

**Transcription ICANN Dublin
GNSO session Sunday 18 October 2015
Discussion with CEO Fadi Chehadé**

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Jonathan: Hi, everyone. Welcome back to the next session. Are we good to go with the recording? Thank you.

So we have the GNSO working sessions over the weekend. We have attendance that varies. I've been very pleased to see the level of attendance. But I know we can always count on people coming to this session when we invite Fadi...

Fadi Chehade: Hi.

Jonathan: ...to spend some time with us. I'm not going to give much of a preamble. You all know who Fadi is obviously, and he's very welcome here. So thank you for coming, Fadi. I know your time has been squeezed.

We had a number of topics we talked about yesterday. But I think really, my sense -- and we had a very brief discussion beforehand -- is that really there's a couple - given the whole CCWG-Accountability experience and the challenges we've faced on how best to work, I think two things that the group -- or that the community -- is really thinking about is how do we work -- given those experiences -- how do we work as effectively as possible -- board and community?

And also, are there lessons that we can take away in terms of how we more effectively work as a (multi-stakeholder) community?

And this has really stretched both of those two concepts -- board and community and (multi-stakeholder) community. And I realize we're putting you on the spot a little this morning, but if you are able to give any thoughts on those two in that context, it would be great to have your thoughts and input.

So welcome, Fadi, and...

Fadi Chehade: Thank you.

Jonathan: ...thanks for coming to see us.

Fadi Chehade: Thank you, Jonathan. Thank you for welcoming me as you always do.

My apologies for the brevity of time. This is a very unusual meeting in many ways, and there's just so many things pulling us in different directions. So apologies, but I'll have 15 minutes, and I'll use them at your pleasure here to answer these questions.

The board -- as an institution -- is going through its own evolution right now. There's no question that the accountability work is reshaping -- in many ways -- how the board will work with all of us -- with all of you.

So it's hard to -- right now in the middle of the white water part of that transitions river -- to kind of clearly define how we can do this better because how we exit this process will redefine -- in many ways -- not just the community relationship with the board and the modus operandi (sic), but also the community's - the board's relationship with the staff. Everything will be -- in a way -- in a different place when we're done.

I do think that the board is different today as a result of the CCWG work than it was six months ago. It's a different board. I'm in it, so I can tell you that from the inside. It's a completely different board.

I think the CCWG work has changed even the way we are working with each other as board members and how do we understand things and assess them and how...

This is obviously -- as I told you before -- this is not a normal board. Most of us come around here around this table from an environment where corporate boards are understood.

This is not a typical corporate board in many ways: fifteen members, plus myself, eight from non-com -- as you know -- seven from the community; misunderstood to be a board that will look after the fiduciary responsibility to the corporation, when -- in fact -- that's not the case. That's not the case. Because most of us come from corporate boards, so we assume when we use the word "fiduciary" we mean that the board has some kind of a fiduciary responsibility to the corporation. We don't.

Even California law makes it very clear that we have a fiduciary responsibility to do what is in the bylaws, our mission, our core values. That's what our ultimate responsibility is towards. And (J.J.) reminds the board of that all the time. So I think we're clear on that.

The second bit that sometimes is unclear is whether the board somehow has higher fiduciary responsibility or more elevated role than the community. And that's also -- in my opinion -- not the case and shouldn't be the case.

We don't have a better judgement than the community. We simply are there to serve the community in a very limited role, and we should do it well. And I

think that evolution of the board and its understanding of its own limited role is happening as a result of the CCWG effort. Right?

I'll give you an example. If you ask our board - or again, I haven't asked them, but hypothetically, if I asked our board six months -- eight months -- ago -- before the CCWG did its work -- what do think of the idea of a binding arbitration mechanism? I don't think we'd be where we are now.

We are here because of the CCWG work that actually helped clarify that it is time for ICANN to understand that the community needs an appeals mechanism that has a tangible and enforceable result. And so that's all -- frankly -- a fruit of the CCWG work.

We wouldn't be here without it. We would not be even thinking in that regard. I mean models aside and exactly how we do this aside, but just the idea that a binding outcome is made against a board position, that's a good thing. I support it, and I thank the CCWG for -- frankly -- bringing that to the fore.

The idea of board removal is another great idea because that changes the dynamics of the board and how we work with it. Today, to remove a board member, you guys pretty much have to wait till their term ends. I mean, yes, if they did something illegal, you can go to the California attorney general.

But in general, you have to wait it out. You hope that if you send letters to the board, the rest of the board would remove them. But you really have no quote unquote "power" to say to the board, "You have broken some conditions to this community. Get off your seat."

And once again, the CCWG has now crossed that line -- meaning it is now acceptable to the board -- clearly without question -- that the community which appointed the board should have the prerogative to remove that board. And that's a great change forward -- which, again, the credit to that goes to the CCWG.

So that's now reshaping the relationship, Jonathan, because suddenly you have a different -- frankly -- distribution of power -- right -- that the community regains or gains some very important power. Of course, that power needs to be accompanied with the necessary responsibilities. I think no one disagrees about that. Right? I mean that's normal. But that's what happens.

This will change the nature of the board. Believe me, I also think the way you elect board members will now be changed as a result because we're all watching this process and saying, "So if this board is this mighty institution that we need all this to shake, next time we elect a board member, let's think very carefully who we're putting on that board. And is that person going to be up to the task of understanding these responsibilities and the ability of the community to shake them?"

It's a very important - because the board doesn't come from - they are not - they don't descend on Mt. Sinai. I mean they come from you. Right? I mean you pick them one by one. So we pick them. So it's very, very important to see how that changes.

I will speak frankly as I do, and especially because, you know, no one can fire me now because I'm leaving anyway. So I'm going to just say it. I do think that throughout this process in the last few months, we have -- we, the board -- have made some pronouncements -- some statements -- that could have been done better.

So I said that to Thomas. I think we could have communicated better. We could have shared what is the rationale behind things better. We could have clarified what was - so I'll admit that, and I'll take the blame for it if necessary. It is what it is.

So we could have done better, and I think we should learn to do better in the future when we say things and communicate them. And we should

understand that -- with the redistribution of power -- the board needs to be very cognizant of its place and how it speaks and when it speaks.

So this is all learning...

Jonathan: Yes.

Fadi Chehade: ...that I think will change us.

Jonathan: So one of the things we're going to talk about with the board specifically when we meet with the board -- including you, Fadi -- is we'll talk with them a little more about, you know, CCWGs in the future and how we might better work because -- clearly -- that's something the board has both grappled with and -- as you say -- not handled most elegantly.

And I don't think that's necessarily a one-way blame. I mean there's been some challenges there for them. They didn't know whether to hold back or leap in, and I've had a sense from that talking to board members.

I wonder -- given the time -- if we shouldn't touch on this (multi-stakeholderism) and the challenges and issues around that. If others do have questions or remarks or points you like to make, be aware of the time. But this needn't necessarily be only one-way traffic. So if you did want to make a quick question or a point, by all means do so. Just raise your hand or make yourself known to me.

But if not, I suggest we talk a little bit about the (multi-stakeholder) part of things as well and see, you know, what thoughts -- in particular in and around what's gone on with the development of CCWG's work and others -- how we might better use the (multi-stakeholder) model and any thoughts you have on that (unintelligible) make...

Fadi Chehade: There aren't many places on the planet where the (multi-stakeholder) model works like it does at ICANN because we're not a monolithic group -- meaning we're not just a group with exactly the same interests.

So even at the ITF -- with the respect to their community -- yes, they have the (multi-stakeholder) bottom-up approach. But the ITF is largely people coming together with very, very common interests to build, you know, technology and protocols and standards.

Here, we have very varied interests. I mean they don't have the pleasure of 153 governments, now, next door. They don't have the pleasure of 33 IGOs. They don't have - so we are a unique environment in many ways.

Also, other (multi-stakeholder) environments that have been invited to learn how they work generally need the following by (multi-stakeholder): one stakeholder decides, but listens to others along the way -- that's not our case here. That's not our case here.

And so this makes it very different that the decision-making itself is distributed across all the interests. It is not a decision-making process that is concentrated, but then with consultation with others. Very few other (multi-stakeholder) environments have that decision-making this way.

I think the scrutiny of the CCWG process has also shed very strong lights over our decision-making processes. How do we make them?

And the later discussion about the whole CCWG process as a process in the ICANN sphere -- I think -- is going to highlight the learnings from this process and figure out how do we maintain that in a healthy way moving forward. Should the CCWG concept replace board decisions? Should it inform them? These are the questions -- right -- that we need to get into.

But what we want is to maintain efficiency -- which, by the way, many other environments don't have. It's very important to maintain efficiencies. Businesses like you come to here to get things done. Right? We want to get things done. We don't want a process that suddenly looks like it'll take years to get anything done.

But at the same time, we need to maintain balance of interests and balance of power. And that's delicate. That's the stuff of many books and many theories and political science. Right?

I do believe that what we have is unique and is actually remarkable. I really do. It's quite remarkable. Sometimes -- some days -- we wake up (unintelligible) and we think it's a mess. But it's quite remarkable. It's amazing what we have.

It doesn't work all the time. It's not most efficient all the time. But all we have to do is listen to someone like Kavouss who -- for years -- worked in the ITU and different places, and he tells you, "This is a breath of fresh air," because he has seen the other side of this.

This is a breath of fresh air. We fight. We argue. But at the end, we have mechanisms that work.

Let's not wreck these in the process. Let's all see the other - frankly -- I don't mean this to plant fear -- I'm just saying let's be careful. Let's make sure we manage these carefully. We have a treasure in other words. Let's keep that treasure working for us. It's not perfect. But nothing is.

Jonathan: Thanks, Fadi. I have a couple of questions from (James) and then from Malcolm.

Then I'll just agree with you just for a moment that -- actually -- we have something unique. And whilst it might - could always deal with improving, I've

worked in other environments -- commercial and non -- and this is something unique and extraordinary.

(James)?

(James): Thanks, Jonathan. Thanks, Fadi. Unique, also. It's a treasure, but it also means we're always in uncharted waters. Right?

Fadi Chehade: Yes.

(James): It means we're making it up as we go along...

Fadi Chehade: Yes.

(James): ...to some extent. And I don't know, Jonathan, I'm mindful of the time, but can we follow up on just something that Fadi touched on earlier with - I think it really kind of builds on the bit about interacting with the board and the other.

But I think if we can step away from viewing things through the CCWG lens with respect to accountability, I think part of the context that this came up in our conversations yesterday was a new CCWG being formed specifically to address the auction proceeds.

Do you see anything particularly dangerous about that issue -- specific to that issue -- that would change your advice or your thoughts on how we can interact with the board and that CCWG? Or just does the general advice stand?

Jonathan: (James), I only hesitate on that because we're going to come to that.

(James): Okay.

Jonathan: I mean we have that on our agenda with the board. So I suggest we take that up with the board as whole and -- by all means -- bring Fadi back into that...

(James): Yes, I'll be here.

Jonathan: ...as a board (unintelligible).

(James): I'll be here. Okay. So I'll just put a marker down for that...

Jonathan: Yes. That would be great.

(James): ...(unintelligible) in that session, then, because I know we're short of time.

Jonathan: All right. Malcolm?

Malcolm Huty: Thank you, Chair. Fadi, spoke a moment ago. He touched on briefly the position of the board as to the care it needs to take in its interventions and so forth. And with reference to what we have as the agenda in front of us as to how the (multi-stakeholder) role operates, I wanted to ask a question about the role of the President in that process in those sorts of engagements.

Yesterday in the GAC, Fadi, you gave a personal view as to where we stand on that and what needs to be taken forward. Now that personal view aligns -- in many very important ways -- with what most of us -- or all of us I think -- think. Certainly, it aligns in important ways with the collective position of the CCWG as it stands at the moment.

But it also deviates in important ways from the expressed view of the CCWG so far. And your closing comments in particular -- reading the transcript -- looked like a checklist of important takeaways of things we mustn't do.

But I was there in the room, and it came across -- to me at least, and I know to some of my colleagues -- more as in a much more accusatory tone -- a

suggestion that the CCWG had got it wrong in these particular ways without justification and -- I believe -- without possibility of justification -- without foundation at all.

But coming as a personal view from the president there to such an important group of stakeholders -- like governments -- it raises the question, well, is it - to what extent is it appropriate for the president to be setting out a personal view on the conclusions -- or the conclusions so far -- of a (multi-stakeholder) process that is still in process in such a manner rather than representing that process?

What advice would you give to your successor in the care in doing that?

Fadi Chehade: First -- let me be clear -- many of the questions and the things I was addressing are not in the CCWG's prevue - which I should.

So for example, when England -- U.K. -- asked, "What is the timeline," that includes implementation aspects that I'm responsible for, and I had to give a full answer to that so they understand this.

So matters related to diversity and ST18 are between the board and the GAC. And I needed to address these. Right? So there's more to why the GAC Chair and I discussed me being there than just rendering an opinion on CCWG.

Secondly, I'm the one who's deeply engaged with many of the ministers and the presidents around the countries whose GAC members are new, and there are lots of bilateral diplomatic things that I'm aware of that led me to these important points that I made at the end.

Now, in terms of the appropriateness of me making these clear points to the GAC, I think this has much deeper layers that required me saying these

things that would take much more time than we have here this morning. But I'll give you an example.

There is great concern by many governments if the courts -- and specifically, U.S. courts -- are the first place to go to to solve issues. Right? This is very concerning to many of them. And it would create a problem for us when we are trying to get through the transition if we end up in a place where it is perceived -- or even possible -- that the first place to solve a problem is a U.S. court.

So I was just making the clarity to that saying we should watch for that. We should ensure that that doesn't happen. Now, good news is that's not what's happening -- I hope. That's not where we're going. But this is a clear admonition that needed to be made. That's why I made it.

The second thing I mentioned is capture. Capture is how we're going to be measured in the circles that will end up approving our proposal. It's all about capture. If you had a chance to read the 11 or so editorials in the Wall Street Journal, they're all about capture. Period.

So if we end up with a model that I cannot defend -- because I'll be the one in that seat next to (Larry) in Congress defending capture -- or anti-capture. So I was simply saying that this is a critical test that we have to pay attention to. That's it.

So I think -- in that regard -- frankly, I think we are completely aligned. I mean I don't think we have - neither the CCWG is planning for capture or is it planning to make the courts the first place to go to. But we were showing the governments that many of their bilateral discussions with us on these issues are heard and understood. That's all. That's why I made the points.

Malcolm Huty: If it had come across more clearly that you understood that the CCWG also shared those views and had no intention of bringing those about and was

(unintelligible) very strongly to ensure that there was nothing in its report that would bring those about -- if you had shown that you understood -- and conveyed that you understood -- that as being our intent and our belief that we had done so, then it maybe would not have come across as a personal view that you've (unintelligible) a fear that our proposal was indeed going to bring those about.

Fadi Chehade: I don't think that was my intent. And certainly, it is not my position to say where the CCWG is. The Chairs were sitting next to me. I don't think it would have been appropriate for me to say, and I believe they're okay with that. Right?

All I was saying is we're all evaluating what the community does. However, those are the things we should pay attention to. And I think that's the - if you asked me earlier, "Where should the president go and not go," I don't think I should go where you're asking me to go -- which is to render a judgement as to where they stand. That would be beyond my remit.

My remit is to simply say to people, "Look. As you're evaluating things -- given the hundreds of government bilaterals (sic) we've been having -- those are the areas we should be putting care on."

Now, I can tell you in this group -- and I know this is public -- that I know that the CCWG is very, very much in line on these issues. But it's not for me to advise governments that way.

Jonathan: Okay. Thanks, Malcolm...

Malcolm Hutty: Definitely.

Jonathan: ...for some penetrating questions. And thank you, Fadi, for some frank and straightforward answers. I know we've got a hard time limit, and I've got that time signal for two minutes five minutes ago. So I think we have to draw a

line. It would be great to have you here for longer, but appreciate that we had you here now.

Fadi Chehade: Sorry I can't...

Jonathan: The bad news is that you have to go. The good news is that we'll hear from Thomas Rickert shortly on the progress and developments from the horse's mouth as it were. We will hear the progress of (unintelligible).

Fadi Chehade: Thank you.

Jonathan: Thank you again, Fadi. And we'll call that session to a close.

Fadi Chehade: Thank you.

END