

# Annex 10 – Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

## KEY DISCUSSION ITEMS<sup>1st</sup> READING CONCLUSIONS:

1. Discuss • There is also a suggestion that the independent reviews should be done at the request of a majority of the SO/ACs and that any recommended changes occur only with the approval of the SO/ACs acting through the Community Mechanism.
2. Discuss suggestion to subject GAC to independent structural reviews.
  - a. As agreed on Jan 28<sup>th</sup> call include under WS1: (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS
  - b.
3. Confirm that all comments can be handled as part of the WS2 deliberations
  - a. Summary of comments
    - i. • Accountability of SO/ACs is considered critical given the powers and roles of an Empowered Community that the transition would provide them with.
    - ii. • Accountability to the global community is also deemed important in this context. Three levels of accountability are suggested: 1) Accountability of SO/AC to whole community; 2) Accountability of SO/AC representatives to communities when acting as Designator; 3) Future structure of ICANN/ICANN resulting from transition including accountability aspects and related checks and balances.
    - iii. ~~• There is also a suggestion that the independent reviews should be done at the request of a majority of the SO/ACs and that any recommended changes occur only with the approval of the SO/ACs acting through the Community Mechanism.~~
    - iv. • Some contributors believe that SO/AC Accountability improvements need to be given immediate attention. Creating a "Mutual Accountability Roundtable" involving representatives of the ICANN/ICANN Board, Community and Staff, developing a detailed plan on enhancing SO and AC accountability and applying the Independent Review process to SO and AC activities are considered crucial to Work Stream 2."

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## 1. Summary

- 1 The CCWG-Accountability recommends addressing the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) in a two-stage approach:
  - **In Work Stream 1:** Include the review of SO and AC accountability mechanisms in the independent structural reviews performed on a regular basis.
  - **In Work Stream 2:** Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

## 2. CCWG-Accountability Recommendations

- 2 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations. The CCWG-Accountability recommends the following:
  
- 3 **Work Stream 1:** Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.
  - These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - 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.*
    - The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into ICANN bylaws as part of Work Stream 1. In Recommendation 9 and Annex 9, the Accountability and Transparency Review will include this among issues that merit attention in the review:
      - *(b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*
  
- 4 **Work Stream 2:** Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.

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- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>1</sup>
- Develop a detailed working plan on enhancing SO and AC accountability [taking into consideration the comments made during public comment period on the third draft.](#)
- Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities as well.

### 3. Detailed Explanation of Recommendations

- 5 As the community’s power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in enacting those powers. In other words, “Who watches the watchers?”
- 6 In response to these concerns, the CCWG-Accountability:
  - Identified the existing accountability mechanisms in place for SOs and ACs.
  - Reviewed existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the First Public Comment Period.
  - Built a list of steps to enhance SO and AC accountability that should be addressed in Work Stream 1 and Work Stream 2.
- 7 A review of existing ICANN documentation shows that the provisions that oblige SOs and 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.
- 8 The reviewed documents were:

#### 1) [ICANN Bylaws](#)

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

It is also important to review whether SOs and ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example,

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<sup>1</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: *The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN/ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN/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/ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN/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 his or her 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.*

it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions, but also to SO and AC activities.

2) **The Affirmation of Commitments**

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, should also be seen as applicable to the SOs and ACs that form the wider ICANN organizational structure as defined in ICANN's Bylaws.

The identified mechanisms or criteria in the Affirmation of Commitments by which SOs and ACs should conduct their work in relation to the DNS are: paragraph three and paragraph nine.

3) **ATRT 1 Recommendations and ATRT 2 Recommendations**

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

4) **Operational Rules and Procedures of the Various Supporting Organizations and Advisory Committees**

Having inventoried the existing mechanisms related to SO and AC accountability in light of the new responsibilities associated with the Work Stream 1 Proposals, it became clear that the current framework for SO and AC accountability needed to be enhanced.

The aim of the enhancements is to ensure that SOs and ACs are accountable not only to their current members, but also to the wider communities that these bodies are designed to represent.

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

10 Work Stream 1: Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.

- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
- 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.
- The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into ICANN bylaws as part of Work Stream

1. In Recommendation 9 and Annex 9, the Accountability and Transparency Review will include this among issues that merit attention in the review:
  - o (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS

11 **Work Stream 2:** Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process

- Evaluate the proposed "Mutual Accountability Roundtable" to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>2</sup>
- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during public comment period on the third draft.
- Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities as well.

## 4. Changes Made Since the ~~Third~~ Second Draft Proposal

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- Addition of: The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into ICANN bylaws as part of Work Stream 1. In Recommendation 9 and Annex 9, the Accountability and Transparency Review will include this among issues that merit attention in the review:
  - o (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS
- In WS2 recommendations the addition of: Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during public comment period on the third draft.

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<sup>2</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: 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 his or her 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.

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- <sup>9</sup> During the Public Comment Period on the “CCWG-Accountability Second Draft Proposal regarding Work Stream 1 Recommendations,” the community presented several concerns and suggestions on how the accountability of the SOs and ACs could be enhanced. As the focus of Work Stream 1 recommendations is to ensure that the accountability enhancements necessary for the IANA Stewardship Transition to occur are in place, the CCWG-Accountability will discuss other aspects of this topic as part of Work Stream 2.
- <sup>10</sup> Suggestions and concerns raised during the Second Comment Period that are open for further exploration as part of Work Stream 2 work on SO and AC accountability are:
1. **Who watches the watchers?** To avoid an infinite loop, it was suggested that the SOs and ACs should be subject to an IRP when their actions go against the ICANN Bylaws.
  2. Consider ways to limit conflicts of interest within SOs and ACs.
  3. Implement the principle of non-cumulative holding of offices, successively or simultaneously, to mitigate the risk of “capture” of the new institutional framework of ICANN by individuals.
  4. Establishment of an independent commission in charge of controlling the conflict of interest statements issued by the ICANN Board members.
  5. Structural reviews should be undertaken as a two-step process: first, the Review Team works with the incumbent SO or AC; second, the resulting review is sent to an independent examiner.
  6. The CCWG-Accountability should also consider whether other steps are necessary before escalating to adversarial arbitration when SO and AC accountability issues arise instead of going directly to an IRP.
- <sup>11</sup><sup>14</sup> The majority of comments received on SO and AC accountability in Draft Two were related to issues that will be addressed in Work Stream 2. There were some requests for clarification on Work Stream 1 items, and the text has been edited accordingly. However, there have been no changes to the recommendations for Work Stream 1 work on SO and AC accountability.

## 5. Stress Tests Related to this Recommendation

- ST12
- ST33
- ST34

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### **4215 Support and enhance the multistakeholder model.**

- Enhancements of [ICANN/ICANN](#)'s Accountability are all enhancements to [ICANN/ICANN](#)'s overall multistakeholder model. Greater accountability of SOs and ACs to their members and stakeholders is a part of enhancing the wider multistakeholder model of [ICANN/ICANN](#).
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### **4316 Maintain the security, stability, and resiliency of the Internet DNS.**

- N/A
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### **4417 Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A
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### **4518 Maintain the openness of the Internet.**

- N/A
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### **4619 NTIA will not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.**

- The proposals for enhanced SO and AC accountability are based on mutual accountability enhancements, instead of accountability towards a government-led or intergovernmental organization. Governments are recognized as key stakeholders, especially in their role with regards to public policy.
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