

# CCWG Accountability

## Mailing List Discussions

### Week: 14 February – 19 February 2015

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#### CCWG accountability ([archives](#))

- **Consensus Policy**

- A definition of “[Consensus policy](#)” as used based on policy development process (PDP) in the GNSO, including the recording of positions, was discussed. A contributor commented that there is no particular need for the CCWG to delve into GNSO procedures. He further raised the question of accountability relating to the Board’s actions in approving consensus policy and referred to PDP recommendations relating to IGO/INGO that differed from GAC Policy Advice.
- It was noted that consensus policies are only developed to address issues within ICANN’s mission (“picket fence”), these prevent ICANN from imposing policies on existing registries and registrars that are outside mission. In addition, the point was made that the GNSO can recommend by consensus that ICANN adopt policies that relate to gTLDs that do not directly relate to an existing registry/registrar contract. It ICANN does not have a legal right to impose obligations on the contracted parties related to matters outside the picket fence, but the lines have been muddied from time to time
- Picket fence restrictions around consensus policies as defined by new gTLD registry agreement were [shared](#) along with a [list](#) of Consensus Policies that must be complied with by gTLD registries and registrars.
- Policy development in the [ccTLDs world](#) and roles and responsibilities of stakeholders are different.

- **Public Interest**

- The CCWG discussed a suggestion to have public interest in the group's draft problem statement replaced by commitments to values of human rights and Internet freedom. While some see this as interesting, others are concerned about the limits it would set on the use of "public interest" in ICANN. Clarification was sought on definition of Internet freedom.
- Some believe that human rights are an essential component of public interest and call for *public interest consistent with human rights*. Others, however, argue that it is not within ICANN scope, raises complexities and should not be tackled by the group. It was suggested that this caveat could be reflected as follows: *public interest consistent with human rights and within ICANN’s scope*.

- A reference was made to a human rights related [session](#) that took place at ICANN 52.
  - A definition of “public interest” or “interest” with regards to incumbent ccTLD managers and any entity in a bilateral relationship with ICANN was should be clarified.
  - ICANN uses a standard definition of “global public interest” developed by a [Strategy Panel on Public Responsibility Framework](#) and it was suggested that this use raises an accountability issue in itself. It was noted, however, that this definition should be read with caution: it has not been formally adopted by ICANN. Moreover, the ICANN strategic plan identifies the needs to reach a consensus definition of public interest.
  - Suggested that ICANN’s notion of public interest is insufficiently clear and that it does not play in favor of any stakeholder: it can be abused and downplayed by parties. The contributor calls for measurable standards for accountability.
  - A suggestion that Human Rights issues might be reframed under a Corporate Social Responsibility (CSR) framework gained support, but it also raised concerns that if ICANN wants to engage in public governance functions, it must accept public governance responsibilities. It was argued, however, that CSR strategies are complementary and deal with how to make a commitment operational.
  - Thee [United Nation's Guiding Principles on Business and Human Rights \(UNGPs\)](#) were referred to as addressing the risk of business activities creating negative impacts on human rights
  - GAC operating principles dedicated to preserving the central coordinating functions of the global Internet for the public good were shared on the [list](#). A contributor suggested incorporating them into the accountability mechanism template.
- **Legal Advice**
    - There was discussion on whether ICANN should pay for external independent legal advice. While a lawyer has duty of loyalty is to the client, it was not uncommon for one party to pay the bill and for another party to be the client. So long as the CCWG has the autonomy to select the law firm, the CCWG - and not ICANN - is its client, the advice the firm renders will be independent of ICANN’s views and corporate interest. This relationship needs to be clearly established.
    - There was a suggestion to put up a request for proposals to select external legal advice. However, lack of time for such a process was emphasized.
    - It was suggested that a determination should be made whether the Board would be willing to override internal legal advice if independent advisor describes a mechanism as legal and ICANN’s internal legal advice was that it was not.

- Suggested that the legal sub-team would look at anti-trust law implications for the new/enhanced accountability measures being considered.
- **Antitrust Law**
  - A contributor commented that should changes be suggested under California Corporate Law, the Board may determine that it violates anti-trust law and cannot be implemented. The contributor suggested that the group 1) obtain ICANN's position on antitrust law, 2) get independent legal advice on this, 3) analyze failures and legal justifications to introduce recommendations on this.
  - Implementation was flagged as a pre-requisite.
- **Membership Organization**
  - A contributor noted ICANN [Bylaws](#) state that ICANN shall not have members. It was commented, however, that [Articles of Incorporation](#) anticipate that ICANN may have members.
- **Shared on List**
  - [Ensuring Trust in Internet Governance](#)
  - [AFRALO statement](#)
  - [GAC communiqué](#)
  - [Frankfurt interviews](#)
  - [Project plan & timeline](#)
  - [NTIA blog post: Stakeholders Continue Historic Work on Internet DNS Transition at ICANN Singapore Meeting](#)
  - [United States Senate Hearings on "Preserving the Multistakeholder Model of Internet Governance"](#)