ICANN Offices
Ombuds, Complaints & ?

How to organize the various WS2 request for new mechanisms to increase ICANN accountability?

In the course of the work of various sub-groups, of Work Stream 2 (WS2) of the cross-community working group on ICANN accountability (ccwg-accountability), new mechanisms to increase ICANN accountability are suggested.
Very often the next questions are:
- "Where to put those mechanisms?"
- "Who will better suited to fulfill those new missions?"
- "Do we have the right structures to handle those requests?"

This paper is meant to explore the current situation, the news requests and possible solutions.

1. The current situation

ICANN Ombuds Office

"... the ICANN Ombudsman (...) reports directly to the ICANN Board, but is not a member of ICANN Staff. He is available to the ICANN Community for complaints about delay and unfairness within and between ICANN and the supporting organizations."

"The Ombudsman is given some specific powers to look at problems. There are some things that the Ombudsman cannot investigate, but sometimes the Ombudsman can facilitate some resolution, by discussion or mediation.
The ICANN Ombudsman is independent, impartial and neutral. The Ombudsman's function is to act as an informal dispute resolution office for the ICANN community, who may wish to lodge a complaint about ICANN staff, board or problems in supporting organizations. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman is impartial and will attempt to resolve complaints about unfair treatment, using techniques like mediation, shuttle diplomacy and if needed, formal investigation. The Ombudsman is not an advocate for you, but will investigate without taking sides in a dispute. The process is informal, and flexible.
Complaints to the ombudsman are completely confidential."

https://www.icann.org/ombudsman

ICANN Complaints Office

In an ICANN Blog posted on 04 October 2016, Göran Marby, ICANN President and CEO, announced the creation of an ICANN Complaints Office.

"Finally, John Jeffrey will continue in his current role as ICANN's General Counsel and Secretary, and in that role will continue to be responsible for supporting the ICANN Board's work. I am also expanding John's remit as we are creating a new role of an ICANN Complaints Officer. The ICANN Complaints Officer will receive, investigate and respond to complaints about the ICANN organization's effectiveness, and will be responsible for all complaints systems and mechanisms across the ICANN organization. We will be appointing someone to this role, reporting directly to John. This person will work closely with Ombudsman Herb Wayne.
The Complaints Officer is an important role that will provide a focus point for the community if they have complaints about the ICANN organization. It is an additional way to keep the organization and me accountable to you, the global ICANN community. The purpose of the office is to ensure that complaints and particularly those of community members, about systemic issues or concerns about the organization are heard, reviewed, analyzed and resolved as openly as appropriate. I want to be clear though that this in no way replaces or supersedes the important role of all ICANN's formal accountability mechanisms."

Job description
https://chj.tbe.taleo.net/chj06/ats/careers/v2/viewRequisition?org=ICANN&cws=37&rid=1082

2. The new requests

1. Diversity
https://community.icann.org/x/jhWOAw

The Diversity-DT is currently working and discussing on the following:
Creating and office of diversity and inclusion within ICANN

"In order to move forward, we propose to create, within ICANN, an office for diversity and inclusion (or "observatoire de la diversité") in charge of
1. gathering and analyzing data regarding diversity within ICANN and
2. making concrete proposals to enhance effective diversity within ICANN.

This Office would be tasked with the following missions:
- Establishing a diversity audit;
- Defining diversity criteria;
- Collecting the data for each criterion for all leadership positions in ICANN; Drafting a long-term diversity strategy;
- Publishing an annual report on diversity within ICANN;

- Making concrete proposals to improve diversity within ICANN, to be shared with the community."

3. Guidelines for Good Faith Conduct
https://community.icann.org/x/nhWOAw

4. Human Rights
https://community.icann.org/x/kBWOAw

5. Jurisdiction
https://community.icann.org/x/khWOAw

6. Ombudsman
https://community.icann.org/x/lhWOAw

7. Reviewing CEP
https://community.icann.org/x/nBWOAw

8. SO/AC Accountability
https://community.icann.org/x/lBWOAw

9. Staff Accountability
https://community.icann.org/x/mhWOAw

Draft documents (still under review by the subgroup)
Document A version 1.3

Recommendation #5
…
"Base staff accountability and evaluation on how staff has managed to strengthen and serve ICANN through strengthening and serving the ICANN stakeholder community. Staff accountability is not only a question of sets of rules and standards of behaviors. KPIs, codes of conduct and the role of the Ombudsman need to reflect this. It goes beyond ticking boxes but needs to look first at how staff behavior impacts policymaking at the root of the process which is the stakeholder groups." (P14)
…
"Strengthen and redefine the Ombudsman office. Human resources related issues have to become again within the remit of the Ombudsman office." (P15)

First Draft Document B

"The CCWG-Accountability work with ICANN to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2." (P1)

...

"Escalation processes (incl Ombudsman, Complaints Officer)

Currently the Ombudsman can be brought into any issue where a stakeholder has concerns a situation where they have been treated unfairly. The Ombudsman can recommend action, but at this time has no enforcement powers. A separate group in WS2 is currently working on new definition of Ombudsman scope. The current scope does not permit issues to be brought to the Ombudsman office by

At this point there are still more questions about the role and powers of the new Complaint Officer position than explanations, though the job posting7 offers some indications."

...

10. Transparency

https://community.icann.org/x/mBWOAw

ICANN CCWG-Accountability Work Stream 2
Draft Recommendations to improve ICANN's Transparency
(February 2017)
https://community.icann.org/download/attachments/59643288/CCWG-Accountability-WS2-Transparency-PublicConsultationon-February2017-Document-Final.docx?version=1&modificationDate=1487104652000&api=v2

Improving ICANN's Documentary Information Disclosure Policy (DIDP)

"Probably the most important aspect of a robust transparency policy is providing people with a mechanism by which they can request access to information. Early-on in consultations, it became apparent that there was strong support for major improvements to ICANN's Documentary Information Disclosure Policy (DIDP)." (P5/23)

...

"The exception for information requests which are "not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual" also requires careful consideration. While exceptions for vexatious requesters are generally legitimate, experience suggests that they are also prone to abuse if their exercise is not closely watched. As a result, and because it is difficult to objectively define when a request should be considered abusive or vexatious, it is recommended that either the Ombudsman or the Complaints Officer should be required to review any decision to invoke this

exception." (P8/23)

...

"A further recommendation is that the ==Ombudsman's== mandate regarding transparency should be boosted to grant the office a stronger promotional role, including specific steps to raise public awareness about the DIDP and how it works and by integrating understanding of transparency and the DIDP into ICANN's broader outreach efforts. Another way to facilitate re-quests is to make it clear to external stakeholders what sort of information ICANN holds, to better facilitate filing targeted and clear DIDP requests. This can be done, for example, by publishing a list of the categories of information it holds and whether they are disclosed on a proactive basis, may be available via a request or are confidential." (P10/23)

...

"Monitoring and evaluation are also essential to a successful right to information policy, and either the ==Ombudsman== or the ==Complaints Officer== should be tasked with carrying out reasonable measures to track and report basic statistics on the DIDP's use, such as the number of re-quests received, the proportion which were denied, in whole or in part, the average time taken to respond, and so on." (P11/23)

Improving ICANN's Anonymous Hotline (Whistleblower Protection)

"Hotline Policy Scope

It is noted that the scope of the Hotline policy is limited to ICANN employees. It is agreed as per the NAVEX report that it is appropriate to limit the scope of the Hotline policy to employees and rely on the ==Ombudsman== to handle complaints from external stakeholders. However, NAVEX recommends that ICANN follow common practice and make the Hotline Policy and Procedures information accessible to Business Partners and other "appropriate third parties as defined by ICANN" to report ethics or compliance matters." (P17/23)

3. Possible solutions

As we can see various sub-groups (WS2 ccwg-accountability) have suggested new mechanisms to increase ICANN accountability.

Where to put those mechanisms?"
Who will better suited to fulfill those new missions?"
Do we have the right structures to handle those requests?"

For each of them it will be useful to determine:
- The level of independency from the ICANN staff (organization), from the ICANN Board or from the Empower Community;
- The type of interaction needed with those groups;

- The possible inclusion "one way or another" into the mission of existing ICANN Offices or no.

Some of those new missions seem to create more problems with the current Offices.

Proposal

Creation of a third Office – Community Office (?)

This Community Office will be a new Office and an addition to the ICANN Ombuds Office and the ICANN Complains Office.

It will be in charge of all the new missions that request different skills from the Ombuds Office and the Complains Office.
- Gathering data (Diversity, SO/AC accountability and transparency…);
- Promoting the processes and tools available to the community (DIDP…);
- Review (some) processes of interest for the whole ICANN (like diversity, equality, equity, elections…);
- …

It will be independent.

It will have specific staff and budget.

It will be selected by the Empowered Community by a process to be defined.

Coordination

The 3 Offices will form an Independent Coordination Team that can coordinate and act jointly if needed and without jeopardizing confidentiality issues.

Sébastien Bachollet – 13 February 2017, Varzy France

Draft – V1