

8 January 2015 -- High Level Statements -- Response to CWG-Stewardship

From: Thomas Rickert

Sent: 8 January 2015 18:07:04 MEZ

To: Lise Fuhr , Jonathan Robinson

Cc: Mathieu Weill , León Felipe Sánchez Ambía

Subject: High Level Statements

Dear Lise and Jonathan,

The Cross Community Working Group on Naming Related Functions (CWG-Stewardship) and the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) are regularly liaising and co-ordinating their work as both work areas are interdependent and interlinked. The co-chairs of both groups have agreed that it would be valuable for the CWG-Stewardship to provide the CCWG-Accountability with a list of issues it has identified during its deliberations where the work of both group overlaps. Subsequently, the following items from the proposal published on Dec. 1st, 2014 have been identified:

- **Section 3.3 – “Independent Review of Board Actions** – the CWG-Stewardship may propose that this becomes binding under certain circumstances directly related to IANA; no other changes proposed”. If this were to be included in the final proposal implementation would require a change to the ICANN Bylaws regarding the IRP.
- **Section 3.4.3.2 - Independent certification for delegation and re-delegation requests.** This is still under consideration by the CWG-Stewardship but would be a replacement for the authorization function for all changes to the Root Zone or its WHOIS Database currently performed by the NTIA. The replacement mechanism would have gTLD requests for delegations and re-delegations authorized by an independent third party and its decision on these matters would be binding on ICANN/IANA. This would probably require modifications to the ICANN Bylaws.
- **Section 3.4.3.3 - Independent Appeals Panel** – The CWG-Stewardship is proposing that an independent review panel be set up to deal with contested changes to the Root Zone or its WHOIS Database. Although discussions are still ongoing as to the specifics of such a proposal it is generally agreed that such a mechanism should be part of the final proposal and that its decisions would be binding. As such this would also require changes to the ICANN Bylaws.

Additionally, the CCWG-Accountability has been advised that "ICANN-only" proposals currently considered might have significant input on the Accountability mechanisms required.

Finally, the CWG-Stewardship pointed out that feedback would ideally be received early enough to be taken into account when finalizing the proposal to be submitted to the ICG.

While the CCWG-Accountability appreciates the sense of urgency and works as expeditiously as possible on the tasks it has been chartered with, it is not feasible to publish a work results of the group in January.

Nonetheless, the CCWG-Accountability has chosen to publish high level statements as a preliminary assessment of the situation.

However, the CCWG-Accountability is cognizant that any preliminary assessment might be subject to change because of

- changes made to the proposal published by the CWG-Stewardship on Dec.1st, 2014
- other proposals and
- changes due to other external and internal factors, such as evolving deliberations of our group.

The below high level statements might be valuable to all groups or individuals working on proposals to be submitted to the ICG, which is why they are not only a response to the CWG-Stewardship, but published as a status update by the CCWG-Accountability.

1. The CCWG-Accountability noted that a significant number of contributions during the two Public Comments on Enhancing ICANN Accountability called for the implementation of independent mechanisms enabling to review and, when appropriate, redress, decisions from the ICANN Board of Directors. It was often noted that these mechanisms should be in place or committed to before the IANA Stewardship Transition takes place. The CCWG-Accountability is therefore considering addressing this need in its Work Stream 1 (WS1). Unless the CWG-Stewardship specifies otherwise, Board decisions that are directly related to IANA Functions could be added to the remit of such independent mechanisms for the review and redress of decisions of the ICANN Board of Directors, which the CCWG-Accountability may address in Work Stream 1. Other issues that were brought up by many and could qualify for being in the remit of such mechanism were decisions broadening or altering ICANN's mandate as well as recalling one or multiple ICANN Board members. Please note that the legal nature, composition, and specific mandate of this mechanism are yet to be determined.
2. The CCWG-Accountability acknowledges the expectation for certain internal and / or external review and / or appeals processes to be implemented or committed to prior to the transition and will consider these as part of its work.
3. Further, we would like to assure you that the CCWG-Accountability output will adhere to the following considerations;
 - Any proposal will address the concern on to whom should ICANN be held accountable.
 - Any proposal will address the concern on what should ICANN be held accountable for.
 - Any proposal will address the concern on how ICANN or its Board of Directors should be held accountable.

We hope this broad but clear roadmap helps the CWG complement their work and that we continue to work on a coordinated fashion.

Please note that these statements reflect the current status of deliberations of the CCWG-Accountability and might be subject to change for the reasons mentioned above and further input from the community.

Kind regards,

Mathieu Weill, León Sánchez and Thomas Rickert

Co-Chairs of the CCWG-Accountability