
SAN JUAN – ccNSO Members Day 1, Part 2
Tuesday, March 13, 2018 - 10:30 to 11:00 AST
ICANN61 | San Juan, Puerto Rico

UNKNOWN SPEAKER: ccNSO members, Day 1, Part 2. This is ICANN 61, San Juan, Puerto Rico. Meeting is starting at 10:30, ending at 11:00. Meeting room 209-BC, March 13, 2018.

STEVEN: Good morning, welcome back from coffee and welcome back to what I believe is the 43rd or 44th face-to-face meeting of this group since its inception, which I find kind of remarkable, actually. This session is on the ccNSO as decisional participant, three presentations are planned in the next half hour, I will be doing a very brief summary of the activities in the empowered community administration since we last met in Abu Dhabi, this will be followed by Katrina speaking to us about the rejection action guideline, which is almost out of the oven and ready to go. Lastly, David will be talking to us about the IRP process.

I will start with a brief summary of where the ECA has been since Abu Dhabi. Most recent activities of ICANN that involve the empowered community and the empowered community administration as the adoption of the PTI FY19 Operating Plan and Budget. This went out for a public comment shortly after

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Abu Dhabi on the 26th November, the staff reported back on the comments received from the empowered community in mid December. As you can see, the board approved the PTI budget and operating plan in the INFY Operating Plan and Budget on the 4th February, which initiated a rejection action petition period. We were formally notified by the ICANN corporate secretary of this on the 9th, that period ended on the 2nd March, of this year. No rejection action petitions were received by any of the SOACs, if they were, none were sent up to the ECA for consideration and a couple of weeks ago I closed out this matter by issuing a letter to the ICANN corporate secretary saying that there was no activity on our part.

With regard to upcoming activities, as I alluded to yesterday in our joint session with the GNSO council, coming up next is the ICANN draft FY19 Operating Plan and Budget as well as revisions to the 5 year operating plan. The public comment period for the FY19 Operating Plan and Budget closed on the 8th March, as you can see there were a fair number of comments received and having reviewed them, they most centered on the funding cuts proposed in the budget to the ICANN Fellowship and the ICANN Wiki funding. Staff is currently reviewing the comments received, their report is due on the 12th April, hopefully they will make that deadline. In earlier discussions I had with ICANN board members, it appeared they thought they were going to

vote at their retreat on the 10th and 12th May, however, I am getting conflicting information from ICANN staff suggesting that they may actually not vote until the end of May. As you recall from my comments yesterday, if they vote any later than about the 10th May and the rejection action petition is put on the table by the empowered community, we will not have sufficient time to organize a public forum on any rejection action petition at the Panama City meeting.

The procedure as to what happens here once the board votes, ICANN organization, the corporate secretary notifies the empowered community administration that the board has taken a vote on the budget and adopted the budget and this starts the 21-day rejection action petition period. The \$64 question is, will any rejection action petitions be submitted based on the comments that were made during the public comment period. The short answer is, nobody knows. I have no idea, it remains to be seen, and also remains to be seen if one is filed that it gets the supporting decisional participant to back it as well. Again as I note, if the board does not vote before the 9th or 10th May, we will not have sufficient time to organize a public forum at ICANN 62, if indeed we are confronted with a rejection action petition. Personally I think if we got into that situation where we had to hold a public forum as a teleconference subsequent to Panama on an issue of such contention as the budget, I think it will not

be a good development for the community. Are there any questions?

LIZ WILLIAMS:

Thank you Steven, Liz Williams, AU. Just a quick question about whether you think it's ever likely that that kind of activity would actually take place? You just said that it's a risk to the organization, if, for example, that happened around a budget. What do you perceive as the likely risk?

STEVEN:

If I understand your question correctly, I have no idea whether or not one of the SOACs, or indeed a member of our SO is sufficiently motivated to submit a rejection action petition to their perspective SOAC leadership for consideration. I have a gut sense that there is a fair amount of motion surrounding those two proposed budget cuts and the threshold for actually getting a rejection action petition up and running is rather high as it requires the support of at least a second ACSO. The timeframes are pretty tight, A, to get the petition in to begin with and considered by your SOAC leadership, and B, to solicit the support of another SOAC. I think the odds are really low, but I don't think they're zero. I really feel that if we find ourselves in the run up to Panama after late April, or whenever after the board votes actually, that we actually have a viable one that

needs to be dealt with by the empowered community, it needs to be considered. I think not being able to hold a public forum on something as contentious as that in Panama would be most unfortunate. I hope that answers. Any other questions? Jordan?

JORDAN CARTER:

Jordan Carter, .NZ, you mentioned ICANN Wiki and Fellowship funding I think is the two contentious items. There is also the big uplift in personnel costs that ICANN, going from 55 to almost 80 million dollars over three years, the ccNSO made comments about that. Has the council, or you, considered actually moving towards a rejection action petition based on any of the items identified by the SOP.

STEVEN:

I personally have not, I'll let the council chair speak for the council. It was noted in the SSOPs comment and also in a couple of other comments, my focus on the ICANN Wiki and the Fellowship stuff was based really on the number of comments that poured in on those two topic areas. Katrina?

KATRINA:

Yes, thank you very much. No, the council hasn't considered filing a rejection petition yet, but again, let's see how the final

budget looks like and if there are any grounds for us doing this really very serious step. It shouldn't be taken lightly.

JORDAN CARTER: Can I just clarify, I am not suggesting we should be, but I think that ICANN definitely needs to have a better explanation of that big uplift in staff costs in the next version of the budget. If they don't, I think that that should be something that should be started to be at least considered.

STEVEN: In my personal capacity I agree with you. Any others? OK, Katrina, I will turn it over to you then.

KATRINA: Thank you very much Steven. I will not repeat everything that Steven highlighted during the webinars that we run on the 28th February and the 2nd March. Actually you can find on our website a recording from the webinar from the 28th February, so if you're interested please listen to the recording. Here I will try to highlight what we already have prepared to make sure that we are a good member of the empowered community, so we have a guideline for ccNSO nominations to specific reviews. Yes, this guideline will apparently have to be reviewed after operating standards are adopted.

Then we have a guideline for appointing our representative to the [...] [19:56] evaluation review committee, and also to the empowered community administration. As you know, according to the by-laws by default, it is the chair of the seat, or the decisional participant who is automatically member of EC administration, but this can be changed. The ccNSO chose the path of... having proceeded to select a representative to the empowered community administration currently, Steven does excellent job on that committee or administration. Then we have also guideline for selecting our members to the customer standing committee.

We still need to approve, approval actions and rejection actions, the guideline to make sure we have a procedure to handle those. Apparently, there is approval action guideline will need to be reviewed again to make sure that it is in line with rejection action guideline. We still need, started working on INIFPR community coordination group on guideline and David will speak more about that. We also need a guideline to appoint our representative to the SCCGU which is a community coordination group. A little bit more in detail about the rejection action guideline, here you can see all those actions that according to the bylaws can cause this rejection action. Currently, it's ICANN budget and this is what we're focusing on at the moment.

Again, as you know this is really a very tight timeline, when we have forty days public comment and there's a report from the staff, then there's the decision from the ICANN board of directors, then they notify ECA, empowered community administration, and at that point any decisional participant including ccNSO get involved. Here are seven core steps in the escalation process. They are all in detail explained in the recording of the webinar. Some main points that you can find in the guideline, first, the guideline introduces new position, it's rejection action petition manager. That is a person who is responsible for handling rejection action petitions, or initial handling let's say, and two more members, councilors, they are all councilors, two more councilors to form this rejection action petition committee.

The guideline says that neither rejection action petition manager nor any other councilors who are on the rejection action petition committee may not submit rejection action petition themselves, to avoid any conflict of interest. Still, the guideline defines who can submit a petition, that is a ccTLD, that gives specific rights to our SOPC, that is the committee that actually reviews budget and plans so that they are in a position to evaluate if there is a need for a petition. Plus, you don't have to be a ccNSO member to submit rejection action petition, so

any ccTLD can do that, it will also give the power to the council as such.

There are also, of course, requirements for submission but they merely mirror what is already said in the by-laws, so the rejection action petition must be based on previous comments, a comment that was submitted during the public comments period, you cannot just: "I don't like the budget so I submit a rejection action petition." It really must be grounded in the previous comment or in one way or another, by that I meant that, either the substantial comment was not properly addressed in the final version of the document or maybe some other comment it was address, now it is clear to you, the document of the budget, for example, has become totally unacceptable and there are some really serious flaws.

Then the guideline defines the process for reviewing of submitted petitions, how they are grouped, if necessary, and how the rejection action petition committee handles them and issues advice to the council. Then, of course, that is one thing about submitting petition, another thing is that if some other decisional participant decides to submit a rejection action petition, then at one point ccNSO, we as a decisional participant, we get involved in the process and the guideline also addresses that, how we can respond, what the council must

do, how we consult the community to see if we should join, or decide not to join a particular rejection action petition.

The guideline is also very specific about the timelines and what are the responsibilities of each of the players, whether that's a community member or council, or rejection action petition committee. At the end when there is a final decision about the rejection action petition, there all membership have a say. Final decision is the subject for veto by 10% of our members, which is according to the current rules of the ccNSO from 2004. That's basically a very short summary so thank you, if there are any questions, together with Steven, I think we're happy to take them.

STEVEN: Any questions? If no, I will turn it over to David.

DAVID: Thank you Steven, good morning everyone, my name is David McCawley and I'm here in my capacity with DOTCC and I'm also the leader of the ICANN independent review process implementation oversight team, thank you. That team was created as a construct of the CCWG on accountability and when the new by-laws went into effect in October 2016, we became a creation of the by-laws, so we are not any longer part of the

CCWG. I'll go through a couple of slides briefly, just to sort of remind us of the background of the new IRP and then I'll talk a little bit about a paracommunity IRP, excuse me. If you want to know about the independent review process, go to the by-laws and read section 4.3. It is probably 10, 15 pages. It is somewhat complex, very interesting and a good chronicle of the new rights that we have under the IRP process.

Basically, the purpose is to ensure that ICANN complies with the articles and bylaws, that is really the standard by which IRPs will be looking. Hold ICANN to and for, the IANA functions contract, that's called out as a subject for IRP, service complaints for direct customers of PTI is also within the ambit of IRP, and the whole thing is hopefully we'll reduce disputes over time because these decisions will now be precedential and they will be maintained that way by a new standing panel. The scope, this includes as I said action and inaction by ICANN that is alleged to have been beyond by-laws or articles, it will include specifically decision complaints regarding process specific expert panels.

Those are bodies like were created under the new gTLD program to examine string similarity complaints, things of that nature. Actions, if someone has a complaint resulting from what they claim is an inadequate response to a DID request, that's cognizable at IRP now. Rights of the empowered community are, and specifically IRP does not have jurisdiction to look at CCT

delegations and re-delegations. The major development so far in the IRP, the by-law itself when it was passed, that's now done, that's in place. We need rules of procedure by which an IRP will operate, those rules exist as part of the rules of the international center for dispute resolution, but they have to be supplemented to take account of ICANN idiosyncrasies, we're in the process of doing that, you've heard me say that before. We've made progress, we're close to the end, we may divide what we issue into two parts, to take account of the things we've already finished and the things we have left remaining. There are one or two difficult issues, we're working our way through them, but the rules should be done shortly. Importantly on this slide is the third bullet, the standing panel has to be created and that is not something within the purview of the implementation oversight team. That job falls to ICANN, SOs and ACs, and ICANN's job will be to facilitate a lot of this by releasing an expression of interest document, things of that nature, working with the SOs and ACs to gather in applications, and look through them and vet them.

When it comes to making nominations, ICANN will step back from that process and the SOs and the ACs, they have the role of nominating members to a standing panel. A standing panel, remember I said there going to be issuing precedent setting decisions, this is actually quite important, the standing panel has to be at least seven members, has to be diverse, things of that

nature. This is complex business and the by-laws are somewhat high level. There will be a meeting tomorrow night in room 202, at 17:00 where ICANN, SO and AC leadership will again get a chance to grapple with this issue and help SOs and ACs get organized, and it is important. I would encourage all leadership members of SOs and ACs to put that on their calendar and attend that meeting tomorrow evening at 17:00 in room 202. The standing panel is an important process, so I will move on from that and will be happy to answer questions about it.

What about empowered community initiated IRP? I will speak for a few minutes about it, but I can't cover it comprehensively. This, like Annex D itself, is a very complex thicket. What I will say about it, at a very high level, is that in section 4.2, I mentioned that if you want to know about IRP read by-law 4.3, if you want to know about empowered community IRP claims, go to the Annex D and read section 4.2. It allows for empowered community IRP, first, should be a community mediation process. It's an effort to try and avoid IRP, obviously, and mediation as you probably know is a facilitated discussion, it is not like arbitration where someone is going to make a decision, it has a legally trained facilitator that the parties agree on that help them try to resolve the issue. That's under section 4.7 of the by-law, talks about the community mediation.

Then let me just mention that with respect to empowered community IRPs, there are support level requirements and there are short time levels within which to reach these, so if a decisional participant feels like they have sufficient basis to make an IRP claim, they have to seek the support of at least one other, in order to get that ball rolling. They will have 21 days within which to do that. If that hurdle is reached, there will be a community forum, possibly a community conference call, but there will be a community forum, this is not something that is face-to-face necessarily, it can be handled remotely. There is a 30 day period within which to do that to try and assess what kind of support exists for this claim. Then after following that, there is another period of time within which to gather the support needed to make the IRP claim. It's usually at least three decisional participants supporting the idea, and not more than one objecting, that is the normal threshold. That is a very high level look at this process. The implementation oversight team doesn't have a former role in this, this is the empowered community deciding this. However, we in the oversight team tend to volunteer our help, because we're becoming experts in the new IRP.

I am happy to do that with this community, I also participate in GNSO. I am happy to do it with any community, really. I do expect to be mapping out this process and the traps to get

through, just to have it done. That by and large is a high level look at the IRP.

STEVEN: Thank you David, any questions? We have about a minute. None, we're here ending on time and as you can see our board members have arrived and so we're going to segway into the next session which is our conversation with the board. Thank you.

KATRINA: Thank you very much, we'll start momentarily, board members please join us here. There are also seats, ICANN doesn't give us many of them, but there are still some seats so please do sit down. May I ask [...] [35:56] also to join us here and also Giovanni, you too.

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