

#### 4.4.4 Accountability Mechanisms

- 4.4.4.1 Explanation of the Subject

ICANN has Accountability Mechanisms that may be invoked by the community. The Accountability Mechanisms were utilized by applicants, in particular the Request for Reconsideration process, invoked for a number Community Priority Evaluations.

On its Accountability Mechanism website ICANN states:<sup>1</sup>

*ICANN has a proven commitment to accountability and transparency in all of its practices. ICANN considers these principles to be fundamental safeguards in ensuring that its bottom-up, multi-stakeholder model remains effective. The mechanisms through which ICANN achieves accountability and transparency are built into every level of its organization and mandate – beginning with its Bylaws, detailed in its Accountability and Transparency Frameworks and Principles<sup>2</sup> (adopted by ICANN's Board in 2008) and annually reinforced in its Strategic and Operational Plan<sup>3</sup>. In order to reinforce its transparency and accountability, ICANN has established accountability mechanisms for review of ICANN actions.*

These mechanisms are as follows: (See further details on the above-mentioned site)

Reconsideration Process: Reconsideration is a mechanism provided by Article IV, Section 2 of the Bylaws<sup>4</sup> by which any person or entity materially affected by an action (or inaction) of ICANN may request review or reconsideration of that action by the Board.

Independent Review Process (“IRP”): In addition to the Reconsideration Process, ICANN has also established a separate process for independent third-party review of Board actions (or inactions) alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws. See Article IV, Section 3 of the ICANN Bylaws<sup>5</sup>.

Ombudsman: The ICANN Ombudsman is an independent and impartial neutral whose function is to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly for matters which have not otherwise become the subject of the Reconsideration Process or the Independent Review Process.

- 4.4.4.2 Questions and Concerns Related to Subject

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<sup>1</sup> See <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>

<sup>2</sup> See <http://archive.icann.org/en/accountability/frameworks-principles/contents-overview.htm>

<sup>3</sup> See <https://www.icann.org/en/about/planning>

<sup>4</sup> See <https://www.icann.org/en/about/governance/bylaws#IV>

<sup>5</sup> Ibid

The DG noted several areas where additional, or modified Accountability Mechanisms may need to be developed to ensure fairness, counter abuse, and to facilitate appeals. The DG noted that a high percentage of CPE results triggered Accountability Mechanisms, which the DG suggested meant that applicants felt that the process was not properly conducted, though the frequent usage of an Accountability Mechanism is not necessarily an indication of an accountability issue. Feedback from the DG suggested that for CPE, there appeared to be a lack of transparency, that the Panel misinterpreted the applications and review guidelines, and that the Panel improperly applied the CPE criteria in reaching its determinations.

In addition, the DG noted the lack of a mechanism for appeals to an objection, as well as to the determination of panels in the evaluation and objections processes.

- *4.4.4.3 Relevant Guidance*
  - Accountability Mechanisms: <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>
- *4.4.4.4 Rationale for Policy Development*

With respect to accountability mechanisms ICANN should consider what factors would be important for a meaningful and equitable appeals process. In particular, ICANN could consider the following questions:

- Should the process make a distinction between appeals relating to substantive and procedural issues?
- Who is an appropriate final arbiter?
- Should redress be available only for certain issues but not for others?
- Should there be safeguards against abuse and penalties?

It should be noted that the scope of Accountability Mechanisms extends beyond the New gTLD Program. For instance, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability)<sup>6</sup> is looking at this specific topic, amongst other broader topics related to ICANN's accountability. The discussions and outputs of the CCWG-Accountability may be beneficial in addressing issues identified by the DG and the wider community.

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<sup>6</sup> Details regarding the work of the CCWG-Accountability can be found here: <https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability>