

# For ICANN to be accountable, diverse, open, transparent, multistakeholder, and trustworthy

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## Without the intervention of the United States justice in the relations between ICANN groups<sup>1</sup>

I wish to contribute with my **own** views to the discussion, adding my user perspective, coming from an end-user of the Internet.

The original version of this text is in French.

To make it clear (and transparent), I wish to inform the readers of my involvement (past and current) in and around ICANN.

- I first started following ICANN activities in 2001 as a voice for corporate users (France).
- Elected chair of the French chapter of the Internet Society in 2004 and participated in the creation of EURALO in 2007. ALAC member (2007-2010).
- Member of the ICANN Board of Directors, appointed by At-Large: 2010-2014.
- Member of the Board of IFFOR: 2011-2014.
- Member of the Board of Directors of AFNIC, appointed by the users committee (2013-2016).
- Member of the CCWG-Accountability appointed by Euralo/At Large.

### 1. Accountability for all

The accountability of the Board of Directors is absolutely essential.

But it may only be accountable to organizations (SOs, ACs, Ralos...) which are, in turn, accountable themselves.

These organizations must consider the accountability of their operations vis-à-vis their participants and the other components of ICANN as an essential element.

### 2. Trust is paramount... to all

To be clear and direct, I support none of the solutions which require the creation of structures (UA or others) complementary to the existing organizations.

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<sup>1</sup> Board, SOs, ACs, SGs, "Constituencies", RALOs (Regional At-Large Organizations)...

This is due to several reasons:

- **Inequality:** certain organizations will not be able to / will not want to implement this type of structures.
- **Complexity:** this adds a further layer to the already complex ICANN system.
- **Increased litigiousness:** favors the recourse to the courts to decide on disputes which could be settled by other means (consensus building, mediation, reconsideration, and even recourse to the independent review process - IRP.)

**Trust** should / must be the cornerstone of the accountability system.

But if this is not enough, in order to allow "community" representatives to access certain powers -currently, to the 5 proposed powers (see discussion of these powers later in the document)- they must be integrated into ICANN's bylaws before the transition.

So let's start by defining in detail the composition, the selection, and the operation of the structure that will represent the "community" and what needs to be changed in the bylaws for the latter to receive the powers that will be ultimately be required.

And if in the framework of these new bylaws a disagreement were to arise between the Board of Directors and the "community," a reconsideration would be resorted to, or even the Independent Review Process - IRP.

Trust, consensus-building, and transparency must be the keys in the processes involving the "community" and the Board of Directors. Replacing them with a legalistic solution can only undermine the organization's strategic objectives and the spirit in which volunteers get involved - particularly end users.

### 3. Open to all

The organization has made great progress in this area since the arrival of Fadi Chehadé. We must continue these efforts.

The implementation of the new ICANN meetings strategy in 2016 should improve:

- The operation of the meetings;
- Intra and cross-community work;
- Non-programmed exchanges;
- The diversity of the countries visited; and therefore
- The openness of ICANN and of its work to all.

We will need to continue to improve the integration of new participants and to ensure they can fill positions -including ones involving responsibility- in the organization.

### 4. Multistakeholder for all and by all

It is essential to continue providing an opportunity for all to find their place in the ICANN multistakeholder system in order to allow both a transfer of the IANA function to the multistakeholder community and the accountability of current and

future ICANN structures.

To this end, a certain flexibility must be allowed so that the current structure may be escalated by modifying or creating SOs, ACs, SGs, Constituencies, or any other grouping of natural and/or legal persons.

This is not a point discussed in this report but it should be a point taken into consideration in the future work streams (workstream 2).

- Who can create a new structure?
- How?
- With whose permission?
- ...

At the same time, ICANN's structure by type of actors should not be the only form of organization, the only possibility of exchanging, or of building positions.

From this point of view, AFRALO has been an example to the other regions by organizing and coordinating a meeting of all African participants (AFRICANN) at each global ICANN meeting.

DNS women does the same, with a different criterion of selection.

The expression by type of actors, regions, language... should all be encouraged. This depends on (and will allow) a better consideration of diversity or **diversities**.

## 5. Diversity is an absolute need

Enhancing diversity in all its aspects and at all levels must be a constant goal of ICANN.

This must be taken into account, not only in the proposals of the current areas of work of the working group on accountability (workstream 1) but also in the proposals of the working group on the transition of the IANA stewardship by the NTIA.

Both proposals require a minimum of one representative per region and, should there be more than 5 members, the remaining seats should be distributed equally among a part of the regions.

However, that is not enough.

**The consideration of diversities must be multidimensional**

- Region;
- Culture;
- Sex;
- Age;
- ...
- And of course by type of actors.

To enhance diversity, ICANN could draw inspiration from the example of Amadeus (Global Distribution System of bookings - GDS). It was created by 4 airlines (Air France, Lufthansa, Iberia, SAS) that divided amongst themselves the most important functions. It is headquartered in Spain, its chair is Finnish, its development center is in France, and its data processing center is in Germany.

For ICANN, we could imagine (dream of ; )):

- Headquarters in the USA;

- A European\* Chair - CEO (if both functions are kept together);
- A Latin American\* Chair of the Board of Directors;
- An African\* Vice-Chair of the Board of Directors;
- The Chair of the BoD of the PTI would be from Asia Pacific\*.
- ...

\* These regions are, of course, interchangeable.

## 6. The 5 powers

### 1. Reconsideration/rejection of Budget, Strategic Plan or Operating Plan

- a. My only comment regarding this power is that it must be compatible with the development plan for the budget (or of the strategic and operating plans.) I would prefer a solution where consensus is built during the development of these documents, prior to the discussions and decisions of the Board of Directors.
- b. We must avoid adding rigidity to the operation of ICANN.
- c. A solution to improve the involvement of the community in discussions regarding the budget (and accounts) would be, for example, to publish all of the organization's financial data in **open data**.

### 2. Reconsideration/rejection of changes to the bylaws

### 3. Approval of changes to the fundamental bylaws

- a. The sections composing ICANN's bylaws should be divided into 3 categories:
  - i. The fundamental bylaws;
  - ii. The basic bylaws;
  - iii. The sections that should belong in an operating document.
- b. Should we follow the distinctions made by the International Olympic Committee:
  - i. The fundamental principles;
  - ii. The bylaws;
  - iii. The rules.
- c. The means of validation would be:
  - i. For the fundamental principles: a priori by the community;
  - ii. For the bylaws: a posteriori by the community;
  - iii. For the rules: direct agreement between the Board of Directors, staff and the AC or SO concerned.

### 4. Recalling an individual member of the Board

### 5. Recalling the whole Board

- a. Five members of the Board of Directors are elected annually for 3 years. I honestly fail to understand why they would be replaced before the end of this term of 3 years. This would allow the seizure of power by a small group.

- i. So before seeking a solution to replace members of the Board of Directors before the regular elections, might it not be possible to establish an **open, transparent framework which is understandable to all... for all elections** to the Board of Directors?
  - ii. The establishment of an elections office (for all ICANN elections) would be a first step.
- b. I therefore oppose to the current proposals regarding the possibility of recalling members of the Board of Directors.
  - i. The recalling of a member of the Board of directors by his or her electoral constituency due to a disagreement is contradictory to his or her independence.
  - ii. Recalling the whole Board of Directors
    - 1. It is possible that the process will be too complex and will never go beyond distracting the participants and the staff, not making any progress related to ICANN's functions.
    - 2. It is also possible that it will be so painful for ICANN (as an organization) that it will lead to its end and its subsequent transfer to an intergovernmental structure (which we do not want.)

**c. Alternative proposal**

- i. In a given year the community will have the possibility of recalling up to **7 members of the Board of Directors**.
- ii. This proposed limit of 7 members allows the retention of 9 members who will undertake everyday operations until the 7 new members are elected.
- iii. With the proposed annual election of 5 members, it would be possible to change up to 12 members each year.

## 7. Additional comments and conclusion

All of the above leads me to the following comments:

- **Complexity**

the proposals of the CWG-IANA Stewardship Transition added to those of the CCWG-Accountability are too complex.

- *Not to mention the proposals which will come from the IANA Stewardship Transition Coordination Group (ICG.)*
- Especially if one takes into account the new structures that are proposed, the members of which will be chosen among those involved with the work of ICANN.
- How many structures and how many members?
  - PTI – Post Transition IANA (3 to 5 members)
  - CSC – Consumer Standing Committee (4 memb + x + 1 liaison)
  - IFRT – IANA Function Review Team (11 members + 1 liaison)
  - SCWG – Separation CCWG (12 members + 2/4 liais)
  - The "community" (29 members)
- A clear objective must be the **prohibition to hold multiple offices**.
- For all these structures, we must therefore find more than 60 people with the necessary skills and diversity.

- **Elections**

- Regardless of whether it is for existing or for new structures, an elections office must be created to ensure the due consideration of
  - an open and transparent process;
  - the bylaws;
  - diversity;
  - the prohibition to hold multiple offices (at any given point in time or / throughout time);
  - ...

- **Systematic view**

- In order to ensure an acceptable end result which is understandable and implementable, it is absolutely necessary to have a systematic consideration:
  - Of ICANN as an organization;
  - Of its reviews by
    - Structure;
    - Topic.
  - Of the proposals
    - Of the CWG-IANA Stewardship Transition;
    - Of the CCWG-Accountability;
    - Of the IANA Stewardship Coordination Group (ICG).

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