Appendix D: Work Area 1 Outcome

Inventory of Existing ICANN Accountability Mechanisms

ICANN Bylaws and Bylaws-Mandated Redress Mechanisms

ICANN Bylaws specifically provide four avenues for review:

- **Reconsideration Process (Art. IV, Sec. 2):** mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information.
- **Independent Review Process (IRP) (Art. IV, Sec. 3):** allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals.
- **Organizational Reviews (Art. IV, Sec. 4):** As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine whether that organization has a continuing purpose in the ICANN structure, and, if so, whether any change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities.
- **Office of the Ombudsman (Art. V):** reviews claims of unfairness by ICANN or its constituent entities. The Ombudsman framework is consistent with international standards. Office of Ombudsman publishes on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns.

Policy Consideration Requirements: Bylaws-Based Advisory Mechanisms

Bylaws define ICANN's relationships to its component entities, including its Supporting Organizations (GNSO, ccNSO, and ASO) and Advisory Committees (SSAC, GAC, ALAC, and RSSAC). The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization.

Affirmation Of Commitments

Signed with the United States Department of Commerce (DoC) on 30 September 2009, the Affirmation of Commitments contains joint commitments relating to ICANN's technical coordination role of the Internet Domain Name System. The commitments uphold the multi-stakeholder model, commit to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular reviews relating to accountability and transparency as well as on three other

fundamental organizational objectives. More information about the Accountability and Transparency Reviews are outlined below.

Headquarters

ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. ICANN is also subject to both California and U.S. laws and regulations regarding ICANN's tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes. These laws, as well as the laws of other places where ICANN has a presence, carry with them obligations. For example, under law, all ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community.

Accountability and Transparency Review Teams 1 and 2 Recommendations

Periodic assessments of ICANN's progress toward ensuring accountability, transparency and the interests of global Internet users are undertaken by community-led Review Teams. The first accountability and transparency review, conducted in 2010 by the Accountability and Transparency Review Team 1 (ATRT1), resulted in a set of recommendations. A second review was launched in 2013 - in compliance with the Affirmation of Commitments timeframe. Pursuant to the Affirmation of Commitments, the Second Accountability and Transparency Review Team (ATRT2) assessed the extent to which the ICANN board and staff implemented the recommendations arising of the ATRT1, in addition to the core scope, and issued a set of recommendations.

Contractual Requirements

ICANN enters into a variety of contractual arrangements through which it takes on obligations. While meeting these requirements are a matter of contractual compliance for ICANN, at times the contracts also include broader accountability requirements as well. Some of these contracts include:

- The IANA Functions Contract with the NTIA, which incorporates, for example, a customer complaint resolution process at c.2.9.2.g as well as requirements for how ICANN is to consider delegation requests for ccLTDs (C.2.9.2.c) and gTLDs (C2.9.2.d).
- Registry Agreements and Registrar Accreditation Agreements (see https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en and https://www.icann.org/resources/pages/registries/registries-agreements-en) Through these agreements, there are escalation paths set out in the event of disagreement between ICANN and the Registry or Registrar, in each case leading to the ultimate reference to arbitration if needed
    - o Both Registry and Registrar Contracts include a requirement to follow "Consensus Policies", which are policies developed through the ICANN multistakeholder process and approved with high thresholds of support. Most commercial contracts do not include the ability to insert new

obligations in this way, and so the requirements on the ICANN Board and the ICANN community in developing and approving these policies are high and must be followed.

- The consensus policies may only cover specific issues that are specified within the agreements, and may not touch on other specific areas (such as pricing terms). Historically, this has been referred to as the "picket fence" around where ICANN could mandate registry and registrar compliance with obligations that are not specifically included within the contracts.
- Detailed topics subject to "Consensus Policy" are defined in the gTLD Registry and Registrar Agreements.

ICANN Board of Directors Documentation

Documents relating to the Board of Directors include briefing materials, resolutions, preliminary reports and minutes. Since 2010, the ICANN Board has provided a rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a searchable tool, with information on how the mandate within each resolution was achieved. The Board also makes public how it addresses the advice it receives from the Advisory Committees, with both a GAC Register of Advice as well as the new Advice tracking tool.

General ICANN Operational Information

Financial information includes an annual budgeting process developed with community input, the posting of quarterly financial reports (following the practice of listed companies), as well as the annual posting of ICANN's Audited Financial Statements, and the annual Form 990 tax filing. For tracking of ICANN's operational activities, information about current projects across the organization is posted. ICANN also maintains the Documentary Information Disclosure Policy (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.

ICANN Board Selection Process

The selection of voting Board Directors occurs through different community processes. The Nominating Committee appoints eight Directors, ICANN's Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors), and the At-Large Community appoints one Director. Directors serve staggered terms enabling some annual renewal of the Board. Mechanisms for the removal or Directors and Non-Voting liaisons are described in ICANN Bylaws. The President and CEO of ICANN, who is appointed by the Board, also serves a Board member.