NonCommecial Stakeholder Group Public Comment Input Framework

Do you believe the set of Work Stream 1 proposals in this interim report, if implemented or committed to, would provide sufficient enhancements to ICANN's accountability to proceed with the IANA Stewardship transition? If not, please clarify what amendments would be needed to the set of recommendation.

Do you have any general feedback or suggestion on the interim Work Stream 1 proposals?

The Noncommercial Stakeholders Group (NCSG) is one of four stakeholder groups in the Generic Names Supporting Organization. We have over 500 members in 97 countries representing individuals and nonprofit organizations devoted to civil liberties and human rights, development, education, research and charitable causes.

NCSG members have been active participants in the IANA stewardship transition process. In addition to representatives on the CCWG and CWG, NCSG members have contributed inputs, hosted workshops, chaired drafting teams, developed shared processes for consideration of proposals and volunteered hundreds of hours of time.

No ICANN action should violate fundamental human rights. We therefore welcome and note with approval that the call to forebear from content regulation in the mission statement section shows a positive concern for human rights.

Propose adding points about:

The proposal needs more work on transparency - both in the working of the CCWG (for example chairs mtgs should be transcribed) and also in the substance of the CCWG work.]

Revised Mission, Commitments & Core Values

1. Do you agree that these recommended changes to ICANN's Mission, Commitments and Core Values would enhance ICANN's accountability?
2. Do you agree with the list of requirements for this recommendation? If not, please detail how you would amend these requirements.

The NCSG supports a clear statement of ICANN's limited technical mandate. We agree that ICANN's mission should be limited to the coordination and implementation of policies and procedures required to facilitate the stable and secure operation of the DNS. We applaud the recognition that ICANN's Mission does not include the regulation of services that use the DNS or regulation of the content that these services carry or provide. We also applaud the CCWG's recognition that the existing bylaw language describing how ICANN should apply its Core Values is weak and permits ICANN to exercise excessive discretion.

In paragraphs 69-100 NCSG believes the CCWG should avoid overly broad references to furthering "the public interest;" such references should be more specific and refer to a "public interest goal

within ICANN's mandate." ICANN does not have a mandate to pursue the general public interest; it is intended to serve the public interest only within its narrow DNS-related scope of activity.

Paragraph 105
There is horribly redundant wording here: "ensure that decisions are made in the global public interest identified through the bottom-up, multistakeholder policy development process and are accountable, transparent, and respect the bottom-up multistakeholder process." This should be simplified to: "Ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent."

Paragraph 107
We prefer the original wording, with the exception of adding "in the DNS market." The current revision muddles and undermines the clear intent of this passage, which was to encourage ICANN to rely on competition and market mechanisms. The addition of the words "healthy" and "enhances consumer trust" introduce vague criteria that in many ways contradict competitive market criteria. The addition of "consumer choice" is unnecessary as that value is already encompassed by a commitment to competition.

Paragraph 110
This paragraph is incorrect as it currently stands; it says "governments and public authorities are responsible for public policy." As ICANN deals with a global arena, it should say that "governments and public authorities are responsible for public policy in their jurisdictions." We also believe that the phrase "duly taking into account the public policy advice of governments" should be changed to "duly taking into account the advice of the GAC," as it is GAC - not "governments" - that formally provide advice to the board under the bylaws and not all of its advice deals with public policy.

We fully support the changes to the Core Values and the designation that certain Core Values are considered Commitments - values that should rarely (if at all) be balanced against each other - and the incorporation of various provisions from the Affirmation of Commitments.
We support the addition of respect for Human rights to the core values and support the addition of an obligation for human rights impact analyses for ICANN decisions to the mission. **NCSG has consistently recommended that ICANN adopt the "Respect, Protect, and Remedy" framework which was developed for private corporations and that ICANN benchmark its human rights compliance by joining the Global Network Initiative. These would provide simple ways to further strengthen this core value.**

Fundamental Bylaws
1. Do you agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability?

2. Do you agree with the list of requirements for this recommendation, including the list of which Bylaws should become Fundamental Bylaws? If not, please detail how you would recommend amending these requirements.

The NCSG supports the empowerment of the ICANN community through the introduction of fundamental bylaws. NCSG supports the importance of preserving the ICANN's narrow mandate and believes that a higher threshold for initiating a new or changing an existing fundamental bylaw and a role for the community to approve such bylaw changes are essential components in that regard.

We support the list of suggested fundamental bylaws as well as the addition of reviews that are a part of the CWG Stewardship's work.

Independent Review Panel Enhancement
1. Do you agree that the proposed improvements to the IRP would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

The NCSG believes that a strong independent appeals mechanism is critical to enhancing ICANN's accountability. We strongly support the binding nature of the proposed process and the accessibility of this mechanism, particularly in relation to the cost burden of the mechanism.

ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. This suggest that IRP should provide a means of challenging actions that exceed ICANN's scope simply because they exceed its scope, not just because they have a negative "material affect" on the challenger. Either that, or ICANN-created restrictions on fundamental rights such as freedom of expression or privacy, must be considered "material affects" and so specified in the proposal.

Reconsideration Process Enhancement
1. Do you agree that the proposed improvements to the reconsideration process would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements. Are the timeframes and deadlines proposed herein sufficient to meet the community's needs? Is the scope of permissible requests broad / narrow enough to meet the community's needs?

Mechanism to empower the Community
1. What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale

in terms of required accountability features or protection against certain contingencies.

[NCSG supports the empowerment of the ICANN community through the 6 powers identified in the proposal.   These powers are central to enhancing ICANN's accountability and appropriate tools for community empowerment.

Within NCSG there is support for both the membership and the empowered designator models. NCSG generally recognizes that the membership model provides a viable way of being able to realize the potential of the 6 enumerated powers.

This said, there remain concerns that the membership model itself, including the unincorporated associations aspect thereof, may require considerable changes in the structures,processes and relative power of the ACs and the SOs and their constituent groups (Constituencies and Stakeholder Groups) that the CCWG may not have spent adequate time assessing. Some are also concerned about the accountability mechanisms available to stakeholders when using a separate UA in the proposed model. We suggest that this deserves further discussion and that an empowered designator model be considered as an alternative.]

While an empowered designator model may not provide the tightest control nor the easiest means of achieving community empowerment, the extent to which the desired community powers can be realized should be further explored in a designator model for comparison. There may be some willingness to live with some flexibility in terms of enforcement of some of the desired community powers. Some NCSG members believe that internal mechanisms can be put in place to better align the board and the community on matters relating to the organization's budget and strategic plan such that tight legal enforcement on those matters is not the highest priority in this work.

Some in NCSG support providing each SO/AC with five votes in the community mechanism and others do not support that relative weighting of votes in the community mechanism and instead believe the relative weights should be more closely modeled on communities appointing to ICANN's existing board of directors.

Power: reconsider/reject budget or strategy/operating plans
1. Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you agree with the list of

requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Some NCSG members believe the ability of the community to intervene in the budget process is a mechanism which is extremely important. A strong ability to ensure that the security and stability of the DNS is not impacted by unwise budgeting or financial planning is at the core of the community's responsibility to their stakeholders and the internet as a complete whole. Other NCSG members would like to see internal mechanisms put in place at ICANN to more closely align the board and the community at various stages in the process including the extent to which agreements between the two can be required before such decisions can be finalized. While the board may have the final say, processes can be put in place to direct the board to work more closely with the community in reaching the ultimate decision. For some NCSG members, that requirement would be sufficient on this issue.

Power: reconsider/reject changes to ICANN "standard" Bylaws
1. Do you agree that the power for the community to reject a proposed Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree.

Power: approve changes to "Fundamental" Bylaws
1. Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree.

Power: Recalling individual ICANN Directors
1. Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree.

Power: Recalling the entire ICANN Board
1. Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree.

Incorporating the Affirmation of Commitments into the ICANN Bylaws
1. Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree and find this an essential component of the proposal.

2. Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Yes, we agree as above.

Bylaws changes suggested by Stress Tests
1. Do you agree that the incorporation into ICANN's Bylaws of the above changes, as suggested by stress tests, would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Items for Consideration in Work Stream 2
The CCWG-Accountability seeks input from the community regarding its proposed work plan for the CCWG-Accountability Accountability Work Stream 2? If need be, please clarify what amendments would be needed.

There is a key element missing from Work Stream 2 and that is the monitoring and evaluation (and possible changes) to Work Stream 1 accountability enhancements as they are being implemented and as they are used/exercised. If the community finds that certain Work Stream 1 (and 2) measures outlined in this proposal do not meet expectations and/or do not meet their intended purpose then there should be a mechanism for those measures to be reviewed and possibly amended.

Additional Questions:
1.) The CCWG-Accountability welcomes feedback on whether there is a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to propose new Fundamental Bylaws or changes to existing ones. In particular, the CCWG-Accountability welcomes feedback on whether the Mission should be subject to even higher thresholds of Board or community assent. (para 126 of the CCWG proposal)

2.) Do you agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability? (para 189 of the CCWG proposal)

Yes, we find this essential to securing the levels of accountability that are necessary for ICANN to be able to successfully function as a fully accountable, transparent and multistakeholder entity going forward. NCSG does not support the suggestion that the same levels of accountability and community empowerment could be achieved without such a mechanism.   However we believe significantly more work needs to be done within CCWG regarding the specific model and the important details of that mechanism. For example, some are concerned that the emphasis on legal methods of enforcement particularly litigation, are inconsistent with, or simply antithetical to, the multi-stakeholder model and have potential to undermine this model in the long term.

3.) What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies. (para 190 of the CCWG proposal)