CCWG-Accountability WS2
Face to Face Meeting at ICANN 59

25 June 2017

08:30 local

Agenda

08:30 – 09:00 – Welcome, review of agenda, Administration
0900 – 09:15 – WS2 Extension – Status and Budget
09:15 – 09:30 – IRP – IOT Status and Update
09:30 – 10:15 – CEP - Update
10:15 – 10:30 – Coffee break
10:30 – 11:30 – SO/AC Accountability update on public consultation
11:30 – 12:30 – Transparency – Status on update on public consultation
12:30 – 13:30 – Lunch
13:30 – 14:30 – Ombudsman – Presentation of external review and recommendations
14:30 – 15:30 – Staff Accountability – First reading of recommendations
15:30 – 15:45 – Coffee Break
15:45 – 17:15 – Jurisdiction - Status
17:15 – 17:30 – Wrap-up
Adjournment

ICANN Expected Standards of Behavior

Those who take part in ICANN's multistakeholder process, including Board, staff and all those involved in SO and AC councils, undertake to:

Act in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.

Adhere to ICANN's conflict of interest policies.

Treat all members of the ICANN community equally, irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation; members of the ICANN community should treat each other with civility both face-to-face and online.

Respect all members of the ICANN community equally and behave according to professional standards and demonstrate appropriate behavior. ICANN strives to create and maintain an environment in which people of many different backgrounds and cultures are treated with dignity, decency and respect. Specifically, participants in the ICANN process must not engage in any type of harassment. Generally, harassment is considered unwelcome hostile or intimidating behavior -- in particular, speech or behavior that is sexually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, age, color, national origin, ancestry, disability or medical condition, sexual orientation or gender identity.

Protect the organization's assets and ensure their efficient and effective use.

Act fairly and in good faith with other participants in the ICANN process.

Conduct themselves in accordance with ICANN policies.

Support the maintenance of robust mechanisms for public input, accountability, and transparency so as to ensure that policy development and decision-making processes will reflect the public interest and be accountable to all stakeholders.

Listen to the views of all stakeholders when considering policy issues. ICANN is a unique multistakeholder environment. Those who take part in the ICANN process must acknowledge the importance of all stakeholders and seek to understand their points of view.

Work to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus-driven approach to policy development. Those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants.

Promote ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.

Facilitate transparency and openness when participating in policy development and decision-making processes.

Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability and security of the Internet's system of unique identifiers, irrespective of personal interests and the interests of the entity to which individuals might owe their appointment.

Administration

3.1 Review of Decisions and Action Items from 24 May meeting:

Decisions:

- Modified reporting schedule approved as presented including suggested amendments.
- Approval Process for WS2 Recommendations document approved at first reading and to be presented for a second reading at the next plenary.

Action Items:

- Staff – Draft letter of appreciation for MW (completed)
- Staff – Present Approval Process for WS2 Recommendations document for second reading at next plenary (completed via email list)

Requests:

Membership is requested to provide comments on the scheduling of the completion of WS2 in FY18 and Approval Process for WS2 Recommendations document on list.

WS2 Extension – Status and Budget

IRP – IOT Status and Update

ICANN's Independent Review Process (IRP)

June 2017 Update/Overview

By

David McAuley
On behalf of IRP Implementation Oversight Team

IRP

- New IRP:
  - Bylaw Section 4.3
  - Came into effect Oct 1st, 2016:
- Agenda:
  - Purpose
  - Main Pillars
  - Miscellaneous

IRP (Purpose)

- Purpose of IRP (Section 4.3(a)):
  - Ensure: (a) against exceeding mission; (b) compliance with Articles/Bylaws;
  - Empower community/claimants to enforce compliance with Articles/Bylaws;
  - Ensure ICANN accountability;
  - Address claims ICANN failed to enforce IANA Naming Functions contract;
  - Provide vehicle for direct IANA customers to seek resolution of PTI service complaints that are not resolved through mediation;
  - Reduce disputes by creating precedent in connection with policy development and implementation; …

IRP (Purpose) (con't)

- Purpose of IRP (Section 4.3(a)):
  - Accessible, transparent, efficient, consistent, and just resolution of disputes;
  - Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in proper courts;
  - Provide a vehicle for resolving disputes as an alternative to civil litigation.

IRP (Main Pillars)

- Three main pillars of new IRP:
  - New Standard of Review
  - Standing Panel
  - Updated ‘Supplementary’ Rules of Procedure

IRP (Main Pillars) (con't)

- New standard of review (Scope) of IRP (Section 4.3(b))
  - To address claims that ICANN (Board, individual directors, officers or staff) acted/failed-to-act in manner that violated Articles/Bylaws, including:
    - Exceeded scope of mission;
    - Resulted from response to advice or input from any AC or SO that are claimed to be inconsistent with Articles or Bylaws;
    - Resulted from decisions of process-specific expert panels that are claimed to be inconsistent with Articles or Bylaws;

IRP (Main Pillars) (con't)

- New standard of review ..
  - To address claims that ICANN … violated Articles/Bylaws, by (among other things):
    - Resulted from a response to a DIDP request that is claimed to be inconsistent with Articles or Bylaws;
    - Arose from claims involving rights of the EC as set forth in Articles or Bylaws;
    - Claims of non-enforcement of ICANN's contractual rights with respect to the IANA Naming Function Contract; and
    - Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

IRP (Main Pillars) (con't)

- Excluded from Scope of IRP:
  - EC challenges to the result(s) of a PDP, unless the SO(s) that approved the PDP supports the EC challenge;
  - Claims relating to ccTLD delegations and re-delegations;
  - Claims relating to Internet numbering resources, and
  - Claims relating to protocol parameters.

IRP (Main Pillars) (con't)

Nature of Review – "objective, de novo" (Section 4.3(i))

IRP (Main Pillars) (con't)

- Standing Panel (Section 4.3(j))
    - At least seven members (ICANN to provide DNS training);
    - Secretariat/admin support to be provided (ICANN – SOs/ACs – IOT to coordinate selection);
    - Expression of Interest doc for panelist application (ICANN);
    - Seeking/vetting applications (ICANN – SOs/ACs);
    - Panel nominations by SOs/ACs – confirmation by Board (not to be unreasonably withheld);

IRP (Main Pillars) (con't)

- Standing Panel …
  - Panelists serve five-year term (recall only for specific reasons like fraud/corruption – IOT to develop recall process);
  - Panelists must be independent of ICANN and SOs/ACs (Section 4.3(q));
  - Individual cases to be heard by three-member panel selected from standing panel (Section 4.3(k));
  - Appeals to full standing panel possible (Section 4.3(w));
  - Resolution within six months is target (Section 4.3(s));
  - Enforcement in court envisioned if needed (Section 4.3(x)).

IRP (Main Pillars) (con't)

- Rules of Procedure (Section 4.3(n)):
  - First draft of updated rules;
  - Review of public comments underway, making progress, including discussions on these rules, among others (note discussions not yet final):
    - Time within which a claim must be filed;
    - Retroactivity of (1) standard, and (2) rules;
    - Joinder of interested parties; and
    - Challenges to consensus policies.

Miscellaneous

- Note the Cooperative Engagement Process (CEP Process -Section 4.3(e)) – an informal attempt to resolve the dispute (non-mandatory but potential consequences for failure to engage).

- Also – note conciliation efforts to narrow issues under review (Section 4.3(h)) (non-mandatory).

- IRP IOT status to be addressed.

- Access consideration – Section 4.3(y):

  - *ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.*

CEP - Update

- **What is the CEP?**
- **Task of this subgroup**
- **Work to date**
- **Issues Under Consideration**
  - **Purpose**
  - **Structure / Derogation**
  - **Third Party Neutral**
  - **Timelines**
  - **Transparency**
  - **Discovery**

Coffee break
15 Minutes

SO/AC Accountability update on public consultation

Background Continued...

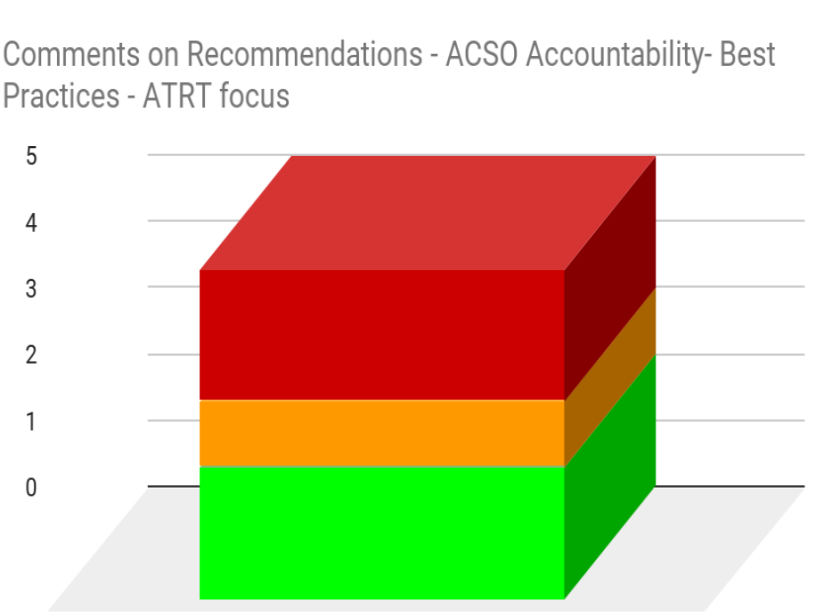
- The draft report reflected several months of research and deliberation, starting with exploration of to whom ICANN's SO/ACs are accountable:
  - **Track 1** recommendations present 25 best practice recommendations for SO/ACs to consider implementing, in areas of

Review of Responses to Recommenc

- ***Track 1.*** Respondents were supportive of recommendations regarding to whom SO/ACs are accountable. General support for proposed Best Practices.
- The split was: 4 - Support; and 4 - Qualified Support.
- ***Let's discuss the qualifications.***

Review of Responses to Recommend

- ***Track 1 - ATRT*** responses diverge, but more negative about having ATRT review implementation of best practices in SO/ACs.
- The split in responses: 2 - Support; 2 - Against; 1 - Concern
- ***ATRT already has large scope, so … should best practice implementation be examined in the SO/AC organizational reviews?***

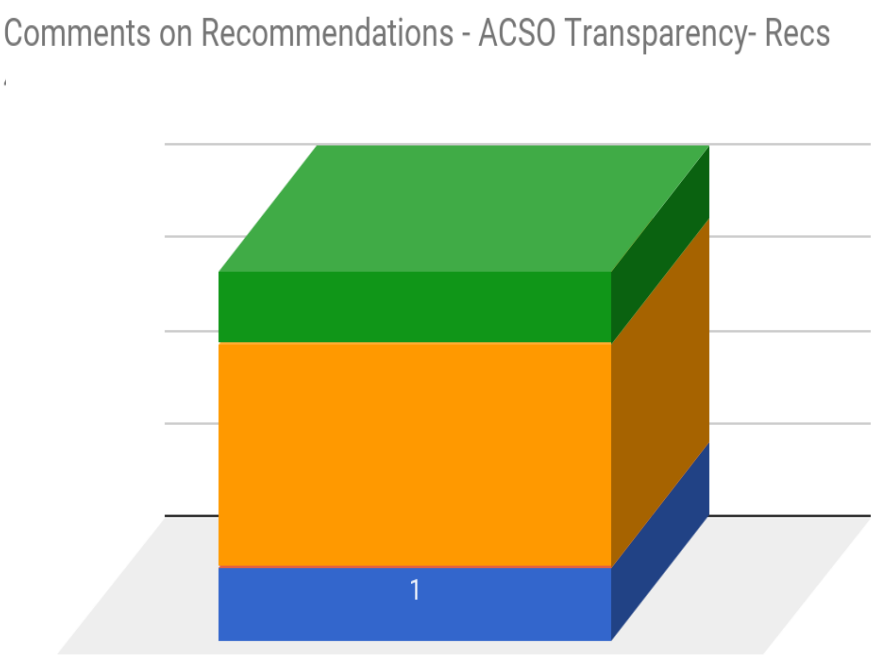


Review of Responses to Recommend

- ***Track 1 Reporting Best Practices.*** Respondents were less supportive, having CONCERNS regarding recommendations in the Reporting proposed Best Practices.
- The split was 3 - Concerns; 1 - Unsure.
- ***Concerns focus on volunteers and time, affecting other work. Do we look to SO/AC organizational reviews?***

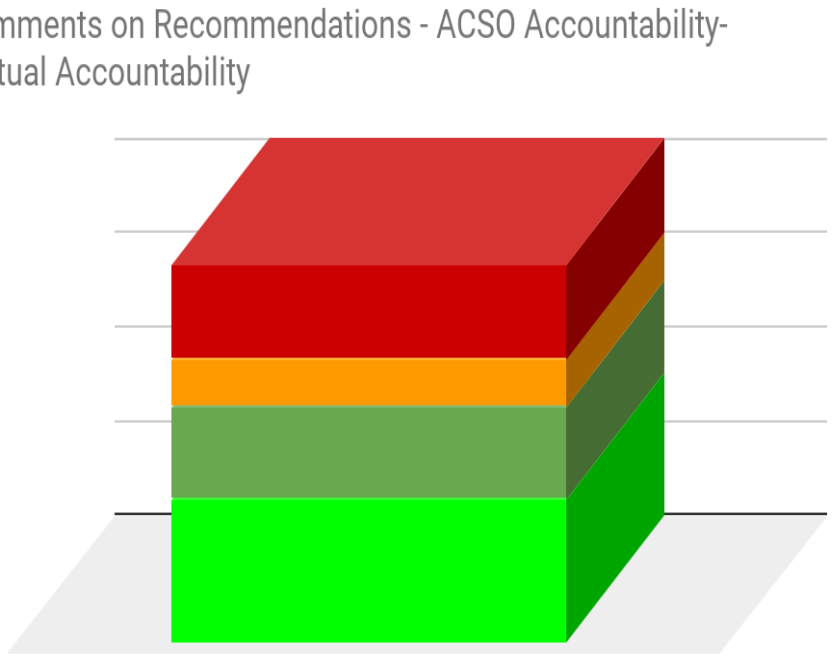
Review of Responses to Recommenc

- ***Track 1 Transparency.*** Respondents were divergent about open meetings and meeting notes, with most holding CONCERNS.
- Split was: 1 - Support; 3 - Concerns; 1 - Against.
- ***Some strong concerns here. Need to discuss where to take recommendations now.***



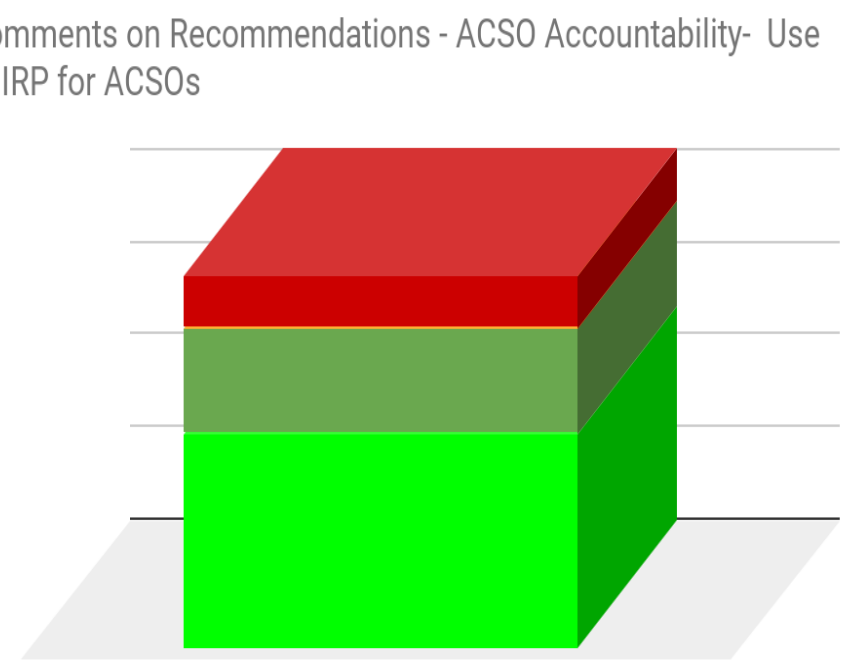
Review of Responses to Recommen

- ***Track 2 regarding optional Mutual Accountability Round Table.*** No overwhelming support and several CONCERNS. Split was 3 - Support; 2- Qualified Support; 1- Concerns; 2- Against.
- ***Lacking strong support for MART, should we revert to our original recommendation against MART?***



Review of Responses to Recommen

- ***Track 3 regarding the Applicability of IRP for ACSOs*** – General Support and 1 Against the recommendation.
- Split was 4 - Support; 2- Qualified Support; 1- Against
- ***If not the IRP, then who & how to enforce vs SO/AC that is not following its rules? Can the Ombuds office do it?***



Next Steps...

- **Public comments and our discussions today will be taken on-board by CCWG-Accountability WS2 to consider amending our recommendations and then publish a report on results of the public consultation.**
- **CCWG will also need to determine if any changes to our report are significant or not.**
- **If significant changes are recommended, CCWG-Accountability WS2 may have a second**

Transparency – Status on update on public consultation

Lunch
1 Hour

Ombudsman – Presentation of external review and recommendations

External review of the ICANN Ombuds Office

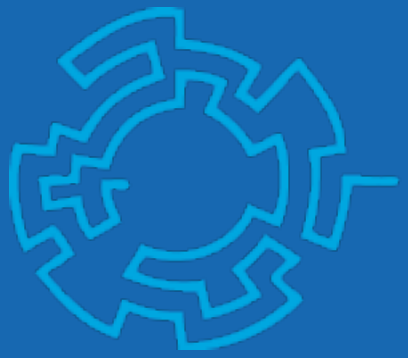
Cameron Ralph LLC &

cameron. ralph. khoury

CCWG-Accountability
Work Stream 2

nbuds

ICANN



Cameron Ralph LLC

- Consulting firm specializing in governance, performance assurance and policies.
- Expertise in independent reviews of Ombudsman schemes – both Government established and industry based schemes.
- Reviewed some 16 schemes located in Australia, New Zealand and Canada (financial services, telecommunications, water and energy, public transport, legal services).
- Have assisted Ombudsman schemes with strengthening their quality assurance and other processes.
- More information available - http://crkhoury.com.au

Cameron Ralph LLC: Consultants

Phil Khoury

- A governance and change management consultant specializing in regulatory and other non-profit organizations
- Worked extensively with industry bodies, complaints handling schemes and specialist disciplinary bodies.
- Former Executive General Manager of the Australian Securities and Investments Commission (ASIC).

Debra Russell

- Formerly a senior executive with Australian Securities and Investments Commission, a senior manager with PricewaterhouseCoopers, a sessional lecturer at University of Melbourne Law School and a solicitor with Allens Arthur Robinson
- Strong legal and regulatory compliance background.

Interviews

Interviews

- **People from**
  - ccwg-accountability (co-chairs)
  - Subteams WS2
    - Diversity
    - Guidelines for Good Faith Conduct
    - SO/AC accountability
    - Transparency Subteam
    - ATRT Expert
    - Ombuds
  - Board
  - RIR
  - ALAC & Lacralo
  - gtld applicant
  - GAC
  - Ombuds (current and Previous)
  - Staff
  - Other

Face to face interviews with community members and ICANN staff attending ICANN58 including: members of the Board, members of the Subgroup, members of constituent bodies, members of the community, senior members of staff

Survey

An on-line survey was undertaken (5 languages offered) seeking additional input from members of the community.

In a limited period, an excellent **84 community responses** were received, including 3 that we arranged to be translated.

Recommendations

Summary of recommendations

Recommendation 1

The statement in Article 5 of ICANN's Bylaws of the Ombuds Office's Charter should be changed to give the Office a more strategic focus

Recommendation 2

The Ombudsman Framework should be replaced by procedures that

- *Distinguish between different categories of complaints and explains how each will be handled*
- *Set out the kinds of matters where the Ombuds will usually not intervene – and where these matters are likely to be referred to another channel (with the complainant's permission)*
- *provides illustrative examples to deepen understanding of the Ombuds approach*

Summary of recommendations

Recommendation 3

Once ICANN has agreed to a revised configuration for the Office of the Ombuds, a plan should be developed for a soft re-launch of the function, which should incorporate action to emphasis the importance of the Ombuds function by all relevant parts of ICANN, including

- *Board*
- *CEO*
- *Community groups*
- *Complaints Officer*
- *…*

Recommendation 4

The ICANN By-laws and any relevant rules of ICANN groups should be amended to oblige all relevant parts of ICANN (should include the Corporation, the Board and Committees and any body or group with democratic or delegated authority) to respond within 90 days (or 120 days with reason) to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons

Summary of recommendations

Recommendation 5

The ICANN Office of the Ombuds should establish timeliness KPIs for its own handling of complaints and report against these on a quarterly and annual basis

Recommendation 6

The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities

Summary of recommendations

Recommendation 7

The Office of the Ombuds should be ideally configured (subject to practicality) so that it has gender, and if possible other forms of diversity within its staff resources

Recommendation 8

ICANN should establish an Ombuds Advisory Panel

- *made up of 5 or 6 members to act as advisers, supporters, wise counsel and an accountability mechanism for the Ombuds*
- *The Panel should be made up of a minimum of 2 members with ombudsman experience and 3-4 members with extensive ICANN experience*
- *The Panel should be responsible for commissioning an independent review of the Ombuds function every 3-5 years*

Summary of recommendations

Recommendation 9

The By-laws and the Ombuds employment contracts should be revised to strengthen independence by allowing for a

- *5 year fixed term (including a 12 month probationary period) and permitting*
- *only one extension of up to 3 years*

The Ombuds should only be able to be terminated with cause

Recommendation 10

The Ombuds should have as part of their annual business plan, a communications plan, including the formal annual report, publishing reports on activity, collecting and publishing statistics and complaint trend information, collecting user satisfaction information and publicising systemic improvements arising from the Ombuds' work

Summary of recommendations

Recommendation 11

- *With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work that addresses*
  - *a) Whether there is unique value that the Ombuds can add through the proposed role or function?*
  - *b) Whether the proposed reporting/accountability arrangements may compromise perceived independence?*
  - *c) Whether the proposed role/function would limit the Ombuds ability to subsequently review a matter?*
  - *d) Whether the workload of the proposed role/function would limit the Ombuds ability to prioritise their complaints-related work?*
  - *e) Whether any Ombuds involvement with the design of new or revised policy or process, creates the impression of a 'seal of approval'?*
  - *f) Whether the proposed Ombuds input may be seen as a 'short-cut' or substituting for full stakeholder consultation?*

Other functions

- If the Ombuds is not to be made responsible
- A staff function
  - If the function will require a great deal of interaction and collaboration with the Corporation, we would recommend a staff function – with obligations to consult with the community
- A community function
  - If the task is quite independent and not reliant on heavy staff input, then it could easily be the responsibility of a community body or person – with an obligation to consult with staff

DIDP (Documentary Information Disclosure Policy)

We think it would be appropriate for the Ombuds to have input to the design of the proposed new DIDP and to provide information or refer people to it, but not to be expected to replace management's responsibility to implement, promote and routinely report on it. The Office could conduct an 'own-motion' review of the operation of the function after a time, but this should be at its own discretion taking into account its other priorities.

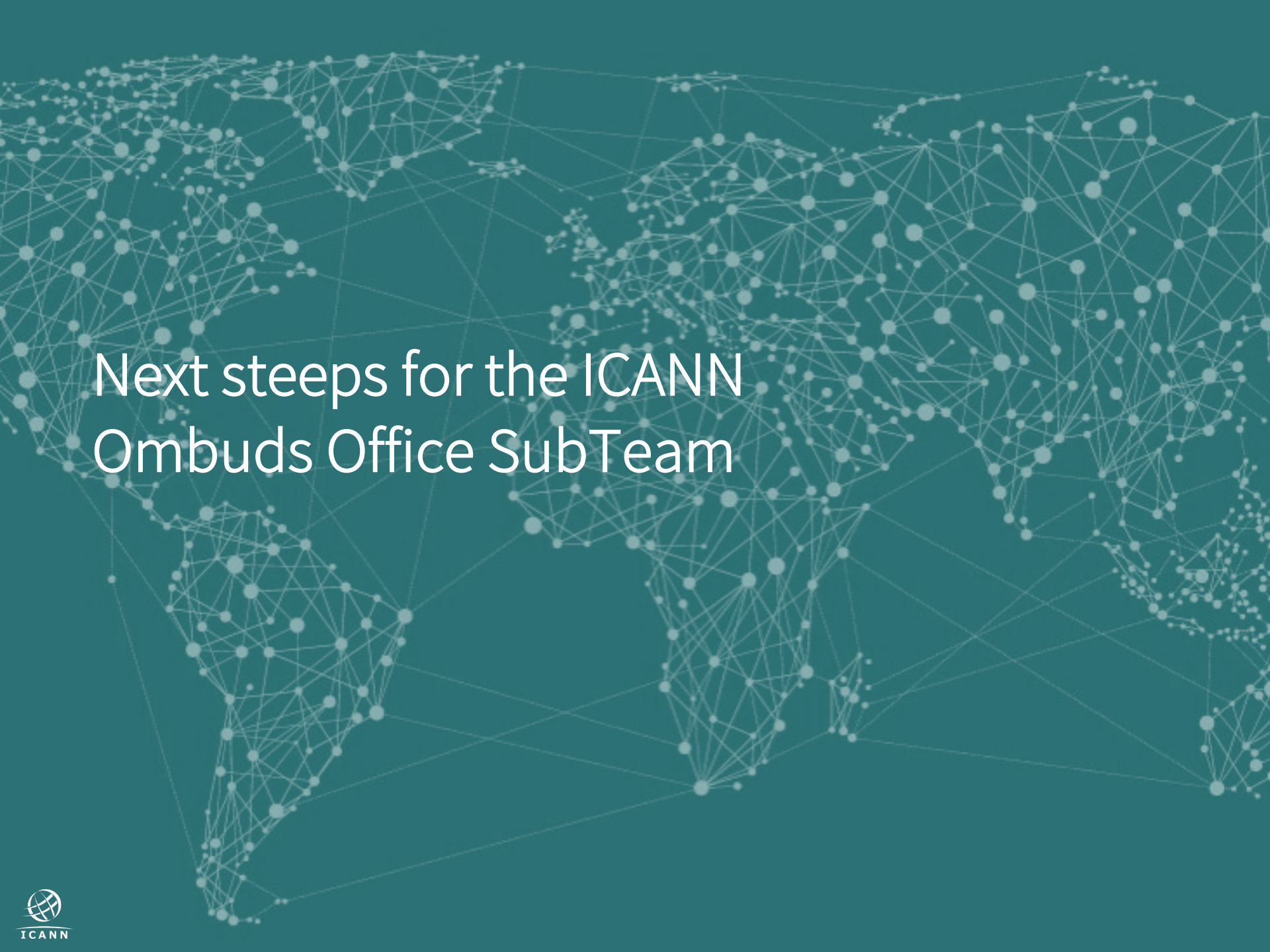
Diversity

We would have concerns about the Ombuds function taking on the role of Office of Diversity (as floated with us). As above, the Ombuds could assist, but we think this is better as a staff or community responsibility.

First, it will be quite a workload in the first few years. Second, this is a likely issue for complaints and the Ombuds would be unable to credibly review such a complaint, particularly if it was against guidelines or the implementation of guidelines the Ombuds had been responsible for.

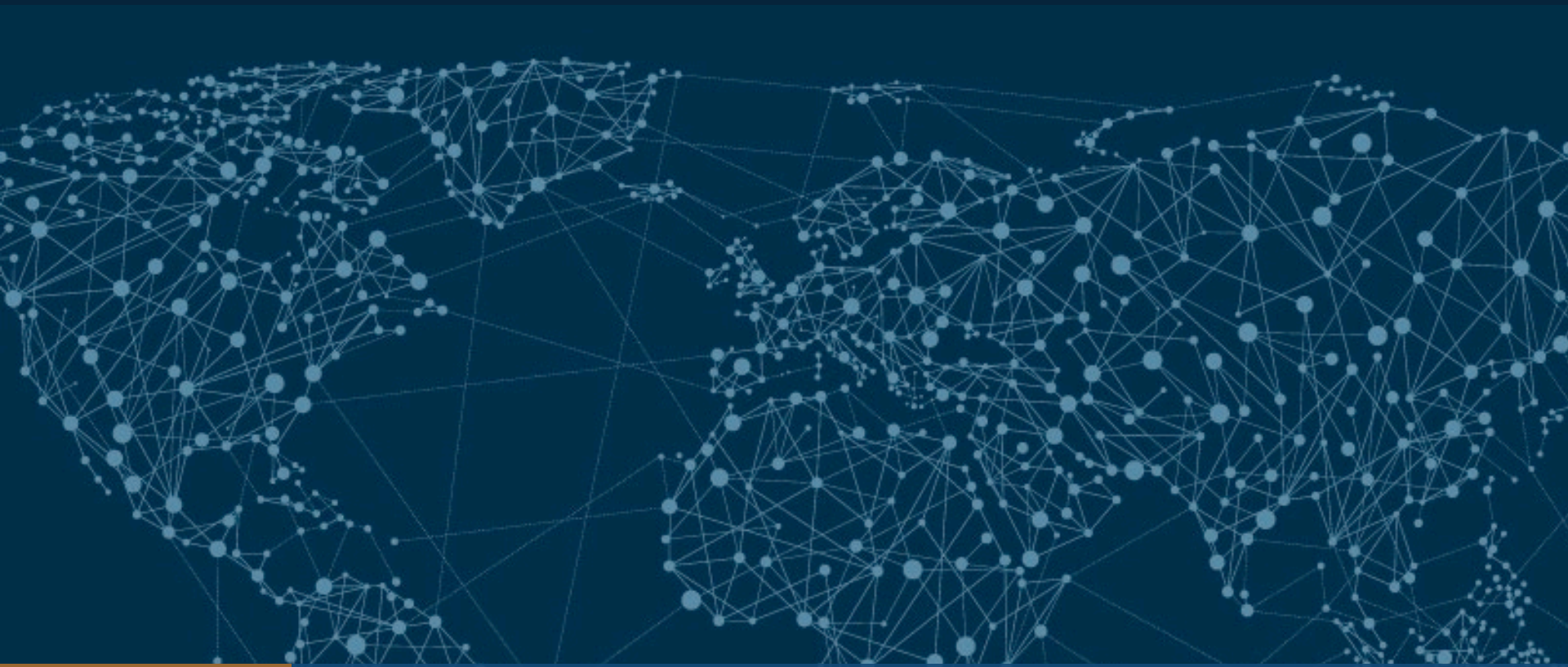
Third, the process of corporation functions and various ICANN groups adopting new policy will inevitably involve those groups seeking the Ombuds 'seal of approval' – eg. "will this implementation be OK?". Again, that would compromise the Ombuds independence.

Next steeps for the ICANN Ombuds Office SubTeam



Next steeps IOO SubTeam

- Prepare a draft report answering (at least) the following topics
  - ICANN's Bylaws of the Ombuds Office's
  - Replacement Ombudsman Framework by Procedures
  - Plan to be developed for a soft re-launch
  - Framework to respond to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons
  - Framework to establish an Ombuds Advisory Panel
  - Framework to develop a policy for any Ombuds involvement in non-complaints work
- Coordination with the other subgroups
- Prepare a new schedule



Thank You

Staff Accountability – First reading of recommendations

Recommendations:
1. ICANN Organization should continue developing and publicising the ICANN Organization Delegations document, so that it evolves into a concise statement of the allocation of roles and responsibilities between Board and Staff in ICANN.
2. ICANN should further develop and regularly publish a detailed ICANN organizational chart of all employees with clear reporting lines, so that contracted parties and other community members are aware of the different levels of decision making within each department and the point of contact for escalation or otherwise.
3. ICANN should create a four-member panel composed of the Ombudsman, the Complaints Officer, a representative chosen by the Empowered Community and a Board member. The panel will review concerns or issues raised by the community, ombudsman, staff or board that at least two panel members determine require further effort. While this panel should work transparently, it will, at its discretion, be able to treat issues that require it, as confidential.

Staff Accountability – First reading of recommendations

4. ICANN Organization, in cooperation with the community and the board, should develop appropriate internal processes for ICANN staff to raise and resolve any issues they have in working with community members.
5. ICANN Organization, , in cooperation with the community and the board, should institute an information acquisition programme (surveys, focus groups, info from Complaints Office) to allow ICANN Organization to better ascertain its overall performance and accountability to relevant stakeholders.
6. ICANN should continue to focus on ICANN Organization as an effective support system for the multi-stakeholder, bottom-up model through championing a culture that supports high performance, transparency, openness, responsiveness, and accountability. There should be a regular evaluation progress regarding this goal. While this may fall within the ATRT purview, it may also be done in a different manner.

Staff Accountability – First reading of recommendations

7. ICANN Organization should work with the community to:
    a. Develop and publish service level agreements (similar to t he Service Level Agreement for the IANA Numbering Services) that clearly define all services provided by ICANN to contracted parties and the service level target for each service.
    b. Develop and publish service level definitions that clearly define services provided to members of the community, and the expected service level target for each type of service.
8. ICANN organization should improve visibility and transparency of the organization's performance management system and process, specifically in relation to how individual or department goals are identified and mapped to ICANN's strategic goals and objectives.
9. ICANN Organization should enhance current community evaluation related to staff performance, by ensuring managers seek input from the appropriate community members during staff's annual reviews.

Coffee break
15 minutes

Jurisdiction - Status

Conclusion of the Co-Chairs presented at the Jurisdiction meeting of 14 June 2017

Thomas Rickert for the CCWG-Accountability Co-Chairs, We have concluded that the Jurisdiction sub-group will take Californian jurisdiction as a base line for all its recommendations, and that the sub-team not pursue recommendations to change ICANN's jurisdiction of incorporation, location of headquarters or seek immunity for ICANN. With this decision we are recognizing that there is no possibility that there would be consensus for an immunity based concept or a change of place of incorporation. As such I would establish in the minutes of this call that we focus on the solution that gets most traction. Recognizing that this does not eliminate, as I think Avri said during last week's call, that we can discuss all issues that might arise during the deliberations. But that we actually focus on the status quo being Californian law and place of incorporation. and work on solutions that are founded on this.

Wrap-up

End of Meeting

Adjourned.