

## CCWG Accountability Mailing List Discussions

Week: 23 -29 January 2015

CCWG accountability ([archives](#))

### Frankfurt Statement

A [Public statement](#) was prepared describing the outcomes of the Frankfurt meeting and the progress made, particularly the two new work areas enabling community empowerment over ICANN Board decisions, and enhancing the review and redress processes to be considered in Work Stream 1.

### ICANN – various proposals to create a membership organization

Continued discussion about revising ICANN's corporate structure to become a membership organization, where "members" would have powers to hold the Board and corporation accountable.

- To be a "member" would the representative organizations need to be legal entities? The example of the NRO and the IP number registries was used. This would entail SO/ACs creating an entity independent of ICANN but answerable to that SO and AC, as the NRO is to the RIRs. External entities could be members of ICANN, but would not be owned by their "alter egos".
- How could this work for the GAC and non-ccNSO ccTLDs?
- Problems of ccTLDs as members highlighted. Not all ccTLDs are members of the ccNSO. ccTLD policy is not made by ICANN / ccTLDs not subject to ICANN policy development. The regional ccTLD entities that exist do not have an executive role over their respective ccTLD members and a regional aggregation of ccTLDs interests suggested as not being appropriate.

### Delegates as an alternative to members in CA non-profit corporations

Suggested that using "delegates" may solve some of the problems of members, removing the need for members to join ICANN and turning ICANN into a membership organization, and overall making fewer changes to ICANN's structure.

- Delegate may have some or all of the powers of members
- Delegates would not be "statutory" members of the Organization

A CCWG participant provided advice on [possible membership structures](#) for ICANN to hold the Board accountable:

- The heads or representatives of ICANN's 11 current SO/AC would become one of the members of ICANN; members can be incorporated or unincorporated.
- Under CA law an organization has broad leeway to create a membership structure that best fits its needs.
- The GAC could be one member.
- The structure is flexible, if a new SO/AC was created it could become a member.

- The 11 members serve on behalf of their respective memberships and could be recalled or replaced.
- Membership overly favoring one SO/AC over the others, for example the GNSO, could be addressed by a weighted voting structure, etc.
- Risk of organizational capture can be prevented by giving each stakeholder group only 1 membership and requiring super-majority (3/4) vote for significant decisions.
- No fees are required, the SO/AC can remain open to participation.

Noted that under this arrangement members would be obliged to represent their groups rather than acting in the organization's overall best interests. The complexities of the ccTLD's relationship with ICANN were again noted, and recognized it will be necessary to look at other ways in which to solve these issues.

The above membership-related issues will continue to be discussed.

### **ICANN community powers over Board decisions**

- Suggested that through an ombudsman mediated process the "Community" could overturn a Board decision on a limited number of key issues.
  - "Community" would need to be defined, for example representatives of the GAC, GNSO, At-Large, ccNSO, etc.
  - Together, through a bottom-up process these entities could reach a "Decision of the Community"
  - They are existing ICANN structures, no need to create a new representative "uber" structure.
  - The Board could be required to accept a Decision of the Community, only rejecting by super-majority with other safeguards.
  - The Board would retain ultimate decision making authority as required by California corporate law, but the standard of ignoring a bottom-up Decision of the Community would be high.
- Noted concerns that ccNSO/ccTLD policy was not subject to ICANN control. And that one part of the community should not have a decision-making power over another part.
- At the same time, new complexity at the Board and Ombudsman level also added.

### **Process driven**

Suggested that ICANN is process driven and a slave to legal judgment, that human judgment is lacking. This topic generated a great deal of comment on the list. Decisions need to include common sense, not only reflect procedural and legalistic correctness. Some remarks:

- Ensure stress tests include the risk of paralyzing the organization with processes

and legal actions

- Assess what kinds of incentives any proposed mechanisms would create.

Discussion raised the question of "Whose judgment is the good judgment?" And noted that ICANN created a culture of being afraid of litigation because the community litigious, that the Board sometimes does the community's job often because the community failed to do it for themselves.

Suggested that there are no real accountability mechanisms in place because none are binding on the Board. This was challenged that the AoC does provide for accountability in the ATRT reviews, that Board selection methods provide accountability mechanisms, and the reconsideration request process does provide a level of accountability, among others.

END