

ICANN CCWG-Accountability, Work Stream 2 project on SO/AC Accountability

First Draft of Report, as of 31-Aug-2016

Background and mandate for SO/AC Accountability in Work Stream 2

ICANN's new bylaws reflect the CCWG Supplemental Final Proposal¹, regarding Work Stream 2 (WS2):

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("CCWG-Accountability Final Report") that the below matters be reviewed and developed following the adoption date of these Bylaws ("Work Stream 2 Matters"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;²

This WS2 item was described in greater detail in the CCWG Final Proposal, Recommendation 12³:

Supporting Organizations and Advisory Committee accountability, as part of WS2.

- o Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
- o Evaluate the proposed "Mutual Accountability Roundtable" to assess viability.
- o Propose a detailed working plan on enhancing SO and AC accountability as part of WS2.
- o Assess whether the IRP would also be applicable to SO and AC activities.

Regarding the first bullet above, Recommendation 9 of the CCWG Final Proposal noted that further enhancements to SO/AC accountability should be driven by the accountability review process (ATRT), which has always suggested that ATRT look at:

d) assessing the extent to which ICANN's decisions are embraced, supported, and accepted by the public and the Internet community⁴

¹ CCWG Final Proposal, 23-Feb-2016, at <https://community.icann.org/pages/viewpage.action?pageId=58723827>

² New ICANN Bylaws, adopted 27-May-2016, p. 135, at <https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf>

³ Annex 12 of CCWG Final Report, 23-Feb-2016, pp. 5-6, at <https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/58726378/Annex%2012%20-%20FINAL-Revised.pdf>

⁴ Annex 9 of CCW Final Report, 23-Feb-2016, p. 11, at <https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/58726375/Annex%2009%20-%20FINAL-Revised.pdf>

In addition, Recommendation 10 of the CCWG Final Proposal noted that further enhancements to SO/AC accountability can be accommodated through the accountability review process.⁵

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

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.
- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.
- Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

Matthew Shears 8/30/2016 4:46 PM

Comment [1]: This set of bullets should be prioritized - # 2 the working plan should be the first bucket we address. the other bullets can slot in later

Matthew Shears 9/1/2016 4:17 PM

Comment [2]: See comment and additional food for thought at end of this doc. Thanks.

Problem Statement and The Starting Point

To address our Work Stream 2 project, Steve DelBianco suggested at the ICANN meeting in Helsinki that we begin with Stress Tests that address failure of AC/SO accountability⁶.

ST 31 on *Rogue Voting* by an AC/SO rep (remember that?)

Response: If an AC/SO rep expressed support/oppose against the instructions of their AC/SO, the decision rules for Empowered Community could have procedures to invalidate the consensus call, and do-over.

ST 32-34 suggested by NTIA Secretary Strickling

ST 33 on **internal capture** by a subset of AC/SO members

ST 34 on incumbent members **excluding new entrants** to an AC/SO.

CCWG proposed two mechanisms to answer these Stress Tests:

1. The key response to these STs was that a disenfranchised AC/SO member could challenge the Board decision to follow that advice/policy, using reconsideration or IRP.

The standard of review would be ICANN's Articles of Incorporation and amended Bylaws, including Core Values requiring "open, transparent and bottom-up, multistakeholder policy development processes"

2. Another ST response was that the required periodic Organizational Reviews (Bylaws Sec 4.4) require 5-year cycle of review of each SO, Council, and AC to determine:

⁵ Annex 10 of CCW Final Report, 23-Feb-2016, pp. 1-4, at <https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/58726376/Annex%2010%20-%20FINAL-Revised.pdf>

⁶ Annex 15 of CCW Final Report, 23-Feb-2016, at <https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/58726384/Annex%2015%20-%20FINAL-Revised.pdf>

- (ii) whether any change in structure or operations is desirable to improve its effectiveness and
- (iii) whether that organization, council or AC is accountable to its constituencies, stakeholder groups, organizations.

Two other Stress Tests (ST 33 and 34) address challenging Board acceptance of a tainted AC/SO decision. This is important to respond to the 4th bullet in our Recommendation 12: *Assess whether the IRP would also be applicable to SO and AC activities.*

A key term in the Organizational Review described above is “effectiveness” of each SO/AC, though the Bylaws have never defined that term. Our group could develop guidance for effectiveness of SO/AC outreach and representation.

Please see the table below to compare present reviews required to assess accountability of SO/ACs.

Existing requirements for reviews of SO/AC Accountability

SO/AC	Community Represented and role within ICANN (per bylaws)	SO/AC Accountability Mechanisms
All		<p>AoC [2009] includes “(d) assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community”</p> <p>Bylaws Section 4.4 requires the Board to cause an independent, periodic review (every 5 years) of each SO/AC, except that the GAC “shall provide its own review mechanisms”</p>
ALAC	<p>“the primary organizational home within ICANN for individual internet users”</p> <p>“to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users”</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether ALAC has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether ALAC is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>
ASO	<p>“ASO shall be the entity established by the Memorandum of Understanding [2004] between ICANN and the Number Resource Organization (“NRO”), an organization of the existing RIRs”</p> <p>“ASO shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses”</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether ASO has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether ASO is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>
ccNSO	<p>ccTLD managers that have agreed to be members of ccNSO.</p> <p>(a) develop and recommend to the Board global policies relating to country-code top-</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether CCNSO has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether</p>

Matthew Shears 8/30/2016 4:39 PM

Comment [3]: I am not sure that we should be focussing on (ii) and effectiveness - effectiveness is the result of a number of factors, one of which is accountability.

Avri Doria 8/28/2016 10:18 PM

Comment [4]: not sure i understand what this word means in this context

Matthew Shears 8/30/2016 4:39 PM

Comment [5]: As above accountability is but one element of effectiveness and would argue the latter is very difficult to measure.

Matthew Shears 8/30/2016 5:03 PM

Comment [6]: This is useful but a key building block would be a statement from each SO and AC as to whom and for what they believe they are accountable. This may and probably should already exist in their foundaung documents. If not then there is already an accountability deficiency.

	<p>level domains;</p> <p>(b) Nurture consensus across the ccNSO's community, including the name-related activities of ccTLDs;</p> <p>(c) Coordinate with other ICANN Supporting Organizations, committees, and constituencies under ICANN</p>	<p>CCNSO is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>
GAC	<p>Open to all national governments (and Distinct Economies upon invitation).</p> <p>"concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues"</p>	<p>AoC [2009] includes "(b) assessing the role and effectiveness of the GAC and its interaction with the Board 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"</p> <p>New Bylaws put it differently "(B) assessing the role and effectiveness of the GAC's 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;</p> <p>GAC is not required to undergo independent review.</p>
GNSO	<p>Open to registries, registrars, commercial stakeholders (BC, IPC, ISPCP), non-commercial stakeholders.</p> <p>develop and recommend to the Board substantive policies relating to generic top-level domains</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether GNSO has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether GNSO is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>
RSSAC	<p>chairs and members shall be appointed by the Board.</p> <p>"advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System"</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether RSSAC has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether RSSAC is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>
SSAC	<p>Chair and members appointed by ICANN board.</p> <p>"advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems."</p>	<p>Every 5 years, the Bylaws require a review to determine (i) whether SSAC has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and [new] (iii) whether SSAC is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p>

Avri Doria 8/28/2016 10:34 PM

Comment [7]: does this include accountability to ccNSO managers who have not agreed to be members of ccNSO.

Who is accountable and the scope of accountability of SO/ACs

John Curran: scope of the SO AC accountability work with regards to being limited to within the scope of the SO/AC activities within ICANN. Some SO's (e.g. the ASO) have definition and existence external to ICANN, and are comprised of formal member-based bodies with clear and legally defined accountability to their members, and thus the scope of an ICANN-related accountability review must be with respect to the ICANN-related activities that the SO undertakes. This has been raised several times, including by the ASO representatives to this working group, and remains absent from the document.

ATHINA FRAGKOULI:

The whole project is about ICANN's accountability. Of course, SOs and ACs have a role and several responsibilities within the ICANN structure. I believe we should be very careful of that because for example, the number policy discussions are not taking place within ICANN. They're taking place elsewhere, and ASO has a very specific role there. This role is to channel policy proposals that are made elsewhere.

Some of the accountability tools and measures we discussed might not be applicable in the ASO, for example. I would suggest that it might be appropriate to lead a little bit the scope of this SO/AC accountability in the role of each SO and AC within ICANN. Thank you.

To whom are SO/ACs accountable to?

Three scenarios can be considered:

- 1. SO/ACs are accountable to their stakeholder group
- 2. SO/ACs are accountable to each other
- 3. SO/ACs are accountable to the global public Internet users

Opinions

- Scenario 1 applies. SO/ACs are accountable to their stakeholder group. This scenario also addresses the concern that was raised in STs on the risk of an SO/AC being captured by a group that has a narrow interest. The SO/ACs at ICANN are accountable to the stakeholder group that the bylaws say they were to represent.

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

Matthew Shears 8/30/2016 5:02 PM

Comment [8]: This is an important point. We cannot impose something on the SOs and ACs so we need to work with them through the members of this DT. Understanding what the SOs and ACs think they are accountable for would be a good place to start.

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Bold

farzaneh badii 8/27/2016 2:05 AM

Formatted: Font:Not Bold

- Scenario 2 and 3 does not apply. SO/ACs are accountable to a global set of stakeholders but only within the context of ICANN and within ICANN mission and not beyond.
- Clarification: not supporting the scenario 2 (SO/ACs are accountable to each other) does not mean that the idea of MAR is not viable. Sharing what worked and did not work and best practices is appropriate. But this is not the same thing as being accountable to each other.
- Considering the empowered community which groups SO/ACs together, it is important for other SO/ACs to know that other SO/ACs have accountability rules and follow them.
- Jordan Carter (NZ): I also don't support us getting too hung up on "who should Soss or ACs be accountable to" - it's a bit like saying voters in a democratic election should be held to account. It kind of misses the point

Track 1 Effectiveness:

Effectiveness of SO/AC Outreach

At the Helsinki meeting and on our group's first call, Steve DelBianco proposed that representation and outreach should be measured **by results and by efforts** of the SO/AC.

Outreach *results* – such as statistical analysis of representation -- are appropriate to measure outreach. But this should not be the only measure of effective outreach. Such results are not often obtained, even when an SO/AC is open and accessible to new entrants and does proactive marketing and recruiting from portions of the targeted community that are not well-represented in the SO/AC.

For that reason, we could design measures of effort at outreach and recruiting. And if there are complaints from someone excluded or disenfranchised by an SO/AC, we should measure the effort to respond to that complaint and to reform SO/AC **practices**.

Effectiveness of Community Representation in SO/AC decisions

Another aspect of effectiveness could be whether decisions of an SO/AC reflect what the represented community *actually wanted*. The ATRT was drafted in 2009 to assess "the extent to which ICANN's decisions are embraced, supported, and accepted by the public and the Internet community". However, this could be difficult and arbitrary to determine, so Steve recommended against second-guessing SO/AC decisions and votes.

Ultimately, an SO/AC is accountable to the stakeholders *who decide that it is worthwhile to participate and assert their views*. Who participates will change over time, depending upon the impact and relevance of being developed or debated.

Giovanni Seppia 8/18/2016 4:11 PM

Comment [9]: I tend to agree. Representation can be measured by the level of engagement that the SO/AC have with their respective communities, and that falls under the "efforts".

Giovanni Seppia 8/18/2016 4:13 PM

Comment [10]: Good point. One measurement could also be how SO/AC work to make sure new entrants become regular participants.

Giovanni Seppia 8/18/2016 4:15 PM

Comment [11]: There should be a more structured procedure that obliges the SO/AC to take into due account the views of the community they represent and eventually, well-substantiate the reasons for deciding against what the community wanted.

Avri Doria 9/2/2016 2:06 AM

Comment [12]: One thought on this. I think a direct appeal to the ATRT for a decisions, or even a class of decisions is impractical and should be avoided. I also think that the appraisal of whether an SOAC is accountable to its stakeholders is more a task of the 4.4 reviews.

Where i think the ATRT can play a role is in a review of whether those reviews have been done according to mission, commitments and core values and whether the outcomes of those reviews have been implemented appropriately. Some may argue that this overloads the ATRT (I would disagree). The point is that there is no other review of the work the 4.4 reviews do.

In terms of 4.6a, part of this fits under 4.6(b)(ii)A review of Board Governance as they are the lead in in any SAOC reviews except GAC, but that is covered by B. But other than that, it seems a stretch that could allow for arguments that digging any deeper than the performance of the OEC would be out of scope. I think that if this group wants it to be explicit, we will have to suggest the addition of another clause to 4.6(b)(ii). A clause could define ATRT review of the effectiveness of 4.4 reviews as in scope. Otherwise people would have to rely on "may assess include, but are not limited to, the following:" of 4.6(b)(ii), which is always a slog.

Track 2: Mutual Accountability RoundTable

Mutual Accountability Roundtable

The "Mutual Accountability Roundtable" noted in the CCWG Final Proposal originated from advisor Willie Currie in 2015:

a roundtable of the Board, CEO and all supporting AC/SO chairs. Pick a key issue to examine. Each describes how their constituency addressed the issue, indicating what worked and didn't work. Then a discussion to create a space for mutual accountability and a learning space for improvement.

Willie Currie's May-2015 email:

The idea of mutual accountability is that multiple actors are accountable to each other⁷. 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 and possibly a Public Accountability Forum 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 once a year at the ICANN meeting that constitutes the annual general meeting. The form would be a roundtable of the Board, CEO and all supporting organisations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year at the end of each AGM who would be responsible for the next Mutual Accountability Roundtable. There could be a round of each structure giving an account of what worked and didn't work in the year under review, following 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 could be argued that this form of mutual accountability would contradict and undermine the 'linear chain of accountability' established in the new community powers and cause confusion. The answer to this is that ICANN needs a combination of accountabilities to manage its complexity as an organisation. In the IANA transition, it is critically important for ICANN to have a strong principal-agent relationship at the centre of its accountability system to replace that of the NTIA. However, that system is vulnerable to charges that the community assuming the role of accountability holder or forum is itself not representatively accountable to the global public of Internet users. To address this requires a way of introducing a system of mutual accountability as well as a recognition that ICANN is accountable as a whole ecosystem to a set of democratic standards and values captured in its Bylaws.

Willie Currie, Advisor to the CCWG-Accountability

May 26 2015

Matthew Shears 8/30/2016 5:05 PM

Comment [13]: This may not be a very popular view but the MAR is a bit of a distraction right now. We really need to focus on "Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal." This is the core of our work - the MAR, should it be agreed, should be seen as a piece of this work, not a stand alone element at this early stage. Discussion of the role of the MAR should come later.

⁷ L. David Brown: 'Multiparty social action and mutual accountability' in *Global Accountabilities: Participation, Pluralism and Public Ethics* Cambridge University Press, 2007.

Our group discussed the idea of a Mutual Accountability Roundtable (MAR) on our 11-Aug-2016 call.

1. What is the idea of MAR

Willie Currie, the adviser to ccwg-accountability made the opening remarks on the MAR. He argued that the idea of MAR was an *informal* structure of accountability that could be developed. *The SO/ACs hold each other into account* annually using the MAR. MAR can be developed as a meeting of SO/ACs with a limited agenda focusing on how they account to each other.

2. The questions that we should ask are (based on the overall discussion, please add if your question has not been addressed)

- Should the leaders of SO/ACs take each other into account? (Kavouss disagreed with this idea)
- Or does the MAR extend to holding the members of SO/ACs accountable so that their actions are accountable to that stakeholder group?
- Another question, not considered here: if we were to get the SOAC chairs together, or the SOACSGCRALO chairs together, what is the best use of their time? (by Greg)
- In what way should SOACs be accountable?
- Who are SOACs accountable to?
- Kavouss asked: Mutual accountability with respect to each other or accountability to underlying SO/AC members.
- Is MAR a good starting point for our discussion?

3. How to persuade SO/ACs to participate

Greg argued that the MAR sounds like a finger pointing contest and Robin shared his concern and Tatiana agreed.

Willie said it's important to have a narrow agenda for the MAR so that it does not lead to a space where people attack each other. MAR is not necessarily SO/AC accountability back to the global community. That's a more complex question.

Giovanni Seppia: The MAR is a nice idea, but it should not be over-engineered. I believe that the MAR meeting should take place whenever the SO/AC chair feel there is a need for it. Once a year could be useless or could be too much if there are no topics for discussion.

4. Accountability to external community

Steve Said, SO/AC is committed to its underlying community. We need to work on AC/SO being accountable to external community.

Carolina Aguerre: Since some decisions from an SO/AC might have effects on the larger ICANN community, one of the most relevant outcomes from this group would be to establish parameters for external accountability.

Giovanni Seppia: I would say both to the external and to THEIR communities that in some cases it did not happen in the past. Personally, I saw many times a disconnection between certain SO and large groups of their communities.

I also think this is the key element to be defined for this discussion.

5. A Best Practice idea?

Avri Doria 8/28/2016 11:57 PM

Comment [14]: is this phrase the problem. It is not how they account to each other, but perhaps how they understand each other and take each other into account in their work.

Avri Doria 8/28/2016 11:59 PM

Comment [15]: does this mean we should all work in our bottom-up silos without taking the existence and nature of our sister SOAC into account when we work on things? How does this relate when one SOAC decides to work on an issue that is within another group's chartered purpose.

Avri Doria 8/29/2016 12:08 AM

Comment [16]: while this is possible, it would only be a reflection of finger pointing that was already going on behind the scenes. the idea of shining a light on these issues and impressions at least once a year, if there are any, is a good thing to do. This falls under the rubric of the light of day being a cure for a festering wound.

The leaders of AC/SOs take a single issue and have a best practices discussion and learn lessons from each other mistakes. But is this still what we are talking about? Tatiana asked if this is a best practice forum or an accountability forum?

Greg said sharing best practices might be a safe space and it should be better structured but doubt that if it's an accountability issue and if it's within our remit and he said he does not know if this is our job. We need to know, what are we here for, what are we here to accomplish and what would be like to live under such a regime.

Jorge villa (ASO): any SO/AC is different to the rest of the SO/AC. Accordingly is different to try to compare which one is doing it better. I think that the most interesting thing is to know that each SO/AC is accountable (respect to any specific topic) or is doing good steps to be accountable.

6. Organizational reviews not effective

Organizational reviews do not do a good job for holding the SO/ACs accountable (Steve and Alan said)

7. Mutual respect

Alan argued that there should be a mutual respect that SO/ACs represent their community

8. The problem statement and clarifying the concepts

- John Curran : is not necessarily opposed the MAR idea –

Mutual accountability could be good but we cannot decide on that until we have a problem statement:

Improve best practices of accountability SO/AC ?

Be an organization that accredits all the SO/ACs serving accountably to their respective communities?

Or if it is set up to allow the SO/AC to present their progress in accountability

- Kavouss expressed that we need to differentiate between mutual accountability (SO/ACs): accountable to each other and to their community. He mentioned that he does not know how SO/ACs can be accountable to their community especially for GAC Because GAC members are accountable to their governments not to other governments. It is difficult to implement the MAR and he is opposed to get together of SO/AC chairs in MAR.

- Alan also asked: What are we trying to solve?

- Robin: I agree that we need to discuss the "problem" or the issue before we propose specific solutions. Perhaps a roundtable is best, but maybe there is something better.

- Greg: We have not established whether there is such a thing called MA and we haven't worked out how it works. Robin and Tatiana agreed

- John Curran: The term "Mutual Accountability" may be part of the problem. If one considers the SO/AC's as accountable representatives of segments of the global community, and that it is valid to ask the SO/AC's to positively assert periodically that they are indeed accountable to

Avri Doria 8/29/2016 12:05 AM

Comment [17]: X community accountability discussion ?

some, then when would such representations be made at ICANN, and what would we call that session?

-

10. The goal in MAR

Steve: Our goal (in Willie's word) to improve performance, by sharing what worked and did not work with regards to accountability

11. Are we starting from a wrong starting point?

Greg Shatan 2: Starting with mutual accountability strikes me as the wrong starting point, much less starting with a roundtable to deal with it, whatever it is. We may get there, but not yet. And when we get there, we should know more than we do now. (Others supported the idea)

12. What should we be discussing?

Robin Gross said we should discuss topics such as transparency, representativeness, etc. To which Steve responded: @Robin -- that was the focus of what I presented on our first call, and the Lightning Talk in Helsinki. Just getting that started.

Kavouss Arasteh offered his own view of the Mutual Accountability Roundtable in an email on 13-Aug:

The Round Table Mutual Accountability concept is purely a theory which does not work

I do not see the benefit that few people non formally repetitive by any SO /AC getting together without any authority, clear responsibility legal mandate exchange views among themselves to do what?

Those individual could merely express their own personal views and do not have any right to represent their corresponding SO/AC unless they go back and discuss with them and bring back a consensus proposal. What would be the status of such discussion?

THE ISSUE HAS TWO ASPECTS

1. Mutual accountability of SO/AC with respect to each other
 1. How one AC or SO should be held accountable with respect of other SOs/ACs?
 2. Based on that exchange of views of limited number of people without any delegation of authority by their corresponding constituencies?
 3. Imagine that there would be some criteria to determine one or more SO or AC must be accountable in certain areas but the convincing evidence reveal that such terms and conditions of accountability were not observed.
 4. Do we have a mechanism to escalate that?
 5. How to escalate that, and to whom we escalate
 6. If a judgment mechanism entity is created, how the decision would be implemented by SO/ Ac which were not complying with the yet to be established criteria ?
 7. If after the decision made by the judgement entity those AC/ SO ignore the decision what we would do?
 8. Do we sanction those mentioned SO/AC? How?
1. Accountability of each SO/ AC with respect to their greater community
 1. GAC composed of delegations that are accountable to their own government
 2. NO Rules or procedure could make a GAC member accountable to other countries
 3. This is in full contradiction of sovereignty of countries.

Giovanni Seppia 8/18/2016 4:27 PM

Comment [18]: I agree that transparency and representativeness are crucial elements when talking about SO/AC accountability. One good point to further investigate to improve it is if the current SO/AC processes are sufficiently transparent and accessible to the overall community.

Jordan Carter 8/30/2016 1:25 PM

Comment [19]: To me, it's a great idea, and most of the questions Kavouss sets out don't need to be answered because they don't relate to the concept itself... because below.

It seems simple: you get the ICANN leadership together (Board, Staff, SO/ACs) to discuss some cross-organisational topics in a way that allows them, respectfully and openly, to share stories of success and challenge mistakes or failures.

For that to work will take time because it will require building up trust that people are acting with good intentions, and to acknowledge there is value in being able to deal with somethings difficult questions in public.

In particular, with governments involved through GAC, the peculiar problems of sovereigns (who are in the end accountable only to their own publics) needs to be dealt with sensitively and carefully.

But to me, it's about making ICANN as a whole system work better. That is why it has to include all the stakeholders, and why questions about "who will be accountable to whom" aren't really ones that need to be asked or answered.

4. Thus no one could make any individual GAC members or collective GAN members to be accountable to any other government than those who nominated them
 5. ALAC, How the chair or members of ALAC could be accountable to 4 billion users
 6. Similarly GNSO composing many communities, commercial, non-commercial, contract, non-contract, and so could be accountable to each other?
 7. How registry community could be accountable to registrar community
 8. How contracting house could be made accountable to non-contracting house where their domain of activities and mandates are different
 9. I can give more and more examples
2. The concept is not clear.
1. The objectives are not clear
 2. The applicable criteria's are not clear
 3. The composition and representation with delegation of authority are not clear
 4. The accountability mechanism and its associated escalation criteria are not clear
 5. the objection process and reconsiderations are not clear

Jordan Carter (.nz): it [MAR] helps the bodies be accountable to their own constituencies, by explaining and holding their work out there and sharing it with each other

- it's [MAR] about the whole system having a kind of conversation that buttresses and improves overall accountability through actors being more open about what has happened, exchanging views, being legitimised in asking occasionally difficult questions

- Jordan Carter (.nz): everyone holding everyone to account for making ICANN work in the public interest

- Jordan Carter (.nz): it's quite subtle and not direct, and shouldn't be seen as a hard edged accountability tool IMO

-

farzaneh badii 8/27/2016 2:31 AM
Formatted: Font:(Default) Arial, 10.5 pt, Not Bold, Font color: Gray-80%, Highlight

farzaneh badii 8/27/2016 2:31 AM
Formatted: Font:(Default) Arial, 10.5 pt, Not Bold, Font color: Gray-80%, Highlight

farzaneh badii 8/27/2016 2:31 AM
Formatted: Font:(Default) Arial, 10.5 pt, Not Bold, Font color: Gray-80%, Highlight

farzaneh badii 8/27/2016 2:31 AM
Formatted: Font:(Default) Arial, 10.5 pt, Not Bold, Font color: Gray-80%, Highlight

farzaneh badii 8/27/2016 2:31 AM
Formatted: Indent: Hanging: 0.25", Don't add space between paragraphs of the same style, Outline numbered + Level: 1 + Numbering Style: Bullet + Aligned at: 0.75" + Indent at: 0.5"

Track 3: Propose a detailed working plan on enhancing SO and AC accountability as part of WS2

On 30-Aug-2016, we presented these 5 slides on a CCWG plenary call, to surface our present discussions about SOAC accountability outside of its target community and members.

SO/AC Accountability per WS2 Bylaw

review and develop ... to the extent set forth in the CCWG-Accountability Final Report:

(iii) Supporting Organization and Advisory Committee accountability, including but not limited to **improved processes** for **accountability**, **transparency**, and **participation** that are **helpful to prevent capture**

1

**SO/AC Accountability in CCWG Final Report
Recommendation 12:**

1. Include SO/AC accountability in **ATRT process**
2. Evaluate "**Mutual Accountability Roundtable**" (if viable, recommend implementation actions)
3. Propose **detailed plan on enhancing** SO / AC accountability as part of WS2
4. Assess **whether the IRP would also be applicable** to SO and AC activities

2

SO/AC Accountability in CCWG Final Report Recommendation 10:

In Work Stream 1: Include the review of SO and AC accountability mechanisms in the **independent structural reviews**.

So, new Bylaws require independent reviews to also determine:

- (iii) whether [SO/AC] is **accountable to its constituencies, stakeholder groups, organizations and other stakeholders**.

3

The present question for SO/AC Group

Should we (SO/AC group) seek to increase accountability of each SO/AC to global community beyond its membership?

For example, ccNSO was created with ccTLD managers as its members.

*Should we seek to make ccNSO **more accountable** to Internet users and domain registrants outside the ccNSO?*

4

Present SO/AC Accountability mechanisms for accountability **beyond** SO/AC members

1. Some SOs include Liaisons from other stakeholder groups
2. Some SO/AC must consider **public comment**
3. Board must approve SO/AC policies and decisions – *in the global public interest*
4. ATRT assesses whether ICANN's decisions are embraced, supported, and accepted **by the public and the Internet community**

5

Track 4: Assess whether the IRP would also be applicable to SO and AC activities.

If we are to “Develop a detailed working plan on enhancing SO and AC accountability” then we do need to find a set of criteria with which the SOs and ACs can assess their accountability so that a working plan on how to enhance SO and AC accountability can be undertaken. **There are numerous criteria that could be used - here are some suggestions:**

1) representation - is the diversity of persons and interests adequately represented and sought out?

2) inclusion - are the views of the community solicited and taken into account?

3) transparency - are decisions and other procedural matters open, clear and transparent?

4) reporting - are the decisions reported back to the broader community/is the community kept informed?

5) responsibility - are there clear mechanisms to hold the community and decision-makers responsible for their actions/to hold them to account?

Additional food for thought from the final accountability proposal:

Appendix C - Background and Methodology

56 The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group endeavored to produce a definition of what accountability is, listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

57 As a general concept, the group proposed that accountability encompassed processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG Accountability, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.

58 The group proposed that accountability is comprised four dimensions:

1) Transparency means that an actor (ICANN) is answerable to its stakeholders by being open and visible to them.

2) Consultation means that the actor (ICANN) continually takes input from and explains its positions to the stakeholders.

3) Review means that the actor's actions, policies and programs are subject to outside monitoring and evaluation.

4) Redress means that the accountable actor makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.

59 Independence and checks and balances were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Not Bold

Matthew Shears 9/1/2016 4:18 PM
Comment [20]: We have agreed criteria and tools to measure and thereby enhance accountability.

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Underline

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

ensure that the decision is made in the interest of all stakeholders. The group investigated two different non-exclusive views in order to assess independence: independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms.

60 The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and parties affecting ICANN. The following principles were agreed to guide the activities of the CCWG Accountability:

- ICANN accountability requires that it comply with its own rules and processes (part of "due process", as a quality of fairness and justice);*
- ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;*
- ICANN should be accountable to achieving certain levels of performance as well as security;*
- ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.*

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic

Matthew Shears 9/1/2016 4:16 PM
Formatted: Font:10 pt, Italic