

CCWG accountability ([archives](#))

- **Impact of accountability measures**
 - It was suggested that the impact of accountability measures on stability of ICANN the institution should be considered, as well as achieving appropriate balance between different parts of the community, i.e. the power structures in ICANN. Noted that while the bylaws are silent on ICANN remaining a not for profit and the AoC commits ICANN to continuing to operate as multi-stakeholder organization for the benefit of the public, the Articles of Incorporation do speak to some of these issues. The corporation's articles can be an important source of accountability provisions.

- **Problem Statement & Definitions**
 - A revised problem statement & definitions document was circulated <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001589.html>
 - A contributor raised the question: How can stakeholders assure themselves of having the means to hold ICANN to account, following the end of the IANA contract? - and believes the question of who should have the power? – should be addressed.

For the CCWG, a question to answer about ICANN's general accountability is "who has the power to hold the corporation to account?" The group then can't ignore the question of whether this can be done entirely within ICANN's structures. Does external accountability require new institutional mechanisms or can existing provisions be leveraged? It was suggested that organizations that do not have shareholders but whose Board is accountable to an external community would be good models for the group to study.

- **Stress Tests**
 - Consequences and remedies were suggested for stress tests #20 (the blocking ICANN's delegation of a new TLD) and #23 (ICANN using contractual agreements to impose requirements on third parties, outside the scope of ICANN's mission) – see <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001608.html>
 - It was observed that looking at examples of recent IRP cases to evaluate whether the CCWG had designed accountability measures that answer the risks/situations posed in those cases would be useful.

- **IRP**

- It was suggested that the IRP panel must apply a defined standard of review focusing on whether the Board acted without conflict of interest, exercised due diligence and independent judgment. It was also observed that the IRP panel does not have the power to actually decide the question of whether or not a Board decision was inconsistent with the Articles or Bylaws. Noted that the merits of the case should be reviewed. The question of who has standing to bring such a challenge, and what should be the standard of review was raised along with a request to review abstentions and whether unanimous vote was discussed.
- The following recommendations were made: (1) have an independent body constituted by a process independent from ICANN; (2) and have expertise in international law, and not just commercial arbitration; e.g. International Court of Justice or International Law Commission that provides a bench which should be the appeals mechanism.
- "Unappealability" of certain decisions (gTLD), transparency, and redaction policy were flagged as items to review.
- Thread of discussion noted that while the IRP allows parties to challenge Board decisions that are inconsistent with the Articles of Incorporation or Bylaws, the IRP panel does not have the power to actually decide the question of whether or not a Board decision WAS inconsistent with the Articles or Bylaws. This is something that the CCWG should look to correct.
- **Request for reconsideration**
 - A set of reforms on the following areas was suggested: standing, standard of review, composition, selection, decision-making, accessibility, implementation and due process – see <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001637.html>. Reconsideration sub-team webpage: <https://community.icann.org/display/acctcrosscomm/Request+for+Reconsideration>. Suggested that the group could also address transparency aspects of the IRP, which would optimally provide for more access to updates/information, as the process was currently considered to be lacking in transparency. IRP redaction policy could also be reconsidered.
- **Jurisdiction**
 - A contributor raised the multilayered characteristics of jurisdiction and requested clarification <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001660.html> Suggested that the group start its discussions from the basis of requirements: what characteristics are important to ICANN when considering location and jurisdiction?
 - It was observed that discussion of ICANN's place of incorporation is a Work Stream 2 item and should not be dealt with in any depth until Work Stream 1 is complete. Noted that the incorporation of the AoC into the Bylaws may require decisions about how to handle some commitments.
- **Other discussions/links**

- Articles of Incorporation and Not for Profit status:
<http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001595.html>
- Arbitration matters: <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001599.html>
- Adherence to international law - <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001610.html>
- Criteria for comparison of accountability mechanisms - <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001655.html> described as tool to better understand the impact of various options. A suggestion of a [scorecard](#) for each criteria was made to evaluate mechanisms' suitability.
- GAC Chair's response to stress test #14 discussion (amendment of GAC's operating procedures) <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001626.html> and a follow-up from USG <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001711.html>
- A community decision making tool was shared in context of community council discussion <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001685.html>
- Update on IANA Stewardship Discussions <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001686.html>
- Sidley Response to CWG's questions <http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001697.html>

Stress tests ([archives](#))

A new draft was circulated for the Team's consideration <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000114.html> and edits were shared as a follow-up Edits shared <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000116.html>.

A contributor suggested revised language to address the ccTLD redelegation contingency - <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000123.html>

A link to *Educational Material to Assist ICANN in Deciding What Status The Corporation Should Aim for as A Private International Entity in Its Host Country* was shared - <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000115.html>

Comments on information security stress-test were made - <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000122.html>

A contributor suggested a new stress-tests around ICANN staff policy preferences <http://mm.icann.org/pipermail/ccwg-accountability4/2015-March/000121.html>

WP1 ([archives](#))

Templates for WP1-5B-1 - Prevent ICANN Imposing Obligations – Accountability Contract - and WP1-5B-2 templates - Prevent ICANN Imposing Obligations – Golden Bylaw – were share for the WP’s consideration - <http://mm.icann.org/pipermail/wp1/2015-March/000137.html>

Differences between structure and process were suggested - <http://mm.icann.org/pipermail/wp1/2015-March/000136.html>

A draft suggesting inserted of AoC components inserted into bylaws was circulated - <http://mm.icann.org/pipermail/wp1/2015-March/000145.html> A draft template for WP1-3A - Community can require implementation of all Accountability WG Work Stream 2 accountability improvements – was put forward - <http://mm.icann.org/pipermail/wp1/2015-March/000161.html>

WP2 ([archives](#))

A article written by Rolf Weber and Shawn Gunnarson entitled “A Constitutional Solution for Internet Governance” which suggests reforms for ICANN was circulated for discussion <http://mm.icann.org/pipermail/wp2/2015-March/000041.html>. The article suggests a charter that restricts ICANN to actions the community has already approved and establishes an independent constitutional court. While some believe costs is important and should be factored in – others think frivolous suits are an important problem. The need for affordability was stressed. It was suggested that the new gTLD application process, which allocated funds to allow a Government or ALAC to lodge as dispute, as well as the "Independent Objector" be considered. The “Independent Objectors” allows for a complaint to be lodged on behalf of the community, and provides to cover the costs of the dispute resolution provider. Discussion continued about the Independent Review process, with suggestions that it should be more accessible in terms of cost and ease of bringing issues to the panel. Others suggested that each party should bear its own costs, with provisions to prevent frivolous cases or those made in bad faith.

Legal Subteam ([archives](#))

Questions were sent to Adler & Colvin for initial advice - <http://mm.icann.org/pipermail/ccwg-accountability5/2015-March/000054.html>

Independent Review ([archives](#))

A contributor noted that concept of a judiciary/constitutional court is in line the “state” analogy. Comments touched on terms, removals for specified cause and costs. A participant noted that without a solid scope of jurisdiction, the IRP would not able to do any work of note. Suggestions for a standing panel (term, selection, etc) were shared - <http://mm.icann.org/pipermail/wp2-independentreview/2015-March/000023.html>

A template was circulated for Subteam's consideration -

<http://mm.icann.org/pipermail/wp2-independentreview/2015-March/000030.html>
along with suggested edits <http://mm.icann.org/pipermail/wp2-independentreview/2015-March/000032.html>

Compact Mission ([archives](#))

A Mission Statement and Core Values Compact draft was shared -

<http://mm.icann.org/pipermail/wp2-compactmission/2015-March/000022.html>

Information on Ombudsman Bylaws and ATRT2 <http://mm.icann.org/pipermail/wp2-compactmission/2015-March/000024.html> along with information on role of Ombudsman association <http://mm.icann.org/pipermail/wp2-compactmission/2015-March/000025.html> was circulated. The ICANN Ombudsman provided further detail on its responsibilities, etc <http://mm.icann.org/pipermail/wp2-compactmission/2015-March/000030.html> It was suggested that ICANN Bylaws should be amended to include the Mission Statement and Core Values Compact as part of the durable or "golden" provisions that cannot be amended (except in specified circumstance). Contributors called for a very high bar of approval and a clear definition of limits and extraordinary procedures.