New gTLD Program
Accountability Mechanisms

New gTLD SubPro PDP WG | Work Team 3 | 6 June 2017

Background

As per the Final Issue Report on New gTLD Subsequent Procedures of 4 December 2015:

With respect to accountability mechanisms ICANN should consider what factors would be important for a meaningful and equitable appeals process. In particular, ICANN could consider the following questions:

- Should the process make a distinction between appeals relating to substantive and procedural issues?
- Who is an appropriate final arbiter?
- Should redress be available only for certain issues but not for others?
- Should there be safeguards against abuse and penalties?

It should be noted that the scope of Accountability Mechanisms extends beyond the New gTLD Program. For instance, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) is looking at this specific topic, amongst other broader topics related to ICANN's accountability. The discussions and outputs of the CCWG-Accountability may be beneficial in addressing issues identified by the DG and the wider community.

ICANN-Organization-Wide Accountability Mechanisms

- **Ombudsman Office**
  Informal dispute resolution office for the ICANN community, to lodge a complaint about ICANN staff, board or problems in supporting organizations. Primary purpose: fairness.

- **New "Complaints" Office**
  "Catch all" complaints office – complaints that don't fall into existing complaints mechanism.

- **Reconsideration Request Process**
  Board review of board and organizational decisions to determine whether correct process was followed.

- **Independent Review Panel Process**
  Any person materially impacted by ICANN decision may file a 3rd-party review of that decision to determine if consistent with ICANN bylaws and Articles of Incorporation (process).
  Note: Next WT3 Mtg will focus on IRP process as a key accountability mechanism

- **Accountability & Transparency Review Team (ATRT) Process**
  Bylaw mandated 5-year review process to evaluate and recommend improvements to public input, accountability, & transparency in operations.

- **Documentary Disclosure Information Policy (DIDP)**
  Information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is to be made available to the public unless there is a compelling reason for confidentiality.

- **Law Suits?**
  One can always sue ICANN to obtain justice, or can gTLD applicants? Waiver of legal rights in gTLD agreement.

gTLD Program Specific Accountability Mechanisms

Additional Accountability Mechanisms, which are Specific to ICANN's New gTLD Program:

- **Public Interest Commitments Dispute Resolution Procedure (PICDRP)**
  Registry may not be complying with a Public Interest Commitment (PIC) in Spec. 11 of Registry Agreement

- **Trademark Post Delegation Dispute Resolution Procedures (PDDRP)**
  Concerns about Registry Operators Encouraging or Supporting Trademark Infringement (WIPO)

- **Independent Objector Process**
  i) Limited Public Interest Objections (Morality & Public Order claims)
  ii) "Community" Objection

Questions to Consider

Discussion Points

- Standards of Review (procedural, substantive) appropriate for this instance (new gTLDs)?

- Adequate transparency in new gTLD decision making process including implementation?

- Are there special concerns with respect to conflicts of interest and adequate safeguards for COI in new gTLD program?

- Adequate penalties and safeguards against abuse?

- Adequate enforcement in case of accountability lapses?

- Are there specific needs with respect to new gTLDs which make ICANN's basic accountability mechanisms inadequate?

- Is there a need for a new accountability mechanism specifically focused on new gTLD program?

- Who should be final adjudicator in such cases?

Next WT3 Meeting in 2 weeks: Tuesday, **20 June 2017 (15:00 UTC)**

Continuing Discussion on Accountability Mechanisms and New gTLD Program

Sub-Topic:

> ***Deep-Dive into the Independent Review Process (IRP) Application to New gTLD Program***