Board Comments to CCWG Draft Proposal

14 December 2015

Introduction

- The Board expresses its agreement and support for nearly all of the recommendations in the Draft Proposal.
- For areas where the Board has remaining concerns consistent with what it has raised previously, it provides recommendations and suggestions for addressing concerns.
- Outstanding concerns of the recommendations include:
  - The scope and implementation of inspection rights.
  - Participants in the IANA budget veto.
  - Contractual enforcement in the Mission Statement.
  - Integration of human rights considerations.
  - Specific details around Work Stream 2 obligations.

Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers

Board Comments:

◉ Supports establishment of the "Empowered Community" including Sole Designator Model with powers of Board appointment, removal and enforcement.

◉ Supports development of a definition for "global public interest" involving the full community, including the Board.

◉ Agrees to rationale for well-defined inspection rights for specific documents related to the community powers. Also:

   o Inspection rights not to be given to the Designator, but rather be provided to the community with enforcement power to the Designator.

   o Further clarity on how Empowered Community would reach a decision on which documents it wants to inspect, what purpose, or how documents will be used once received.

Recommendation #2: Empowering the Community Through Consensus: Engage, Escalate, Enforce

Board Comments:

- ⊙ Supports the engagement, escalation and enforcement process.
- ⊙ Generally supports thresholds as set out in the proposal based on the current ICANN structure
  - o Would not support lowering of any of these thresholds
  - o Recommends further defining the thresholds for exercising community powers in the event that the number of SOs or ACs change (to include percentages)

Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

Board Comments:
- ⊙ Supports the recommendation.

Recommendation #4: Ensuring Community Engagement in ICANN Decision Making: Seven New

Board Comments:

- ⊙ Supports the seven areas of Community Powers and the engagement process focused on discussion and building consensus prior to community use of these powers.

Comments on each power outlined in next slides.

1) The Power to Reject ICANN's Budget or Strategy/Operating Plans

Board Comments:

- ICANN's CFO and members of the Board have been actively engaged in discussions of this power.
- Further defining of a caretaker budget approach is required; Prior discussions were not fully addressed in the Proposal.
  - Would favor a "targeted veto" as an alternative caretaker budget approach.
  - Recommends that the caretaker budget approach be embedded in the Fundamental Bylaws.
- Supports inclusion of additional clarification on the role of operating communities served by the IANA functions in acceptance or rejection of IANA Functions Budget.
  - Further defining of this role to be clarified in Implementation.

2) The Power to Reject Changes to ICANN Standard

Board Comments:

- ⊙ Supports community opportunity to weigh in on Bylaw changes and that Bylaws changes should not be implemented with significant community objection.

- ⊙ Supports principles of policy recommendations and Bylaws changes however proposes specific changes to clarify language in Proposal.

3) The Power to Remove Individual ICANN Board

Board Comments:

- Supports recommendation to remove Board members.
- Suggests specific further development of clear process and use of rationale for removal, specifically in transparency around initiation of a community discussion on removal
- Suggests that process of engagement/escalation be the same for both SO/AC and NOMCOM appointed Directors.
- Stresses importance of independent judgment of Directors and diversity in cultural background and experience of Board members.

4) The Power to Recall the Entire ICANN Board

Board Comments:

- ⊙ Supports recommendation to remove the entire Board.
  - o Acknowledges that the removal process has addressed many of the Board's earlier concerns.
- ⊙ Stresses importance of clear, high thresholds for removal of the entire Board.
  - o Would object to any attempt to lower the threshold for removal of the entire Board.
  - o Suggests that measures be implemented in the Bylaws to prevent any attempt to lower the threshold for the removal of the entire Board below four SOs/ACs.

5) The Power to Approve Changes to ICANN Fundamental Bylaws and Articles of Incorporation

Board Comments:

⊙ Supports this recommendation.

6) The Power to Initiate a Binding Community Independent Review

Board Comments:

⊙ Supports expanding scope of IRP to be available for more general claims of violations of ICANN's Bylaws or Articles of Incorporation.

⊙ Suggests that protections be built in on the potential community bringing challenges against other parts of the community, i.e. challenging Board action on policy recommendations arriving out of appropriately run policy development processes.

    o Suggests a higher threshold should be required in these situations.

7) The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, Including Triggering of Post-Transition IANA Separation

Board Comments:

- ⦿ Supports this recommendation and understands that this is a dependency between the CWG-Stewardship recommendations and the CCWG-Accountability Proposal.
- ⦿ Suggest clarification about the process of creating a Separation Cross Community Working Group to be applicable only to the separation of the names community services of the IANA Functions.
    - o If the scope is intended to be broader, any review process would have to include the other operational communities.

Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values

Board Comments:

- Supports modifying the Mission Statement with an emphasis on clear, concise language.

- Agrees with the following two principles that serve as the basis for contract enforcement discussions:

  - ICANN's entering into and enforcement of Registry and Registrar contracts is an important component of ICANN's work in coordination and allocation of names in the Root Zone of the DNS.

  - ICANN is not a regulator, and does not regulate content through these contracts.

- Suggests separation of the ICANN's Mission Statement from Scope of Responsibilities.

Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission

Board Comments:

- Supports upholding human rights as appropriate within its limited Mission and Scope of Responsibilities.
- Requires additional work on proposed human rights Bylaws text before considering a Bylaws placement.
  - Suggests that the inclusion of interim text into the Bylaws risks unintended consequences, including potential uses of IRPs to test human rights issues that are not anticipated/not within scope.
- Suggests a clear path forward to allow a meaningful expression of human rights considerations in ICANN, including working with the community to develop a Human Rights Statement.
- Suggests expanding Work Stream 2 to include considerations of whether human rights issues should be reflected within the Bylaws or elsewhere, and how human rights should be considered/reflected within policy development.

Recommendation #7: Strengthening ICANN's Independent Review Process

Board Comments:

- ⊙ Supports the recommendations on the IRP but suggests enhancements to uphold the stated purpose of the IRP.

- ⊙ Restates concern that the IRP is not the venue to resolve disputes related to process-specific expert determinations.
    - o Suggests disputes of this nature should be considered and addressed within the development of the process or program.

- ⊙ Suggests that IRP panels should not be used for specific, substantive operational decisions, including DIDP, as these decisions would expand the scope of the IRP beyond its intended purpose.

Recommendation #8: Improving ICANN's Request for Reconsideration Process

Board Comments:

- ◉ Supports the recommendations on the Reconsideration Process.
- ◉ Suggests that further details will need to be addressed in implementation.

Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN's Bylaws

Board Comments:

- ⊙ Supports the incorporation of the Affirmation of Commitments reviews into the Bylaws.

- ⊙ Supports that the operational standards for reviews remain outside of the Bylaws, as they should require community input and review to be changed.

- ⊙ Suggests adjustment to language regarding WHOIS.

- ⊙ Supports development of the IANA Functions Review as a Fundamental Bylaw.

Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

Board Comments:

- Supports that accountability is reviewed and strengthened among the community, and not just focused how the ICANN Board is accountable to the community.

Recommendation #11: Board Obligations with regards to Governmental Advisory Committee Advice

Board Comments:

⊙ Supports the community resolution on Board obligations with regards to GAC advice.

Recommendation 12: Committing to further accountability work in Work Stream 2

Board Comments:

- Supports further accountability work and confirms commitment to how it will consider further recommendations.

- Acknowledges Board commitment to consider Work Stream 2 recommendations under the same process it will evaluate Work Stream 1 recommendations.

- Suggests that the open-ended scope of Work Stream 2 elements should be defined and limited to align with the staff and voluntary resources available.

    o Will not support inclusion of Bylaw language that does not align with the previous two statements.

- Suggests that all continuous improvement recommendations (Work Stream 2 or otherwise) meet the criteria set out for the IANA Stewardship Transition.