

CCWG-Accountability WS2 Plenary

27/28 September 2017
13:00/19:00 UTC



Agenda

1. Introduction, update to SOIs, reminder on standards of behavior
2. Review of Agenda
3. Administration
4. Legal Committee Update
5. Point on Quorum (held over from last plenary)
6. Second Reading of the draft recommendations of the Diversity sub-group.
7. First reading of the final recommendations of the SOAC Accountability sub-group.
8. First reading of the final recommendations of the Human Rights sub-group.
9. First reading of the draft recommendation of the Ombuds sub-group
10. First reading of the draft recommendation of the Staff Accountability sub-group.
11. AOB
12. Next Plenaries
13. 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.

3. Administration

- Review timeline.
- Reminder of 27 October face to face in Abu Dhabi.
- Reminder of High Interest sessions in Abu Dhabi

4. Legal Committee Update

- Question sent to ICANN Legal on Ombudsman recommendation 8 regarding the independence of the proposed Ombuds Advisory Panel (questions sent directly to ICANN legal on approval of Co-chairs).
- Transparency – at the 13 September meeting of the sub-group updated language for recommendations 2, 15 and 16 were considered. ICANN Legal advised that they would consider these and provide written feedback to the sub-group.

5. Question on Quorum

6. Second Reading of the Diversity sub-group draft recommendations

Main chapters of Report:

- EXECUTIVE SUMMARY
- SCOPE
- BACKGROUND AND SUPPORTING INFORMATION
- DESCRIPTION OF ISSUES
- CURRENT STATE OF PLAY
- RECOMMENDATIONS
- Annexes

6.1 Diversity Recommendations

Defining Diversity

Recommendation 1: SO/AC/groups agree that the following 7 key elements of diversity should be used as a common starting point for all diversity considerations within ICANN:

- Geographic/regional representation
- Language
- Gender
- Age
- Physical Disability
- Diverse Skills
- Stakeholder group or constituency

6.2 Diversity Recommendations

Defining Diversity

Recommendation 2: Each SO/AC/group should identify which elements of diversity are mandated in their Charters or ICANN Bylaws and any other elements that are relevant and applicable to each of its levels including leadership (Diversity Criteria) and publish the results of the exercise on their official web sites.

6.3 Diversity Recommendations

Measuring and Promoting Diversity

Recommendation 3: Each SO/AC/group, supported by ICANN staff, should undertake an initial assessment of their diversity for all of their structures including leadership based on their Diversity Criteria and publish the results on their official website.

Recommendation 4: Each SO/AC/group should use the information from their initial assessment to define and publish on their official website their Diversity Criteria objectives and strategies for achieving these, as well as a timeline for doing so.

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6.4 Diversity Recommendations

Measuring and Promoting Diversity

Recommendation 5: Each SO/AC/group, supported by ICANN staff, should undertake an annual update of their diversity assessment against their Diversity Criteria and objectives at all levels including leadership. They should publish the results on their official website and use this information to review and update their objectives, strategies and timelines.

6.5 Diversity Recommendations

Supporting Diversity

Recommendation 6: ICANN staff should provide support and tools for the SO/AC/groups to assist them in assessing their diversity in an appropriate manner. ICANN should also identify staff or community resources that can assist SO/ACs or other components of the community with diversity related activities and strategies.

Recommendation 7: ICANN staff should develop and publish a process for dealing with diversity related complaints and issues.

6.6 Diversity Recommendations

Supporting Diversity

Recommendation 8: ICANN staff should support the capture, analysis and communication of diversity information in the following ways:

- Create a Diversity section on the ICANN website.
- Gather and maintain all relevant diversity information in one place.
- Produce an Annual Diversity Report for ICANN based on all the annual information and provide a global analysis of trends and summarize SO/AC/groups recommendations for improvement, where appropriate. This should also include some form of reporting on diversity complaints.
- Include diversity information derived from the Annual Diversity Report in ICANN's Annual Report.

6.7 Diversity Recommendations

Note: A number of CCWG-Accountability-WS2 diversity sub-group members believe it is essential to establish an Office of Diversity. The role of this office would be to independently support, record and keep track of issues including complaints from the community on diversity issues within the organization.

7.1 SO/AC Accountability Final Report

Recap of major milestones:

- 2-Mar-2017: Sub-group approved initial draft recommendations for plenary consideration
- 29-Mar-2017: Plenary approved draft for public consultation
- 14-Sep-2017: Sub-group approves final recommendation for plenary consideration, including:
 - Response to public comments received on 1st draft
 - Final recommendations
 - Red-line of final recommendations versus first draft
 - Recommendation that changes in Final report do not necessitate another public consultation

7.2 SO/AC Accountability - Response to Public Comment on First Draft Report

- There were 12 public comment respondents
- Half of specific comments supported the draft report
- Addressed most comments by adding clarifications to the final recommendations
- There was no support for adding a review of SO/AC Best Practices to the ATRT reviews.
- There was minimal support for a Mutual Accountability Roundtable
- There was minimal support for applying the IRP to SOACs.
- Several comments were outside the scope of this WS2 project, as described in transitional bylaws.

7.3 SO/AC Accountability Final Report

Track 1: Review & develop recommendations to improve SO/AC processes for accountability, transparency, and participation

Highlights of changes to Track 1 recommendations:

- Best Practices are now called *Good Practices*
- Recommendations for 29 (4 more than draft report) Good Practices for SO/ACs to consider implementing
- Clarified that SO/AC/Groups are not required to implement Good Practices
- Removed the recommendation that a review of SO/AC good practices become part of the ATRT
- Added that ICANN Organizational Reviews of SO/ACs could include assessment of Good Practice implementation

7.4 SO/AC Accountability Final Report

Track 1: Review & develop recommendations to improve SO/AC processes for accountability, transparency, and participation

New recommended Good Practices for Accountability:

- Added - 6. Each Empowered Community (EC) Decisional Participant should publicly disclose any decision it submits to the Empowered Community. Publication should include description of processes followed to reach the decision.
- Added - 7. Links to SO/AC transparency and accountability (policies, procedures, and documented practices) should be available from ICANN's main website, under "accountability". ICANN staff would have the responsibility to maintain those links on the ICANN website.

7.5 SO/AC Accountability Final Report

Track 1: Review & develop recommendations to improve SO/AC processes for accountability, transparency, and participation

Recommended Good Practices for Transparency:

- Reworded recommendation 5:
 - Original: Notes, minutes, or records of all membership meetings should be made publicly available.
 - Final: Records of open meetings should be made publicly available. Records include notes, minutes, recordings, transcripts, and chat, as applicable.
- Added 6. Records of closed meetings should be made available to members, and may be made publicly available at the discretion of AC/SO/Group. Records include notes, minutes, recordings, transcripts, and chat, as applicable.

7.6 SO/AC Accountability Final Report

Track 1: Review & develop recommendations to improve SO/AC processes for accountability, transparency, and participation

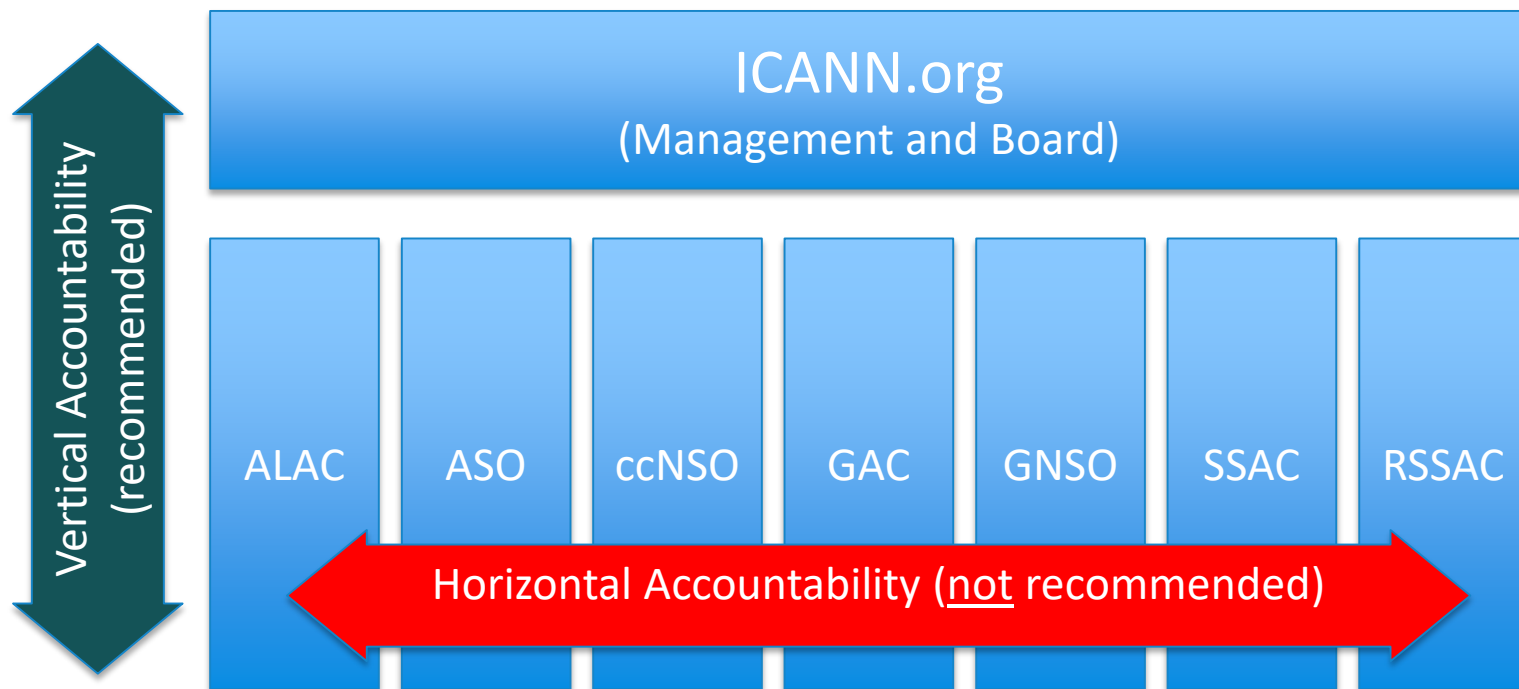
Recommended Good Practices for Participation:

- Removed original recommendation - 4. For any meetings, be they closed to members only or open to anyone, the members should be able to access meeting records, subject to exceptions for confidential matters
- Added 4. An AC/SO/Group that elects its officers should consider term limits
- Added 6. if ICANN were to expand the list of languages that it supports, this support should also be made available to SO/AC/Groups

7.7 SO/AC Accountability Final Report

Track 2: Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.

We are not recommending the “Mutual Accountability Roundtable” for implementation



7.8 SO/AC Accountability Final Report

Track 3: Assess whether the Independent Review Process (IRP) should be applied to SO & AC activities.

Changes to Track 3 recommendations:

- IRP should not be made applicable to activities of SO/ACs
- The ICANN Ombuds Office can meet this need:

The appropriate mechanism for individuals to challenge an AC or SO action or inaction is through ICANN's Ombuds Office, whose bylaws and charter are adequate to handle such complaints.

We note that duties and powers of the Ombuds Office may be further enhanced and clarified through recommendations of the CCWG Work Stream 2 project "Considering enhancements to the Ombudsman's role and function", as provided in ICANN Bylaws.

8.1 Human Rights FOI Final Report

Recap of major milestones:

- Sub-group approved draft recommendations for plenary consideration at its 2 December 2016 meeting.
- Plenary approved draft recommendations for public consultation at its 11 January 2017 meeting.
- Sub-group approves final recommendation for plenary consideration at its 29 August 2017 meeting. This includes:
 - Response to all public comments made on draft recommendations
 - Final recommendations with minority opinion.

8.2 Human Rights FOI Public Consultation on draft Recommendations

- 11 respondents
- No significant changes made to the draft recommendations
- Decision by the sub-group to not take on the comments from several governments generated a minority opinion.

8.3 Human Rights FOI – Minority Opinion

This dissenting opinion is based on serious concerns about the Sub-Group's treatment of the substantial comments and proposals submitted during the public comment period by the Governments of Brazil, Switzerland and the United Kingdom (who are all active members of the GAC's Human Rights and International Law Working Group). Their expectation was that a properly balanced result would reflect some if not all of the positions and proposals made in their responses. The governments are dismayed to note, however, that there are no changes of any significance to the draft FOI and Considerations documents that addresses any of the substantial issues which they raised.

8.4 Human Rights FOI – Minority Opinion

In particular, the three Governments were in full agreement that the FOI text should make stronger reference to the UN Guiding Principles as the most relevant voluntary international standard. However, the Subgroup did not undertake an inclusive effort to determine if a compromise text could be formulated that would accommodate this position of the three governments.

This dissenting opinion is supported by Jorge Cancio (Switzerland) and Kavouss Arasteh (Iran), members of this Subgroup, and the representatives of the Governments of Brazil and UK who are observers on this Subgroup, and the representative of the Government of Peru.

8.5 Human Rights FOI – Final Report

With the exception of the minority position the final report of the Human Rights FOI sub-group is almost identical to the draft recommendations which were approved by the CCWG-Accountability-WS2 in January 2017.

CCWG-Accountability Work Stream 2

ICANN Ombuds Office (IOO)



ccwg plenary Meeting
27/28 September 2017

Rapporteur: Sébastien Bachollet

9.1 What we will cover in this presentation

- External review of the ICANN Ombuds Office
- IOO-WS2 subteam overlap with recommendations of other WS2 sub-groups
- IOO-WS2 subteam report for 1st reading by the plenary
- Q&A

CCWG-Accountability

Work Stream 2





External review of the ICANN Ombuds Office



recommendations presented to the plenary 6/6/2017

Cameron Ralph LLC &

cameron.ralph.khoury



CCWG-Accountability

Work Stream 2



ICANN

9.3 Executive Summary – Conclusions

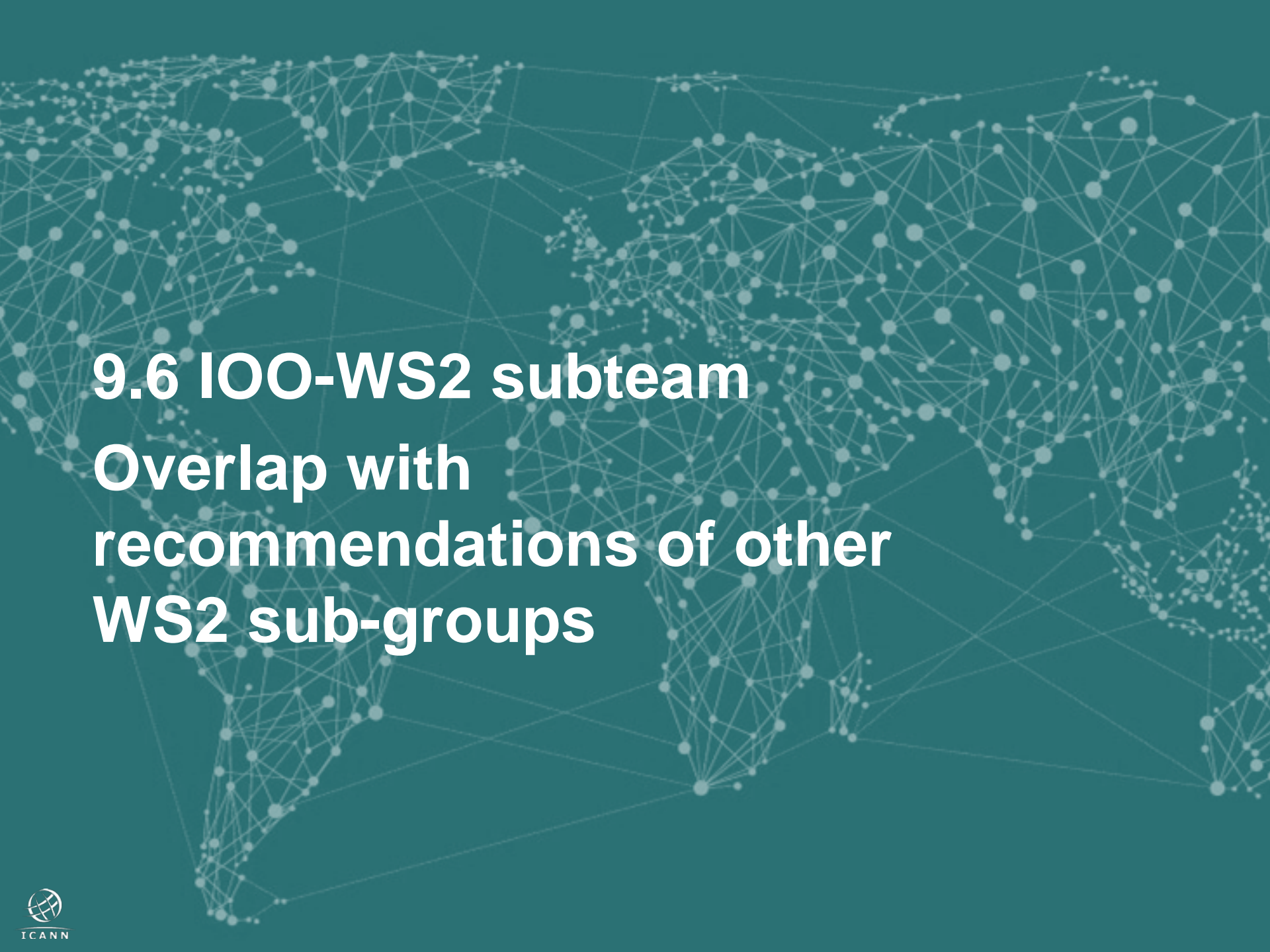
- The Ombuds function is valued and provides an essential 'safety valve' for fairness
- It does not however meet all expectations, with a number feeling that it does not have enough power or independence
- There is no single 'model' that can be readily applied to the ICANN ombuds function and that to deliver confidence in fairness and to meet the range of expectations, it will need to adopt a multi-faceted approach
- The current ombuds function is close to what is needed, but could use some re-configuring and strengthening
- We also considered some of the suggestions that are being floated for non-complaints work that could be given to the Office of the Ombuds

9.4 Executive Summary - Areas for

- We identified five areas for improvement
 - Clarify role and processes – manage expectations
 - Standing and authority
 - Strengthen independence
 - Strengthen transparency
 - Policy for non-dispute roles

9.5 Executive Summary - Recommendations

The report concluded with 11 specific recommendations



9.6 IOO-WS2 subteam

Overlap with recommendations of other WS2 sub-groups

9.7 Overlap – SO/AC Accountability

No explicit recommendation but note the following from the latest version of the SOAC Accountability Recommendations

- Therefore, our group's conclusion is that the IRP should not be made applicable to activities of SO/AC/Groups. The appropriate mechanism for individuals to challenge an AC or SO action or inaction is through ICANN's Ombuds Office, whose bylaws and charter are adequate to handle such complaints.

We note that duties and powers of the Ombuds Office may be further enhanced and clarified through recommendations of the CCWG Work Stream 2 project "Considering enhancements to the Ombudsman's role and function", as provided in ICANN Bylaws.

9.9 Overlap - Transparency

Recommendation 13 - The exception for information requests which are “not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual” should be amended to require the consent of the Ombudsman before it is invoked

9.10 Overlap – Transparency

Recommendation 19 - The Ombudsman’s mandate regarding the DIDP should also be boosted to grant the office a stronger promotional role, including by integrating understanding of transparency and the DIDP into ICANN’s broader outreach efforts, by publishing a list of the categories of information ICANN holds and by reasonable monitoring and evaluation procedures, such as publishing the number of requests received, the proportion which were denied, in whole or in part, the average time taken to respond, and so on

**9.11 IOO-WS2 subteam
report
18 Sept 2017 for
1st reading by the ccwg-
accountability plenary**

9.12 Approval of the objectives

The IOO sub-group approved the objectives of all the recommendations made by the external evaluator but did modify some of the implementation requirements to allow for more flexibility and speed in implementation, especially when considering Bylaws changes.

9.13 Proposed recommendations (1/9)

1. The Ombuds Office should have a more strategic focus
2. The Ombudsman office should include 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

9.14 Proposed recommendations (2/9)

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 emphasize the importance of the Ombuds function by all relevant parts of ICANN, including

- Board
- CEO
- Community groups
- Complaints Officer

9.15 Proposed recommendations (3/9)

4. All relevant parts of ICANN should be required (should include the Corporation, the Board and Committees and anybody 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.

9.16 Proposed recommendations (4/9)

5. The ICANN Office of the Ombuds should establish KPIs for its own handling of complaints and report against these on a quarterly and annual basis.
6. The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities.

9.17 Proposed recommendations (5/9)

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 (The primary objective of this recommendation is to ensure that the community has choices as to whom in the IOO they can bring their complaints to and feel more comfortable doing so).

9.18 Proposed recommendations (6/9)

8. ICANN should establish an Ombuds Advisory Panel
 - Made up of 5 or 6 members to act as advisers, supporters, wise counsel for the Ombuds and could also advise the Board (BGC and BCC) with respect to Ombuds related matters.
 - 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

9.19 Proposed recommendations (7/9)

9. The Ombuds employment contracts should be revised to strengthen independence by allowing for a
 - 5 years 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

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.

9.20 Proposed recommendations (8/9)

11. The following points should be considered and clarified publicly when looking at Ombuds involvement in any non-complaints work
 - Whether there is unique value that the Ombuds can add through the proposed role or function?
 - Whether the proposed reporting/accountability arrangements may compromise perceived independence?
 - Whether the proposed role/function would limit the Ombuds ability to subsequently review a matter?
 - Whether the workload of the proposed role/function would limit the Ombuds ability to prioritise their complaints-related work?
 - Whether any Ombuds involvement with the design of new or revised policy or process, creates the impression of a ‘seal of approval’?
 - Whether the proposed Ombuds input may be seen as a ‘short-cut’ or substituting for full stakeholder consultation?

9.21 Proposed recommendations (9/9)

The additional recommendations by the Transparency sub-group with respect to involving the Ombuds in the DIDP process should be considered using the criteria in recommendation 11.

This specific point will be noted in the public comment process for this document to gauge if the community supports these additional recommendations when considering the criteria in recommendation 11.

9.22 Q&A

10.1 Staff Accountability – Definition and

The group adopted the definition of “accountability” used by the board and organization in its development of the board resolution on delegated authorities, passed in November 2016. Accountability in this context is defined, according to the NETmundial multistakeholder statement, as “the existence of mechanisms for independent checks and balances as well as for review and redress.”

The focus of this group was to assess “staff accountability” and performance at the service delivery, departmental, or organizational level, and not at the individual, personnel level.

10.2 Staff Accountability – Highlights of Roles and Responsibilities

1. The primary role of those who work for ICANN – the “ICANN staff” or “ICANN Organization” – is to execute the strategy and plans adopted by the ICANN Board. They do the day-to-day work of the organization, working with the ICANN community in many cases to do that work.
2. This staff role is distinct from the roles of the ICANN Board and ICANN Community.
5. Formally speaking, staff accountability is through the Chief Executive to the ICANN Board.

10.3 Staff Accountability – Highlights of Roles and Responsibilities

6. Informally speaking, relationships between and among staff, board and community are integral to the successful work of the ICANN system. ICANN needs to hold staff accountable for succeeding in those relationships and in dealing with any problems.

7. In thinking about Staff Accountability, the important point is that collaboration is essential to ICANN's success. The community needs to be sure that ICANN staff will be congratulated and thanked when things are working well, and also to be sure that staff are held accountable through the usual set of Human Resources (HR) and 2 performance management approaches where things don't go well. Formal and informal systems need to be working together to achieve

this.

10.4 Staff Accountability – Highlights of Roles and Responsibilities

8. Clear delegations, and open and well-communicated process for resolving issues, will help generate certainty and clarity, and ensure that issues if they arise are dealt with well. Such an approach also generates important information and feedback for ICANN allowing it to evolve and improve over time.

9. An ICANN document, “ **ICANN’s Delegation of Authority Guidelines3**”, sets out more detail of the respective roles of ICANN’s Board, CEO and staff, and how these interact. It was first published in November 2016. The organization has been improving the clarity of this over time as it has matured, and this document will continue to evolve over time.

10.5 Staff Accountability - Issues

Underlying issues or concerns, identified through the group's analysis:

A) Lack of broad and consistent understanding of the existence and/or nature of existing staff accountability codes of conduct and other mechanisms.

B) Lack of an effective diagnostic mechanism to clearly identify and then address accountability concerns between community and organization.

10.6 Staff Accountability –

1) To address the lack of understanding of the existence and/or nature of existing staff accountability mechanisms the following actions should be taken:

a) ICANN organization should improve visibility and transparency of the organization's existing accountability mechanisms, by posting on icann.org in one dedicated area the following:

- i) Description of the organization's performance management system and process
- ii) Description of how departmental goals map to ICANN's strategic goals and objectives.
- iii) Description of The Complaints Office and how it relates to the Ombuds Office

10.7 Staff Accountability –

(1 continued)

iv) Organization policies shared with the CCWG-Accountability during the course of the WS2 work

v) ICANN Organization Delegations document

vi) The roles descriptions included in this overall report

vii) Expectations and guidelines regarding the development of staff reports for Public Comments, or staff response to Community correspondence.

b) ICANN organization should also evaluate what other communication mechanisms should be utilized to further increase awareness and understanding of these existing and new accountability mechanisms.

10.8 Staff Accountability –

2) To address the lack of clearly defined, or broadly understood, mechanisms to address accountability concerns between community members and staff members regarding accountability or behavior:

a) ICANN organization should enhance existing accountability mechanisms to include:

i) A regular information acquisition mechanism (which might include surveys, focus groups, reports from Complaints Office) to allow ICANN Organization to better ascertain its overall performance and accountability to relevant stakeholders.

10.9 Staff Accountability –

2) (Continued)

- ii) The group notes that several new mechanisms are now established but have not yet been exercised enough to determine effectiveness or potential adjustments. The evaluation mechanism proposed here would be helpful in determining effectiveness of these recent mechanisms before creating yet more mechanisms that may turn out to be duplicative or confusing for the organization and community.
- iii) Results of these evaluations should be made available to the Community.

10.10 Staff Accountability –

2) (Continued)

b) ICANN organization should standardize and publish guidelines for appropriate timeframes for acknowledging requests made by the community, and for responding with a resolution or updated timeframe for when a full response can be delivered.

c) ICANN organization should include language in the performance management guidelines for managers that recommends people managers of community-facing staff seek input from the appropriate community members during the organization's twice-annual performance reviews.

10.11 Staff Accountability –

3) In some situations, issues may be complex and require cooperation among several of the ICANN accountability mechanisms. An example might be a complaint about fairness filed by one or more parts of the empowered community. Another example might involve situations among the Board, Community and/or Organization that repeat regularly and are not susceptible to redress by any one of the accountability mechanisms. ICANN should investigate the creation of an informal four-member panel composed of the Ombudsman, the Complaints Officer, a representative chosen by the Empowered Community and a Board member.

10.12 Staff Accountability –

3) (continued)

The panel could 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. This panel would have no powers beyond those of its members and their ability to cooperate.

10.13 Staff Accountability –

- 4) ICANN Organization should work with the community to:
 - a. Develop and publish service level guidelines (similar to the 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.

10.14 Q&A

11 AOB

12. Next Plenaries

- Thursday 28 September 19:00UTC
- Wednesday 4 October 0500 UTC (optional but please schedule)
- Wednesday 11 October 1300 UTC (optional but please schedule)
- Wednesday 18 October 1900UTC

13. End of Meeting

Adjourned.