

CCWG-Accountability WS2 Active Public Consultations



March 2017

CCWG-Accountability WS2

From Recommendation 12 of the CCWG-Accountability Work Stream 1 Final Report:

The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.

As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:

CCWG-Accountability WS2

- Considering improvements to ICANN's standards for diversity at all levels (Diversity sub-group)
- Staff Accountability (Staff Accountability sub-group)
- Supporting Organizations and Advisory Committee Accountability (SOAC Accountability sub-group)
- Improving ICANN's transparency... (Transparency sub-group – currently in Public Consultation)
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw. (Human Rights sub-group)
- Addressing jurisdiction-related questions...(Jurisdiction sub-group)
- Considering enhancements to the Ombudsman's role and function. (Ombudsman sub-group)

CCWG-Accountability WS2

In amending the Bylaws based on the WS1 recommendations two additional requirements were identified for WS2:



















- Guidelines for Good Faith Removal of an ICANN Director (currently in Public Consultation)
- Review of CEP

In addition to these 9 topics WS2 is also supports the Implementation Oversight Team (IOT) responsible for implementing the amended IRP rules.






Subgroups Progress Update

Progress:  37%

Reporting Period:
FEBRUARY 17

Topic	Meetings this month	Progress	Status	Updates	Focus / Concerns / Risks
Transparency	0	 70% (+ 20 %)		<ul style="list-style-type: none"> Recommendations to improve ICANN's Transparency have been posted for Public Comment. 	<ul style="list-style-type: none"> Public Comment Period: 21 Feb – 10 Apr 17.
Guidelines for Good Faith...	0	 60% (+ 10 %)		<ul style="list-style-type: none"> Draft report approved by Plenary for Public Comment. 	<ul style="list-style-type: none"> Public Comment Period: 7 Mar – 24 Apr 17
SO/AC Accountability	4	 50% (+ 5 %)		<ul style="list-style-type: none"> Work on all three tracks completed. On track to have report to CCWG Plenary on the 10th of March for 1st reading. 	
Human Rights	4	 40% (- 10 %)		<ul style="list-style-type: none"> Finalized Framework of Interpretation (Fol). Achieved Subgroup consensus on Fol. Working on Considerations from Annex 12 of the CCWG Final Report. 	
Diversity	2	 30% (+ 5 %)		<ul style="list-style-type: none"> Finalizing the questionnaire to be sent to SO/AC for their input on diversity Discussion around the initial report based on the strawman consultation 	<ul style="list-style-type: none"> Discussion around the proposal of the diversity office Discuss timeline / ability to deliver by June?
Staff Accountability	3	 30% (+ 0 %)		<ul style="list-style-type: none"> Subgroup continues work on two documents: <ul style="list-style-type: none"> - Document A (the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community), - Document B (staff code of conduct, kpi's, processes, etc). 	<ul style="list-style-type: none"> Seeking CCWG plenary input and feedback on two key questions related to ICANN staff participation and focus of subgroup.
Ombuds Office	1	 25% (+ 10 %)		<ul style="list-style-type: none"> RFP for an external review of the IOO posted, 7 responses received, analyzed. Final phase for the reviewer selection's, contract to follow. 	<ul style="list-style-type: none"> Coordination with other sub-groups (Transp., Staff Account., H.Rights, Div., SO/AC Account.) A new timeline needs to be setup.
Review of the CEP	0	 15% (+ 0 %)			<ul style="list-style-type: none"> Subgroup needs more inputs in order to proceed with this topic.
Jurisdiction	2	 15% (+ 0 %)		<ul style="list-style-type: none"> Worked on "The influence of ICANN's existing jurisdictions relating to resolution of disputes. Participant-proposed responses added to "Hypothetical #1" and "strawman" responses. 	<ul style="list-style-type: none"> Questionnaire response period: 9 Feb – 17 Apr 17. A set of questions seeking information from ICANN Legal has been sent to the Co-Chairs. Need to revise timeline and target.

Based on data available from the WS2 wiki this is a high level summary of the work underway

 Not started
  On-track
  Behind schedule, but recovery still possible
  Target will be missed
  Completed



List of CCWG-Accountability WS2 active Consultations

- Public comment on draft recommendations to improve ICANN's transparency
- Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director
- Questionnaire related to ICANN's jurisdiction

Public comment on draft recommendations to improve ICANN's transparency

Annex 12 of the final report list the areas of focus for improving ICANN's transparency:

- Enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP) recommendations
- Transparency of ICANN's interactions with governments.
- Improvements to the existing whistleblower policy.
- Transparency of Board deliberations

Public comment on draft recommendations to improve ICANN's transparency

The Transparency sub-group seeks to enhance transparency at ICANN to deliver a range of key benefits, including:

- Enhancing accountability and trust
- Improving relations with ICANN's stakeholders
- Combatting corruption or mismanagement

Public comment on draft recommendations to improve ICANN's transparency

Reforms to the DIDP are a key aspect of this. Major recommendations include:

- Clarifying and improving procedures for filing and processing requests
- Narrowing exceptions to allow for disclosure of information whose release would not lead to harm

Public comment on draft recommendations to improve ICANN's transparency

Major suggestions include (cont.)

- Instituting open contracting rules
- Clarifying confidentiality around legally privileged information
- Creating effective monitoring and evaluation for the DIDP system

Public comment on draft recommendations to improve ICANN's transparency

Recommendations also include enhancing the transparency of board deliberations, so that decisions to redact material be tied the DIDP exceptions and subject to IRP appeal.

Recommendations also touch on ICANN's interactions with governments, suggesting greater disclosure about lobby and other political activities, as well as improving whistleblower protection, mainly in line with the NAVEX review recommendations

Public comment on draft recommendations to improve ICANN's transparency

- Closing Date: 10 April 2017
- URL: <https://www.icann.org/public-comments/ccwg-acct-draft-recs-2017-02-21-en>
- All comments are welcome and comments of support are important to help ensure the recommendations can be accepted.

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

Recommendation 4 of the final report of the Cross Community Working Group on Enhancing ICANN Accountability includes a process by which the Empowered Community or the nominating SO or AC can remove a voting director of the ICANN Board. It further stipulates that if those parties who undertake to remove a director using this process are sued by that director, that ICANN will indemnify those parties subject to a set of conditions which include acting in good faith.

It is in this context that Recommendation 4 required that:

- *Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2.*

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

- 1. The task:** Create a set of guidelines to meet “good faith” standard (for community behavior) under indemnification clause in by-laws.
- 2. Philosophy of the Group:**
 - Keep it simple and flexible;
 - Apply to all Board seats (NomCom and SO/AC);
 - Respect SO/AC Processes; and
 - Meet Legal standard without creating “cause” for board removal.
- 3. Opinion from ICANN Legal:** “We should be OK.”
- 4. Report approved by Plenary:** publication for comment.

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

1. Petitions for removal:

- a. may be for any reason; and
- b. must:
 - be believed by the Indemnified Party to be true;
 - be in writing;
 - contain sufficient detail to verify facts, if verifiable facts are asserted;
 - supply supporting evidence if available/applicable;
 - include references to applicable by-laws and/or procedures if the assertion is that a specific by-law or procedure has been breached; and
 - be respectful and professional in tone.

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

2. SO/AC's shall have procedures for consideration of board removal notices to include:

- reasonable time frames for investigation by SO/AC counsels or the equivalent if the SO/AC deems that an investigation is required ;
- period of review by the entire membership of the SO/AC;
- consistent and transparent voting method for accepting or rejecting a petition; and
- documentation of the community process and how decisions are reached.

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

Stand Alone Recommendations:

A standard framework be developed and used to raise the issue of Board removal to the respective body – either the specific SO/AC who appointed the member or the Decisional Participant in the case of a Nom Com appointee. The framework would be in the context of developing a broader framework for implementing community powers and entering into the discussions contemplated by WS1.

Implement the guidelines as a community best practice to apply to all discussions even if not covered by the indemnities contemplated under Article 20. There may be discussions around rejecting a budget or rejecting a proposed standard by-law that would benefit from a good faith process. The guidelines could be adopted as a universal standard given that they are broad enough to encompass any discussion.

Public comment on draft recommendations on Guidelines for good faith associated with removal of an ICANN Director

- Closing Date: 24 April, 23:59UTC
- URL: <https://www.icann.org/public-comments/enhancing-accountability-guidelines-good-faith-2017-03-07-en>

Questionnaire related to ICANN's jurisdiction (Not a public comment)

The Jurisdiction Subgroup is addressing questions related to ICANN's jurisdiction, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability and the actual operation of ICANN's policies:

1. Has your business, your privacy or your ability to use or purchase domain name-related services been affected by ICANN's jurisdiction in any way?
2. Has ICANN's jurisdiction* affected any dispute resolution process or litigation related to domain names you have been involved in?
3. Do you have copies of and/or links to any verifiable reports of experiences of other parties that would be responsive to the questions above?
- 4 a. Are you aware of any material, documented instance(s) where ICANN has been unable to pursue its Mission because of its jurisdiction?
- 4b. Are you aware of and able to document the existence of an alternative jurisdiction where ICANN would not be so prevented from pursuing its Mission?

Questionnaire related to ICANN's jurisdiction (Not a public comment)

- Closing Date: 23:59 UTC 17 April 2017
- URL: <https://community.icann.org/display/WEIA/Jurisdiction+Questionnaire>

Questions?

Thank You