COPENHAGEN - GAC: CCWG Accountability Work Stream 2 – Reports from GAC Members
Saturday, March 11, 2017 – 14:15 to 15:00 CET
ICANN58 | Copenhagen, Denmark

TOM DALE: Thank you, Thomas.

As was mentioned, the cross-community working group on enhancing ICANN accountability had a full day of meetings yesterday here in this room in fact. And some information on that has already been circulated, as Thomas, said by Olga Cavalli from Argentina.

The issues that we identified in the brief are still mostly relevant. But you have to appreciate that in meeting our obligations under our contract, it sometimes means that, in order to meet the deadline for circulating the briefings, there are often some late developments that might not be fully reflected in the material.

And you may have noticed that in the week before an ICANN meeting an awful lot of things tend to happen. Again, not necessarily within the control of anyone in this room. However, the briefing material that we sent identified issues, firstly, of a general nature and then specific. So I'll just run through those and then leave it to the members who have been active in those areas to provide you with some more information.

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At the general level for the CCWG's work, there was an update yesterday concerning the expected timing. And they'll be taking longer than they originally planned to conclude the work and provide a final report and set of recommendations. We can talk about that a little bit later.

They intend to provide a staged release of the different elements of their work but also the opportunity for public comment on a single document as well.

These issues, as they go out for public comment, as we mentioned in the brief and in other briefing material that we sent you, will provide the GAC with an opportunity, if the GAC wishes, to submit comments to public comment processes or to respond to questions that are coming from this work. There are a number of things that are out there right now asking the community, including the GAC, for input. But the GAC should really consider providing some guidance and prioritization in those areas. And then the secretariat and others can assist in doing what you ask us to do. But at the moment they're questions for you to consider.

The main areas of priority at the moment which are dealt with in subgroups remain jurisdiction, ICANN jurisdiction. And there's a questionnaire which was circulated to the GAC some weeks ago from the subgroup there concerning factual information on

ICANN 58
COMMUNITY FORUM
COPENHAGEN
11–16 March 2017

experiences with jurisdiction issues. The work on human rights, you had an update, if you were here earlier, from the GAC working group on human rights and international law on the activities in the cross-community working group. And, again, a draft set of proposals concerning a framework of interpretation to assist with the new bylaw on human rights is expected to be out for public comment at some point soon. And, again, the GAC will have an opportunity to comment on that. The work on improving the accountability of SOs and ACs, that is supporting organizations and advisory committees, means that some draft proposals will be out for public comment shortly on that. The GAC will have an opportunity to consider its views on achieving the sort -- or dealing with the sorts of best practices that that group is likely to suggest for groups in ICANN to consider.

The work on transparency, as we've noted in the brief, is relevant because there are some proposals which are now out for public comment concerning greater transparency of how ICANN deals with individual governments on, essentially, political lobbying work. And, finally, in relation to diversity and you would have heard some discussions if you were here for the CCWG meeting yesterday again, a questionnaire on diversity is being prepared for groups like the GAC and others in the community to consider and provide its views back to the CCWG on achieving diversity across the GAC and other groups.

That's a very quick overview. But, as Thomas has said, GAC members have been involved in all of this work to varying degrees. I'll hand it back to the chair. Thank you.

CHAIR SCHNEIDER: Thank you, Tom. I'll invite GAC members of Work Stream 2 and accountability to complement and add a little bit more of their experience in the substreams. So who would like to begin? Yes, Denmark.

DENMARK: Thank you, Thomas. And thank you to Tom which did a good job of summarizing where we were standing. And also the email from Olga. I was out there. I was impressed, but that was good. So we got the information.

Just to underline that there is a monthly report from the secretariat which highlights where we are in the process. And if not all our fellow members have it, I can circulate it. It gives a good overview where we are in the process, what has been discussed, and what is the next steps there?

As indicated and as Tom also said that one of the issues was that we are not able to keep the timeline. So there will be, as far as I can see, there has got to be an extension up to one year from now. And we have a meeting with Goran, the CEO. And that was

also touched upon. It seems that, if we can keep within the budget, there shouldn't be the big problem. One of the problems could be the location of staff to support this, which is another issue. But, first of all, the CCWG will look at it and will come up with a proposal. And that will also go to the chartering organization. So from GAC side, we have, hopefully, within a short time to take a stand whether to prolong this.

There was a discussion whether to have hard deadlines. So we will finish this or whether we, at least in some of the questions, need a longer time. One can say at jurisdictions there have been many meetings. But up until now one can say primarily a questionnaire is out for us to answer. There's still a lot of work to be done there. We have now out three documents. It was also mentioned that the transparency and especially for us the role of government and the interaction with ICANN is important. There's also another document that is on the good practice, if that is ever going to be we're going to sack one of the board members or the whole board, there is something. So those three documents at least we should look at and see what response, if any, GAC should provide on issues. I suspect after the discussion yesterday that the SO and AC accountability seems to be pretty close to public hearing. There is especially one thing which will have been discussed but resurfaced yesterday that is this roundtable mutual accountability between

the SO and ACs, whether it will be a roundtable or whether it will be a kitchen table discussion that was up for consideration afterwards. I also expect that the questionnaire on diversity will soon be ready so we can have that out. And, as everybody heard this morning, probably also the human rights.

So I think I will stop there. This is only the tip of the iceberg. There's still 90% left to discuss or to brief about. But I think I will not take up your time. Thank you.

CHAIR SCHNEIDER: Thank you, Denmark. Olga, Argentina.

ARGENTINA: Thank you, Chair, for that information. I would like to comment on that part of the meeting where the ICANN CEO came to talk with the group. It was mainly focused on staff accountability and the relationship in between the community and the staff.

And I think he pointed out an interesting concept that I never thought about, that this is a community which is bottom-up organized. And the staff is top down. They have chief, CEO and a structure.

So they're both different in how they are going to organize.

There seems to be some difficulty in the community to perhaps express their comments about the staff and vice versa. So he talked about the need to engage in a certain format of formal communication that allows both parties to have a good way to understand each other. And I think this was a kind of remarkable thing. And also there was a comment about the newly appointed ICANN Complaints Officer. That was announced yesterday.

So that was mentioned also in the meeting. And I will stop here. And, if I find something else to share with you, I'll come again. Thank you.

CHAIR SCHNEIDER: Thank you. Iran, Kavouss, please.

IRAN: Thank you. Thanks to Tom for the brief. And thanks to Olga for and Finn for what they have provided. Taking into account the time of the meeting, I will be very brief and just refer to the important issues that need to be considered by us. The transition which has been taking place put several items for the further discussion among that, in my view.

ICANN 58
COMMUNITY FORUM
COPENHAGEN
11–16 March 2017

CHAIR SCHNEIDER: Or view of our government. The most important of that is jurisdiction. A very complex issue.

After a considerable amount of time, almost 10 sessions, four questions were drafted. And question four coming mostly from, I would say, some of the people who are very worried about the jurisdiction. I don't want to name any country.

The questionnaire is sent out. At the beginning they wanted to limit the deadline for a few weeks. But, under the assistance of some of the GAC, it was extended up to 17th of April. We should realize that it is not only GAC that should reply to this. GAC members should socialize, distribute that among the internal stakeholder, consult them, and get the reply on time or in time and send it back.

If there is no such things, then there would be no action from those who have some concern about the jurisdiction.

So I request distinguished GAC members to kindly not only themselves consider but also discuss it at the level of their internal structure, arrangement, socialize it, distribute it, mobilize the people in order to get that reply and to come back on 17th. That is one part of jurisdiction.

The other part of the jurisdiction is legal question raised to ICANN and that to be replied. And, based on that, no further action be continued.

The third part of the jurisdiction is, again, on some insistence of some of the GAC members, we tried to go back to the previous ICANN litigations and review that to see what was the issue and how it was dealt with by the court. That is very, very important. And some of the CCWG took the responsibility to make a summary of that. This summary will be discussed and continued. Thomas, allow me to -- indulge us. A distinguished GAC member mentioned that we need to be more active. I can't say more that that. We don't push anybody, but we need to be more active.

This is a critical moment, and we have to do that. For us this is much more important than the many other things, which is more straightforward.

The issue   another issue that colleague referred to the staff accountability, it is not very clear what is the problem. How the community wants to breach or bypass the hierarchy and directly go to the staff and go to the accountability. It was mentioned that the hierarchy should be respected and the responsibility remains with the CEO and the Board members. But it is under discussions.

So I stop here. If there is any other questions, there are other groups, maybe other colleagues mention that.

But for the human rights we have discussed this morning and the issue that is still under consideration. And we have mentioned that all SOs and ACs, with the respect to the application of human rights, should be treated equally. And that is important. Should not only be ICANN and GAC advice, with a capital A should respect the human right. PDP recommendation prepared by GNSO and ccNSO must also respect the human rights. That is important. And we are mentioned. And I hope that will be taken into account. Thank you.

THOMAS SCHNEIDER: Thank you, Iran, I have Brazil. Benedicto, please.

BRAZIL: Thank you, Thomas. Allow me to start by congratulating you for your new position and to say that we look forward to working with you and Switzerland in organizing successful IGF by the end of the year.

I assume Switzerland does not need advice in organizing international meetings. But just, in any case, we'll be ready to offer any comments and to assist in any capacity we might be

deemed appropriate on your part. So congratulations and success in organizing IGF.

In regard to the meeting we had yesterday, I think colleagues have already touched on the most important aspects.

I'd like to indicate three ideas. First of all, it was very evident that in the different topics, the different topics are in different stages of preparation. In some cases, I think there is a sentiment that work is almost done or very close to be finished.

Colleagues have been working diligently on those issues. So I think there was an assessment that it would not be necessary to prolong artificially unnecessarily in some streams of work. So I think this is something to take into account. On the other hand, in regard to some issues, particularly the issues of jurisdiction, human rights, there's still a lot of work to be done. And here again, I think, following the same pattern of thought, if we do not need to prolong that officially those that have already achieved a mature state, we should not rush artificially and set artificial deadlines for completion of work that still needs very important and serious discussion. I would just remind colleagues, of course, that we all know jurisdiction was the main -- one of the main topics that remained at the end of Work Stream 1 as a major contentious issue. So we think it deserves the time it will take for completion. We understand there is an

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issue of resources attached to this. But I think that can be worked out with ICANN. I think it is in everyone's best interests to not have our hands tied up or to be pushed to do things in a way that is inappropriate just because of some artificial deadlines or because of resources that I think are not discussed in this organization.

In regard to jurisdiction, I'd like to mention that the streams of work that have been indicated by Kavouss, the questionnaire, the legal questions, the examination of litigation cases -- I think those are very important areas to be looked into. And they will provide us with very important factual information. But I think jurisdiction and, by the way, not only jurisdiction but all the new regulations or the new normatives that are being set should not be drafted just by looking backwards. We should not just look backwards and convince ourselves that what we've been doing until now is the best way to proceed.

I think we should also, of course, make sure that everything that has been put in place will withstand the test of time, will be able to assist us in any case that might appear. So I think it's important to have that very solid factual information, the most solid we can, but also not to deviate on discussions on things that might emerge that would also be tested by the -- what we put in place.

In that regard, I just wanted to repeat once again because every time we speak about jurisdiction there is some interpretation. We do not mean by jurisdiction that we want to change the seat of ICANN elsewhere or even to change the (indiscernible) principle.

What we're thinking, basically, our main concern is about the dispute settlement that may arise and what would be any remedies that can be attached to the existing rules to remedy situations in which we can make sure that any issue that will be brought to justice will be treated in a way that will be -- that will satisfy stakeholders' interests, particularly on the part of governments, of course, since we are government.

We think work has been progressing. We feel that we might be able to finish some streams of work in a very short time horizon. But, again, we would not like to be rushed into very speedy decisions. Because I think we are trying to set rules for the future, and I think we should do it in a very serious manner without being pressured by what I would not -- using the expression -- artificial deadlines or issues that could be easily solved if there is a will to do so. Thank you.

CHAIR SCHNEIDER: Thank you, Brazil. And, Benedicto, nobody knows everything. So we'll very happily draw on your experience of the very good

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IGF that you organized. Don't worry. You will hear from us. I will count on you. Thank you.

Next I have Canada.

CANADA:	Thank you very much, Mr. Chairman. Colleagues have covered a lot of ground, so I'll focus mostly on the areas of work where we're a member and identify some potential next steps for GAC consideration in the next session. As colleagues from Iran and Brazil have already outlined, the work of the jurisdiction subgroup has proven to be the most complex with a multitude of elements to consider. However, the subgroup is at a pivot point and hopes to use key inputs from the survey on jurisdiction and questions to ICANN legal to help advance the discussion.

The jurisdiction questionnaire, as was already mentioned, is currently out for public comment until April 17th, I believe. It's available in the six U.N. languages. The questionnaire is more of a fact finding exercise focused on specific documented experiences. So we suspect it will be challenging for the GAC to respond as a whole. But interested governments may wish to respond on an individual basis.

A smaller team has also been assembled or is being assembled within the subgroup to develop a proposal for how the questionnaire responses will be reviewed and evaluated. And we've volunteered to be on this drafting team.

The diversity subgroup has developed a draft report to capture the exchanges to date and also to facilitate a new discussion. The document identifies elements of diversity that of are of interest to the subgroup within a broader definition of diversity. Discussions to date have mostly been focused on scoping of the elements and also some potential metrics. The subgroup still needs to consider how it envisions the criteria would apply at ICANN and ultimately to develop recommendations.

The diversity subgroup has also drafted a survey, as was mentioned, to help better understand current diversity practices at ICANN. There was a good discussion on this at the plenary yesterday with follow-up required. And, until the questions are finalized in the plenary, there's likely no immediate reaction required for the GAC.

On human rights, as we heard at this morning's discussion, the subgroup has completed the framework to interpret ICANN's new core value on human rights and is now focused on developing a complementary document with considerations inherent to the framework.

The idea is that, once the considerations are approved by the -- finalized within the subgroup and approved by the CCWG, the elaborated framework of interpretation will be posted for public comment.

Regarding -- the need to revise the timelines has already been sort of raised, so I won't repeat anything just to note that, as a chartering organization, the GAC will likely be consulted. And we'll need to determine if it supports the revised timeline.

And, finally, with respect to the output of the CCWG, the CCWG will issue reports by the nine subgroups for public comments as they become ready, it seems. Or that is the proposal currently. There will then be a final public comment period, as Tom has mentioned. And I believe this will be limited to the inconsistencies in the final report, just to avoid reopening anything in the final process. And I think the CCWG will also be reaching out to charter organizations, including the GAC, to recommend this approach for approval. So this is another thing we may wish to discuss. Thank you.

CHAIR SCHNEIDER: Thank you, Canada. I have Indonesia next.

INDONESIA:	Thank you, Tom. First of all, I appreciate your new position. And I hope we still meet you either in IGF or in ICANN or in ITU. No problem.

First of all, regarding my colleagues from Iran, about the GAC to discuss on this all information with the stakeholders, I think it's already clear in the accountability that this --the SOs and ACs should be discussed in consultations with their designated community. So I think this is one point that should be taken into account.

Secondly, just to make classification that accountability is for the GAC itself, the GAC as an AC of ICANN, not from -- not for the accountability of its country or its government. It has nothing to do with the country or government. It's only for the GAC, SO and AC at ICANN.

The last one, I think number 3 is that we will have IGF in Geneva. I think perhaps it will be useful if we can revisit the final report of the U.N. working group on Internet governance, which actually cost numbers of IGF during the Tunisia WSIS. I mention this because, if you look at the U.N. WGIG proposals, there are a lot of connections or a lot of similarities with the one that's mentioned here in the CCWG -- jurisdiction, accountability, transparency, and so on. So perhaps we can make one basket in

IGF for this particular point. The CCWG accountability related to the U.N. WGIG that will cost members of U.N.

CHAIR SCHNEIDER: Thank you, Indonesia. As we mentioned, the WGIG report from 2004-2005 is actually 12 years after it's a very interesting paper to read. And, just for your information, there will be a call for workshops as every year for the IGF. Of course, that will -- it's about to be launched. And you will have five, six, seven weeks time until the next IGF consultation and open consultation and MAG meetings that will be held in Geneva for the WSIS forum is 13-15 June. Of course everyone is invited to remotely or in person attend. And also I think it may be worth thinking about proposing a session on the transition and the CCWG work as a multistakeholder exercise to showcase this work in the framework of the IGF. So feel free, those who are interested, to propose something that goes in that direction, of course.

Other comments? On the elements of Work Stream 2?

Of the accountability work?

Iran.

IRAN:	Thank you, Chairman. I think His Excellency the ambassador of Brazil touch upon very important point that this should be considered that there is no impression, at least from the GAC member that participated, that changing the location of the ICANN, so on, so forth, because it is absolutely impossible. The whole process is based on that. If you change that, you have to redo the whole job.
	What we want, we want to have a healthy jurisdictions, which covers the point of the countries. We are not criticizing any court or any decision has been made. We are just talking about the future, how we should ensure ourself that to the extent practicable, the concerns are met.
	So the allocation of ICANN being outside California is out of question in view of the overwhelming majority. I have not heard anything about that because absolutely impossible. Thank you.
CHAIR SCHNEIDER:	Thank you, Iran.
	Other comments?
	If you don't have comments right now, we'll have the coffee break in six minutes, and then we'll resume, and then maybe we can go into some more detail about the different work streams of the SO/AC groups; in particular, the ones that have reports

published, and then we can discuss where it may be useful and wished that we coordinate the GAC input in addition, maybe, to individual governments and observers inputs. So I think this is the proposal on how to use best the time after the 15 minutes break.

Before we get to the break, there's another thing that we should spend a few minutes on, and I'm looking at Manal and Tom. It's the question that we've been asked to answer on the scope of the ATR- -- ATRT3. You know, the accountability, transparency review number 3 that is due, according to the bylaws. And there has been, as we've been informed, there has been a discussion about the scope of this review because at least some parts of the community have a feeling that there may be some overlap with, in particular, what we have just started to discuss with the works of the accountability Cross-Community Working Group. And the question is how to deal with this. And I think we have sent you out a draft letter on -- on -- as a response to the ATRT3, the call for volunteers, and, in particular, with regard to the scope. We have had some exchanges on the GAC e-mailing list.

I'm bringing this in now. We can also take this up after the coffee break if you need a little time to prepare because we should -- people are waiting for a reply from the GAC on this issue, and we should agree on this or give a reply fairly, fairly soon. So this is

why I'm raising this. But maybe anybody wants to complement me with further information.

Yes, thank you, Manal.

MANAL ISMAIL: Thank you, Thomas. And just to put things very quickly into context, there are also a set of questions that will be discussed on a panel on Monday, and the GAC is supposed to participate to this panel. Thomas was invited to the panel, but due to some other conflicts, I'll be replacing him on this panel.

So I think the questions were also shared with -- with the GAC or....

Yeah. So, I mean, apart from the letter we prepared as a response, I would also seek guidance on the questions. Maybe after the coffee break I can tell you what I have in mind just to make sure that this does not violate or is away from what the GAC thinks.

Thank you.

CHAIR SCHNEIDER: Thank you, Manal.

So if -- we could use the three remaining minutes for a few questions but we can also make the coffee break now and then

convene in time, in 18 minutes, at the quarter past, and that allows you also to think about what you -- what you just heard, and then we can continue.

I think we will have a little bit of time in the next 45 minutes that we've reserved for the accountability discussion to also look at the accountability, transparency review 3.

Okay. I see no questions right now, so that means that we would have the coffee break, and be back at 3:15.

Thank you very much.

[Coffee break]