

## ccNSO Council Call

18 October 2005

### Participants

Chris Disspain (Chair)  
Bart Boswinkel (ccPDP Issue Manager)  
Victor Ciza  
Hirofumi Hotta  
Ondrej Filip  
Patricio Poblete  
Eva Frölich  
Dotty Sparks de Blanc  
Bernard Turcotte  
Charles Sha'ban  
Oscar Robles-Garay  
Donna Austin

### Apologies:

Bart Vastenburg  
Young Eum Lee  
Olivier Guillard  
Eduardo Santoyo  
Paulos Nyirenda  
Mohammed El Bashir  
Yassin Mshana  
Giovanni Seppia  
Fernando Espana  
Ali Drissa Badiel

Chris Disspain (CD) welcomed members to the meeting and noted that we won't have enough participants on the call to pass any resolutions.

Bart Boswinkel (BB) advised that the idea is to follow the agenda Chris sent out for the call. He will try to highlight some of the elements in the final report and then go to question and answer/discussions and then through the process for making decisions over the next couple of days.

The original purpose of the PDP was to encourage cc managers who are not members of the ccNSO to become members. The Luxembourg meeting was an eye opener for many cc managers. There is no indication to what extent the original goal of the PDP will be achieved if the recommendations are adopted by the Board. In going through the process and having the discussions about the issues, it is fair to say that the proposals in the final report have merits on their own.

There is a need to understand what stage we are at in the process for the ccPDP.

We are now at the beginning of the voting mechanisms. Firstly, council has to vote on the recommendations—it is not a vote on the report. Council will make their own recommendations on what should be put to the Board. Council members should vote on these and they will then become members' recommendations. Fourteen or more members of the ccNSO Council have to vote in favour of the recommendations—there is no quorum at this meeting to conduct a vote. As of tomorrow we will try to come to decisions via email.

After this stage the members vote period starts. This will be straight forward unless 50% of the membership does not vote. Council should encourage members to vote to ensure the quorum is met and to avoid embarrassment. After the members vote, the recommendations are put to a Board vote. In this case, because we are dealing with bylaw changes—the Board has to follow its own set of procedures. There might be a public consultation period involved or other mechanisms. As a consequence we will not be able to conclude this process in Vancouver. Not sure how long the board vote will take. This will depend entirely on the process the Board chooses.

Dotty Sparks de Blanc (DS) stated she did not understand why it was not possible to complete this process by or in Vancouver.

BB advised that we hope to have concluded the members vote by 18 November, then we will submit the Board report to the Board. The Board has to go through a set of procedures defined in the bylaws about changing bylaws—this can take from one to a couple of months to complete. The Board will not be able to take a vote on this in Vancouver. The Final vote on the recommendations will be after Vancouver.

CD added that the bylaws call for the Board to go to public comment.

DS asked if it is possible for this to happen in this calendar year?

CD felt that the most likely scenario is that it will go out for public comment and will be looked at by the Board at a meeting in January.

BB considered this to be an optimistic scenario, as according to the bylaws there must be 21 days for the members to vote.

CD advised that we are anticipating commencing the members vote on 25 October which would close on 15 November.

DS asked how many Europeans does the PDP satisfy?

BB responded that he has no idea.

CD advised that he will ask the members to vote on the principal that this is a good idea, it cannot be done on the basis that the European members will join the ccNSO.

BB then lead the group through the proposals in the Final Report, noting the distinctions between four types of proposals.

One—there is a procedural proposal for Issue G to extend the comment period 2

Two—there is the do nothing so the ccPDP stops for this issue

Third—there are suggestions to make changes to the bylaws and decide whether to put these into Council recommendations

Fourth—there is a change to the bylaws proposed which is put into the recommendations but it is feasible that it will not be accepted.

With regard to the fourth kind of proposal, this is specifically about the proposal regarding Issue C—changes of bylaws by the Board. If you read through the final report it is possibly not feasible that this proposal will be accepted. We had a discussion with John Jeffrey, ICANN's General Counsel and if the proposal remains as it currently is and as it has evolved in the course of this process, it is possible that he will have to advise the ICANN Board not to adopt it.

Is this clear?

CD asked if there were any specific questions about anything in the report {no}

BB advised that regarding Issue G—applicable law, the ccNSO Council can resolve to move forward as recommended without going to a members vote. It is a procedural decision.

CD advised that we can resolve to set up a dialogue with the GAC and we don't make any recommendations about this at this stage. We resolve to set up a joint group with the GAC to resolve this issue.

Bernie Turcotte (BT) asked if this is Chris and Bart's recommendation on the way to go forward?

CD responded yes, noting that a copy of the letter to Sharil (GAC Chair) and his response is in the report. This creates a dynamic between the GAC and the ccNSO. A formal resolution about this will be sent out tomorrow.

CD asked what should we do about the suggested change in the Final Report that has been identified as most likely not to be acceptable by the Board? The Issue is that under the current bylaws the ccPDP and the Scope of ccNSO can only be changed by using a PDP. The proposal is that not only those two things can be changed, but also Article IX of the bylaws which is the Article dealing with the ccNSO. Currently the Board could change the bylaws without going through a formal consultation process including the approval of a change by the ccNSO. It is a fundamental principle of governance of non-membership corporations that the prerogative and responsibility to change bylaws is with the Board. We have the choice to put forward a recommendation that is unlikely to be accepted, make no comment on the recommendation and just put it forward and see what happens or we can stop it in the process now.

BB advised that if you do not accept proposal it will not be put forward as a Council Recommendation. This is the same as Chris's third option.

DS asked is there some halfway measure?

CD replied no not really

DS considered that if we think it's ridiculous we should not put this forward.

CD noted that his concern is that we will fail in the explanation.

Patricio Poblete (PP) asked if it is true that this could be interpreted as a process for this kind of change?

CD replied that it is a function of the distribution of power. At the end of the day as a lawyer you cannot advise to pass control of the constitution of the organization outside yourself. The last thing we want is moving forward for something knowing in advance that it is not to be accepted by the Board.

BB advised that from a risk perspective the issue as raised is not as cumbersome as some of the ccTLD managers want you to believe it is. Under the current bylaws the Board has to go through established procedures as we witness in this particular ccPDP. These procedures will up to two to three months at least. Therefore you cannot be taken by surprise, which is the fear expressed.

CD considered that the power of the phrase 'and you can always leave' is important because you can always walk away and have the time to do so. He suggested that the proposal is to produce some sort of explanatory memorandum in layman's terms and leave it to members to vote.

DS asked if it is worth going through the exercise if those who have raised the issue are unlikely to join anyway?

CD noted that the alternative is that we could make a recommendation to not vote for it.

BT advised that he liked Chris' recommendation. He considered that the Council should not position itself to vote against it. Further it would be nice to have, but no-one will die in a ditch over it.

CD felt that this is an issue that should be voted upon by the Members. If the members are opposed to it it won't go anywhere. Anyway we will not know who is in favour or who has significant doubt about this.

BB reminded the group that the member's vote is only on council recommendations. Therefore, if you want the members to vote on this particular proposal it needs to be a Council Recommendation.

CD advised that we're trying to avoid the members of the Council voting against it, nor do I think that the Council should recommend to the members that they don't vote for something or advise them to vote against it. The Council should provide an explanation and let the Members vote on it.

DS asked what explanation are you going to give?

CD said that we will try to get a simple two or three paragraphs from lawyers on what it means. The choices are, we, the Council, vote in favour, or against the proposal, which is not wise given the role of the members in the ccNSO. It is up to the Members to make up their mind. It is not an option to not give members a vote on this. However the members should be aware of the concerns underlying the non-feasibility of this proposal.

This brings us to the last lump of resolutions A, B, D, E, F, I & J. My proposal is that we make a recommendation to the members that we vote in favour of the proposals. The Council will get a ballot paper via email to give you the opportunity to vote on each particular one, that record will get published and then there will be a members vote on each one.

Any questions/problems

Next meeting: 1 November, timing to be determined as daylight saving commences in some countries. The Goal is that there will be a report on the AF WG at this meeting.

Meeting closed UTC 12.03