

CCWG Accountability WS4 – Scenarios

8 January 2015

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Context :

The Charter of the CCWG-Accountability mentions that “the CCWG-Accountability is expected to provide a detailed description on how its proposals would provide an adequate level of resistance to contingencies (“stress tests”), within the scope of each Work Stream.”

It further notes that the “CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition”.

The goal of WA4 is to identify the main contingencies that CCWG Accountability will use to test the proposed mechanisms and solutions, once they are elaborated.

For definitional purposes, a contingency / scenario consists of:

- an event (threat), such as new federal legislation relating to the IANA Functions Contract,
- its consequence, such as creating significant interference with existing policy or the policy development processes, and
- what contingency plan, if any, is known to exist.

The measures of the probability of and the impact of each event may be addressed in subsequent draft(s) of the WS4 work product.

Scenarios for the CCWG to consider:

1. Change authority for the IANA Root Zone ceases to function, in part or in whole.

Consequence: significant interference with existing policy (or policies) relating to the content of the IANA Root Zone and/or prejudice to the security and stability of one or several TLDs.

2. Delegation authority for the IANA Root Zone ceases to function, in part or in whole.

Consequence: significant interference with existing policy (or policies) relating to the delegation from the IANA Root Zone and/or prejudice to the security and stability of one or several TLDs.

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Comment [1]: How would you clarify difference between 1 and 2 ? Should we keep both or merge them ?

3. Litigation arising from existing public policy, e.g., Anti-Trust (Sherman Act, et. seq.).

Consequence: significant interference with existing policy (or policies) and/or policy development relating to one or more relevant activities.

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4. New regulation or legislation (see above).

Consequence: significant interference with existing policy (or policies) and/or policy development relating to one or more relevant activities.

5. Domain industry financial crisis.

Consequence: significant reduction in domain sales generated revenues and significant increase in registrar and registry continuity costs, threatening Icann's ability to continue operating.

6. General financial crisis.

Consequence: loss affecting reserves sufficient to threaten business continuity.

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Comment [2]: We might consider merging 5 & 6

7. Litigation arising from private contract, e.g., Breach of Contract.

Consequence: significant loss of contracted party fees.

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Comment [3]: I would propose a slightly different angle.
7. Large contributors to Icann budget (top 2 or 3) refuse payment of fees due to contractual or policy dispute. Consequence : loss of revenues and legal costs threatening Icann's ability to continue operations.

8. Technology competing with DNS

Consequence: significant reduction in domain sales generated revenues and significant increase in registrar and registry continuity costs.

9. Major corruption of fraud

Consequence: major impact on corporate reputation, significant litigation and loss of some or all reserves

10. Chairman, CEO or major officer acting in a manner inconsistent with the organization's mission.

Consequence: major impact on corporate reputation, significant litigation.

11. Compromise of credentials.

Consequence: major impact on corporate reputation, significant loss of authentication and/or authorization capacities.

12. Capture by one or several groups of stakeholders

Consequence : major impact on trust in multistakeholder model, prejudice to other stakeholders

13. One or several stakeholders excessively rely on accountability mechanism to "paralyze" Ican

Consequence : major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff, ...

14. ICANN or NTIA choose to terminate the *Affirmation of Commitments*.

Consequence: ICANN would no longer be held to its *Affirmation* commitments, including the conduct of community reviews and required implementation of review team recommendations. This consequence could be avoided if *Affirmation* reviews and commitments are added to ICANN's bylaws.

15. ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN's failure to enforce contracts, or other actions.

Consequence: affected parties could be prevented from seeking legal redress for commissions or omissions by ICANN.

16. ICANN engages in programmes not necessary to achieve its limited technical mission. For example, uses fee revenue or reserve funds to expand

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its scope beyond its technical mission, through grants for developing nations or other causes.

Consequence: ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.

17. ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by technical community or other stakeholder groups.

Consequence: DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.

18. Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for approving advice to ICANN's board.

Consequence: Under current bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free online expression, for example.

19. ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.

Consequence: The entity charged with root zone maintenance could face the question of whether to follow ICANN re-delegation request or to follow the court order.

20. A court order is issued to block ICANN's delegation of a new TLD, because of complaint by existing TLD operators or other aggrieved parties.

Consequence: ICANN's decision about whether to honor such a court order could bring liability to ICANN and its contract parties.

21. A government telecom minister instructs ICANN to re-delegate a country-code top-level domain (ccTLD), despite objections from many current registrants and user communities in the country concerned.

Consequence: Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.

22. ICANN Board, claiming absolute necessity, fails to comply with bylaws and/or refuses to accept the decision of a redress mechanism constituted under the bylaws.

Consequence: Community loses confidence in the multistakeholder structures as a means that can govern ICANN.

23. ICANN uses RAA or other agreements to arrange that its counter-parties impose requirements on third parties, allegedly outside scope of ICANN mission. Affected third parties, not being contracted to ICANN, have little or no effective recourse against ICANN; contracted parties, not being implicated by the requirements themselves, do not avail themselves of mechanisms allowing them to challenge ICANN's decision.

Consequence: ICANN seen as a monopoly leveraging power in one market (domain names) to achieve power over adjacent markets.

24. An incoming Chief Executive institutes a "strategic review" that quickly arrives at a new, extended mission for ICANN; the Board, having just hired the new CEO, approves the new mission and strategy without community consensus.

Consequence: Community ceases to see ICANN as the community's own mechanism for discharging certain limited technical functions, and views ICANN as an independent, *sui generis* entity with its own agenda, not necessarily supported by the community. Ultimately, comes to question why ICANN's original (i.e. current) functions should remain in the control of a body that has grown to have a much broader and less widely supported mission.

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Scenarios that relate to the feasibility of the transition itself are intentionally excluded, and input from the Board's Risk Committee is anticipated in the near term.

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