So we had several calls, and we discussed the issue of quorum. Should it remain as it is at the moment? In certain situations, we need a quorum of our members to vote in order to have eligible voting.

(Unintelligible), we have prepared the first draft report. We all have read them. I received several comments from the members how to update the report.

So, probably, we'll start with the first comments of Sabine. Could you, please, for the transcript?

Sabine Dolderer:

Actually, I have only one comment. And that was from the (unintelligible) arguments, which are put in another status also important because we have announced the-- we have added the different documents which are pro quorum-- that it's, actually, to bring in here that there's also a certain amount of commitment to fulfill.

And I think it's also important to note that it's also important for the organization to be seen first as a sort of-- let's say our decisions are taken into account because (unintelligible) the organization if you don't-- if you take a lot of decisions, which actually (inaudible) by the members.

So it's also important for the organization to have the commitment of the-- to see the commitment of the different members. And, actually, it becomes part of the contractual relationship between ICANN and the different ccTLDs. And I think it's important that we actually keep the level of changing the contractual arrangements as very high.

Katrina Sasaki:

Hong, you also had some.

Hong Xue:

Okay. My comment is actually about the recommendation as going to be submitted by the study group. The purpose of our study is primarily to resolve the problem of non-voting, which disables the quorum required by the voting process. I agree with recommendation [1.3]. And I actually suggest we should lower the quorum and put it as an important suggestion.

What I'm interested is that-- how to interpret the non-voting. If a member is not voting, primarily, there's no response. And, here, it seems we ask them to indicate why they're not voting. Is this new process, or is a new layer added to the voting process?

What if it's a member that simply wishes to hide behind with quietness, and now we ask them to indicate that it does not care or-- yeah. I'm not comfortable, as this is irrelevant to me-- that's very interesting.

And then I also wanted (unintelligible), once for all, I make a general indication or this every-time case by case.

Katrina Sasaki:

Yes. First of all, (unintelligible) the idea of our group is not to solve this issue of people not voting. We can't solve it. So there was a capacity-building working group which came up with several accommodations regarding how to increase participation. So we can't solve this issue, and we're not looking into the issue of why people are not voting and how to make them vote.

We are looking particularly into this quorum rule.

And, regarding your question about-- Is it a one-for-all or-- The idea was that every member, just as a tradition in their culture-- they can state the fact that they're not voting. That doesn't mean that they do not agree with the policy or it means that they abstain or they, yeah, basically, do not-- will join the majority or whatever the decision is made.

So it's definitely a per-member statement. It won't be stated for all.

The proposal was to give an opportunity if-- In our (unintelligible), for example, a member can indicate the fact of him not voting. So this has been interpreted as abstention. So it means that we can count him into the total number of votes cast.

So, just in order to ensure that there's a quorum.

Or, if either they do not vote and it means that they vote against or if they're not voting means that-- that don't count them at all when counting the total number of the votes.

So Sabina also had a comment.

Sabine Dolderer:

I think it's important that we actually recognize the nature of the organization we're in.

So, the ccNSO-- And the quorum is only applicable to actually a decision which changes actually the contractual relationship between ICANN and each ccTLD. I think that's very important that we actually are very clear on that. So, even if somebody don't care, it changes his contractual relationship with ICANN, and that is something-- and his obligation towards what he has to do with regard to the contractual relationship with ICANN or, at least, one test tells us it is important that everybody actually is very clear about that.

And I wouldn't really warn that no care means that I don't care if my duties according to my-- which I have towards ICANN are changing.

And I think that the quorum should actually proceed so that people know exactly that there is a change (a) and (b) that they have to apply to the change. You have to vote-- if the vote is passed. I have no problem at all if they actually take (unintelligible) and say I don't care. And I have a problem to say, if somebody even doesn't react, that that actually is counted as I don't care because that is for all the others a very huge burden.

Katrina Sasaki: Just a short comment. By entering ccNSO kind of-- you agree that you will be obliging the policy issues. So your voting or not voting shouldn't change this fact.

If you don't want to be bound by the rules what are policies set by ccNSO, you can leave the organization any time.

Sabine Dolderer: Yes. Of course. But, from our perspective, that was actually-- the only part for us to accept as we go in. And, of course, when the (unintelligible) will change, I will recommend to my organization to really think hard about it in going out because I think it's really, for us, a core problem that (unintelligible). Of you decide what happens and the others don't care, it's not an organization, actually-- I can actually devote my organization to in doing policy.

Unidentified Participant: I have a question first to Gabi. When we set out working processes, there are two options - yes and no. Is there a third one that's abstain?

Unidentified Participant: Yes.

Gabriella Schitteck: This is Gabi.

So, just to clarify why we took this up, it's because, after the [IDN PDP vote], I spoke to some people about this thing that people had not voted. And (unintelligible) [Carolina Guerra] said - Oh, but in our culture, not voting means that you're abstaining. She actually thought that or (unintelligible) thought they were actively doing something by not doing something.

Unidentified Participant: That's exactly my understanding. No voting could be generally [interpreted] as abstaining will result in problems of course.

Katrina Sasaki: It's not for all. I would see here three possible scenarios. I do not vote, it means that I am against. I do not vote, it means that I am abstaining. Or I do not vote, don't count my vote; I haven't expressed my opinion.

Keith Davidson: Keith Davidson for the record.

I think this raises a really interesting point. Going back to Sabine's first observation that this is about changing the contractual obligations between ICANN and the ccTLD, that's not necessarily the case. I mean, when we voted on the IDN PDP for those countries who want to remain firmly attached to ASCII only, it's not going to interrupt the contractual obligations to ICANN whatsoever. So you could argue that the value of not voting is less than someone who is affected by the PDP outcomes having a vote.

So this idea that you will be drawn to vote because it's going to affect your relationship may not always apply, and it may cause some weakness in the election process. I think that's an important [twist].

I think second, too, is that there is a desperate need for clarity. As you say, different cultures respond to a non-vote in different ways. So I think you need to have that clarified right from the outset because it strikes me that more and more of the ccTLDs who are entering the ccNSO are doing so because they want to formalize a relationship with ICANN, which in no way indicates that they want to participate in the ccNSO at all. It's just their only way of formalizing with ICANN is to join the ccNSO.

So I think that's-- Maybe the final answer on that is to have two categories of members - members who participate and want to be counted as part of a quorum and members who are just non-participants and don't want to be counted as a part of a quorum.

Sabine Dolderer:

I think there's another option. We can actually open up a debate about binding policies again. So, if we actually gave up the mandate for-- and I disagree with you on that, that the IDN PDP doesn't change the obligation-- the relationship with the [ASCII TLD]. It does de facto because, if you look on the IDN PDP-- on the outcome of the IDN PDP, there was a clear ruling about the domains on the second level, which is definitely not part of a responsibility for ICANN for an ASCII TLD. And I think it's important to be very clear on that. And I understand that for those IDNs, ccTLDs who have from the necessity and the need to (unintelligible) IDN, ccTLD was the only bid in town. They actually want to agree on that. I think it changes the nature dramatically because, actually is the first time for a ccTLD, ICANN demands, policy, oversight on the second level. So far, I'm not-- I don't see how you feel that it doesn't change anything.

Barrack Otieno:

I think there are three scenarios we are looking at in my view. There is a situation where somebody may choose to abstain. Then they'd be a no-show, where someone deliberately doesn't come up. And then there's someone who says yes.

Now, in my culture, if you give an apology for a meeting, you bind yourself to the proceedings of that meeting by (unintelligible) unless somebody has said no clearly. So, probably, we may want to look at that. We borrow heavily from the British culture in Kenya. And, if I say I want to make it for the meeting, it's treated as absent with apology. And I'm considered to be bound by whatever deliberations will be taken by the majority in that meeting. So, automatically, my vote is for those who went by yes, unless I clearly say no or I clearly say I have abstained.

Hong Xue:

Our discussion so far has become very, very interesting. A key issue we have to resolve is how to integrate (unintelligible) because there's always been the problem of a quorum.

Well, I'm looking at the three possible interpretations and feel this is very interesting.

For the abstain one, I suggest that could be used as a general interpretation that I do hear from Barrack. It could be yes if you not vote. It could mean no. I'm against it. I strongly suggest we have serious second thoughts to make such positive presumption. If you're not voting and your presumed to be agreeing or presumed to be against it, that's a very serious consequence.

I also suggest (technical difficulties) voting. So that means don't count me as the quorum.

Barrack Otieno: Thank you. I think, going by the bylaws, there is this basic minimum that is supposed to be met before meeting (inaudible). For example, if we have five here and three of us are there and, say, 40% is quorum, then we say we have quorum.

Then the next thing is, when we want to take a vote, [however] the people are there, how many are abstaining. We say something like that. Those who will abstain, it is for documentation purposes.

But, in terms of making a decision, it is those who are for it and those who are against the decision that is being made. And then, if the nos are more, then the nos have it. If the people who are for it are more, then they have it.

The issue of apology is a question of trying to bring clarity, making members understand that, if you give an apology, then you are bound by the decision, unless otherwise.

Sabine Dolderer: Yeah, but I think the current interpretation as it's written in the bylaws is very clear. So it means-- the quorum in that sense means that 50% have to participate, and it's regardless if they say yes, no, and they say abstention. The problem is we have more than 50% who don't say anything.

So the discussion we are currently doing is about limiting the attendance rate. And I don't think that we should limit the attendance rate because, currently, the rule is the attendance on this voting has to be 60%. And that is what we are struggling to achieve. And we're not struggling to achieve, then, a yes or no within those who actually are voting. But our current problem is really that the people just don't enter the room. They don't say apologize on enter. They don't say - I abstain. But they don't enter the room. And the question is: What do we do with decisions taken with more than 50% of the people being outside of the room? And I would really, really work to change that.

I have no problem at all if you say we just close the possibility. We'll actually have done something, and Gabi is sorting out the people step by step, explaining them what's it's all about, telling them please, go ahead. We need a quorum. I have no problem at all with that.

But what I think is-- we are an industry organization. As an industry organization, and we are-- if these industry organizations decide something and we are contractually bound to implement it, I know that I want to have a sort of a safeguard. But, if only there are three people in the room and decide something, I have to implement it just because I didn't [get it].

Keith Davidson: I was actually going to make the same point about the bylaws that Sabine just made. But, yeah, that's the real danger, too, is decisions made by very few people just because they happen to be in the room.

But perhaps there is a need for new members or on an annual basis. Members that say that they actually want to be aloof from the decision making, that they don't care-- they're not counted as part of the quorum anyway. They're just sitting at the edge as non-voting members or something like that so that those who do want to participate can, but you're not making it impossible to achieve the super majority that you need in order to get something passed.

Barrack Otieno: Barrack Otieno again. (Unintelligible) adopt an approach of simple majority. I don't know if that would work in our case.

Katrina Sataki: Unfortunately, that's not an option in our case.

Unidentified Participant: I think the proposal from Keith is quite good. I think we should actually-- maybe we should think in the line of two [types] of memberships, where you have, really, the one being bound to the decisions and implementing the policies [that are developed] and, obviously, then are also participating in the voting. But I think we have to be very clear.

My fear is that, when I see all the policies develop in the ccTLD arena, I think it's very hard to follow all those developments. And I see also that one of the developments are arching over to the ccNSO (inaudible), and, especially with the IDN PDP, where I really see that safeguards which we have implemented where the general counsel of ICANN actually had to make a view that the PDP has to be into the boundaries of the bylaws, which was (inaudible).

Keith Davidson: Yeah. I think it's important to remember the initial establishment of the ccNSO and the concept of the subsidiary that applied back then. That binding policy from ICANN, top-down, could not happen-- that the super majority of ccTLDs had to be in agreement in order to have binding policies [thrust] on us and the right to opt out and resign membership if you were served policies that you couldn't live with. So I think, again, those are important tenets.

But, as time goes on-- and we've already seen in the last year the number of new members coming in. And, as ICANN increases its regional operations, expect a lot more ccTLDs to come to the party as well. I'm fairly comfortable that most of those ccTLDs will not be in the slightest bit interested in the work of the ccNSO. Their reason for engagement is otherwise. So I think, looking ahead, this group needs-- I think you've identified the issues perfectly. But you need to work on the principle of having some way of a ccTLD saying - We don't care. We just don't care. We don't want to be counted as part of anything because we don't care enough about it or we don't know enough about it or don't want to know enough about it.

Sabine Dolderer: I'm still (unintelligible) that issue of non-voting. I suggest we think about the two possibilities - one, to have a general interpretation of non-voting. But, in that case, probably we need approval by the council to change the bylaw and put a footnote into the bylaw.

Another possibility is to do as has been suggested in the document - up to the individual indication by the members. But I'm concerned about the second option. Would that create the result of (unintelligible) has been completed? And, through this indication, I can actually change the result and can actually invalidate the vote result. I don't believe it's very--

Gabriella Schittek: It definitely would not change the number of votes cast for and against the decision. It just would make-- was there a vote, or we have to go to another round?

Sabine Dolderer: The thing about this scenario is that not voting could suddenly be interpreted against, as no, and then we--

(Multiple Speakers)

Sabine Dolderer: That's the end of PDP. Right?

Keith Davidson: But the non-vote is essentially an abstention, so you've got two-- you can either vote to abstain or not vote, and you'll be recorded as an abstention, essentially. So that's the worst of all options. If you scrub the opportunity to vote for abstention and then everyone who didn't vote was seen to be abstaining, then that would help people-- push people into voting and so on.

But it still won't get us around the issues that we're currently facing. And I think it's unfair on the secretariat and staff to have to chase members to make important decisions that dictate the contractual obligations that we have with ICANN.

Sabine Dolderer: I disagree with that because I think it's a contracting party to us. And, if they want us to change something, then they have to discuss it with us and, in particular, with each and every individual. It's a usual thing between contracting parties. That is, if somebody wants from me something, he has to discuss it with me. We have to argue about it and come up with something. But that's not so far away from usual business behavior.

Gabriella Schittek: I don't think it's quite so because (unintelligible) PDP. There are discussions for five or six years going. Of course, people are losing track of the discussions. That's another issue. But asking from secretariats to chase-- please, read the document, and do vote. Oh, you don't care? No, please, vote. Please, do vote. It's not an option.

Sabine Dolderer: No. I think it's an option not to - Please, vote. It's an option to-- that's an important decision. It's about the quorum. [That are] the arguments within there. I can't explain it to if you haven't followed the discussion. Of course, that's (unintelligible). And it has a lot to do taking the people-- bringing the people back on track, explaining what it's all about, explaining what are the different options. That is actually (unintelligible). Of course, it's a membership organization. Of course we should treat the people not like if you don't vote we assume that you say no, or, if you don't vote, we assume you say yes. If you don't vote, we assume you say abstention, and we decided for you. But it's really taking them serious, informing them. Let them take an informed decision.

Gabriella Schittek: Do you really think that our members are not informed enough?

Sabine Dolderer: From my perspective, I have a huge problem to get an informed decision about the (inaudible). It was 70 pages. It was really difficult to read. And it took me quite some time to really get all the pieces. And I would say it was within the (unintelligible) area on some of the more informed members of the ccNSO. So I think it's really a service to bring the people and explain what it's all about and what was actually meant and less sending them one e-mail from [Tony] and hoping that they read these 70-pages report.

Keith Davidson: Just wanting to prod along the dispute with Sabine over the contracting parties, if ICANN was serving top-down policies to the ccNSO, I would agree with you fully. But where the PDP starts by discussions and working groups within the ccNSO, then it's the ccTLDs who

are dictating what they want as policies and then seeking the endorsement of the greater majority of ccTLDs. So that's not ICANN seeking a contractual change. That is the various peers amongst us, the members themselves, who are dictating what they want and then seeking the consensus of the majority of the ccTLDs. So I think that's quite different.

Sabine Dolderer: Still then, it's about convincing the people and bringing them on board.

Gabriella Schitteck: So I just wanted to follow up on not being informed because I think that, from our end, we really did what we could. Not only have we discussed this at every meeting and so on, but, before (unintelligible), we arranged two Webinars in different time zones. We announced it many times. John's Webinar-- for those of you who didn't understand John's Webinar, we tried to make it easy as possible for you. And, during the Webinar, we, certainly, not only presented what was in the paper; we also presented how the voting would go, where the ballots would come from, et cetera. So we tried to make it as easy as possible. And I understand it's still very hard to understand. But I think that, although we really-- I think we did what we could to inform people. They still didn't get informed. So there were some problems.

Barrack Otieno: Thank you. I think that we've captured this point developing on the (unintelligible) ccNSO members can indicate how their non-vote should be interpreted.

And I want to bring up the perspective of the African region. Most of our cc's, I would say, are understaffed. You'd find one individual doing multiple things. And, a lot of times, either they (technical difficulties)-- sorry. A lot of times, either they are maybe best in a university or they're technical people, who sincerely may not have the pedigree to be able to understand some of the policy issues that are being addressed, which is one of the things we are trying to do in the region.

So, in that case, I would request something very clear on how their vote would be interpreted so that someone makes the decision in advance, because, a lot of times, we find that these guys are not trained (unintelligible) input out there to them. And so they are not sure how to participate or what to do. So I would just like to highlight that.

But, that said, I know people are informed. But sometimes they don't understand what they're being informed about.

Unidentified Participant: No. I just had a silly question. Do we have by now an understanding of why people do not vote, because, from what I'm getting, is that they're informed. There is efforts being done. What you are saying is that perhaps they don't understand what they're going to vote to. But, in different instances, for example, it doesn't take too much to understand. Again, it's a decision that-- it should be not very much time consuming and energy consuming. So do we have by now an idea? And then we can tackle (inaudible).

Katrina Sataki: There was a working group on capacity building, which looked into these issues. Gabi, would you give a short overview?

Gabriella Schitteck: We didn't understand why people don't-- why they don't join. We were not able to find out. You were on that-- Weren't you in that group? Yes. You worked on that group too.

So what we-- the group was trying to do was to make some recommendations on how we can try to involve people. But we did not reach the voting issues in this group though. But, no, we don't have an answer on why people don't vote.

Unidentified Participant: As far as I remember, in the capacity building working group, we primarily studied how to stimulate people to join working group to do the work. So voting, essentially, is not a focus of our study.

Katrina Sataki: Okay. So our time is running out. Well, thank you very much for the discussion. I think we have some points. We will try to figure out your mood and update the report accordingly.

Any last words any of you would like to advocate or to say against or for--?

Keith Davidson: Just really a question. In the paper that I read, you talked about the council elections specifically being a lower quorum. To me, that is something that should be probably decided by simple majority of those who vote. I mean, I think it's so trivial by comparison to PDP and so on. So I just wondered if the working group had talked about that specifically and whether that was likely to be the recommendation. Or did you have some different ideas about--?

Katrina Sataki: We've talked about that, discussed it. Again, there were different views on the issue. At the moment, we have this as one of the proposals that should be discussed by the group to have lower quorum for-- especially in the case of council elections; specifically, because it's not quite clear from bylaws what to do in case there is no quorum reached in the council elections.

Unidentified Participant: I have a very cynical question on that, which I didn't-- which I refuse to send by e-mail. But, on the other hand side, if there is only one candidate per region, he's elected without voting and, obviously, without quorum, which concerns me quite a lot from a democratic point of view because, as a matter of process, I don't think it's important to discuss about if there is a necessity of quorum if you have two candidates. As long as you have only one candidate, you don't need a quorum at all. But that was just my cynical remark on that.

Barrack Otieno: I think I would go by the suggestions or recommendations in the report. And one way we could do this-- as you do it when you're putting out-- when you're sending out the [meaning], it just needs to be clear. These voted. These abstained. Yeah. These ones voted. These abstained. These ones did not vote. It's also a way of encouraging--

Unidentified Participant: Are you talking about votes within the council, because I think that's what you mean-- what you're talking about. We're not-- In this case, we're discussing about elections to the council if there's more than two candidates. We're not talking about the voting within the council.

Barrack Otieno: Okay.

Katrina Sataki: Okay. So thank you very much for your participation. And, well, we will update the report and send it again for your consideration. Thank you very much.