CCWG-Accountability WS2 Plenary

11 October 2017

13:00 UTC

Agenda

1. Introduction, update to SOIs, reminder on standards of behavior
2. Review of Agenda
3. Administration
4. Legal Committee Update
5. Second Reading of the final recommendations of the SOAC Accountability sub-group.
6. Second reading of the draft recommendation of the Staff Accountability sub-group.
7. First reading of the draft recommendation of the Ombuds sub-group
8. First reading of the final recommendations of the Human Rights sub-group.
9. Review of OFAC recommendation by Jurisdiction group.
10. AOB
11. Next Plenaries
12. 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
- Preparation for ICANN 61
  - Confirmation to hold usual pre-conference face to face on 9 March
  - Confirmation of travel funding dates:
    - Begin accepting applications Sunday 15 October
    - Close applications Sunday 19 November 23:59 UTC
    - Submit final list to ICANN Monday 27 November

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).

5.1 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

5.2 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.

5.3 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

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.

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.

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

5.7 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 <u>not</u> recommending the "Mutual Accountability Roundtable" for implementation
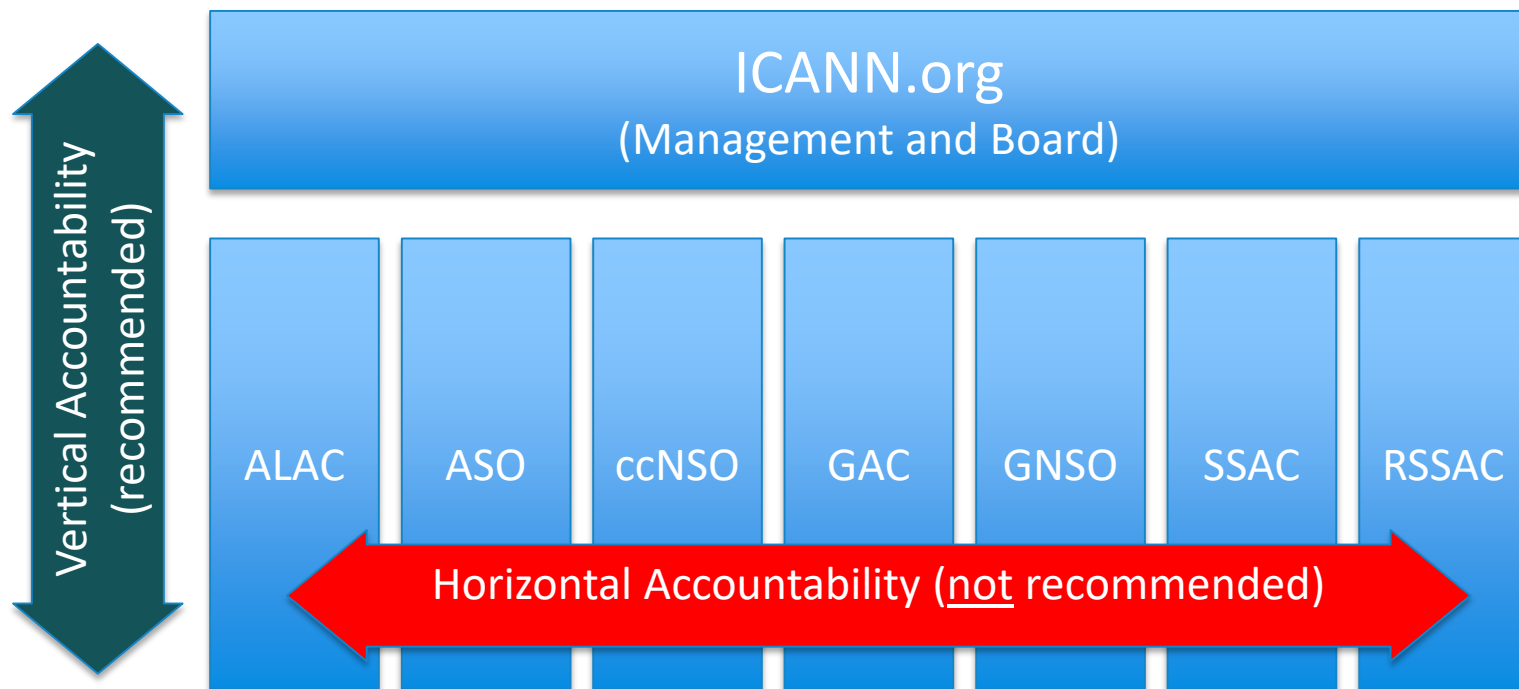
Changes to Track 3 recommendations:

- IRP should <u>not</u> 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 though 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.

6.1 Staff Accountability – Rec 3 updated

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 a mechanism for an ad-hoc four-member panel composed of the Ombudsman, the Complaints Officer, a representative chosen by the Empowered Community and a Board member.

6.2 Staff Accountability – Rec 3 updated

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

While this panel should work transparently, it will, at its discretion, be able to treat issues that require it, as confidential. Examples of appropriate reasons include discussion of confidential topics such as:

6.3 Staff Accountability – Rec 3 updated

a. trade secrets or sensitive commercial information whose disclosure would cause harm to a person or organization's legitimate commercial or financial interests or competitive position.

b. internal strategic planning whose disclosure would likely compromise the efficacy of the chosen course.

c. information whose disclosure would constitute an invasion of personal privacy, such as medical records.

d. information whose disclosure has the potential to harm the security and stability of the Internet.

e. information that, if disclosed, would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.

7.1 Ombudsman – changes since last

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. It is also important to note that these do not modify the Charter of the Office of the Ombudsman (section 5.2 of the ICANN Bylaws) or the Jurisdiction of the Office of the Ombudsman as documented in the ICANN Ombudsman Framework.

7.2 Ombudsman – Rec 5 and 7

5   - The ICANN Office of the Ombuds should establish ~~KPIs~~ timelines for its own handling of complaints and report against these on a quarterly and annual basis.

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).

7.3 Ombudsman – Rec 8

8   - ICANN should establish an Ombuds Advisory Panel:

•   Made up of 5 members to act as advisers, supporters, wise counsel for the Ombuds and should be made up of a minimum of at least 2 members with ombudsman experience and the remainder with extensive ICANN experience

•   The Panel should be responsible for:

▪   Contribute to the selection process for new Ombuds which would meet the various requirements of the Board and community including diversity.

▪   Recommending candidates for the position of Ombuds to the Board.

▪   Recommending terms of probation to the Board for new Ombuds.

▪   Recommend to the Board firing an Ombuds for cause.

▪   Contribute to an external evaluation of the IOO every 5 years.

▪   Making recommendations regarding any potential involvement of the IOO in non-complaint work based on the criteria listed in recommendation 11.

•   The Panel cannot be considered as being part of the Ombuds office and cannot be considered additional Ombuds, but rather external advisors to the office.

•   Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the 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.

9.1 Jurisdiction – OFAC Recommendation

During the preparation of this Recommendation, the Subgroup considered an email where a registrar declined to do business with a potential reseller, based on the registrar's policy of not doing business with people with Iranian passports. The Subgroup also learned that this registrar, which had been registering domains for a number of Iranian nationals, refused to continue to do business with them. The Subgroup has concluded that, to the extent these instances are related to OFAC, the concerns raised by these instances are adequately covered in the Recommendation already without any additional changes. This is not in any way a comment on the validity of these particular concerns. The Subgroup will consider creating a "stress tests" based on these scenarios.

10 AOB

11. Next Plenaries

- Wednesday 18 October 1900UTC
- Face to Face - Friday 27 October 08:30 Local

Adjourned.