Work Stream 2 Topic:

SO/AC Accountability

Scope

As defined in the CCWG-Accountability Work Stream 1 report (Annex 12), there are four areas of work for this project:

● *Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.*

● *Evaluate the proposed "Mutual Accountability Roundtable" to assess viability and, if viable, undertake the necessary actions to implement it.*

● *Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.*

● *Assess whether the IRP would also be applicable to SO and AC activities.*

Background for Discussion

The CCWG-Accountability added four stress test items that were suggested by NTIA in Secretary Larry Strickling's statement issued on 16 June 2015:

- NTIA-1: Test preservation of the multistakeholder model if individual ICANN Supporting Organizations (SOs) and/or Advisory Committees (ACs) opt out of having votes in community empowerment mechanisms.

- NTIA-2: Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in a SO and/or AC.

- NTIA-3: Barriers to entry for new participants.

- NTIA-4: Unintended consequences of "operationalizing" groups that to date have been advisory in nature (e.g., Governmental Advisory Committee)

Definition of Accountability that may be applicable to SO/AC Accountability from the Third Draft Report Supplemental Final Proposal on Work Stream 1
Appendix C - Background and Methodology

56 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.

57 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.

58 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 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.

59 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.

Third Draft Report Supplemental Final Proposal on Work Stream 1
Annex 15: Stress Testing covered two stress tests based on NTIA criteria.

IV. Failure of Accountability
V. Failure of Accountability to External Stakeholders

On 26 June 2015 at ICANN56 in Helsinki, Steve DelBianco presented a lightning talk to the CCWG-Accountability on this topic. To view the presentation, please see: https://community.icann.org/x/rBWOAw.

A proposed approach issued from Steve DelBianco's lightning talk in Helsinki is as follows:
● SO/AC outreach to their target community is measured by effort and not just by results

● SO/AC is accountable to the stakeholders who decide that it is worthwhile to participate and assert their views
● Effectiveness of AC/SO policies in serving the targeted community is more important than whether an AC/SO decision was made with full participation of all conceivable stakeholders

Several questions and points regarding SO/AC Accountability were raised during the Lighting Round discussion. These are captured in the [Helsinki meeting transcript](#) and are summarized below:

- It was noted that Larry pressed us on internal capture in Stress Test 33 where the members of an AC or an SO or even a constituency or stakeholder group below that level have captured for their own interests a decision that would have otherwise been made differently, or when new members who are legitimately entitled to be in that constituency or stakeholder group are excluded for some reason of manipulated eligibility, a denial of their application for membership.
- You have to ask whether the constituency is accountable to its targeted membership. So if a constituency itself has exclusionary behavior preventing new entrants from getting in, that was part of what Larry Strickling asked us about in Stress Test 34.
- Looking into whether the IRP should be applicable to SO and AC activities. This is in our approved report, and part of Work Stream 2 is to figure out if it will work.
- For all the organizations, we need, I think, to be more accountable to have a transparent process for selecting any leaders for any position. That's something we need to add in our work to do the accountability approach. It's something that it's not done and not very clearly in every part of this organization.
- We just not need to find a way to be accountable to our own community in each silos, but as some said, to the overall community. One SO to the other SO and AC, and one AC to the other SO and ACs, it's important. We work hard to talk about the Board, but now we need to work hard to talk about ourselves.

CCWG-Accountability Advisor, Willie Currie, suggested a "Mutual Accountability Roundtable" to the CCWG-Accountability in June 2015. The document outlining his thoughts on this proposal is available at: http://mm.icann.org/pipermail/ws2-so_ac/2016-July/000002.html

Resources

General

Accountability and Transparency Reviews
https://www.icann.org/resources/reviews/aoc/atrt

ICANN KPI 5.2 Promote ethics, transparency and accountability across the ICANN community
https://www.icann.org/progress

Within the One World Trust Report is the following excerpt found on page 41 (Appendix B: 2)

"Accountability Strategy: the One World Trust, HAP and WANGO frameworks all explicitly require the organisation to have a strategic commitment to accountability. HAP and the One World Trust extend this to mapping who the organisation's stakeholders are. Being clear about what an organisation's accountability commitments are, and who they consider themselves accountable to, can help them to focus policies and resources on key areas necessary to meet these commitments, as well as providing a clear statement of what stakeholders can justifiably expect from the organisation."

HAP - The 2010 HAP Standard in Accountability and Quality Management (Humanitarian Accountability Partnership)

WANGO - World Association of Non-Governmental Organizations

A prominent part of One World Trust approach centered around Accountability Strategy – a framework or statement that clearly spells out who is accountable to who. At the time that the report was issued, the notion of accountability to and by different stakeholder groups had not taken hold at ICANN.

 Organizational Reviews - https://www.icann.org/resources/reviews/org

While ICANN's Board is ultimately responsible for initiating Organizational Reviews and for establishing the criteria and standards under which they shall occur, the reviews are performed by an entity independent of the organization or committee under review. The purpose of these reviews is twofold. The reviews are meant to determine (i) whether that organization has a continuing purpose in the ICANN structure, and if so (ii) whether any change in structure or operations is desirable to improve its effectiveness.

The second cycle of Organizational Reviews started with the review of the GNSO in July 2014 and is currently in the phase of planning the implementation of 34 Board-approved and community-supported recommendations. The second review of the At-Large organization began in May 2016. Both of these reviews follow a standard process built on lessons learned from recent reviews and industry best practices (such as PMI). A crucial aspect of these reviews is community involvement in the review process, accomplished through the creation of the Review Working Party to serve as a liaison and represent the voice of the community under review. The Review Working Party provides input on several key aspects of the review - criteria for the review, criteria for the selection of the independent examiner and clarifying feedback and comments on initial findings, draft recommendations and final recommendations.

Another process improvement incorporates feasibility assessment and prioritization of the recommendations by the Community under review. For additional information about this

process, please see Board Resolution and supporting materials for Independent Review of the Generic Names Supporting Organization Final Report and Recommendations
 - https://www.icann.org/resources/board-material/resolutions-2016-06-25-en#2.e

The criteria for conducting an Organizational Review is documented in the Request for Proposal. Please see the most recent example for the At-Large Review - https://www.icann.org/news/announcement-2016-01-05-en. See Section 2.3 Scope of Work. Specifically, "ICANN will supply the criteria to be used in conducting the At-Large Review, which were developed in collaboration with the At-Large Review Working Party. These criteria include but are not limited to the following areas, to be applied to At-Large Community components (ALAC, RALOs and ALSes):
·   Fulfillment of mission, adherence to Policies and Procedures, and organizational support
·   Accountability and transparency to the public
·   Membership processes and participation
·   Communication
·   Governance and management, effectiveness of execution
·   Evaluation and measurement of outcomes
·   Effectiveness of implementation of prior review recommendations"

The above criteria are further refined by the independent examiner, the Review Working Party and ICANN Organization, with oversight by the Organizational Effectiveness Committee of the ICANN Board. These criteria serve as the basis for data gathering - interview questions and surveys conducted by the independent examiner as well as review of documents and observation of proceedings. More detailed information on this is provided in the Final Report issued by the in the independent examiner.

As can be noted above, Accountability and transparency to the public of the organization under review is already included as one of the criteria. Further guidance and input from WS2 on ways to measure SO/AC accountability and transparency in a manner to support consistency across all organizations would be useful.

Relevant Stress Tests from CCWG-Accountability Work Stream 1 Report

Stress Test 31 looked at Rogue Voting response. There were also two Stress Tests added based on comments by NTIA's Larry Strickling:
● ST 33 on internal capture by AC/SO member(s)
● ST 34 on excluding new entrants from AC/SO

These Stress Tests relied on two mechanisms:
● A disenfranchised AC/SO member could challenge a Board decision to follow that advice/policy, via Reconsideration or IRP vs. "open, transparent bottom-up, multistakeholder processes"
● Periodic Organizational Reviews of AC/SOs:

○ whether any change in structure or operations is desirable to improve its effectiveness
○ whether that SO, council, or AC is accountable to its constituencies, stakeholder groups, organizations

GAC

The GAC Operating Principles are available at:
https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

GNSO

Review of GNSO Final Report Westlake Governance Limited September 2015
https://www.icann.org/en/system/files/files/gnso-review-final-15sep15-en.pdf

ccNSO

The ccNSO recently conducted a survey on the ccNSO's accountability. Results were discussed in Helsinki:
● Results: https://www.surveymonkey.com/results/SM-MCSN6TQT/
● Presentation: http://ccnso.icann.org/meetings/helsinki56/accountability-survey-results-30jun16-en.pdf

SO/AC Accountability materials from WS1 WP3 Subgroup

● https://community.icann.org/pages/viewpage.action?pageId=53783727

● https://community.icann.org/download/attachments/56141553/Staff%20Accountability%20Public%20Comment%20tool.docx?version=1&modificationDate=1444292666000&api=v2

● https://community.icann.org/download/attachments/56141553/SOAC%20accountability%20PC2.docx?version=3&modificationDate=1444735125000&api=v2