



Comments of the Internet Governance Project on the 2nd Draft of the CCWG-Accountability Proposal on Work Stream 1 Recommendations

Centered at the Georgia Institute of Technology's School of Public Policy, the Internet Governance Project (IGP) is a leading source of analysis of global Internet governance, Internet institutions, and public policies pertaining to critical Internet resources. IGP partners have participated actively in both the CWG-Stewardship and the CCWG-Accountability.

IGP supports most of the reforms proposed by the CCWG. Nevertheless we see significant problems in the 2nd Draft that need to be corrected before the proposal can be accepted. So our answer to the question:

- Are there elements of this proposal that would prevent you from approving its transmission to Chartering Organizations?

is Yes.

1. The SMCM voting allocations do not make sense

The CCWG proposal relies heavily on a Sole Member Community Mechanism (SMCM) to provide enforceable checks on the ICANN board. IGP supports the basic idea behind the Sole Member Community Mechanism as a means of community empowerment. We join many other stakeholders, however, in objecting to the specific voting allocations proposed and to the potential for a dramatic change in the role of the Governmental Advisory Committee (GAC). We see in the CCWG's proposed voting allocations a major change in the the nature of ICANN and a distribution that could undermine rather than improve the board's accountability to its stakeholder groups.

IGP has done some analysis of the current stakeholder balance in ICANN with respect to Board selection. Table 1 below shows that Supporting Organizations account for 75% of the board members who are elected. Table 1 also shows that Supporting Organizations appoint 60% of the members of the Nominating Committee (Nomcom). Nomcom appoints the other half of the board.

Table 1

Existing Board Selection Structures									
	Directly elected by community					Appointed by Nomcom			
Body	Seat Count	Allocation	%		Body	Vote Count	Allocation	%	
ASO	2	0.2500	25%		ASO	1	0.1250	7%	
CCNSO	2	0.2500	25%		CCNSO	1	0.1250	7%	
GNSO	2	0.2500	25%	75%	GNSO	7	0.8750	47%	60%
At-Large	1	0.1250	13%		ALAC	5	0.6250	33%	
ICANN	1	0.1250	13%	25%	IETF	1	0.1250	7%	40%
IETF*	0	0.0000	0%		GAC*	0	0.0000	0%	
GAC*	0	0.0000	0%		RSSAC*	0	0.0000	0%	
RSSAC*	0	0.0000	0%		SSAC*	0	0.0000	0%	
SSAC*	0	0.0000	0%						
Sum	8	1.0000	100%			15	1.8750	100%	

If you compare the existing stakeholder balance in board selection (Table 1) with the voting allocation proposed by the CCWG (Table 2, column 2), one finds a dramatic difference. Currently, SOs account for 75% of the elected board members and 60% of the votes on Nomcom. Yet in the CCWG's proposed voting allocation (Table 2), Advisory Committees would account for almost half of the votes (48%) and Supporting Organizations only 52%. In fact, in one of the alternatives mentioned in the CCWG proposal (Alternative 1), Advisory Committees would account for 57% of the votes in the SMCM. The accountability reforms were not supposed to do this.

Table 2

Community Mechanism Structure												
	Alternative 1		Currently Proposed Vote Allocation				Alternative 2		Alternative 3			
Body	Count	%	Count	%		Count	%	Count	%			
ASO	5	14.29%	5	17.24%		5	21.74%	4	28.57%			
CCNSO	5	14.29%	5	17.24%		5	21.74%	4	28.57%			
GNSO	5	14.29%	43%	5	17.24%	52%	5	21.74%	65%	4	28.57%	86%
ALAC	5	14.29%	57%	5	17.24%	48%	2	8.70%	35%	2	14.29%	14%
GAC	5	14.29%		5	17.24%		2	8.70%		0	0.00%	
RSSAC	5	14.29%		2	6.90%		2	8.70%		0	0.00%	
SSAC	5	14.29%		2	6.90%		2	8.70%		0	0.00%	
Sum	35	100%		29	100%		23	100%		14	100%	

In addition to the distorted proportions, the CCWG proposal fundamentally alters the roles of the Advisory Committees. The GAC, which is currently barred from appointing anyone to the ICANN board, is given 5 votes, the same as the Supporting Organizations. The GAC's advisory role on public policy is suddenly changed; it would under the SMCM be voting (not advising) on bylaw changes, decisions to remove board members, and independent review appeals. GAC's powers would be significantly enlarged, as GAC Advice would also retain its privileged status in the ICANN bylaws. Specialized technical advisory committees, such as SSAC and RSSAC, would also be voting on policy issues and board appointments - areas in which they may have no specialized expertise. Worse, members of SSAC and RSSAC are effectively appointed by the ICANN board itself, making them inappropriate vehicles for providing the community with the power to challenge the board.

IGP finds this confusion of roles and this wholesale redistribution of authority within ICANN to be unacceptable. The CCWG proposal draft has provided no rationale for this major change in stakeholder balance or rearrangement of roles.

IGP would accept a voting allocation in which all the SOs are given 10 votes and ALAC is given 5 votes. Neither GAC nor the specialized technical ACs should participate in the SMCM.

2. The composition of the SMCM must be fixed and stable

Inexplicably, the CCWG proposal allows eligible ACs or SOs to decide at any time whether they want to be part of the SMCM or not. This means that at any given moment, those contemplating use of the SMCM for critical accountability checks do not know the actual composition or voting structure of the SMCM. This fosters uncertainty and is an open invitation to instability and gaming of the system.

The composition of the SMCM should be a fixed and stable part of the proposal. The eligibility of specific entities within ICANN for participation in the SMCM should be clear from the outset and stable over time, not elective. As noted above, we support a voting allocation in which SOs are given 10 votes and ALAC is given 5 votes.

3. Loopholes in the mission statement and core values must be closed

The revisions of ICANN's mission, core values, and fundamental commitments, coupled with the strengthened Independent Review Process, have the potential to institute important improvements in ICANN's accountability. IGP is concerned, however, about the removal of language protecting adherence to ICANN's mission from Core Value 7. Core Value 7 addresses ICANN's willingness to duly take into account the advice of governments and public authorities. Objections from governments led the CCWG to remove language suggesting that ICANN's response to GAC advice must be limited by its mission and core values. The CCWG needs to put that language back in. ICANN's response to advice from public authorities must be within the constraints of its mission and core values, otherwise the mission and core values are

meaningless. It is governments and public authorities, after all, who are most likely to push for actions by ICANN that expand its authority.

We also echo the Non Commercial Stakeholder Group (NCSG) in objecting to the section entitled “Freedom to contract.” ICANN does not and should not be able to use its authority over DNS to impose ancillary regulations on Internet content and services via its contracts. That part of the report should be revised along the lines suggested by NCSG.

4. ICANN Board/Jones Day reaction

IGP does not support most aspects of the board-commissioned Jones Day Impact Analysis of the second CCWG proposal and opposes the ICANN board’s push to abandon critical elements of the CCWG’s work.. ICANN’s counter-proposal for a so-called “Multistakeholder Enforcement Mechanism” (MEM) would replace membership and the SMCM with an arbitration panel, whose costs are assumed by ICANN. The board’s limited explanation of its proposal raises two immediate concerns. First, the MEM does not obviate the need to create a decision making structure similar to the community mechanism previously proposed by the CCWG. Second, it is unclear how an arbitration panel independent of ICANN will be governed to ensure the neutrality of the panel. In short, the essence of the board’s counter-proposal raises more questions than it answers. Given the extent of of the CCWG deliberations and scrutiny to which its proposal and fundamental elements have been exposed, we prefer to stick with the SMCM and refine it rather than starting over. ICANN’s proposal for completely new reforms that have not been widely discussed and debated is a nonstarter.

However, ICANN has also proposed reducing or eliminating the community’s ability to challenge the strategic plan or the budget. IGP has some sympathy for avoiding micromanagement of the ICANN budget and would be open to minor changes in the CCWG plan along those lines.

We wish to emphasize that ICANN is but one stakeholder in the process and that it is predictable that it would resist or seek to mitigate accountability reforms that would constrain it. We urge the CCWG to consider the ICANN board and Jones-Day comments on a par with all the other comments it receives and attempt to respond to what the community as a whole wants done.