

CCWG Staff Accountability: Document A

Working Draft 1.2

https://docs.google.com/document/d/1wXuZw-VFeMLT3B5UHLU_nY1SWyyp6-VLeVZF1FY0UDk/edit?usp=sharing

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The creation of this document was requested as a proposed next steps for Staff Accountability WS2.

The CCWG-Accountability work with ICANN to develop a document that clearly describes the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.

4-8 page document

- Specifies roles of Staff, Board, Community
 - Staff
 - Board
 - Community
- Specifies relationships between them
 - Staff<->Board
 - Staff<->Community
 - Board<->Community (descriptive only)
- Describes any proposed Changes / Clarifications
- Describes any activities that should be started/continued/stopped
- Recommendations

Part B: Summary Roles and Relationship

(based on Source documents review, see below Attachment1)

1.Specifies roles of Staff, Board, Community

1.1 Staff Roles

1.1.1 CEO Roles

The CEO:

- speaks for ICANN organization and serves as the external face of the organization.
- leads and oversees in accordance with documented policies and procedures ICANN's day-to-day operations, within budget, plans and priorities.
- reports to the Board.
- is responsible for ensuring that the ICANN Organization delivers on its support responsibilities to the ICANN Community.
- supports all internal accountability and transparency mechanisms and ensures that ICANN remains in compliance with all applicable legal/regulatory requirements.
- proactively protects the organization from third-party claims and monitors and mitigates risks to the organization.

1.1.2 ICANN.org Staff Roles

(see 2-2.2.2.4)

What ICANN Staff don't do

The staff of ICANN does **not** have the following roles:

- deciding the long term strategy and direction of ICANN
- setting policy
- interpreting and acting on the boundary between the *development* and *implementation* of policy in a way that usurps the proper role/s of the Board and community.

1.2 Board Roles

The Board's function in the ICANN system is a complex and delicate one. It is a large and diverse board, composed of a mix of directly representative and NomCom appointed members.

The primary external role of the ICANN Board is to assure the Internet community that policies applied to the DNS are consistent with ICANN's mission and purpose, and developed through the consensus community processes set out in ICANN's bylaws.

In its primary internal role the Board is like the board of any other non-profit. That is, consistent with the law, it acts in accordance with documented policies and procedures collectively by voting at meetings to authorize and direct management to take action on behalf of the ICANN organization.

The Board's main functions are:

- Strategic oversight,
- Oversight of enterprise risk work within the organization,
- Select the CEO and appoint other officers;
- Setting and overseeing enforcement of conflicts of interest policy.
- Set the fiscal year, adopt annual budget, operation and strategic plans, appoint independent auditors and cause the annual financial report to be published.
- Overseeing the development of, and approval of, key financial direction
- Appoint and oversee the performance of the Ombudsman.
- Consider recommendations from reviews.
- Selecting PTI Board membership.

What the ICANN Board doesn't do

The ICANN Board does not have the following roles:

- **To determine policy where community processes have not reached consensus** – in such cases the Board's role is to push the matter/s back to the relevant processes so that differences can be resolved by and among the broader community.
- **To do the work of the organisation** – the Board and its members are the governors and can best do their job with appropriate detachment and in line with their fiduciary duties by not becoming too involved in the day-to-day work of ICANN. The Board collectively as well as each of its members should take care that they do not breach the governance/management barrier in ways that undermine the roles of the Staff or the Community. Where this happens, deliberately or not, it places the whole organisation at risk.

1.3 Community Roles

1.3.1 Empowered Community Roles

The Empowered Community is a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO, the GNSO, the ALAC, and the GAC. The sole purpose of the Empowered Community is to exercise its rights and perform its obligations under ICANN's Articles of Incorporation and these Bylaws, and [it] shall have no other powers or rights except as expressly provided therein.

The purpose of the rights and obligations assigned to the Empowered Community are to allow the ICANN organisation to be held to appropriate levels of accountability to the global Internet community.

1.3.2 Wider Community Roles

ICANN community members act through ICANN's SOs and ACs to develop policies applicable to the root of the domain name system. As such they bring their expertise, interests, opinions and judgement to bear in collectively evolving policy that the ICANN organisation in turn implements.

In other words, community participation is about doing the essential work of ICANN as set out in the Mission and Purpose sections of the Bylaws. The ICANN organisation exists to support that community-led policy making process and to implement its outcomes.

What the ICANN Community doesn't do

The ICANN Community does not have the following roles:

- Governance – the Board's role is to govern and set the long-term direction for the organisation, determining that direction working with the community. The Board has the legal responsibility to govern and it cannot delegate that to the community at large.
- Implement policy – the ICANN organisation through its staff implement consensus policy as applicable. The community determines what the policy is, but that is where its role ends. That said, where there are tensions between policy *development* and *implementation* these need to be dealt with sensitively. It will not serve ICANN if the community feels that policy is being made under the guise of "implementation".

2. Relationships between Staff, Board, Community

Board and management actively engage with the community to ensure that ICANN serves the global public interest within ICANN's mission.

Interdependencies are highlighted in a wide range of ways, including through ICANN accountability mechanisms such as:

- Empowered Community rights
- Reconsideration of Board or staff actions
- Independent review of Board or staff actions
- Recommendations of the Ombudsman
- Transparency and disclosure requirements

2.1 Staff-Board Relationship

Across the roles and obligations that the Board, CEO and senior management share, there are numerous interdependencies in these relationships. These include:

- The CEO (or designee/s) is the spokesperson for ICANN
- The Board Chair is the spokesperson for the ICANN Board, unless delegated to other board members.
- The Board and Staff are key drivers in the development of ICANN's strategic direction and in the organisation's relationships with the ICANN community. They have significant influence of the degree of community confidence and trust in the organisation.
- Working together on Boardworkshop and Board meeting agendas, with the Organization responsible for timely delivery of materials to the Board in the circumstances when the Organization is informed that it should provide Board briefing materials.
- ICANN Board relies on management for information upon which the Board will base its decisions
- The Board also relies on management to support the Board's interactions with the ICANN community.
- Management implements Board resolutions and acts within the scope of delegated authority reflected within those resolutions.

2.1.1 CEO-Board Relationship

The CEO oversees day-to-day operations, while the Board exercises oversight over the CEO, and is responsible for the identification of the strategic direction that the operations will serve. This relationship is crucial to the organisation's success, and any problems or concerns in the relationship should be resolved at the first opportunity.

Collegial setting of key goals and directions, effective performance management, succession planning and testing of the management's policy and analysis frameworks are essential to the Board helping maintain this relationship in a healthy state.

Openness, honesty and excellent and accessible provision of Board-appropriate information and analysis are essential to the Chief Executive helping maintain this relationship in a healthy state.

2.1.2 ICANN.org staff-Board Relationship

Generally speaking the accountable interface between the staff and the Board is through the CEO. From day to day a wide range of staff will work with the Board collectively and with its committees, as well as with individual Board members.

Ensuring this relationship remains healthy requires the Board and Board members always to keep their role as governors in mind. They are not entitled to manage staff members, or to seek to influence staff decisions or behaviour in ways not relevant to their particular roles and responsibilities (e.g. as members of particular Board committees). They must always bear in mind when a request might breach this approach, in which case it must be raised with the Chief Executive. Board members should undergo regular governance training that reminds them of how to work effectively with the organisation's staff.

Ensuring this relationship remains healthy requires staff members to be aware of Board members' roles and how these interact with theirs. They will need to be confident in drawing the appropriate boundaries if Board members do not do so, and management must be clear in supporting staff in this. Staff will also help ensure a healthy relationship with the Board by delivering promised work, and/or being clear when Board requests cannot be met (and why).

2.2 Staff-Community Relationship^[JC1]

ICANN's staff, or the ICANN organisation's executive and implementation roles, are there to support the community in its role of developing policies for the DNS and in its role of holding ICANN accountable to the global Internet community. Without effective support of this sort the community cannot perform the role assigned to it.

In turn the community's expectations of the staff must be reasonable: there are limited numbers of staff and like all people, ICANN staff will perform best when they maintain a balance between their work and personal lives. It is also important for community members to respect the fact that any particular ICANN staff member does not work for the community per se, but rather work for the organisation and are ultimately accountable to the CEO and managed by the ICANN organisation.

The relationship will be healthy when staff and the community understand and respect their respective roles and responsibilities, and proactively work together in a spirit of collaboration, openness and honesty, and respect.

2.2.1 CEO-Empowered Community Relationship

The CEO:

- is responsible in making sure that the ICANN Organization delivers on its support responsibilities to the ICANN Community.
- interacts with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission.
- supports the Empowered Community processes as necessary.

2.2.2 CEO-Wider Community Relationship

The CEO:

- interacts with governments and organizations within the scope of ICANN's Mission and Board's directives.

- interacts with the broader Internet community and other interested parties within the scope of ICANN's Mission and Board's directives.

2.2.3 ICANN.org Staff-Empowered Community Relationship

ICANN.org employees are members of ICANN.org, to serve the community.

Individual staff members are accountable to the ICANN Organization, which supports the community. The CEO is the ultimate point of accountability for how the ICANN Organization provides service to the community. No ICANN employee reports to any person outside of the ICANN Organization.

The ICANN community – as with any other issues – can raise with ICANN management any concerns or observations as they relate to staff accountability.

In general, ICANN expects that “staff accountability to the community” means that those within the ICANN Organization are performing the work that they are hired and expected to complete.

The Empowered Community has the power to:

- Reject ICANN Budgets, IANA Budgets, Operating Plans and Strategic Plans
- Reject Standard Bylaw Amendments;
- Approve Fundamental Bylaw Amendments, Articles Amendments;
- Remove individual ICANN directors or recall the ICANN Board;
- Reject PTI Governance Actions

The EC may pursue an action in any court with jurisdiction over ICANN to enforce the EC's rights under the Bylaws.

Elements in place regarding staff interaction with the community:

- *Code of Conduct*
- *Transparency obligations or criteria*
- *Induction*
- *Training*
- *Key performance indicators*
- *Cross Function communication and influence, are there any Col firewalls between ICANN functional units.*

ICANN.org has developed policies, processes and/or guidelines that reflect the organization's commitment to providing efficient and orderly operation of the business while protecting the rights and safety of all staff. ICANN.org has a policy on Employee Conduct and Work Rules as well as a Policy on the Prohibition of Harassment. These govern all interactions that involve staff members.

Staff accountability to the community is broadly expressed, audited or monitored or reviewed.

Staff's work in meeting certain behaviors is also evaluated at regular intervals, which consider how individuals demonstrate commitment to ICANN's mission and evaluate interactions with stakeholders (internal or external).

The role of the Ombudsman regarding staff accountability:

The community can raise issues with the Ombudsman with regards to staff accountability if it relates to issues of fairness or other items appropriately within the Ombudsman's jurisdiction. If the issue, however, becomes a human resources-related issue, the resolution of the concern is not within the Ombudsman's jurisdiction. See mandate of the Ombudsman at <https://www.icann.org/ombudsman> .

2.2.4 ICANN.org Staff-Wider Community Relationship

Not defined as yet.

2.3 Board-Community Relationship

ICANN's Board is composed of community members. It has a vital role in ensuring the organisation's strategy and approach meets the community's expectations. It also takes a lead in setting ICANN's culture as an organisation designed to support the Internet community in the important work of setting policies in the areas defined by the Mission and purpose parts of the bylaws. It sets the tone for how the organisation relates to its community and is therefore a key player in building trust and confidence.

The community working through ICANN relates to the Board in a range of ways. It has tools by which to hold the Board to account; it has to acknowledge the Board's roles and rights as employer of the CEO, formal decision-maker and governing body of the organisation. Community members should respect and aim to understand the responsibilities of the Board and its particular roles, to avoid misunderstandings and help build trust and confidence.

The relationship can be strengthened through open and honest dialogue, especially on controversial and difficult issues; through an acknowledgement and celebration of mutual accountability between the community and the Board; through a mutual commitment to openness in transparency in the work of the community; and through together developing a culture that celebrates and respects difference and disagreement as integral to the consensus-building process at the heart of ICANN's work.

2.3.1 Board-Empowered Community Relationship

The Board in relation to the Empowered Community shall:

- Interact with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission.

- Respect and support accountability mechanisms, including:
 - Participating in the Empowered Community processes as specified in Bylaws;
 - considering Requests for Reconsideration; and
 - Considering final Independent Review Process declarations.

- Consider policy recommendations arising out of Supporting Organizations (SOs), including participating in consultation processes if necessary.

- Acknowledge advice from Advisory Committee (ACs) and consider advice as appropriate.

- When necessary, follow consultation processes relating to AC advice.

- When necessary, create ACs and working groups to report recommendations and findings to the Board.

- Appoint membership of the RSSAC and SSAC, pursuant to the recommendations from the respective groups.

- Appoint the Nominating Committee Chair and Chair-Elect.

The EC shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

- Appoint and remove individual Directors (other than the President);
- Recall the entire Board;
- Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions, Special IFR Recommendation Decisions, SCWG Creation Decisions and SCWG Recommendation Decisions:
 - Initiate a Community Reconsideration Request, mediation or a Community IRP; and
 - Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

2.3.2 Board-Wider Community Relationship

Not defined as yet

Part C: Comments and Observations:

Proposed Changes / Clarifications

The relationships between companies/organizations and their board, staff and the various stakeholders, (customers, members, investors, stakeholders, governments and regulators, to name some), are well defined in law and in the various formal documents. Yet the way various stakeholders choose to behave and relate to each other – the culture and style of the organisation – have a very big impact on how well it can achieve its goals.

An analysis of the relevant ICANN.org organizational and governance documents, shows that in the case of ICANN.org the situation is similar but with some important differences:

- ICANN.org is governed by its Board.
- The stake/shareholders have the power to remove/replace the Board
- The CEO is reporting directly to the Board
- Staff has its internal regulations and is accountable to the Board through the CEO and various direct/indirect interactions with the Board.

The main similarities end here. Key differences are:

- The stakeholders directly inform the decision making of the Board.
- ICANN.org staff report directly to ICANN.org and are evaluated following ICANN.org KPI's, but at the same time the role of ICANN staff as community support is emphasized.
- Some stakeholders (Registries/Registrars) have direct contractual arrangements with ICANN.org that are of vital interest to the contracted parties. This constitutes a clear conflict of interests for all parties involved. Existing processes and regulations to mitigate this conflict are in place but can never remove them, only aim to deal with them transparently and openly.
- ICANN.org depends on a very small number of Registries for its core technical operability[JC3] .

- ICANN.org depends on Registries and Registrars for its financial sustainability, and at the same time the business models and financial sustainability of Registries and Registrars are directly dependent on their contractual arrangements with ICANN.
- Parts of the stakeholder community (NCSG/ALAC) are in their operational sustainability dependent on logistical, operational and financial support from ICANN.org through and based on ICANN.org staff decisions.
- Parts of the stakeholder community exercise legal oversight over ICANN in its daily global operations (Governments in the form of the GAC).

ICANN.org staff and to large extend the ICANN Board are in a position, where they are:

- directed by...
- accountable to...
- support ...
- operationally and financially sustained by...

...in part or in total to the stakeholder community, whilst at the same time the same ICANN.org staff is:

- directing stakeholder groups through their decision making and actions.
- are only indirectly accountable, and only to a limited extent (mainly excluding human resources related issues).
- are bound to support the operations and interests of ICANN.org and support the interests of the stakeholders only to the extent to which it is compatible with wider ICANN.org interests.

Activities that should be started/continued/stopped

In theory and in an ideal world scenario, the interests of Board, ICANN.org and its staff and its stakeholders should be the same through balancing out different interests during the various ICANN policy making processes, but each party has its own specific interests which it tries to implement over the interests of other parties, which results in clear conflicts of interests.

Even if each party tries to take the interests of other parties fully into account this is not always possible, as each stakeholder groups has its own characteristics and development dynamic. There exists often just a simple lack of knowledge and understanding of stakeholder groups and their interests, by staff and community.

The all-encompassing expectation is that the Board, staff and the community have an overarching joint interest and will make joint policy decision through consensus creation.

Board and ICANN.org staff see themselves as the main enablers and instruments to fulfil the will of the community which has been reached through consensus based policy making. At the same time, the perceived interest of ICANN.org as a company and staff might stand in direct conflict with the perceived interests of all or parts of the community. The list of issues where the interests of ICANN.org and its staff conflict with those of the community is very long and only some examples can be mentioned here:

Staff must negotiate contractual arrangements with stakeholders whose will they are bound to execute, putting Board and staff into a situation where they have to serve two masters at the same time.

ICANN.org is interested in a quick and controlled process of policy making. The reality of multistakeholder policymaking has shown that it will ultimately deliver the required results but that the process is long, messy and uncontrollable. ICANN staff in an attempt to bring the policy making process into order is tempted to offer the community “help”, either internal or external through the engagement of consultancies, to policymaking processes and sometimes thereby undermining the very essence of multistakeholder policy making. ICANN.org is driven by its institutional interests to build necessary capacities either in house or through buy-in, but not through where it by the very nature of ICANN should be placed: the ICANN multistakeholder community!

We also have to be clear that there will also be always a conflict between the long- and short-term interests of ICANN.org as instrument of the community will and the interest of ICANN staff as individual employees. ICANN.org as representative might have long-term development interests, based on some particular stakeholder needs, such as promotion of general Internet governance literacy and awareness-building, before the organizational self-promoting interests of ICANN.org as an organization.

ICANN.org staff will be evaluated against KPI's that measure the promotion of ICANN.org, but we have no information to suggest that KPI indicators exist to measure the extent to which the work of staff has benefited the core interests of the multistakeholder community. One could say ICANN.org is supporting the community to produce the results that are needed for ICANN.org to function, but is not yet adequately supporting the underlying health and strength of the multistakeholder

community on which good policy making is based. (Resolving this may be a broader strategic issue for the community to consider.)

The work of the stakeholder groups, and in particular those who are directly supported by ICANN.org, are observed and evaluated by staff. The criteria for the evaluation is based on participation and input into policymaking processes and does not consider the particular situation, interests, functions and dynamic of a stakeholder group. Decisions by ICANN.org staff about who and how to support are based on this distorted evaluation criteria with the result that the overall policymaking process risks becoming distorted.

The distortions and conflicts of interests could be resolved by a change of self-understand by all parties involved. The relationships between stakeholder groups, ICANN.org and its staff are dominated by promoting particular interests and outcomes in the policymaking process. Real policymaking is not a process in which one group of interests tries to impress its will on another stakeholder group, but is instead a process of constant dialogue, seeking understanding and compromise and a true balance of interest between all stakeholder groups. Such balanced policy making processes can only happen when all those involved move away from emphasizing the policy that is at the end of a process and instead put their energy into the process that results in a policy.

In the case of ICANN.org, this would mean emphasizing and strengthening the stakeholder groups themselves and the dialogue and interaction between stakeholder groups, and ICANN.org staff and Board. Many attempts have been made to do just this, and there are mechanisms in place to achieve this, but it is clear that the current instruments in place are not working and that the policymaking process is still too often dominated by the outcome and not the process itself.

There seems to be also a large potential for conflict when it comes to the implementation of policies by ICANN.org, Board and staff.

It seems that the key to a successful relationship between Board, staff community and implementation of policies is the quality and clarity of the policies that result from the policymaking processes within the community. Effectiveness and value of staff is in direct proportion to how far proposed policies represent a true balance of all stakeholder interests and how far they take ICANN corporate and staff interests into account. Policies that are unbalanced force staff and board to take actions that overstep their competences, rights, responsibilities - such policies will be damaging to all.

Unbalanced policies will force staff to assume stakeholders' policymaking role. Staff and Board will start acting as a policymaker and as stakeholders themselves. As policies staff is confronted with by the community will not always be balanced, they will be forced to make policy decisions. In order to reflect this reality, it might be good to recognize staff as one of the stakeholder groups.

The Ombudsman office is seen a important tool and instrument to maintain balance of interests and to resolve conflicts. Conflict situation between the stakeholder community and ICANN .org staff is regulated through its Ombudsman, whilst with "human resources-related issues", the resolution of the concern is not within the Ombudsman's jurisdiction", (Staff email response), but with a fully ICANN accountable Complaints Officer. The Ombudsman as instrument to maintain balance of interests and to resolve conflicts is there for critically weakened, as a major part of the staff accountability issues, the "human resources related issues", have been removed from a independent accountability mechanism to an ICAN.org internal mechanism. (Note this was done, without full stakeholder community consultation and input.)

There seems to be an awareness about the issues mentioned above with ICANN.org staff. The reply of staff to the questions of the WG questionnaire contains a number of questions from staff to the community, which seem to cover the same or similar issues. It would be worthwhile to seek the dialogue between the WG and the wider stakeholder community with staff on these issues.

Recommendations

- Move the emphasis of ICANN.org, its Board, staff and stakeholders from policy making outcomes to strengthening the policy making processes and stakeholder structures. Emphasis needs to be on the quality of decision-making. If policy is not reflecting a true and lasting compromise and balance, it will show through the difficulties in implementing it. Staff and board overstepping their competences and roles are a sign of bad policies that resulted from bad policy making processes in the first place.
- Educate staff better about stakeholder interests, dynamics and needs.
- Create a standing forum in which ICANN.org staff and stakeholders can discuss issues in a free and open manner that is free from fears of retribution.
- Redefine and clarify ICANN.org staff roles and what is in the interest of ICANN.

- Remove structural, operational and ideological conflicts of interest that staff is subject to.
- Base staff accountability and evaluation on how staff has managed to strengthen and serve ICANN.org through strengthening and serving the ICANN stakeholder community. Staff accountability is not only a question of sets of rules and standards of behaviors. KPI's, 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.
- Removal of existing financial dependencies between stakeholders and decision making of staff and board. (in the short and medium term enable constituencies to establish their own plans of sustainability that are not based on ICANN support)
- Removal of existing financial dependencies between contracted parties and Board and staff. (Outsourcing of contractual functions from ICANN.org?)
- Strengthen and redefine the Ombudsman office. The Ombudsman office is not mainly that of conflict resolution and judgement but as a facilitator of real balanced policy making process of stakeholders. Human resources related issues have to become again within the remit of the Ombudsman office.

Attachments

Attachment 1: Source Document Review

Documents reviewed:

(1) ICANN's Delegation of Authority Guidelines Adopted 8 November 2016

<https://www.icann.org/en/system/files/files/delegation-of-authority-guidelines-08nov16-en.pdf>

(2) ICANN Bylaws

<https://www.icann.org/resources/pages/governance/bylaws-en>

(3) Staff Reply

Review Categories:

1. Specifies roles of Staff, Board, Community

1.1 **Staff** Roles

1.1.1 CEO Roles

1.1.2 ICANN.org Staff Roles

1.2 **Board** Roles

1.3 **Community** Roles

1.3.1 Empowered Community Roles

1.3.2 Wider Community Roles

2. Relationships between Staff, Board, Community

2.1 **Staff-Board** Relationship

2.1.1 CEO-Board Relationship

2.1.2 ICANN.org staff-Board Relationship

2.2 **Staff-Community** Relationship

2.2.1 CEO-Empowered Community Relationship

2.2.2 CEO -Wider Community Relationship

2.2.3 ICANN.org Staff-Empowered Community Relationship

2.2.4 ICANN.org Staff- Wider Community Relationship

2.3 Board-Community Relationship

2.3.1 Board-Empowered Community Relationship

2.3.2 Board-Wider Community Relationship

Review:

1. Specific Roles

1.1 Staff Roles

1.1.1 CEO Roles

- Speaks for ICANN organization and serves as the external face of the organization. (1)
- Leads and oversees ICANN's day-to-day operations (i.e., the CEO is day-to-day decision maker). (1)
- Leads the ICANN organization, including the retention and supervision of staff. (1)
- Executing global compensation structure for the organization based upon Board policies per legal obligations. (1)
- Act in accordance with documented policies and procedures.

ICANN CEO and Senior Management – Key Roles:

- Act within ICANN's Mission.
- Act in accordance with ICANN's Articles and Bylaws.
- Support accountability and transparency mechanisms, including coordination of reviews, supporting and advising the Board in considering Reconsideration Requests and declarations from Independent Review Processes, and document disclosure requests. (1)
- Ensure that ICANN remains in compliance with all applicable legal/regulatory requirements.
- Proactively protect the organization from third-party claims.
- Monitor and mitigate risks to the organization.
- Act in accordance with documented policies and procedures.
- Within budget, authorize entering into expenditures and obligations as required by Contracting and Disbursement Policy.
- Follow all applicable conflict of interest policy, confidentiality, employee conduct guidelines, applicable expense policies and travel guidelines, etc.
- Once approved, the CEO (or to a person designated by the CEO) implements budget, plans and priorities approved by the Board.
- CEO has authority and obligation to lead day-to-day operations, within budget, plans and priorities. (1)

Is the CEO accountable to the Board, to the ICANN community or to both?

The ICANN CEO reports to the Board. The CEO is responsible, as part of his job duties, in making sure that the ICANN Organization delivers on its support responsibilities to the ICANN Community. (3)

1.1.2 ICANN.org Staff Roles

(see 2.1-2.2.4 below)

1.2 Board Roles

ICANN Board – Key Roles

A primary source of the Board's powers comes directly from the ICANN Bylaws, as well as internal policies. (1)

The Board's key powers and roles include:

- The Board acts collectively by voting at meetings to authorize and direct management to take action on behalf of the ICANN organization. (1)
- Exercise strategic oversight, including oversight of the development of the strategic plan. (1)
- Oversight of enterprise risk work within the organization. (1)
- Delegate the Board's authority (within statutory limitations) to Board committees and management. (1)
- Select the CEO and appoint other officers; and undertake CEO succession planning.
- Elect the Chair and Vice-Chair of the Board. (1)
- Appoint members to membership and chair positions of the various board committees and working groups. (1)
- Setting and approving compensation structure for CEO.
Approving compensation for officers. (1)
- Setting and overseeing enforcement of conflicts of interest policy. (1)
- Set the fiscal year, adopt annual budget, operation and strategic plans, appoint independent auditors and cause the annual financial report to be published. (1)
- Overseeing the development of, and approval of, key financial direction such as the investment policies and reserve fund management policies. (1)
- Set fees and charges for ICANN services. (1)
- Appoint and oversee the performance of the Ombudsman. (1)
- Authorize entering into expenditures and obligations as required by Contracting and Disbursement Policy. (1)
- Approve new ICANN office locations, including hubs and engagement centers. (1)
- Approve the need to move an ICANN Public Meeting from a previously identified location, or need to vary from approved meeting strategy. (1)
- Consider recommendations from reviews. (1)
- Selecting PTI Board membership. (1)
- Setting agenda for the Board, and identifying the structure and information needed to support that agenda. (1)
- Act in accordance with documented policies and procedures. (1)

1.3 Community Roles

1.3.1 Empowered Community Roles

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

1. (a) The Empowered Community ("EC") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO (as defined in [Section 10.1](#)), the GNSO (as defined in [Section 11.1](#)), the ALAC (as defined in [Section 12.2\(d\)\(i\)](#)) and the GAC (each a "Decisional Participant" or "associate," and collectively, the "Decisional Participants"). (2)

2. (c) The sole purpose of the EC is to exercise its rights and perform its obligations under ICANN's Articles of Incorporation and these Bylaws, and the EC shall have no other powers

or rights except as expressly provided therein. The EC may only act as provided in these Bylaws. Any act of the EC that is not in accordance with these Bylaws shall not be effective. (2)

1.3.2 Wider Community Roles

(no findings)

2. Relationships between Board, Staff and Community

- Board and management actively engage with the community to ensure that ICANN serves the global public interest within ICANN's mission.
- Interdependencies are highlighted through ICANN accountability mechanisms, including:
 - o Empowered Community rights
 - o Reconsideration of Board or staff actions
 - o Independent review of Board or staff actions
- Management is responsible for leading the activities to develop budget and operating and strategic plans, and the Board approves those budgets and operating and strategic plan and sets priorities. (1)

During onboarding, staff is also provided with information on all aspects of the organization, including the roles of the Board and the community. ICANN's strategic plans and the kpi's associated with the plans, in addition accountability and transparency obligations are covered generally during the onboarding, and then any which may specifically apply to a staff person's responsibilities will be explained by their managers and/or addressed in regular department meetings. Additional training is periodically provided on the best practices in many areas, such as managing people, interpersonal communication and facilitation.

Every staff member completes a Conflict of Interest form which is reviewed by Global Human Resources with input from the General Counsel's office where required. These are updated annually. Where a conflict is identified, HR and legal work with the individual's manager to reduce the staff's interaction in the conflicted area. (3)

2.1 Staff-Board Relationship

Across the roles and obligations that the Board, CEO and senior management share, there are numerous interdependencies in these relationships. These include:

- The CEO(or his designee)is the spokesperson for ICANN
- . The Chair is the spokesperson for the ICANN Board, unless delegated to other board members.
- Working together on Boardworkshop and Board meeting agendas, with the Organization responsible for timely delivery of materials to the Board in the circumstances when the Organization is informed that it should provide Board briefing materials.
- ICANN Board relies on management for information upon which the Board will base its decisions
- . The Board also relies on management to support the Board's interactions with the ICANN community.

- CEO oversees day-to-day operations, while the Board exercises oversight over the CEO, and is responsible for the identification of the strategic direction that the operations will serve.
- Management implements Board resolutions and acts within the scope of delegated authority reflected within those resolutions. (1)

2.1.1 CEO-Board Relationship

- The Board and CEO should be unified in their understanding and goals for ICANN. (1)
- Board and CEO should communicate freely and frequently to avoid misunderstandings. (1)
- Trust and mutual respect is key to the relationship between the CEO and the Board. This list includes what has been discussed by the Board and the CEO regarding delegation of authority, but other issues as they arise and are discussed will be added to the document after being confirmed by the Board. (1)
- The CEO acts within the authority delegated by the Board. (1)
- Maintains open line of communication with the Board, and leads organizational communications with the Board. (1)
- Provide the Board with information as requested to enable the Directors to act on an informed manner. (1)
- Provide the Board with information as requested to enable the Directors to act on an informed manner. (1)
- Implement the decisions of the Board, including implementation of policies approved by the Board and review recommendations approved by the Board. (1)
- Perform operational work in accordance with the strategic direction of the Board. (1)
- Manage within the approved Budget. • Identify sites for ICANN's Public Meetings within the approved Budget and meetings strategy. (1)
- Upon Board approval of need to move a previously-announced ICANN Public Meeting or variance from meetings strategy, identify sites for ICANN Public Meetings within approved Budget and variance. (1)
- Support community in development of and then implement Strategic Plan/Operating Plan as approved by Board. (1)

2.1.2 ICANN.org staff-Board Relationship

(see 2.1.1 CEO-Board Relationship)

2.2 Staff-Community Relationship

2.2.1 CEO-Empowered Community Relationship

. The CEO is responsible, as part of his job duties, in making sure that the ICANN Organization delivers on its support responsibilities to the ICANN Community. (3)

- Interacts with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission. (1)
- Supporting the Empowered Community processes as necessary. (1)

2.2.2 CEO-Wider Community Relationship

- Interacts with governments and organizations within the scope of ICANN's Mission and Board's directives. (1)

- Interacts with the broader Internet community and other interested parties within the scope of ICANN's Mission and Board's directives. (1)

2.2.3 ICANN.org Staff-Empowered Community Relationship

6. (f) The location and street address of the EC shall be the principal office of ICANN. (2)

12. (iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in [Section 22.5\(a\)\(i\)](#)) and Strategic Plans (as defined in [Section 22.5\(b\)\(i\)](#));

13. (iv) Reject Standard Bylaw Amendments (as defined in [Section 25.1\(a\)](#));

14. (v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in [Section 25.2\(b\)](#)), and Asset Sales (as defined in [Article 26\(a\)](#));

15. (vi) Reject PTI Governance Actions (as defined in [Section 16.2\(d\)](#));, (2)

19. (b)The EC may pursue an action in any court with jurisdiction over ICANN to enforce the EC's rights under these Bylaws. ICANN acknowledges the EC's legal personhood and shall not raise the EC's legal personhood as a defense in any proceeding between ICANN and the EC. ICANN shall not assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC's power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to [Section 3.6\(e\)](#)). (2)

20. (c) By nominating a Director for designation by the EC or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC pursuant to these Bylaws, the EC and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby. (2)

What elements of the following document/s (or similar documents/systems) are in place regarding staff interaction with the community:

Code of Conduct

Transparency obligations or criteria

Induction

Training

Key performance indicators

Cross Function communication and influence, are there any Col firewalls between ICANN functional unites.

ICANN.org has developed policies, processes and/or guidelines that reflect the organization's commitment to providing efficient and orderly operation of the business while protecting the rights and safety of all staff. In particular, ICANN.org has a policy on Employee Conduct and Work Rules as well as a Policy on the Prohibition of Harassment. These govern all interactions that involve staff members.

All of ICANN.org's policies are reviewed with new staff during the onboarding program and are always available on the internal staff portal. As a reminder of the importance of ICANN.org's commitment to the specifics of the policies, many are also distributed to staff on

a regular basis. All employment policies remain available to employees electronically on a 24x7 basis. (3)

How is staff accountability to the community, broadly expressed, audited or monitored or reviewed?

In general, ICANN expects that “staff accountability to the community” means that those within the ICANN Organization are performing the work that they are hired and expected to complete. Members of the ICANN Organization are held accountable to their job responsibilities through ICANN’s performance management work. Employees report to their managers, and every employee at ICANN is responsible for meeting goals and objectives that are set and then reviewed with his or her manager on a semi-annual basis. Staff’s work in meeting certain behaviors is also evaluated at regular intervals, which take into account how individuals demonstrate commitment to ICANN’s mission and evaluate interactions with stakeholders (internal or external). ICANN’s work is guided by the strategic and operating plans.

All employees within the ICANN Organization, whether their job duties involve working with external stakeholders or not, are evaluated through the same process.

What feedback does ICANN seek from the community on matters related to staff accountability, and how does it solicit and consider that feedback?

The ICANN community – as with any other issues – can raise with ICANN management any concerns or observations as they relate to staff accountability. If there are concerns within the community that people within the ICANN Organization are not performing their duties appropriately, management takes those concerns seriously and would welcome the forwarding of fact-based information that can be appropriately considered and investigated, if necessary. This is exactly the type of issue that could be brought to the Complaints Officer, once established, so that community members did not have to guess as to an appropriate inroad to voice these concerns.

What processes are in place to respond to any community concerns regarding staff accountability, including appropriate escalation processes?

ICANN management regularly meets with their respective employees, through performance reviews or other avenues to ensure adherence to ICANN’s internal policies and practices. Management raises with employees any concerns, which would include issues of staff accountability, and those employment performance related concerns are handled through ICANN’s established internal escalation and performance management processes.

What role does ICANN see the Ombudsman function as playing in helping to assure appropriate staff accountability?

The community can raise issues with the Ombudsman with regards to staff accountability if it relates to issues of fairness or other items appropriately within the Ombudsman’s

jurisdiction. If the issue, however, becomes a human resources-related issue, the resolution of the concern is not within the Ombudsman's jurisdiction. See mandate of the Ombudsman at <https://www.icann.org/ombudsman>.

Are individual staff members accountable to the ICANN community, or are they only accountable to their bosses in the ICANN staff hierarchy? In other words are there multiple points of staff accountability to the community or is only the CEO accountable?

Individual staff members are accountable to the ICANN Organization, which supports the community. The CEO is the ultimate point of accountability for how the ICANN Organization provides service to the community. No ICANN employee reports to any person outside of the ICANN Organization. Internally, each employee understands to whom they report.

Are there different accountability structures for policy staff who are an integral part of the community process than there is for operational staff, e.g. GDD?

Each employee of ICANN.org has specific job responsibilities. The documentation for policies by which the employees must adhere are the same across the organization. There are not different accountability structures, this would create confusion for the roles and responsibilities, and adherence to organization-wide policies on accountability. Of course, for those in the ICANN Organization that work with external stakeholders, and at times have the external stakeholders responsible for the identification of deliverables, or other external-facing responsibilities, those are part of the roles and responsibilities for which those people are evaluated. (3)

Are staff, members of the ICANN community? Are they stakeholders in any sense? If they are stakeholders, how does their position in the hierarchical top down structure affect the nature of their stakeholder relationship to the rest of the community?

ICANN.org employees are members of ICANN.org, to serve the community. (3)

2.2.4 ICANN.org Staff- Wider Community Relationship

(no Findings)

2.3 Board-Community Relationship

2.3.1 Board-Empowered Community Relationship

- Interact with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission. (1)
- Respect and support accountability mechanisms, including:
 - Participating in the Empowered Community processes as specified in Bylaws;
 - considering Requests for Reconsideration; and
 - Considering final Independent Review Process declarations. (1)
- Consider policy recommendations arising out of Supporting Organizations (SOs_, including participating in consultation processes if necessary. (1)
- Acknowledge advice from Advisory Committee (ACs) and consider advice as appropriate. (1)

- When necessary, follow consultation processes relating to AC advice.
- When necessary, create ACs and working groups to report recommendations and findings to the Board. (1)
- Appoint membership of the RSSAC and SSAC, pursuant to the recommendations from the respective groups .(1)
- Appoint the Nominating Committee Chair and Chair-Elect. (1)

4. (d) The EC shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)). (2)

8. Section 6.2. POWERS AND ACKNOWLEDGMENTS

9. (a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

10. (i) Appoint and remove individual Directors (other than the President);
11. (ii) Recall the entire Board; (2)

16. (vii) Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));

17. (viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and

18. (ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

28. Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

29. In the event the EC Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC shall without deliberation consent to such removal, and the EC Administration shall provide notice to the Secretary of such consent. (2)

2.3.2 Board-Wider Community Relationship

(no findings)

Attachment 2: Excerpts ICANN Bylaws

Section 1.2. COMMITMENTS AND CORE VALUES

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

Section 3.1. OPEN AND TRANSPARENT

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this [Section 5.1](#) shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in [Section 4.3](#) have not been invoked. The principal function of the Ombudsman shall be 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. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in [Section 4.2](#) , the Ombudsman shall serve the function expressly provided for in [Section 4.2](#) .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

- (a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;
- (b) perform the functions set forth in [Section 4.2](#) relating to review and consideration of Reconsideration Requests;
- (c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
- (d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);
- (e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
- (f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and
- (g) comply with all ICANN conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

- (a) No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
- (b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

Attachment 1: Questions for the community:

What are some concrete examples of concerns that the community has with regards to staff accountability? Are the concerns about individual service delivery/individual staff, or about the potential that staff might cause a violation of ICANN policies, processes, or Bylaws?

In the staff accountability group, there have been suggestions that people within the ICANN Organization are afraid to speak to the community. Can you provide more detail to support these suggestions? Is the reluctance to speak based on perceptions of how the ICANN Organization will respond, or how the community will respond?

ICANN expects all people within the ICANN Organization to be respectful to the community in interactions. If the community is not treated with respect, that would clearly be an issue about which ICANN should be made aware. What is the expectation for the community in addressing members of the ICANN Organization?

Do you think that there should be areas where people in the ICANN Organization should be directly accountable to the community? What would this look like, and how could it be done in a way that does not interfere with the employer relationship? Are the enhancements of the Reconsideration and IRP Process, where staff action can be challenged directly, sufficient to address the subgroup's concerns? How does one prevent inconsistent feedback to ICANN.org employees?

[JC1]Is the distinction between Empowered Community and Community necessary in this section, or could it be removed?

[JC2]This feels like it fits somewhere else?

[JC3]I am not sure what this means?