Executive Summary

01   On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.

02   As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN attain a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.

03   This report for public comment represents the current work product of the CCWG-Accountability. It is focused on draft Work Stream 1 recommendations (Work Stream 1 is the CCWG-Accountability's work on changes to ICANN's accountability arrangements which must be in place, or committed to, prior to the IANA Stewardship transition), which were the focus of the first five months of work (from December 2014 until May 2015). **These recommendations are not presented as the consensus of the CCWG-Accountability at this point.** The CCWG-Accountability is seeking confirmation of its approach, and guidance upon several options, from the community.

04   The CCWG-Accountability Charter has been endorsed by the GNSO, ALAC, ccNSO, GAC and ASO. The CCWG-Accountability is composed of 26 members, appointed by each endorsing organization, and 154 participants. Participation in the group is open to any party. The CCWG-Accountability work was conducted through weekly conference calls, attended on average by 44 participants and members, and it held face-to-face meetings in Frankfurt (19-20 January 2015), Singapore (9-12 February 2015) and Istanbul (23-24 March 2015) as well as two intense work days (23-24 April 2015) with each 6 hours of telephone conferences.

05   The CCWG-Accountability has designed its work so that it may be coordinated with the timeline of the IANA Stewardship Transition. The Work Stream 1 proposals, when finalized, will be presented to the ICANN Board of Directors for transmission to NTIA along with the ICG assembled transition proposal.[1]

06   The CCWG-Accountability has established a set of requirements that need to be fulfilled in order to enhance ICANN's accountability. In order to do so, the CCWG-Accountability has established

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[1] Please see ICANN 52 Board statement at https://www.icann.org/news/announcement-3-2015-02-12-en

- □ An inventory of existing accountability mechanisms;

- □ An inventory of contingencies that ICANN must be safeguarded against; and

- □ A set of 26 stress tests to establish whether the newly designed accountability architecture efficiently protects ICANN from the contingencies identified.

07 The CCWG-Accountability has based its deliberations on requests and suggestions that have been provided by the community during a public comment period conducted last year following the NTIA announcement and added its own findings as well as input from independent advisors to establish a list of requirements that need to be met by an improved accountability system in ICANN. With this report, the CCWG-Accountability is seeking additional input and guidance from the community.

08 To date, the CCWG-Accountability has defined the following requirements:

09 The CCWG-Accountability identified four building blocks that need to be in place and that would form the accountability mechanisms required to improve accountability. These building blocks are:

- □ Principles that form the Mission and Core Values of ICANN;

- □ The Board of Directors;

- □ An empowered community;

- □ Independent appeal mechanisms.

10 The recommendations include revising ICANN's Bylaws to clarify the scope of ICANN's policy authority, reflect key elements of the Affirmation of Commitments, and establish a set of "Fundamental Bylaws", which enjoy special protection and can only be changed based on prior approval by the Community. The following items shall have the status of Fundamental Bylaws:

- □ The Mission, Commitments and Core Values;

- □ The Independent Review Process;

- □ The power to veto non-fundamental Bylaw changes and to approve changes to Fundamental Bylaws;

- □ Any reviews required by the CWG-Stewardship (e.g. the IANA Function Review);

- □ New community powers such as recall of the Board.

The group also recommends bringing the regular reviews, which are required by the Affirmation of Commitments (such as the accountability and transparency reviews) into ICANN's Bylaws.

11   A key recommendation of the CCWG-Accountability is to empower the community to have more influence on certain Board decisions. The group identified powers and associated mechanisms including the ability to:

- Recall the ICANN Board of Directors;

- Remove individual Board Directors;

- Veto or approve changes to the ICANN Bylaws, Mission, Commitments and Core Values;

- Reject Board decisions on Strategic Plan and budget, where the Board has failed to appropriately reflect community input in these documents.

12   In addition to the aforementioned powers, the CCWG-Accountability recommends significantly enhancing ICANN's Independent Review Process. The Panel should become a standing panel of seven independent panelists, proposed by the ICANN Board with a confirmation procedure involving the community. Materially affected parties, including in some cases the community itself, would have standing to initiate a procedure in front of the panel. The decisions of the panel would not only assess compliance with process and existing policy, but also the merits of the case against the standard of ICANN's Mission, Commitments and Core values. Additionally, the decisions of the Panel would be binding upon the ICANN Board. The CCWG-Accountability also recommends improvements in the accessibility of the Independent Review Process, especially the cost of access.

13   Finally, the CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process. The key reforms proposed include the expansion of the scope of permissible requests to include Board/staff actions or inactions that contradict established policy, ICANN's Mission, Commitments, or Core Values, and the extension of the time for filing a Request for Reconsideration from 15 to 30 days.

14   **IMPLEMENTATION:**

15   In its deliberations and in discussion with its independent legal counsel, it has become clear that all requirements established by the CCWG-Accountability may be implemented while ICANN remains a not-for-profit public benefit corporation based in California. However, modifications will be required to ICANN's Articles of Incorporation and Bylaws in order to empower the multistakeholder community as proposed by the CCWG-Accountability. Counsel's inputs have included that ICANN could change from a corporation with no members to a membership-based organization.

16   The CCWG-Accountability proposes the creation of a formal membership with power to hold the ICANN Board accountable. It is the group's reference mechanism. This "SO/AC Membership Model" is the approach that, based on analysis so far, fits requirements best. This model would have the following key characteristics:

1. The ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) would each form unincorporated associations, and through these

associations would exercise the rights they would gain as a "Member" of ICANN[2]. The SO and AC unincorporated associations would be Members, completely linked to & under the control of the SO or AC they represent. No third party and no individuals would become Members of ICANN.

2. There would be no need for individuals or organizations to change the ways in which they participate in ICANN or in the SOs or ACs as a result of creating the new "Members" or "unincorporated associations." Current functions would be exercised as they are today.

3. Our legal counsel has advised that through this structure, there would be no material increase in the risks and liabilities individual ICANN participants face today.

4. In the group's reference mechanism, a community group exercising the community powers would have 29 votes in total: 5 for each the GNSO, the ccNSO, the ASO, the GAC and ALAC; 2 each for SSAC and RSSAC.

17 The group discussed variations of these mechanisms and seeks guidance from the community regarding the proposed options.

18 An essential part of the CCWG-Accountability Charter calls for stress testing of accountability enhancements. 'Stress Testing' is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. The 26 stress tests were grouped into 5 categories: financial crisis or insolvency, failure to meet operational obligations, legal / legislative actions, failure of accountability and failure of accountability to external stakeholders.

19 Applied to the recommendations, the stress tests demonstrate that these Work Stream 1 recommendations increase ICANN's accountability significantly, providing adequate mitigation measures in situations where that was not the case without these recommendations. The requirement that ICANN remains compliant with applicable legislations, in jurisdictions where it operates, is also fulfilled.

20 The stress test exercise demonstrates that Work Stream 1 recommendations do enhance the community's ability to hold ICANN Board and management accountable, relative to present accountability measures. It is also clear that the CWG-Stewardship proposals are complementary to CCWG-Accountability measures. One stress test regarding appeals of ccTLD revocations and assignments (ST 21) has not been adequately addressed in either the CWG-Stewardship or

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02 [2] Unincorporated associations are the means by which the "legal personality" required to be a Member is established. They would be a vehicle for the SOs and ACs to exercise these membership powers. They are lightweight structures, and explained further in the memorandum from legal counsel at Appendix G.

CCWG-Accountability proposals, as both working groups await policy development from the ccNSO.

21 The CCWG-Accountability's assessment is that its recommendations published for public comment are consistent with the CWG-Stewardship expectations regarding budget, community empowerment, review and redress mechanisms, as well as appeals mechanisms with regards to ccTLD related issues. The group is grateful to the CWG-Stewardship for the constructive collaboration that was set up across the groups and for the weekly calls between the respective group chairs held since 12 December 2014.

22 During the public comment period, the CCWG-Accountability will pursue its efforts in order to finalize its proposals and facilitate implementation. An indicative, best-case implementation plan is provided in this report.