

## Comments: CCWG-Accountability Draft Proposal on Work Stream 1 Recomm.

As a community based applicant in the current round of new gTLDs, dotgay LLC appreciates the opportunity to submit comments on the CCWG-Accountability Draft Work Stream 1 Recommendations. This is a crucial step in the transition of the oversight over ICANN from the US government to the global community of stakeholders, which is generally welcomed.

### 1. Human Rights

*Re recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries out its Mission*

dotgay LLC especially welcomes the inclusion of the bylaw language reaffirming and clarifying ICANN's obligation to respect human rights.

We find the proposal for bylaw language on human rights to be clear and balanced. We appreciate the fact that it limits the commitment to ICANN's mission and operations only and provides a clear distinction between ICANN's adherence to respect human rights and obligation to enforce human rights, placing the latter outside of the scope of the ICANN's mission.

We are aware of the discussions on the inclusion of particular human rights related international legal instruments, such as Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), into the bylaw language. It is critical that ICANN have a bylaw that guarantees respect in ICANN's policy and actions for the human rights of all people, especially those endangered communities like the gay community, whose human rights are violated by many.

We believe that the issues related to the applicability of international instruments in the context of ICANN's commitment to respect human rights must be addressed in Work Stream 2. We strongly support the proposal to include the interim bylaw for the purpose of ensuring that Work Stream 2, which will facilitate the development of the framework for interpretation of the human rights commitment, will take place.

We also strongly suggest that the work of Work Stream 2 take into account the Ruggie Principles as defined in the UN Guiding Principles for Business and that ICANN adopt all those which are applicable to its mission.

We further agree with the issues identified in Annex 6 of the Draft which will be the subject of further work in Work Stream 2.

We hope that Work Stream 2 will be carried out in the same collaborative, inclusive and open manner as the whole work of CCWG up to now and will result in a clear framework for interpretation and implementation of ICANN's commitment to human rights.

### 2. Transparency

Draft 3 contains the following:

*Re recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws*

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

and a requirement for further work in recommendation #12: *Committing to Further Accountability Work in Work Stream 2*

Today, transparency at ICANN is more an aspiration than a reality. We strongly support implementation of Transparency reform at ICANN. Not only should the improvements recommended by the ATRT be implemented, but serious works needs to be undertaken as part of Work Stream 2.

The only method for information discovery at ICANN is the DIDP process and this process is virtually useless. In the first instance, information is only made available when one requests the precise document containing the information. That is, requests for information without reference to a specific document are rejected. Even when one does know which document contains the requested information, that information is often withheld. The conditions allowed for rejecting a request for information are so restrictive as to provide reason for rejecting most any request.

*ICANN has identified the following set of conditions for the nondisclosure of information:*

- *Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.*
- *Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.*
- *Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.*
- *Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy, as well as proceedings of internal appeal mechanisms and investigations.*
- *Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.<sup>1</sup>*

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<sup>1</sup> <https://www.icann.org/resources/pages/didp-2012-02-25-en>

While some of these conditions, such as Nondisclosure Agreements, and medical and other private information are indeed reasonably exempt from being revealed, the other conditions must be reviewed as part of Work Stream 2 to insure that the condition for rejecting information requests are not so broad as to effectively give ICANN the ability to work in the dark.

ICANN should not be allowed to complete the IANA transition without having fixed its problems with transparency.

Best regards

A handwritten signature in blue ink, appearing to read 'JB', with a long horizontal stroke extending to the left.

Jamie Baxter  
dotgay LLC