



Australian Government

Department of Communications

11 September 2015

Australia's Comments on CCWG-Accountability second draft report

The Australian Government welcomes the opportunity to comment on the Cross Community Working Group on Enhancing ICANN Accountability second draft report. We appreciate the extensive work that has been undertaken by the Working Group in developing a proposal for ensuring that ICANN remains accountable following the transition of stewardship of the IANA functions from the US Government to the global multi-stakeholder community. We wish to acknowledge the efforts of the volunteers, and in particular, the consultative approach that the Working Group has taken.

The Australian Government remains committed to the multi-stakeholder model of internet governance, which has underpinned the dramatic growth of the internet and is widely considered to be a driver of innovation and economic prosperity. We are supportive of measures that enhance ICANN's accountability and transparency, both as part of the ongoing evolution of ICANN, and as a critical step in the IANA transition. It is important that any proposal is considered carefully to ensure that the end result is workable and sustainable, and that it serves the public interest. With this in mind, and while retaining the right to comment further on this or other proposals at a later stage, we offer the following remarks:

Role of governments

We note that much of the global internet infrastructure is owned and operated by the private sector, and that the private sector brings investment and innovation. This notwithstanding, we consider that governments have a vital role in providing public policy advice, and we consider that the GAC's role in providing internet-related public policy advice is fundamental to the multi-stakeholder model.

We consider that the GAC should remain an advisory body to the ICANN Board, and we strongly support maintaining the GAC's current practice of developing consensus-based advice. This ensures that the views and concerns of all GAC members are taken into account. We support the GAC's current definition of consensus, which is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. As per the current procedure, we consider that where consensus is not possible, the GAC Chair should convey the full range of views expressed by GAC members to the ICANN Board. This acknowledges that there may be times when the GAC wishes to provide advice that comprises more than one opinion, and it ensures that that proper deference is given to advice formed when all governments are in agreement.

It is difficult to see how the Board could implement or respond to advice on issues where the GAC itself could not agree. We therefore support Stress Test 18 and the proposed amendments to

ICANN's Bylaws that would ensure that only consensus GAC advice triggers the requirement for the ICANN Board to enter into negotiations to find a mutually acceptable solution. We consider that Stress Test 18 is an effective and necessary accountability measure, and an appropriate response to NTIA's condition that its role is not replaced by a government-led solution.

Human rights

The Australian Government supports an open internet where people can freely access information and express their ideas. We strongly support protection of and respect for human rights, and we affirm that the same rights people enjoy offline also apply online. We welcome discussion on how human rights apply to domain name policy and to ICANN's operations. However, we have reservations about the text in Paragraph 152, which states:

The group has achieved consensus on including a human rights related Commitment in ICANN's Bylaws within its defined Mission. However, no particular wording currently proposed achieved consensus.

We understand that there is considerable interest in human rights within the community, and note that two separate groups are currently considering this issue (the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, and the GAC Working Group on Human Rights and International Law). We do not in principle oppose the inclusion of a reference to human rights in ICANN's Bylaws, but as there is not yet an agreed definition of ICANN's role in relation to human rights, we suggest that this issue is best deferred to Work Stream 2 to allow the community time to consider further. We do not consider that it is necessary to agree text on human rights before the IANA transition takes place.

Independent Review Process

Our final comment relates to the Independent Review Process. In principle, we are supportive of an independent review mechanism, but we are concerned that there is insufficient detail on how the process would work. Given the binding nature of the proposed process, we consider that any arbitration process needs to be carefully considered and subject to rigorous evaluation. The draft report notes that this is an area that requires additional work, and we consider that further information is necessary to allow the community to make an informed decision about whether or not to support this.