SO/AC Accountability – PC2

From CCWG second draft proposal:

1. As new institutional arrangements increase community powers in ICANN, legitimate concerns arise regarding the accountability of the community (organized as SOs and ACs) in enacting those powers. In other words, "Who watches the watchers?".

2. In response to these concerns, the CCWG-Accountability divided its work into the following steps:

   - Identify the existing accountability mechanisms in place for SO/ACs.

   - Review existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the first public comment period.

   - Build a list of steps to enhance SO/AC accountability that should be taken respectively in Work Stream 1 and Work Stream 2.

3. The reviewed documents were:

   1. ICANN Bylaws

   2. The Affirmation of Commitments

   3. ATRT 1 recommendations and ATRT 2 recommendations

   4. Operational rules and procedures of the various SOs and ACs

4. A first review of existing ICANN documentation shows that the provisions that oblige SO/ACs to be held accountable to their constituents or the larger internet community with regards to their actions, decisions or advice, are limited in number and scope.

5. An inventory of existing accountability mechanisms shows that documents reviewed include the following mechanisms:

6. **AFFIRMATION OF COMMITMENTS (AOC)**

7. The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, they should also be seen as applicable to the SO/ACs that form the wider ICANN organizational structure as defined in its bylaws.

8. The identified mechanisms or criteria in the Affirmation of Commitments by which SO/ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.

9. **ACCOUNTABILITY AND TRANSPARENCY REVIEWS**

10. The Accountability and Transparency Reviews have made no direct recommendations with regards to SO/AC transparency or accountability.

11   **BYLAWS**

12   ICANN Bylaws state that each SO and AC shall establish its own charter and procedural documents. Further research needs to be done at SO and AC level to verify existing accountability mechanisms put in place for each SO and AC.

13   It is also important to review whether SO/ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions but also to the SO/ACs activities.

14   ## Recommendations

15   Having reviewed and inventoried the existing mechanisms related to SO/AC accountability, it is clear that current need to be enhanced in light of the new responsibilities associated with the Work Steam 1 proposals. The CCWG-Accountability recommends the following steps:

1.   **As part of Work Stream 1 proposals:**

   o   Include the review of SO and AC accountability mechanisms into the independent periodical structural reviews performed on a regular basis These reviews should include consideration on the mechanisms that each SO/AC, as the case may be, has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.

   o   This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:

      ▪   *The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

2.   **As part of the Work Stream 2 proposals:**

   o   The subject of SO and AC accountability should be included in the purview of the Accountability and Transparency Review process as part of Work Stream 2 working plan.

   o   Evaluate the proposed "Mutual Accountability Roundtable" to assess its viability and if viable, and undertake the necessary actions to implement it.[1]

   o   A detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.

   o   Assess whether the Independent Review process would also be applicable to SO and AC activities as well.

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[1] CCWG-Accountability Advisor Willie Currie introduced a short description of the concept as such:
The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new community powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO and all supporting organizations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how their constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.

During the second public comment period, this topic received a total of 15 comments from which 12 were expressly supportive of the proposal on enhancing SO/AC accountability and one more was expressly against the proposal.

Areas of Consensus

- If SO/AC are to be empowered, it is necessary to enhance their accountability.
- There should be more work done to identify further issues related to the topic.
- It is important to avoid watering down the commitments made for WS2.

Areas Needing Refinement

While this is broad support for enhancing SO/AC accountability, some questions have been raised in the comments that require further refinement and details:

1. **Accountability to whom?** Some commenters raise the concern that while AC/SOs have existing accountability mechanisms that make them accountable to their constituents, it will be necessary to expand this accountability to the wider non-ICANN community..
2. **Periodical reviews.** One commenter suggests that while periodical community reviews are useful, the CCWG should be mindful not to over burden the community with additional reviews.
3. **Who watches the watchers?**. While this has been a continued discussion, one commenter suggests that so far as SO/ACs adhere to standards of openness and transparency as defined in the bottom up multi stakeholder process, it will be a self-solving issue.

Areas of Divergence

While there is broad support for enhancing AC/SO accountability, one commenter expressed he does not support the current proposal:

1. The ICANN community of stakeholders, collectively, and the ICANN organization as a whole, wants the "power and money" but none of the "responsibility and accountability" that one would expect of a global monopoly responsible for "coordinating" the global Internet DNS in the global public interest.

Options for CCWG Consideration

A number of the issues raised above were raised and considered addressed in the CCWG but others remain open. Some further areas for exploration include:

1. **Accountability to whom?** This is an area in which the discussion should be encouraged in order to further explore the issue.
2. **Who watches the watchers?** This has also been an ongoing discussion and should be further explored in order to reach a conclusion.