

Draft CCWG Public comment interim report

Section 98 - Items for consideration for Work Stream 2

Date : 17 Apr 2015

Status of document :

Draft version for “freeze” period. Further comments are welcome and will be discussed during 23-24 Apr meetings.

The CCWG Charter states that:

In the discussions around the accountability process, the CCWG-Accountability will proceed with two work streams:

- Work Stream 1: focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;
- Work Stream 2: focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

While work stream 2 is not necessary to be implemented or committed to before the transition takes place, the Charter insists that they should remain firmly within the scope of the CCWG. The items listed below should therefore be considered as no less important than the work stream 1

items.

a) Commitment to work stream 2 proposal consideration.

However, concerns were raised within the CCWG about the incentives for ICANN to implement WS2 proposals when they are finalized after the transition has taken place. The group's recommendation to achieve sufficient commitment from ICANN is to rely on an interim Bylaw provision, noting that such provisions have been successfully used in the past.

ICANN has, where appropriate, used transitional articles within its Bylaws to identify issues that are necessary to address on a transitional basis, but will expire upon the occurrence of another event. The broadest use of a transitional article was in 2002, after the large ICANN Evolution and Reform effort, which made commitments to future occurrences such as a new MoU between ICANN and a group of Regional Internet Registries at the time when new obligations would come into force for the ASO, or obligations that would be taken on by the ccNSO once formed. See <https://www.icann.org/resources/unthemed-pages/bylaws-2002-12-15-en#XX>.

There is also precedent for the use of transitional terms after the GNSO was restructured, and the Board seat selected by the At-Large Community was implemented.

To account for something such the Board's due consideration and implementation of the outcomes of work stream 2 accountability mechanisms, the proposal wouldn't require anything of the complexity after the 2002 reform effort.

RECOMMENDATION : The CCWG recommends that the Board adopts a transitional article in its Bylaws which would commit ICANN to confirm the relevant CCWG recommendations, and task the group with investigating potential enhancements to ICANN's accountability in the following list of areas <List of items to be detailed> (see section below).

b) Items for consideration within Work stream 2.

During the course of its deliberations, the CCWG encountered several items which it considered as work stream 2. The list of items considered for work stream 2 is the following :

[Note: These items were selected when they met two cumulative criteria: presence in the WA2 document AND having been discussed during the CCWG meetings. This list NEEDS to be reviewed by the CCWG]

- enhancements to ICANN's accountability based on the law(s) applicable to its actions

- Alternative options for ICANN's jurisdiction (understood as 'place of legal establishment') based on possible accountability limitations related to the current jurisdiction of the Corporation ;

- enhancements to the Ombudsman's role and function

- Limiting ICANN's ability to deny transparency / disclosure requests

- improvements to ICANN's budgeting and planning process that guarantee the ability for the community to have input, and for that input to be given due consideration

- Define security audits and certification requirements for Icann's IT systems

Commented [MW1]: Proposal by Pedro Ivo Ferraz da Silva, contested by Paul Rosenzweig on the ground that we should only mention IF our inquiry suggests a real problem. Flagged for discussion

Commented [MW2]: Proposed by Jordan Carter, coming from discussions within W/P1

Commented [MW3]: Addition from Steve del Bianco based on Stress test work related to compromise of credentials