

Thematic Overview for WS2 Transparency Subgroup

1. Improving ICANN's Documentary Information Disclosure Policy (DIDP)

Themes:

- a. Scope of transparency:
 - i. Do transparency measures apply to the staff as well as the Board?
- b. Exceptions to disclosure
 - i. Overuse of exceptions
 1. Legal Privilege
 - ii. Overbreadth of exceptions
 1. Information that relates in any way to the security and stability of the Internet (no requirement for harm).
 2. Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication
 3. Confidential business information and/or internal policies and procedures (needs further clarification).
 4. Information requests which are not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual (needs further clarification)
 5. Trade secrets (needs further clarification)
 - iii. Confidentiality clauses and contracting.
 1. DIDP blanket exception for information provided to a government or international organization in the expectation that it would be kept confidential
 2. How do these relate to disclosure of information both through the DIDP and specifically to access by the Empowered Community or the ICANN board
 - iv. Transparency of board deliberations
 1. Over-classification – and need for a fair and effective system to determine when discussions should be carried out in camera.
 2. When board deliberations are carried out in camera, consideration should go towards only restricting their availability for a set period of time.
 - v. Transparency of interactions with governments
 1. Blanket exceptions for 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. (need for clarification of how and why these assurances are provided).
- c. Process for making requests
 - i. Timelines: 30 days “to the extent feasible”. Need for a binding timeline, and need for statistical tracking of timelines for response, in order to assess performance.

- d. Appeals and Oversight of the System
 - i. There is a need for strong independence in the review process, including an independent appointments process, security of tenure, etc.
 - ii. There should be timelines for the review process.
 - iii. The oversight body should have a broader mandate to track and promote transparency in ICANN
- e. The public interest balancing test
 - i. Currently, the “public interest” test in the DIDP allows for both disclosures in the public interest, and for additional material to be withheld in the public interest. The latter is incompatible with international better-practice laws.

APPEALS – Does a denial of a DIDP request subject to IRP? By-laws appeal to only be by decisional participants

2. Improving ICANN’s proactive disclosure systems

- a. Transparency and ICANN’s interactions with governments
- b. Transparency around ICANN’s interactions with external advocates.
- c. Transparency of board deliberations
- d. Reporting around ICANN’s conflicts of interest policy
- e. Financial and budgetary transparency
 - i. Legal transparency (agreements), contracts, financial agreements and expenditures, etc., operational transparency, like meeting decisions, including venues, hotel and travel arrangements, fellowships, etc.
- f. Data accessibility, including release material in formats that are easily processed and manipulated

3. Improvements to the existing whistleblower policy

- a. Clarity and availability of the existing policy, and employee education around it.
 - i. International dialing numbers are included in a list at the end of the Hotline Policy; however, the reference to these dialing/access numbers on page 2 of the Hotline Policy do not specify where to find this list.
- b. What counts as a whistleblower? Types of incidents reported: accounting irregularities, unethical conduct, abuse of authority, etc.
 - i. Reporting is limited to “serious issues”
 - ii. The Hotline Policy scope is limited to employees.
- c. Operation of whistleblower system – how/when to make a report; who investigates the report, reporting methods (hotline, online, etc.),
 - i. No case management software is currently being used
 - ii. Information about the system’s operations is difficult to locate (ex – stats on reporting).
 - iii. Low use - The Hotline has received only 3 reports since its inception in 2008.
- d. What protections and remediation does the system provide?

- i. Anonymity limited “to the extent allowed by local law”
 - ii. Protection of good faith reporting is not specifically mentioned
- e. What sort of oversight or protections mechanism is in place – internal department (HR, Legal counsel, other) vs. external retention of 3rd party specialist
- f. Transparency – is there an external audit for how whistleblowers have been handled, and how are employees and the public made aware.
- g. How are operational conflicts of interest resolved