First of all great tribute should be expressed to the CCWG Accountability for months of creative, dedicated, exhaustive and exhausting work towards this proposal. As an external advisor to the CCWG process I have had the privilege to witness and engage with what must be one of the most thorough explorations of accountability in the history of global multistakeholderism. The emergent proposal is comprehensive, innovative, promising and sophisticated. Yes, there is (inevitably) more to be done – including in Work Stream 2 after the IANA transition – but one should also underline and celebrate how much the CCWG has already achieved. Certainly my general urging would be to keep going with current proposals and tie up loose ends, rather than to embark on major alterations of course at this stage.

My comments and suggestions for the immediate period ahead are the following:

1. Clarify at all points in the document what exactly is meant by 'ICANN'. Does the term cover the executive offices and staff only? Or also the Board? Or also the proposed Community Mechanism? Or also the Supporting Organizations (SOs) and Advisory Committees (ACs)? Or also the Independent Review Panel (IRP)? The proposal acknowledges this ambiguity (para 498), but the unclarity also needs to be removed. Paragraph 492 suggests that an encompassing concept is involved, but at other points such as paras 123 and 125 a narrower scope is implied. Be explicit and precise at all junctures to avoid confusion and misunderstanding.

2. Likewise, the document often lacks a sharp distinction between 'the Community' understood as the broad public of Internet stakeholders and 'the Community' understood as the SOs and ACs who are constructed as voices and representatives of those wider publics. The two are not the same thing and should not be conflated (see for example paras 11, 130, 209). It cannot be presumed that ICANN's 'inside' Community has the same ideas, interests and identities as ICANN's 'outside' Community. This point has been repeatedly raised in CCWG proceedings, but these continuing slippages in the 2nd Draft Proposal text could suggest a persistent unfortunate assumption on the part of the 'inside' Community that it by definition mirrors the 'outside' Community. The document should distinguish clearly throughout between the two usages of 'Community'. Indeed, one might even avoid the term 'Community' and refer instead to 'SO/ACs' on the one hand and 'the general public' on the other.

3. Building on the preceding point, the document could refrain from equating 'the Empowered Community' with 'the People' (for example, at paras 6 and 142). On the state analogy, 'the Empowered Community' (or Community Mechanism) would better be described as 'the legislature'. If the ICANN Board is likened to the executive branch of a state, and the Independent Review Mechanism is likened to the judiciary, then the Community Mechanism is the legislative branch (that is, an assembly of delegates). The distinction is important: the Community Mechanism is not 'the People', but a (purported) representative of the people. The implications are also important: just as a legislature has its claims of representation periodically tested (with elections and court challenges), so the Empowered Community's representativeness needs to be contested and contestable. Also in this spirit, could the 'Community Mechanism' not be given a more 'legislative' name, such as 'Community Assembly'?

4. Given the preceding point, should the Community Mechanism not be subject to checks and balances, like any other section of a governance apparatus? Note that entire section 1.4 on 'required community powers' makes no mention of a need for those powers to be accountable. The bid for 'giving the ICANN community [as manifested in the Community Mechanism] ultimate authority over the ICANN corporation' (para 130) could set up a situation where one part of the governance framework is exempt from checks and balances? Why not open the Community Mechanism to scrutiny by the Independent Review Mechanism, in the way that, on the state

analogy, legislatures and legislation can be tested in the courts? For example, could the Board use the IRP to challenge the Community Mechanism for overstepping its mandate or violating its rules and procedures? Or could a new SO or AC which is refused participation in the Community Mechanism (para 309) appeal this exclusion to the IRP? In general there is a concern that the proposal gives the Community Mechanism substantial powers without fully thinking through how the new body will be accountability in the exercise of those powers.

5. At Section 6.1, can one defer the crucial issue of specifying how votes will be cast in the Community Mechanism? Paras 305-318 are heavy on detail for example, about how an SO or AC might divide up its number of votes; and about percentage thresholds for different kinds of decisions. However, it is not clear who, specifically, will cast votes on behalf of the various SOs and ACs. Nor is it clear how, specifically, the Community Mechanism will convene in order to take its votes. For example, will the Community Mechanism hold deliberative meetings before it takes its votes; or will the different SOs and ACs merely communicate their votes electronically to some kind of tallying point – and if so, how would that work? How more precisely would the proposed Community Forum (Section 6.3) fit into Community Mechanism processes? History surely teaches that voting procedures can be manipulated, so this issue presumably wants careful attention.

6. Paras 361-364 prompts a question, at the risk of introducing still another stress test, whether CCWG needs to think through a scenario where special interests (or even mere nuisance actors) clog up ICANN's policy processes with disruptive exploitation of the Community Mechanism. How does one prevent that, for example, a handful of big business players or a limited number of civil society activists 'play politics' by bringing narrowly self-interested challenges to ICANN's strategic plan, the budget or a particular board member? Even if such initiatives had little chance of passing a vote, repelling them could absorb a lot of time and energy.

7. More clarity is wanted regarding the Government Advisory Committee (GAC) relationship to the Community Mechanism. Four options suggest themselves: (a) the GAC becomes a participant in the Community Mechanism alongside other SOs and ACs (although how 150+ governments would exercise 5 votes seems problematic); (b) the GAC takes an observer role in the Community Mechanism (although at the moment it is not clear what would be observed and how); (c) the GAC stays outside the Community Mechanism and pursues its established power of requiring the ICANN Board to consider GAC advice (although some governments might object that the creation of the Community Mechanism decreases their role); or (d) provision is made, on similar lines to the board, which require the Community Mechanism to consider GAC advice.

8. Perhaps some reflection is wanted regarding the degree of privilege to be accorded to registries (country code and generic) relative to other stakeholders in the new ICANN accountability arrangements. For example, why does para 105 make specific mention of TLD manager access to the IRP, when non-commercial users, intellectual property stakeholders and others might also have complaints? Similarly, why does para 132 suggest that only ccNSO and GNSO would be empowered to address matters escalated by the CSC? Prima facie the registries and registrars are the stakeholders most likely to have CSC-related complaints, but why close the door in advance to others who might in certain contexts have well-grounded grievances?

9. The solid and specific commitments in Section 11 regarding the Work Stream 2 programme are excellent and should not be watered down in any way. The general time line of Work Stream 2 could also be mentioned at the outset, in para 22, so that readers are left in no doubt from the start that Work Stream 2 is serious business. Also, the first sub-bullet under the work plan in para 139 could be divided into two separate points: one about enhancing diversity in all aspects

of ICANN operations; and one about enhancing the culture of accountability within ICANN. The two issues are distinct.

My remaining comments are more secondary:

Para 22   The second and third sub-bullet points under 'a culture of transparency' are not specifically transparency issues. Is this sub-paragraph not more about 'a culture of accountability'? And could the operative verb be 'deepening' rather than 'instituting', where the latter could imply a rather harsh view that the ICANN organization currently has no culture of transparency and accountability whatsoever?

Para 115   The numbers don't add up!

Para 125   There can be a tension between the first and second stated accountabilities. What happens when ICANN compliance 'with its own policies, rules and processes' conflicts with compliance 'with applicable legislation, in jurisdictions where it operates'?

Para 132   Creating a separate appeals mechanism for ccTLDs adds further complexity to an already labyrinthine institutional apparatus for governance of the DNS. Is it absolutely necessary?

Para 135   Is the Community Mechanism/Forum not a 'new decision-making group or committee'?

Para 161   The wording could suggest that 'the global Internet community' is not a stakeholder in ICANN? Perhaps replace 'and' with 'including'?

Para 199   The wording presumes (dubiously?) that the operation of the DNS can be apolitical.

Para 214   Great to see language about diversity and stakeholder accountability being included among the 'core values'.

Para 341   This formulation suggests that 'greater diversity' in ICANN is primarily if not solely pursued in relation to regions. CCWG's Working Group 3 has discussed many more dimensions of diversity (see paras 440-441).

Para 442   It is not clear what is meant by 'threshold' (related to what?) and 'each group' (which groups?).

Para 443   Again, which 'each group' is meant here? If SO and AC, then specify this?

Para 467   At point 1 also mention diversity objectives in relation to the Community Mechanism?

Para 500   Although it is a matter for Work Stream 2, one can already anticipate discussions about the relationship between the Mutual Accountability Forum and the Community Forum?