

Cologne, 10.09.2015

## eco Comment on CCWG Accountability

### Introduction:

eco – Association of the Internet Industry is an association with more than 800 members from more than 60 countries. The membership includes some 150 companies working in the domain industry, including registries, registrars and resellers. eco is following the various activities relating to the IANA Stewardship Transition closely and has carried out multiple events to stimulate a dialogue among stakeholders on the very subject at the national level as well as actively participated in various conferences at the international level.

The consultation in Germany has led to the adoption of a German position paper, which can be found here:

<https://community.icann.org/pages/viewpage.action?pageId=52894734>

### Comment:

eco appreciates the possibility to comment on the work of the CCWG Accountability. We would also like to thank the group for an outstanding collaborative effort to achieve the work results and consensus positions it has presented to the community with its 2nd report. This is a true testimony of the functioning of the multi stakeholder model.

We would like to express agreement with and support for almost every suggestion that has been made in the report.

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The CCWG Accountability has been tasked with developing enhancements to ICANN's accountability. In doing so, it has worked on a set of requirements for accountability enhancements. eco supports all these requirements as they are the result of multiple community consultations as well as based on NTIA requirements.

Hence, unless these requirements need to be revisited, the group should stand firm by these requirements.

However, the group should be flexible and continue to be open minded for community input and adjust the proposal where appropriate to add detail, remove concerns and limit the risk of unintended consequences.

In our view, what counts is the essence, i.e. the list of requirements, to improve ICANN's accountability. Legal vehicles or operational details to achieve the accountability goals do not that much matter.

We suggest to give the CCWG Accountability discretion to make changes to the current recommendations and we do not see the need for an additional public comment period as long as the overarching requirements are met.

While doing so, we recommend the CCWG Accountability should provide a rationale for making such changes. Justifications for adjustments are improvements of the proposal to avoid or limit risks of undesired side-effects, facilitating community consensus, make the proposal easier to implement or easier to understand both inside the ICANN community as well as to the global community and in political dialogues.

This encouragement to remain flexible does not suggest that the current proposal is flawed. In fact, the legal assessment by multiple law firms has not shown legal weaknesses. In our view, it meets all WS1 requirements.

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WS1 requires accountability enhancements to be in place or committed to. The report provides the foundation for both. In some areas, enhancements can be delivered, for others, a commitment can be made. As a consequence, what has been called "gaps" in the proposal by some are mainly operational details the CCWG Accountability planned to work on within WS1.

We recognize, however, that the 2nd report mainly explains changes from the first report. What is lacking at the moment is documentation of the proposed enhancements as a stand alone document highlighting how little the changes to ICANN's daily operations are, how the current consensus-based community process is not only preserved, but improved with the accountability enhancements and why the proposed enhancements are no evidence of distrust in the Board.

A lot of confusion seems to stem from the fact that the report does not sufficiently convey that the opposite is the case. The enhanced accountability concept offered by the CCWG is evidence of the community consensus that trust is an essential component in ICANN's work. But it also recognizes that trust can only come to fruition when embedded in a robust accountability system.

Also, more emphasis should be given to the preservation of the consensus-based and community-driven bottom-up approach. The CCWG report seems to be read by some as the attempt to replace consensus with voting. This could not be further from the truth for the following reasons:

- The number of community powers entitling the community to vote is limited.
- The thresholds for invoking the powers and voting thresholds for them to be successful are designed to be a matter of last resort

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for (hopefully) rare cases where community consultation with the Board has failed in a sense that the Board chose to ignore Community input.

- The voting thresholds are never simple majority, but more resemble what would be called "rough consensus" in consensus calls for important decisions.
- All policy making by the community remains unaltered, i.e. will be consensus-driven.

However, should concerns about voting remain, we recommend for the CCWG Accountability to consider to replace the language of voting in the CMSM by "rough consensus".

Should the CCWG Accountability chose to keep the voting scheme, we recommend to remove the GAC from it. It is our understanding that the GAC is always welcome to join community discussions and offer advice to the community. Such advice, in particular advice on public policy matters to the ICANN Board (which remains unaltered by this CCWG Accountability proposal) shall not be compromised by the GAC voting on operational issues. Where operational issues impact public policy, the GAC can and should issue advice.

The GAC should maintain its unique advisory role. This will strengthen the multi stakeholder model with all stakeholders being valuable components in their respective roles.

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