

THE UNITED KINGDOM GOVERNMENT'S COMMENTS ON THE CCWG ACCOUNTABILITY 2ND DRAFT PROPOSAL

12 September 2015

1. The United Kingdom expresses its deep appreciation to the Members and Participants of the Cross Community Working Group on Enhancing ICANN Accountability for their tireless dedication to the work in preparing the second draft proposal on accountability.
2. The UK Government applauds the co-chairs, Thomas Rickert, Leon Sanchez and Mathieu Weill, for their efficient management and coordination of this important consensus-based multi-stakeholder process. Through their efforts to secure the contributions of experts worldwide, they have ensured that the final proposal will serve to provide the strong foundations necessary for ICANN to continue to undertake its vital role in the Internet's critical infrastructure which underpins the global digital economy.
3. We are also extremely grateful to all the members of the ICANN staff who have provided such effective round-the-clock support for the work of the CCWG.

General Comments on the CCWG Proposal

4. The UK Government supports the maintaining of the existing, tried and tested, multi-stakeholder structure of ICANN with the Supporting Organisations leading in the development of policy and the Advisory Committees ensuring that policy decisions have full regard to sustaining the stability and resiliency of the domain name system, and take full account of the global public interest and national and international laws.
5. The experience of the 17 years since ICANN was established has demonstrated that this model has served the global community of Internet users very effectively. Such is the configuration of the Internet's domain name system that there can be only one ICANN. The CCWG's Workstream 1 and 2 constitute the opportunity to build on that institutional success and take ICANN to the next level as a truly effective and trusted global organisation that is fully committed to openness, transparency, efficiency, and cultural and geographical diversity in all its functions and operations.
6. We consider, therefore, that the second draft CCWG proposal is a vitally important major step forward in fulfilling the CCWG's Charter and objectives to deliver a cohesive proposal that meets all the requirements of the draft proposal of the Cross Community Working Group (CWG) on Naming Related Functions. We welcome this opportunity to provide comments to assist in the finalisation of the CCWG proposal. The UK Government also looks forward to contributing to further consideration of the proposal as a member of ICANN's Governmental Advisory Committee (GAC) at its upcoming meeting in Dublin.

7. We believe the CCWG second draft proposal to be comprehensive and well-structured. The UK Government supports in particular:

- the approach taken to create a range of new community empowerment mechanisms necessary for the IANA Stewardship Transition to be successfully implemented;
- the concept of instituting fundamental bylaws;
- the proposals to enhance the Independent Review Process including making its decisions binding on the Board.

Exercise of the proposed community powers

8. The UK Government envisages that the exercise of the proposed community powers, in particular those relating to approval or veto of the ICANN budget and to the removal of Board members and the entire Board, would be undertaken only when absolutely necessary, with full community support, after all other existing procedures have been exhausted, and with the aim of addressing and correcting any fundamental failure at the core of the organisation or to prevent any manifest risk of capture of policy development for specific commercial or other advantage.

9. Furthermore, we believe there needs to be rigorous safeguards and provision of contingency mechanisms to ensure that the exercise of these powers do not undermine the effectiveness of the organisation by creating an extent of institutional and functional paralysis which could substantially put at risk the coordination, management and stability of the domain name system.

10. We also strongly recommend that the process for advancing petitions for the removal of individual Board members should provide for the opportunity for the Board members concerned to defend their performance and record in appropriate due process.

Role of Governments in the proposed Sole Membership Model

11. Consistent with the mandate of the Governmental Advisory Committee (GAC) as set out in the proposed Core Value 7 which we support as currently drafted, the considerations in paragraphs 7 and 8 above are likely to be key elements of global public interest concern for governments should any of the proposed community empowerment mechanisms be petitioned with the aim of proceeding to a community vote.

12. We note the provision in section 6.2 of an allocation of community mechanism votes but at this time we would not support the GAC extending its advisory role to adopt an operational function through the exercise of such a voting allocation. For a combination of legal and practical reasons we do not believe that this would be possible within a private sector-led, multi-stakeholder framework. It is essential therefore for the GAC to be recognised

by the community as having a vital role by providing formal advice on any public interest aspect of a petition before it may proceed to a community vote.

13. This should not be perceived as creating an opportunity for governments to intervene in the manner of exercising a veto over a petition emanating from non-governmental sources. Rather, as in the current ICANN governance framework, the community should recognise the important benefits of governmental policy experts worldwide bringing their citizen-oriented, law-based perspectives to the community in order to engage with all stakeholders in a mutually supportive, open and cooperative manner.

14. Concerning the modalities for the GAC to undertake its role in the Community Empowerment Mechanisms, we support the Community Forum concept as described in Section 6.3 of the proposal. The Forum needs to operate within appropriate time frames for the advisory committees including the GAC to be able to undertake their consultations at the national, regional and global levels. Accordingly, we look forward to working with the community of the other SOs and ACs in order to develop the Community Forum so that it successfully embeds the advisory role of the GAC in its operational framework.

15. The UK Government supports the intention of Stress Test 18 as serving to obviate any risk of capture and is contributing to the current GAC review of the text as currently drafted.

16. The UK notes that the ICANN Board, while supporting the overall approach taken by the CCWG to empowering the community, has notified the CCWG of several significant concerns about the proposed Sole Membership model and what it perceives as associated risks through instituting such a major governance change. We look forward to considering, in particular with regard to its implications for the role of the GAC, the alternative model based on existing multi-stakeholder mechanisms which the Board has indicated it intends to describe in its main response to the CCWG proposal in the current round of public comments.

ICANN Mission and Core Values

17. With regard to broader provisions in the proposal relating to ICANN's mission and core values, we disagree with the text in paragraph 187 as currently drafted which we consider exerts a constraint on ICANN's ability to act in the public interest. The GAC has always held that ICANN policy decisions must have regard for example to fair competition in the top level domains market, to require where appropriate public interest commitments to be embedded in gTLD registry agreements (in relation to highly regulated business sectors and child protection), and to recognise demonstrable community support for specific new gTLD applications which are in contention with wholly commercially-based applications.

18. While correctly referring to ICANN's essential technical mission, we recommend therefore that the text of paragraph 187 be reconsidered in order

explicitly to allow for such public interest considerations to be taken fully into account in ICANN decisions. Similarly, we strongly recommend that paragraph 218 restores reference to enhancing consumer trust and choice.

Jurisdiction

19. With regard to the issue of jurisdiction which we acknowledge is an issue of concern for other governments, the UK supports the intention to examine this issue fully in the next phase of the CCWG's work (Workstream 2) when in particular the legal aspects of ICANN's dispute resolution and appeal procedures would usefully be reviewed.

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