

I C A N N
POLICY FORUM

62

PANAMA CITY

25-28 June 2018



CCWG-Accountability WS2

Update on the WS2 Final Report and Implementation Advice

ICANN 62



June 2018

Agenda

1. Review of Agenda
2. Introduction, update to SOIs, reminder on standards of behavior
3. Administration
4. Current status
5. Review and confirmation of Implementation Guidance
6. Coffee break
7. AOB
 1. IOT Public Consultation Announcement
8. Path Forward
9. Co-Chair Statement
10. Adjournment
11. Lunch

Schedule

- ⦿ 8:30 – 9:00 (13:30 – 14:00 UTC)
 - Coffee
 - Review of Agenda - Introduction, update to SOIs, reminder on standards of behavior
 - Administration

- ⦿ 9:00 – 10:30 (14:00 – 15:30 UTC)
 - Current status
 - Review and confirmation of Implementation Guidance

- ⦿ 10:30 – 11:00 (15:30 – 16:00 UTC) - Coffee break

- ⦿ 11:00 – 12:00 (16:00 – 17:00 UTC)
 - AOB
 - IOT Public Consultation Announcement
 - Path Forward
 - Co-Chair Statement
 - Adjournment

- ⦿ 12:00 – 13:00 (17:00 – 18:00 UTC)
 - Lunch

2. Introduction, update to SOIs

Those who take part in ICANN's multistakeholder process, including Board, staff and all those involved in Supporting Organization and Advisory Committee 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. Gender harassment is considered unwelcome hostile or intimidating behavior – in particular, speech or conduct that is sexually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, 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's 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 nature of the entity to which individuals might owe their appointment.

3. Administration

- **There are no meetings planned going forth**
- **The budget for WS2 ends June 30 2018**

4. Current Status

- WS2 needs to complete the Implementation Advice for the 4 issues raised by the Board (14 May 2018 letter to the WS2) before the WS2 Final Report can be sent to the Chartering Organizations.
- It is important to note that the IRP IOT was included as part of WS2 for administrative simplicity but is in fact independent of WS2. Current expectations are that the IRP IOT will continue beyond the scheduled completion date for WS2 of June 2018.

5. Review and confirmation of Implementation Guidance

5.1 Ombuds Panel

5.2 Transparency of Board Deliberations (3 sections)

5.3 Open Contracting

5.4 Government Engagement

5.1 Ombuds Panel

- o Original recommendation – 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 ombuds 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.

5.1 Ombuds Panel

- 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 noncompliant 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.

5.1 Ombuds Panel

This recommendation has not been published to the WS2 plenary list. This version has been agreed to by the Co-Chairs and would be acceptable to ICANN. In considering all aspects of this issue the Co-Chairs recommend this Implementation Guidance to the plenary.

5.1 Ombuds Panel

Implementation Guidance –

The Ombuds panel is not meant to be a decision making body – it is only there to assist the Board or relevant Board Committee with the specific tasks enumerated in the recommendation. The Panel is specifically prohibited from getting involved in any matter before the Ombuds; the Ombuds shall not seek, even on anonymized terms, guidance from the Panel on any matter before the Ombuds. The Panel will only have the following specifically enumerated powers:

5.1 Ombuds Panel

- 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.
- **[Only at the request of the Board = Recommend to the Board firing an Ombuds for cause.]**
- Contribute to an external evaluation of the IOO every 5 years.
- **Only at the request of the Board** - Make recommendations regarding any potential involvement of the IOO in noncompliant work based on the criteria listed in recommendation 11.

5.1 Ombuds Panel

Additionally a formal process to select the panel members should be created to first ensure that candidates must have significant experience and complete independence from the SO/ACs. The requirement for ICANN experience is secondary. The selection process may be designed in any appropriate means to achieve independence, such as by selection by the Board, an independent recruitment firm, or other appropriate process. Regardless of the process which is selected the ICANN Board should post details regarding the process that will be utilized.

5.2.1 Transparency of Board Deliberations

- ⦿ Original recommendation -The DIDP exception for deliberative processes should not apply to any factual information, technical reports or reports on the performance or effectiveness of a particular body or strategy, as well as any guideline or reasons for a decision which has already been taken or where the material has already been disclosed to a third party.
- ⦿ The Implementation Advice posted Wednesday 20 June was edited vs what was posted Tuesday 12 June. This version has been agreed to by the Co-Chairs, the Rapporteur and would be acceptable to ICANN. As such the Co-Chairs recommend this Implementation Guidance to the plenary.


5.2.1 Transparency of Board Deliberations

- ◎ Implementation guidance:
 - For the sake of greater clarity, current publications of Board Briefing Materials appear to fulfil this requirement. [L]
[SEP]
 - Note: As ICANN organization points out, documents/information already provided to a third party (without obligation to keep as confidential) should not be withheld simply because of a deliberative process exception. [L]
[SEP]

5.2.2 Transparency of Board Deliberations

- ⦿ Original recommendation - The Bylaws should be revised so that material may only be removed from the minutes of Board meetings where it would be subject to a DIDP exception. Decisions to remove material from the minutes of Board meetings should be subject to IRP appeal.
- ⦿ The Implementation Advice posted Wednesday 20 June was edited vs what was posted Tuesday 12 June. This version has been agreed to by the Co-Chairs, the Rapporteur and would be acceptable to ICANN. As such the Co-Chairs recommend this Implementation Guidance to the plenary.

5.2.2 Transparency of Board Deliberations

- ◎ Implementation guidance:
 - The basis for redaction of Board minutes and withholding information from a DIDP request should be substantially consistent. For the most part this would seem to be the case including if the CCWG-Accountability recommendations which apply to the DIDP are implemented. As such ICANN should publish a register of all redaction of Board minutes explaining the basis for the redaction . Additionally the register should explain how the basis for this redaction aligns with the DIDP exceptions and if it does not align with such an exception explain why.
 - Note: Re IRP appeal – this is currently in the Bylaws. 

5.2.3 Transparency of Board Deliberations

- ⊙ Original recommendation - Where material is removed from the minutes of Board meetings, the default should be to allow for its release after a particular period of time, once the potential for harm has dissipated.
- ⊙ The Implementation Advice posted Wednesday 20 June was edited vs what was posted Tuesday 12 June. This version has been agreed to by the Co-Chairs, the Rapporteur and would be acceptable to ICANN. As such the Co-Chairs recommend this Implementation Guidance to the plenary.

5.2.3 Transparency of Board Deliberations

- ⦿ Implementation guidance:
 - When redacting any information the Board should identify if the redacted information can eventually be released or not (ICANN should publish the list of the classes of information which can never be disclosed by law, or other reasons, such as staff employment matters etc.). If redacted information is identified as eventually being subject to release it should identify the conditions which would allow the release (this information should be included in the above mentioned Register). The CEO (or his/her designee) would annually review redacted information which is noted as being conditionally subject to release to see if the conditions for release are met, and shall release all appropriate information and update the Register accordingly. For all redactions (other than those that are part of a category that can never be disclosed), the redacted material should be disclosed during the annual Register review process in the 15th year after the redaction was first entered onto the Register.

5.3 Open Contracting

- ⦿ Original recommendation - 16) Wherever possible, ICANN's contracts should either be proactively dis-closed or available for request under the DIDP. The DIDP should allow ICANN to withhold information subject to a non-disclosure agreement, however such agreements should only be entered into where the contracting party satisfies ICANN that it has a legitimate commercial reason for requesting the NDA, or where information contained therein would be subject to other exceptions within the DIDP (such as, for example, where the contract contains information whose disclosure would be harmful to the security and stability of the Internet).

5.3 Open Contracting

- ⦿ The Implementation Advice posted Wednesday 20 June was edited vs what was posted Tuesday 12 June. This version has been agreed to by the Co-Chairs and would be acceptable to ICANN. This version is not supported by the rapporteur. In considering all aspects of this issue the Co-Chairs recommend this Implementation Guidance to the plenary.

5.3 Open Contracting

Implementation guidance:

- ⦿ As the recommendation starts with the language "wherever possible" we would recommend that ICANN publish a document clearly stating its position on the limited use of NDAs and documenting the information that will make available on its contracted relationships, as discussed below.
- ⦿ ICANN should annually publish a register of all suppliers (name of supplier, country or origin and actual annual amount) it pays 500,000\$US or more per fiscal year broken down by categories (eg, computer equipment, software, telecommunication services, contracting etc.) The Board should review this threshold amount on a regular basis to effectively ensure transparency.

5.3 Open Contracting

- ⦿ In scoping ATRT4 SO/ACs should consider if the information provided in the above Register meets their requirements. Should they feel the need for improvements they should request the review consider this.

5.4 Government Engagement

- ⦿ Original recommendation – In the interest of providing the community greater clarity with regard to how ICANN engages government stakeholders⁷ and to ensure that the ICANN community and, if necessary, the Empowered Community is fully aware of ICANN’s interactions with governments, the CCWG-Accountability recommends that ICANN begin disclosing publicly the following (notwithstanding any contractual confidentiality provisions) on at least a yearly (but no more than quarterly) basis with regard to expenditures over \$20,000 per year devoted to “political activities”,⁸ both in the U.S. and abroad:⁹

5.4 Government Engagement

- All expenditures on an itemized basis by ICANN both for outside contractors and internal personnel.
- All identities of those engaging in such activities, both internal and external, on behalf of ICANN.
- The type(s) of engagement used for such activities.¹⁰
- To whom the engagement and supporting materials are targeted.
- The topic(s) discussed (with relative specificity).

5.4 Government Engagement

- ⦿ The Implementation Advice posted Wednesday 20 June was edited vs what was posted Tuesday 12 June. This version has been agreed to by the Co-Chairs and would be acceptable to ICANN. This version is not supported by the rapporteur. In considering all aspects of this issue the Co-Chairs recommend this Implementation Guidance to the plenary.

5.4 Government Engagement

Implementation Guidance -

Note - This recommendation needs to be consistent with DIDP exceptions, specifically the exception which states:

Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party (note - the WS2 Transparency recommendations for DIDP did not mention or modify this exception which is currently included in the DIDP and as such it would be expected to stand).

5.4 Government Engagement

Overall one must recognize that ICANN is a critical actor in the DNS and has significant expertise in the area. ICANN's corporate objectives include a number of activities and programs to share this expertise with all interested parties including governments.

As such any activities where ICANN is presenting information which is publicly available or which is part of formally published ICANN position on a subject through training programs, conferences or individual meetings should not be required to be disclosed beyond the reports which are currently published by ICANN and reports regarding bilateral conversations with governments.

5.4 Government Engagement

Note: Reporting on bilateral conversations can be found in the ICANN Quarterly Reports. Additional information on specifics of these reports can be requested via the DIDP subject to the stated exceptions. An example of such a report can be found at

<https://www.icann.org/en/system/files/files/quarterly-report-08may18-en.pdf> page 29

To further facilitate the community's understanding of ICANN's objectives in discussions with governments it should publish an annual Government Engagement Strategy which should describe the focus of its interactions with governments for the coming year. This document should be derived from existing documentation including but not limited to annual planning, CEO reports to the Board and correspondence with the GAC.

6 Coffee Break

⦿ 30 minutes

7 AOB

- ⦿ IRP-IOT Public consultation on Repose
- ⦿ Other Points?

8 Path Forward

- Finalizing documents
- Transmission to Chartering Organizations
- Transmission to ICANN Board.

9. Co-Chair Statement

10. Adjournment

11. Lunch