

WS2 comment analysis

SUMMARY :

Feedback received during the public comment regarding work stream 2 reveals a misunderstanding between :

- WS1 implementation
- WS2 recommendations, which would be discussed and approved by the CCWG after the WS1 recommendations are approved.

The scope of work stream 1 / work stream 2 remains confusing for many. On the one side, some believe that work stream 1 should only tackle the smallest number of issues possible, as necessary for the IANA Stewardship transition, while on the other side, some comments highlighted that discussions on some key issues (such as fiduciary duties of Board directors) should not be pushed to work stream 2.

Proposed actions for the CCWG-Accountability :

1. Clarify in the report structure the **difference between WS1 implementation and WS2**. IRP rules, Iann budget process, Community Forum practical modalities, and understanding of Board's fiduciary duties should be labelled as work stream 1
2. Clarify the scope of the jurisdiction WS2 item in line with the Brazil comment (*concern about the influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms being proposed, our main concern, from a governmental perspective, refers to the process for the settlement of disputes within the ICANN model. This discussion involves the choice of venue and of the applicable laws but not necessarily the location where ICANN is incorporated.*)
3. Focus work stream 2 efforts on key aspects of the mutual accountability framework :
 - a. Transparency (DIDP)
 - b. SO/AC accountability
 - c. Diversity
 - d. Jurisdiction (see above)
4. Consider whether some of the existing items in the list could be addressed as part of the upcoming continuous improvement reviews, including :
 - a. Whistleblower policy
 - b. Transparency about Iann interactions with governments
 - c. Audits and certification requirements for IT systems
 - d. Enhancement of Ombudsman role (except as it relates to the RfR enhancements)
5. Depending on outcome of Human rights discussion, consider whether adjustment to the WS2 work item is required.
6. Remove item regarding "Further assessing enhancements to government participation in ICANN" from the WS2 list, as it was only a placeholder kept by mistake.

Existing proposals and set of issues for WS2 (quoting from CCWG 2nd report)

- 1 During the course of its deliberations, the CCWG-Accountability encountered several items that it considered should be resolved as part of Work Stream 2. The list at the date of this report is as follows:
 - Refining the **operational details** of Work Stream 1 proposals, including but not limited to:
 - Establishing rules of procedure for the enhanced Independent Review Process.
 - Improving ICANN's budgeting and planning process to guarantee the ability for the community to have input, and for that input to be given due consideration.
 - Defining ICANN Community Forum practical modalities.
 - Clarifying understanding of the fiduciary duties of Board Directors and related expectations concerning Director behavior for the Board.
 - Further assessing enhancements to **governments participation** in ICANN.
 - Considering the issue of **jurisdiction** as described in Section 11.3 below.
 - Enhancing **SO and AC accountability** (see Section 8.3).
 - Instituting a **culture of transparency** within the ICANN organization:
 - Limiting ICANN's ability to deny transparency and disclosure requests.
 - Enhancing the Ombudsman's role and function.
 - Enhancing ICANN's whistleblower policy.
 - Increasing transparency about ICANN interactions with governments.
 - Defining security **audits** and certification requirements for ICANN's IT systems.
 - Considering improvements to **diversity** in all its aspects at all levels of the organization (see Section 8.1).
 - Defining the modalities of how ICANN integrates **human rights** impact analyses, within its mission.

Comment received :

Comments highlight the need to keep momentum and not delay transition but recognized that appropriate steps must be taken for WS2.

Explicit support is provided for :

- 1) *DIDP*
- 2) *Community standards for Board members*

- 3) *Jurisdiction issue*
- 4) *Transitional bylaw*

Concerns include:

- 1) *Avoid pushing critical accountability work to Work Stream 2 to avoid community fatigue;*
- 2) *Issues of critical nature are being pushed to Work Stream 2 (jurisdiction, IRP procedures, community forum);*
- 3) *Human rights process is being rushed;*
- 4) *Further work on operational details of WS1 is essential;*
- 5) *Affordability and accessibility of IRP has been scheduled for work stream 2;*
- 6) *Concerns that treating areas that are naturally part of continuous improvements work as a part of the conditions for the IANA Stewardship Transition may serve as a bar to a successful conclusion of the IANA Stewardship Transition effort;*
- 7) *Concerns about status of IRP between completion of the two Work Streams.*

The following suggestions were made:

- 1) *Add a Bylaws requirement for transparency in dealing with governments;*
- 2) *Handle critical issues in Work Stream 1;*
- 3) *Deal with human rights in Work Stream 2;*
- 4) *Conduct further analysis of how the benefits of different jurisdictions could be useful and considered further as part of WS2;*
- 5) *Develop selection standards to assist in guiding the selection of interim Directors in the case of Board recall;*
- 6) *Diversity should be made requirement;*
- 7) *Assess implementation of WS1 proposals for a limited period of time (to be determined, possibly 6 months or 1 year) post transition;*
- 8) *Assess issue of having ACs as voting members including conducting research and analysis as part of Work Stream 2;*
- 8) *CCWG to reprioritize the affordability discussion and place it for work stream 1;*
- 8) *Add a bylaw as part of Work Stream 1 that requires ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their relationship with any government official;*
- 9) *Discuss the dependency between SMCM model and jurisdiction with a note the SMCM may not be the best model under a different legal jurisdiction.*

The CCWG is requested to clarify:

- 1) *How the community will seek appeal after the transition is complete, but before the rules and procedures of the IRP are completed;*
- 3) *Reference to Work Stream 2 work to assess "enhancements to governments participation in ICANN";*
- 3) *How any proposals arising from this effort comply with NTIA's criterion that its role not be replaced by a governmental solution.*