

#42



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PAGE 2: Personal Information

Q1: Name	Richard Hill
Q2: Affiliation	Association for Proper Internet Governance
Q3: Responding on behalf of	Association for Proper Internet Governance

PAGE 3: Recommendation 1

Q4: Is establishing an Empowered Community for enforcing Community Powers a solution that is acceptable to you?(Please see Annex 1 - Recommendation #1: Establishing An Empowered Community For Enforcing Community Powers for more information)

No, I do not support this recommendation.,

Comment

Paragraph 58 of that proposal shows that the "empowered community" would consist of 5 organizations: ALAC, ASO, GNSO, ccNSO, and GAC. Each of these organizations is an organic component of ICANN, and the majority of them represent the domain name and addressing industries. Thus, the proposal does not provide for any external accountability or supervision of ICANN: ICANN would be accountable only to entities that are part of ICANN. In March 2014, NTIA announced that it intended "to transition key Internet domain name functions to the global multistakeholder community", see: <https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions> An entity (the "empowered community") that consists of organizations that are organic components of ICANN is obviously not "the global multistakeholder community", nor can it be construed to be representative of that community when 3 out of 5 of the cited organizations represent the domain name and addressing industries. Consequently, the proposal manifestly fails to meet the main objective enunciated by NTIA, namely that ICANN should be accountable to a the broad global multistakeholder community. Therefore, we oppose the recommendations contained in the proposal.

PAGE 4: Recommendation 2

Q5: Is empowering the community through consensus: engage, escalate, enforce a solution that is acceptable to you?(Please see Annex 02 - Recommendation #2: Empowering The Community Through Consensus: Engage, Escalate, Enforce for more information)

No, I do not support this recommendation.,
Comment See previous comment.

PAGE 5: Recommendation 3

Q6: Is redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws' a solution that is acceptable to you?(Please see Annex 03 - Recommendation #3: Redefining ICANN's Bylaws As 'Standard Bylaws' And 'Fundamental Bylaws' for more information)

No, I do not support this recommendation.,
Comment See previous comment.

PAGE 6: Recommendation 4

Q7: Is ensuring community involvement in ICANN decision-making: seven new Community Powers a solution that is acceptable to you? (Please refer to Annex 04: Details on Recommendation 4: Ensuring Community Involvement In ICANN Decision-Making: Seven New Community Powers for more information)

No, I do not support this recommendation.,
Comment See previous comment.

PAGE 7: Recommendation 5

Q8: Is changing aspects of ICANN's Mission, Commitments and Core Values a solution that is acceptable to you?(Please refer to Annex 05 - Details on Recommendation #5: Changing Aspects Of ICANN's Mission, Commitments And Core Values for more information)

No, I do not support this recommendation.,
Comment See previous comment.

PAGE 8: Recommendation 6

Q9: Is reaffirming ICANN's commitment to respect internationally recognized human rights as it carries out its Mission a solution that is acceptable to you?(Please refer to Annex 06 - Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out Its Mission for more information)

No, I do not support this recommendation.,
Comment
See previous comment. Further, ICANN, as all private companies, is already obliged to comply with international law, including international human rights law, because such international law is transposed into national law. Nothing that is said or not said in ICANN's Bylaws can alter ICANN's rights and obligations under the law.

PAGE 9: Recommendation 7

Q10: Is strengthening ICANN's Independent Review Process a solution that is acceptable to you?(Please refer to Annex 07: Recommendation 7: Strengthening ICANN's Independent Review Process for more information)

No, I do not support this recommendation.,

Comment See previous comment.

PAGE 10: Recommendation 8

Q11: Is fortifying ICANN's request for reconsideration process a solution that is acceptable to you?(Please refer to Annex 08 - Recommendation #8: Improving ICANN's Request For Reconsideration Process for more information)

No, I do not support this recommendation.,

Comment See previous comment.

PAGE 11: Recommendation 9

Q12: Is incorporation of the Affirmation of Commitments a solution that is acceptable to you?(Please refer to Annex 09 - Recommendation #9: Incorporation of the Affirmation of Commitments for more information)

No, I do not support this recommendation.,

Comment
See previous comment. Further, this results in casting into stone provisions that were unilaterally imposed by the US government, for example that ICANN be domiciled in the USA.

PAGE 12: Recommendation 10

Q13: Is enhancing the accountability of Supporting Organizations and Advisory Committees a solution that is acceptable to you?(Please refer to Annex 10 - Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees for more information)

No, I do not support this recommendation.,

Comment
See previous comment. The proper way to introduce external accountability would have been to turn ICANN into a proper membership organization. See for example the proposal at:
<http://forum.icann.org/lists/icg-forum/pdfXXrCnTxCwW.pdf>

PAGE 13: Recommendation 11

Q14: Is Board obligations regarding GAC Advice (Stress Test 18) a solution that is acceptable to you?(Please refer to Annex 11 - Recommendation #11: Board obligations regarding GAC Advice)

No, I do not support this recommendation.,

Comment
The entire concept of GAC is deeply flawed. Why should a private company have a governmental committee as a organic advisory body?

PAGE 14: Recommendation 12

Q15: Is committing to further accountability work in Work Stream 2 a solution that is acceptable to you? (Please refer to Annex 12 - Recommendation #12: Committing to further accountability work in Work Stream 2)

No, I do not support this recommendation.,

Comment

See previous comments, in particular regarding membership.

PAGE 15: Additional Information

Q16: Please submit comments you have in addition to the information provided above, including on NTIA criteria, CWG-Stewardship requirements and Stress Tests.

While the removal of the unilateral role of the US government is otherwise welcome and long overdue, the present structure could in fact be worse than the earlier one to the extent that it violates the principle of democratic governance, and in particular the key political and public administration principle of separation of powers and instituting checks and balances in that we now have a kind of sovereign body with no outside checks or accountability. This is not acceptable.

Further, we note that the recommendations of CCWG-Accountability did not achieve consensus even within that group, see:

<https://www.icann.org/en/system/files/files/draft-ccwg-accountability-proposal-appendix-a-02dec15-en.pdf>

More importantly, the process was vitiated, in that time and again there were proposals, adopted by so-called consensus, that were subsequently rejected and revised due to pressure from either the ICANN Board or the US government. This influence was exercised with respect to very fundamental elements of the proposal (such as oversight of the ICANN Board), and the result of the pressure was that the proposal was quickly reworked in the directions asked for. Consequently, this was not a bottom-up community driven proposal. On the contrary, it was a proposal driven by either raised eyebrows, or by explicit directions, by those who hold all the power currently.
