Preliminary ICANN Board Comments on the CCWG–Accountability Second Draft Proposal for Public Comment

20 August 2015

The ICANN Board thanks the CCWG–Accountability for all of its work leading to the second draft proposal of mechanisms to enhance ICANN accountability in light of the changing historical relationship with the US Government.

The Board has been active and engaged in the recent CCWG work, including many members attending the CCWG's face-to-face meeting in Paris, and has witnessed first hand the amount of thought and dedication that has gone into the CCWG's work since last year.

The Board reconfirms its support of this process and its commitment to finding a final CCWG proposal that is acceptable to the whole community, including the Board and NTIA. We join with you in embracing the important goal of community empowerment in the ICANN multistakeholder model.

We believe that a solution that ensures ICANN's ongoing accountability to all stakeholders is both desirable and possible. It is desirable to seize this historic opportunity to build on the successful ICANN model of multistakeholder governance and commitment to the public interest that has developed since its founding. It is possible given the hard work of the community and the shared commitment of all stakeholders to improving the transparency and accountability of ICANN. The Board believes that the four building blocks set forth by the CCWG provide a strong foundation on which to build, and look forward to working together as the details are developed.

The ICANN Board is committed to the CCWG's accountability enhancement goals and believes that much of what is contained in the proposal is encouraging and workable. We recognize the importance of affording the ICANN community the ability to assure that:

- the Strategic Plans of ICANN are within ICANN's mission;

- budgets support the mission; and

- the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community.

The Board understands the community's need to have a tool to ensure that the Board (as a whole and as individuals) does not act outside the scope of ICANN's mission. We also agree that the Independent Review Process needs to be refined. The Board agrees that a key part of successfully concluding the transition is to deliver these accountability enhancements. Because these must be achieved without destabilizing or weakening the delicate balance of the stakeholders in the ICANN multistakeholder model, the Board is carefully reviewing the proposals to ensure we believe that they can maintain this balance and that there is a safe,

stable way to implement the changes. ICANN is committed to work with the CCWG on this plan moving forward.

As part of our review, the Board is doing the following:

- First, we are seeking ICANN's external counsel's inputs on the proposal. The Board intends to share that input with the CCWG and post in the Public Comment forum as soon as possible, so that there is a common baseline for further discussion.

- Second, ICANN is reaching out to independent third-party experts on governance to obtain an analysis of the governance impacts of the proposal, including considerations of how the proposal may impact the balance of the stakeholders in the multistakeholder model within ICANN today. The Board will also share that analysis with the CCWG as soon as it is received.

- Finally, and using the briefing materials identified above, the Board will continue to work on its own set of more comprehensive comments and suggestions to the proposal, and will submit that into the Public Comment forum prior to the close.

Initial Impressions of the CCWG's Proposal

While the detailed review work is still forthcoming, a preliminary review of the Proposal indicates that there are still some areas where key details will need to be finalized before the transition of the stewardship from NTIA can occur. Below are some examples of areas that need to be finalized or improved.   Our fiduciary duty as Board members requires us to understand the operational impacts of the recommendations that the community will be asking the Board to accept in the near future, so the Board will work to identify the open areas that need to be finalized. The earlier questions provided by the Board to the CCWG were an attempt to point out areas where additional information or considerations would be helpful in supporting the proposal. While the shift to the sole member model has removed some of the questions about individual parts of the ICANN community being able to exercise statutory powers, the Board's intent was and continues to be that the questions serve as guidance to the CCWG in considering whether sufficient detail is in place within the proposal.

Everyone involved in this process is strongly committed to protecting our unique, bottom-up, multistakeholder model – where all participants have confidence in the multi-equal, stable and balanced nature of the process. Indeed both the proposal and the NTIA criteria stress that must be preserved.

NTIA had always intended to transition its IANA stewardship role to ICANN and the multistakeholder community. The March 2014 announcement from NTIA that the US Government would start the process of transitioning that role came only after ICANN's 16 years of operation demonstrated that ICANN was mature enough for the transition to occur. Assistant Secretary and NTIA Administrator Strickling reflected then and later in subsequent speeches and blogs that ICANN's demonstration that its model was mature and effective is what made NTIA confident that the timing was right.

If the community is going to change this current model, as proposed in the CCWG's draft, the model that is the foundation of the decision to transition, we must all be absolutely confident that the new model will be as or more effective, stable and capture-proof than the current one. Today's ICANN model has been improved and tested many times in ICANN's 17 years of operation, through challenges and lawsuits, and has been resilient.

For ICANN to be fully prepared and stable at the point of the elimination of the U.S. stewardship role, the CCWG must pin down the final details of how the proposed changes will work. All of us want a fully detailed, fully analyzed, and unquestionably stable proposal that we know will survive well, and will not introduce unnecessary ambiguity or control issues at the point when we should be demonstrating ICANN's moment of greatest stability. The Board encourages the CCWG to continue focusing efforts to develop the details to assess and address capture during the public comment period in order to provide the more robust protections that are needed. Our further inputs will support that work.

In completing the proposal, the Board urges the CCWG to consider the importance of comprehensive recommendations. For example, the proposal indicates that the Community Forum, or the place where the discussions of the exercise of the community powers would occur, would be defined in Work Stream 2, and "pursued" in implementation of Work Stream 1. Changing ICANN from having no members to a sole member-based organization without full detail of how that member considers and arrives at positions could jeopardize the delicate balance of ICANN's multistakeholder model. Clear and accurate detail to ensure this balance is therefore essential.

Another example of an open area of concern, also related to how the member would reach decisions, is the still unresolved issue of changing the role of advisory committees and considering the extent to which groups may be gaining new powers either disproportionate to their participation within ICANN today, or gaining powers disproportionately to other SOs or ACs.

On the enhanced Independent Review Process, the Board notes the further detail that is now provided for consideration. We have a concern that the Process enhancements should not open the possibility for ICANN's work to be paralyzed through the lack of a clearly defined timeframes for filing. An important aspect of accountability is predictability, and there are many who rely on ICANN for a predictable business environment. The IRP (and the Reconsideration Process) should provide for some level of predictability for when challenges must be brought. Clarity of other issues, such as the exact expectations of what ICANN would fund for IRPs is needed. The potential for ICANN to fund panel costs for the expanded IRPs, which in the past have been quite expensive, could have a significant impact on ICANN's budget.

As noted above, the Board is committed to work with the CCWG and community on this plan moving forward to implement changes in a stable and balanced way.

Next Steps

The Board knows that time is of the essence, which is why we are submitting this initial set of comments early in this Public Comment period. We want to foster a wide discussion on these issues and hope to provide some ideas for solutions and paths forward within the Public Comment period. We are committed to engaging with and working with the rest of community on solutions to address these and other concerns and in exploring possible language, governance advice and other input to be submitted within this comment period so there need not be a delay in the process.

As Board members, we have been selected by the community to serve the global public interest, and when our terms finish we will return to this community while others take our place. Our concerns are not driven by our own individual situations, but for future Boards and Board members and for the future of the ICANN community and the ICANN model that has worked so well and evolved into the stable, balanced model it is today.