

OVERVIEW

As co coordinators we have pleasure to submit this report on the September 2009 ballot to amend the IGC Charter.

The proposal

On 19 August 2009 a proposal was posted to the list to amend the charter as follows

Replace the following:

- Ⓐ Mailing lists will be run according to netiquette guidelines. One guideline reference for IGC netiquette is RFC1855. One useful guideline for all list participants is:
 - Be conservative in what you send and liberal in what you receive. You should not send heated message("flames") even if you are provoked. On the other hand, you shouldn't be surprised if you get flamed and it's prudent not to respond to flames.. Some of the specific guidelines that will be enforced include those relating to:
 - No personal insults
 - No spam
- Ⓐ Failure to abide by netiquette guidelines may result in suspension or removal from the IGC list according to the following process:
 - The coordinators will first warn a subscriber privately of the problem
 - If the problem persists the coordinators will notify the subscriber publicly on the list of impending suspension from the list. Suspension will include only posting rights.
 - If the problem persists the subscriber's posting rights will be suspended for one (1) month.
 - Once the subscriber's posting rights are restored, any further problem will result in another public warning.
 - If the problem continues to persist after suspension and a second public warning, the coordinators will be permitted to either suspend the posting rights for three (3) months or to remove the subscriber from the list.
 - Any decision for suspension can be appealed. Any decision to remove someone from the list will call for an automatic appeal by the appeals team.

With:

- Mailing list(s) will be run according to guidelines set below in the section titled: Posting Rules for the IGC

And add the following section:

Posting Rules for the IGC

Messages to any IGC list must be in line with the mission of the IGC, particularly its purpose to provide an open and effective forum for civil society to share opinion, policy options and expertise on Internet governance issues, and to provide a mechanism for coordination of advocacy for agreed upon policies and to enhance the utilization and influence of Civil Society (CS) and the IGC in relevant policy processes of organizations or fora dealing with Internet Governance issues.

Appropriate messages to an IGC list contribute to the objectives and tasks of the IGC, particularly:

- To inform civil society and other progressive groups or actors on significant developments impacting on Internet governance policies.
- To anticipate, identify and address emerging issues in the areas of Internet governance and help shape issues and perspectives in a manner that is informed by the stated vision of the IGC
- To develop common positions on issues relating to Internet governance policies, and make outreach efforts both for informing and for creating broad-based support among other CS groups and individuals for such positions.

The messages must observe a minimum of decorum, including:

- refrain from personal attacks, insults or slander
- refrain from offensive or discriminating language
- refrain from threats , including threats of legal action, on list or off list
- refrain from excessive and repetitive posting

Inappropriate postings to the IGC list include

- Unsolicited bulk e-mail
- Discussion of subjects unrelated to the IGC mission and objectives
- Unprofessional or discourteous commentary, regardless of the general subject
- Sequences of messages by one or more participants that cause an IGC list to become a hostile environment

Suspension of posting rights

Failure to abide by posting rules may result in suspension or removal from the IGC list according to the following process:

- The coordinators will first warn a subscriber privately of the problem

- Ⓐ If the problem persists the coordinators will notify the subscriber publicly on the list of impending suspension from the list. Suspension will include only posting rights.
- Ⓐ If the problem persists the subscriber's posting rights will be suspended for one (1) month.
- Ⓐ Once the subscriber's posting rights are restored, any further problem will result in another public warning.
- Ⓐ If the problem continues to persist after suspension and a second public warning, the coordinators will be permitted to either suspend the posting rights for three (3) months or to remove the subscriber from the list.
- Ⓐ Any decision for suspension can be appealed. Any decision to remove someone from the list will call for an automatic appeal by the appeals team.

Recommendations and requests for suspending posting rights

The coordinators may, at their discretion, appoint an advisory team of at least three individuals to assist them in making the determination of when someone has breached the posting rules defined in this charter. While all decisions remain the coordinators' responsibility, any such recommendation from an advisory team will be made public at the time of either suspension or removal from the list.

Additionally, any public request for suspension or expulsion from the list signed by twenty (20) or more members of the IGC will be sufficient to request that the coordinators' review a list subscriber for suspension or removal action. Any such request will require a public response from the coordinators' within a week indicating the action taken and with an explanation of the reasons for the action.

The process

As the proposal was in accord with the sections of the charter outlining the process for a ballot to amend the IGC charter, the coordinators enlisted the support of Dr Derrick Cogburn to assist in the conduct of the ballot.

The ballot opened on September 2 and closed on September 24 2009. As there were some issues at the beginning of the ballot with email delivery through a corporate spam trapping system which delayed ballot papers being sent for a few days, an extension was granted until September 24 for receipt of ballots. During this time a number of reminders on list, and reminders to individuals who had not yet voted, were sent by the coordinators and the returning officer.

A total of 140 ballot papers were sent to people who were potentially eligible voters, representing a total of 126 individual potential voters (a number of members keep duplicate email accounts for reading IGC mail and we currently have no way of determining and recording permanently easily which email account is preferred by members for receipt of ballots)

This process was new to IGC and a few interesting issues arose which need clarification. These are reported below under Issues arising.

The relevant sections of the charter

Membership

The members of the IGC are individuals, acting in personal capacity, who subscribe to the charter of the caucus. All members are equal and have the same rights and duties.

Voting Process (general)

Each person who is subscribed to the list at least two (2) months before the election will be given a voter account.

As part of the voting process the voter must personally ascertain that they are a member of the IGC based on membership criteria described elsewhere in this charter and posted as part of the voting information (i.e. a voter must affirm membership on the voter form in order to vote). The decision to self-identify as a member of the IGC is a personal decision based on the criteria defined. A list of the self-defined member-voters will be published after the election with the results of the election.

Elections will be run by the coordinators and will be subject to the appeals process.

All voting will be open, though at the discretion of the coordinators, with or without a specific request from member(s), any vote can be made into a secret vote. The reasons for making it a secret vote will be stated, and are subject to appeal.

Amendments to the Charter (specific process)

This charter can be amended at any time as proposed by no fewer than ten (10) members and as approved by no less than two-thirds (2/3) of the members of the IGC. The membership requirements for amending the charter are based on the most currently available voters list. In amending the charter, everyone who voted in the previous election will be deemed a member for amending the charter.

Issues arising

The charter does not attempt to describe at all how one ceases to be a member of IGC.

The charter also contains three different descriptions relevant to determining membership for various purposes. These are:

First, membership: a member is clearly defined as being an individual, acting in a personal capacity, who subscribes to the charter of the caucus.

However, membership is qualified before being considered sufficient for particular purposes. In the case of voting for co-coordinators, for instance, the qualifications are that they be subscribed to the list – a further qualification being that they be subscribed for at least two months.

The membership is even further qualified in the case of a charter amendment, and here an amendment needs to be approved by “2/3 of the members of the IGC”. However, as the charter and all interpretations we have seen make clear that a lot of people who are entitled to be considered “members of IGC” are not able to vote in a charter amendment, it seems obvious that this cannot be taken absolutely literally (otherwise any potential amendment would fail because those who are allowed to vote would not be enough in number to allow any amendment to pass). Clearly this was not the intention of those who adopted the charter! This has to mean the subset of eligible members who are “members for amending the charter”.

The charter goes on to state “The membership requirements for amending the charter are based on the most currently available voters list. In amending the charter, everyone who voted in the previous election will be deemed a member for amending the charter.”

That this can be interpreted in several different ways would be obvious to anyone who tried to follow the discussions about this on list between Parminder Singh and Avri Doria. Clarification in this area is important we believe, and the two qualifications are distinctly different.

One says that “everyone who voted in the previous election will be deemed a member for amending the charter”. This statement is inclusive, but there seems to be general agreement that it is not exclusive. (We do not believe that the meaning of the charter is that people who were members before the last election but did not bother to vote are automatically excluded). However, if this interpretation was valid, our job would be a lot easier and the amendment would be clearly passed. But no one seems to believe that should be the case or is the meaning of this section of the charter.

The other qualification is that “the membership requirements for amending the charter are based on the most currently available voters list”. It is important then to understand how such a list might be compiled.

It has been the practice to publish on the website a new members list after each coordinator election. The method of doing so, at least in recent times, has been to add

new members who voted during the election to the existing list of members. We do not exclude from membership those who failed to vote in the previous election.

The problem with this approach, however, is that the members list contains a growing number of non-voters and inactive members, as well as people who have left the list. It cannot be construed to be a voters list, (indeed it is hardly an authoritative members list either).

In any case, the charter makes a distinction between a broader membership requirement and a voting list for a charter amendment (on which particular list the 2/3 requirement for an amendment to the charter is based). It does not, however, clearly specify what a voting list might be.

As this circumstance and the 2/3 requirement are entirely different to what happens in a coordinator ballot, and have never been utilized before, the coordinators had to devise an appropriate way to compile a voters list for the purpose of determining the 2/3 requirement for a charter amendment.

The coordinators felt that it was their duty in this circumstance to rely on common sense. We are not lawyers, but co-coordinators elected to reflect the will of the Caucus. Thus, starting with the latest membership list, we made the following necessary decisions in determining a voting list for purposes of this particular charter amendment.

1. We excluded from the voting list all persons who might still be listed as members, but had actually left the mailing list altogether (unsubscribed) and were no longer recorded as participants. We cannot see any circumstance under which the charter could be interpreted as including in a voting list for purposes of a charter amendment people who have left the list altogether. 12 names were eliminated because of this.
2. We included in the voters list anyone who may not have voted in the last co-coordinator election but was nevertheless on the members list, and decided to vote in this particular charter vote. We believe that by their act of participation in this particular ballot they have affirmed their status as both members and voters whether they voted in the last co-coordinator election or not.
3. We excluded from the list of voters for determining an amendment to the charter all those on the members list who, since June 2008, a period of 15 months, have not participated in any way in IGC business. In other words, they have not voted in the last co-coordinator election, this charter amendment ballot, or in adoption of any consensus statement for IGC for over 12 months – moreover, they have not posted to the list or participated in any online discussion in that time. In our opinion the charter should be clarified to determine that people totally inactive for such a period of time should not be deemed to be members, and that might be a useful subject for a future charter amendment. However, it is clear to us that such people do not belong on this voters list for determining the validity of a charter amendment. 14 names were eliminated from the final voters list because of this.

Should that judgment of the co-coordinators be questioned, it is worth examining the effect if anyone who at any time was a member remains on a voting list. In a very short period of time the voting list of IGC could have a majority who are totally inactive, uninvolved, perhaps deceased, and therefore, in many cases unable to even be contacted. We are absolutely sure that the intention of the charter was not to create a situation where the organization became unworkable and completely unable to alter its own charter. This is why we believe that the voters list must contain the qualifications excluding those who don't vote and don't get involved over a sufficient period of time.

(An examination of the names excluded because of non-participation confirmed this as a sensible path. The wider members list contains some previous employees of NGOs, long since gone; some people who would not probably describe themselves as civil society any more – and in all probability some people who are deceased).

The result

To achieve the necessary 2/3 of members of IGC for amending the charter, therefore, 75 positive votes would be necessary (2/3 of 112 voters as on the list above)

The returned number of ballot papers was 96, with 87 votes in favour and 9 votes against. By way of comparison, the charter was adopted by a vote of only 67 persons – and the last coordinator elections attracted only 89 votes.

Given the excellent turnout, and the overwhelmingly positive response (over 90% of votes cast), we have no doubt at all it is the will of the IGC that this amendment be adopted, and therefore have no hesitation in declaring the amendment carried.

Recommendations

It is very clear to us that the Charter can be interpreted in different ways and in several respects needs both clarification and addition. Our choice has been to interpret it in a way which we believe accords with the wishes and aspirations of IGC members and the intentions of the charter.

However, we believe that clarification of the charter would be a useful step. This would include clearer definitions of members, who should be considered a valid voter, what should be a quorum of voters for any specific event, and the differences between three distinctly different phrases in the charter: *voter account*, *voters list*, and *members list* – or alternatively the elimination of phrases and qualifications no longer needed.

Attempts at charter amendments or gathering enough support to discuss such matters often fail. These are tedious tasks which distract from the purposes and objectives of the IGC. If charter amendments are being contemplated, we do suggest that a comprehensive approach to reform be taken, including addressing various anomalies which were raised in the context of the Nomcom nominations in 2008. It's a big task to address all these issues and the last attempt failed due to lack of interest.

In the meantime, we hope our necessarily precedent-creating interpretations in declaring valid the current amendments in the present circumstances will provide some useful means of allowing the IGC to continue to grow and act effectively in addressing civil society interests in Internet governance, in accordance with the purpose and objectives of our charter.

Appeals

The result is now open to appeal now for 72 hours.

Ian Peter and Ginger Paque, Co-coordinators