



## **Item 2.c - Proposal from CCWG on Enhancing ICANN Accountability**

Whereas, on 14 March 2014, the National Telecommunications and Information Administration of the United States Department of Commerce announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community.

Whereas, NTIA asked ICANN to convene global stakeholders to develop a proposal to transition the current role performed by NTIA in the coordination of the Internet's domain name system (DNS). NTIA required that the proposal for transition must have broad community support and uphold the following principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

NTIA also stated it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

Whereas, during initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, raised concerns on the impact of the transition on ICANN's accountability, with the removal of the perceived backstop of NTIA's historical role.

Whereas, ICANN supported the community in the development of the Cross-Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), chartered by the Address Supporting Organization, the At-Large Advisory Committee, the Country Code Names Supporting Organization, the Generic Names Supporting Organization, the

Governmental Advisory Committee and the Security and Stability Advisory Committee. The CCWG-Accountability has 28 members from across the Chartering Organizations, with an additional 175 registered participants.

Whereas, the CCWG-Accountability's work was determined to be interrelated with the work to develop a proposal being developed by the IANA Stewardship Transition Coordination Group (ICG), the proposal called for by NTIA in its announcement. ICANN agreed that after the Board considered the CCWG-Accountability proposal, it would be transmitted to NTIA to support its evaluation of the ICG's proposal.

Whereas, the CCWG-Accountability's work is divided into two phases:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition; and
- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

Whereas, the CCWG-Accountability's deliberations to date have focused on preparing a set of recommendations to fulfill its Work Stream 1 objectives, and defining the topics that will be considered for Work Stream 2. The CCWG-Accountability developed its report in multiple phases and iterations that included participation beyond the CCWG-Accountability, and beyond ICANN as a whole.

Whereas, the CCWG-Accountability requested that counsel external to ICANN be made available to provide advice on the governance issues that the CCWG-Accountability identified as necessary as part of its work. In coordination with ICANN, two sets of legal counsel were engaged and have provided advice and counsel directly to the CCWG-Accountability. ICANN funds the work of these two firms.

Whereas, in October 2014, the Board committed to a process through which it would consider the consensus-based recommendations of the CCWG-Accountability in Resolution 2014.10.16.16 at <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>.

Whereas, the Board has been closely following the work of the CCWG-Accountability, including identifying a liaison to the group, and active participation from across the Board in CCWG-Accountability meetings. The Board has participated in the public comment processes on the iterations of the CCWG-Accountability reports, and has provided interim inputs into the deliberations on an ongoing basis. A comprehensive list of all the ICANN Board's input into the process is detailed at <https://www.icann.org/resources/pages/board-input-stewardship-accountability-2015-07-10-en>.

Whereas, on 10 March 2016, the CCWG-Accountability Co-Chairs transmitted its Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report (“Report”) to the ICANN Board, confirming that the recommendations achieved consensus in the CCWG-Accountability. The Report was approved by five of the Chartering Organizations, with the sixth, the GAC, submitting a statement of non-objection to transmitting the Report to the Board. The CCWG-Accountability also confirmed the support of the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal (CWG-Stewardship), the group responsible for developing the Domain Names Community’s input into the IANA Stewardship Transition Coordination Group’s proposal. The CWG-Stewardship had identified certain contingencies on the CCWG-Accountability’s recommendations, which were confirmed as met.

Resolved (2016.03.10.16), the ICANN Board accepts the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report (“Report”).

Resolved (2016.03.10.17), the Board approves of the transmittal of the Report the National Telecommunications & Information Administration of the United States Department of Commerce to accompany the IANA Stewardship Transition Proposal developed by the IANA Stewardship Transition Coordination Group.

Resolved (2016.03.10.18), the President and CEO, or his designee, is directed to plan for the implementation of the Report so that ICANN is operationally ready to implement in the event NTIA approves of the IANA Stewardship Transition Proposal and the IANA Functions Contract expires. The Board is committed to working with the community to identify the portions of the CCWG-Accountability recommendations that can be implemented in the event that it is determined that ICANN's obligations to perform the IANA Functions will remain under contract with NTIA.

Resolved (2016.03.10.19), the Board expresses its deep appreciation for the tireless efforts of the CCWG-Accountability chairs, rapporteurs, members and participants, as well as the global community that came together in developing the Report. The intensity and level of engagement from across the community, as well as the spirit of cooperation and compromise that led to this Report is a true demonstration of the strength and triumph of the multistakeholder model.

***Rationale for Resolution 2016.03.10.16 – 2016.03.10.19***

The acceptance of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report ("Report") represents a milestone in the evolution of the multistakeholder model. The CCWG-Accountability was created out of a call from across the ICANN community on a review of the impacts on ICANN's accountability with the removal of the perceived backstop from the historical contract with

NTIA in the event the stewardship of the IANA Functions is transitioned to the multistakeholder community. This Work Stream 1 Report was developed by the 28 members of the CCWG-Accountability, representing six Chartering Organizations, and 175 participants. The development of this Report required over 220 meetings (face-to-face or telephonic), three public comment periods, and more than 13,900 email messages. The dedication of the CCWG-Accountability, including intense debate and resulting compromise from all participants, is an example of what the multistakeholder model can achieve. The CCWG-Accountability work is only part of the coordinated effort to achieve the delivery of a proposal to NTIA on the IANA Stewardship Transition.

The CCWG-Accountability Work Stream 1 recommendations have a few main areas of focus:

- A revised Mission Statement for the ICANN Bylaws that clarifies what ICANN does, while not changing ICANN's historic mission.
- An enhanced Independent Review Process with a broader scope, reaffirming the IRP's power to ensure ICANN stays within its Mission. The IRP will become binding upon ICANN.
- Enhancements to the Reconsideration Request process.
- New specific powers for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus, including the powers to:
  - Reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans.
  - Reject changes to ICANN's Standard Bylaws.
  - Approve changes to new Fundamental Bylaws, Articles of Incorporation and ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Remove an individual ICANN Board Director.
  - Recall the entire ICANN Board.
  - Initiate a binding Independent Review Process on behalf of the Community.

- Reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of Post-Transition IANA separation.
- Inspect ICANN's books and records, and initiate investigatory audits.

The CCWG-Accountability recommendations also describe how the community will come together to exercise their new powers, including paths of escalation and community dialogue. The community will ultimately have the power and standing, through the development of a “designator” structure under California law, to enforce these powers in court, though the escalation paths are designed to reduce the need to ever resort to court for resolution. The Board is supportive of the CCWG-Accountability's focus on internal resolution and the Independent Review Process, as opposed to encouraging the ICANN community to rely upon the judicial system as a regular tool in holding ICANN accountable.

Other areas of the CCWG-Accountability recommendations include the insertion of a commitment to recognition of human rights, incorporating the reviews called for under the Affirmation of Commitments into the ICANN Bylaws, modifying the structural reviews to include considerations of SO/AC Accountability, and affirming the GAC's current advisory role and the deference given by the Board, while refining the threshold needed for the Board to not act consistently with GAC consensus advice. The CCWG-Accountability also specified some elements of accountability that relate to the CWG-Stewardship's portion of the IANA Stewardship Transition Proposal.

Finally, the CCWG-Accountability recommendations scope the topics that will be considered within its Work Stream 2, and identify that the Board will consider those continuous improvement recommendations with the same process the Board identified for the Work Stream 1 recommendations.

The CCWG-Accountability produced three drafts of recommendations to reach this final Report. The first draft was out for public comment from 4 May 2015 through 12 June 2015 and received 31 comment submissions. The second draft was out for public comment from 3 August 2015 through 12 September 2015 and received 93 comment submissions. The third draft was out for public comment from 30 November 2015 through 21 December 2015 and received 89 comment submissions. For each of these public comment periods and document releases, the CCWG-Accountability held multiple webinars to describe the mechanisms in the proposal and answer any questions. The CCWG-Accountability also held engagement sessions at each of the ICANN meetings and individual members conducted their own outreach around the globe at regional and national events and conferences.

The CCWG-Accountability relied upon advice provided by two external law firms, Sidley Austin LLP and Adler & Colvin, which were retained after the need for external inputs was determined by the CCWG-Accountability to be essential to its review of ICANN's governance structure, and to test the legal inputs provided by ICANN. ICANN facilitated the engagement process in collaboration with the CCWG-Accountability, and pays the legal fees. When addressing such important and broad issues, the availability of these legal inputs provided the CCWG-Accountability with the tools to perform their work and have full deliberations. ICANN in its facilitation of the process provided all resources and support requested by the community to develop a consensus report.

#### *Meeting the NTIA Criteria*

The Board agrees that it is important for the CCWG-Accountability recommendations that modify ICANN's governance structure to uphold the same criteria that NTIA defined for the transition of the stewardship of the technical IANA functions. ICANN, as the organization that will remain responsible for the performance of the IANA functions, must have the same safeguards. The Board agrees with the CCWG's assessment that NTIA's criteria are met.

### *1. Support and Enhance the Multistakeholder Model*

At Annex 14 of its Report, the CCWG-Accountability identifies the ways in which its recommendations support and enhance the multistakeholder model. The Board agrees that the specific items enumerated in the Report support this criterion. More fundamentally, however, the recommendations as a whole demonstrate more reliance upon the multistakeholder community coming together to influence not just policy, but also ICANN's governing documents and some of ICANN's key operational decisions as well, such as planning for budgets and operating plans. The multistakeholder community is given more individual and collective access to paths of redress, and assurances of the binding nature of those tools. The spirit of this Report is for a community that has more determination over ICANN. It will be important that those taking on greater responsibilities continue to consider how to evolve their own accountability efforts, as will be considered in Work Stream 2.

### *2. Maintain the Security, Stability and Resiliency of the Internet DNS*

Along with the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board notes that the security, stability and resiliency of the Internet DNS are maintained through the CCWG-Accountability recommendations first and foremost through the affirmation that ICANN's mission, while clarified, remains unchanged, and any future attempt to change that mission will require both Board and community consent. The CCWG-Accountability has identified that there are core components of ICANN's budget that will remain operational even if there is a dispute between the community and ICANN on the budget, and those core components include operations that relate to the security and stability of the Internet DNS.

### *3. Meet the needs and expectations of the partners of the IANA Functions*



Along with the items identified by the CCWG-Accountability in Annex 14 of its report, the Board notes that this criterion is met by the consideration of the needs of the customers of the IANA Functions and the coordination of recommendations that complement the IANA Stewardship Transition Proposal. The needs identified by the CWG-Stewardship have been incorporated into the recommendations, and the CWG-Stewardship has affirmed that its contingencies were met. The CCWG-Accountability also coordinated with the other operating communities to confirm that their concerns on clarification on mission and applicability of independent review processes were addressed.

#### *4. Maintain the Openness of the Internet*

In addition to the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board agrees that this criterion is met through the development of open processes where community members might wish to engage. Maintaining open processes where community members have not only a voice, but also an opportunity to impact, is expected to enhance ICANN's accountability and the multistakeholder model itself. Strengthening ICANN through the strengthening of the multistakeholder model is the key way to maintain the openness of the Internet and continued participation in ICANN's processes. The recognition of the roles of all stakeholders at ICANN is another important aspect of meeting this criterion.

The Board also agrees that the future work scheduled for Work Stream 2, focusing on issues such as enhancing transparency, diversity, community accountability, and defining how staff can be more accountable to the community also are geared towards continued enhancement of engagement in ICANN and maintaining the model.

#### *5. No replacement of the NTIA role with a government-led or an inter-governmental organization solution*

In addition to the CCWG-Accountability's discussion of how this criteria is met, the Board agrees that this criteria is met, again, through a strong grounding in the multistakeholder community. The recommendations reaffirm the role of each of the structures within ICANN, and do not create inequalities in how each of the groups participate, even as the ICANN community moves beyond policy development work and into new operational activities. The role of governments in ICANN is affirmed, as well as the Governmental Advisory Committee's autonomy over its own operating procedures, while at the same time creating more predictability in the Board providing special consideration only to GAC advice that is within ICANN's mission and provided with defined consensus.

### ***Minority and Voting Statements***

The Board notes that there were five minority statements provided to the CCWG-Accountability on its final Report. Appendix A of the report details both the process that the CCWG-Accountability followed to reach consensus. The Appendix also includes the minority statements in full.

In the 10 March 2016 letter transmitting the Report to the Board, the Board has been informed by the CCWG-Accountability co-chairs that consensus was reached on the recommendations. Further, the Chartering Organizations have each approved (with one non-objection) to the forwarding of the final Report to the Board for consideration, though the minority statements were provided by those associated with various Chartering Organizations. There were also voting statements provided within the GNSO on parts of the recommendations, at times mirroring the issues previously raised in the minority statements. The GAC, in providing its non-objection, noted the support for a large majority of the recommendations and lack of consensus over others.

Given the full process for the development of the Report, the numerous concessions made by all in reaching the consensus recommendations, and the approval (or non-objection) of all of the Chartering Organizations, the

Board considers that the existence of these voting and minority statements does not create a barrier to the acceptance of the Report. The Board encourages the CCWG-Accountability to consider if any of the concerns raised in the minority or voting statements can appropriately be addressed within the topics defined for Work Stream 2 or used as guidance in implementation.

### ***Resource Implication***

Accepting the Report and transmitting it to NTIA does not specifically impose any resource requirements on ICANN. However, the planning for implementation that is necessary to be in place for ICANN is ready to implement these changes when appropriate. That effort requires significant resources, including amending ICANN's Bylaws, supporting the revisions to the Independent Review Process, confirming that processes are in place for the community escalation processes, and other planning as required. The implementation planning for the entirety of the IANA Stewardship Transition Process is a coordinated effort, with the interrelated operational and accountability requirements within the ICG's Proposal and the CCWG-Accountability's Report considered together. Given that there is the possibility that NTIA may not be able to approve ICG's Proposal, if that determination is made, the Board is committed to work with the community to implement those parts of the CCWG-Accountability Report that do not interfere with the obligations ICANN would maintain under an IANA Functions Contract with NTIA.

Both the community and ICANN will be called upon to devote time to this effort. The implementation planning must proceed with considerations of fiscal responsibility, and the Board looks forward to working with the community to develop cost management tools that will result in better estimation of costs. The Board will use these estimates to guide future budgeting decisions on the CCWG-Accountability work, including implementation and Work Stream 2. As Work Stream 2 proceeds, the Board urges close consideration of the types of legal support needed now that the

broad governance changes developed in Work Stream 1 are accepted and on path for implementation, and the issues reserved for Work Stream 2 may not be as legal in nature.

During the development of the Report, ICANN provided funding and staff resources for all aspects of the work, including things such as travel support and coordination of face-to-face meetings, secretariat support, external counsel, report drafting and graphics, and translations. The funds expended to date on the CCWG-Accountability helped provide the multistakeholder community with the opportunity to develop the Report with the levels of independence it said were important. Further, the availability of external advice supported the CCWG-Accountability's debate and dialogue that led to its final recommendations. Providing these resources was an important facet of assuring multistakeholder participation in this work.

### ***DNS Impact***

The acceptance and transmittal of this Report are not expected to have any impact on the security, stability and resiliency of the Internet DNS.

### ***Conclusion***

Taking this action today is an important affirmation of the multistakeholder model. The global multistakeholder community came together and developed a plan to enhance the accountability of ICANN to help support the transition of the IANA Functions Stewardship. Issues were debated in multiple fora. Public comments were received, analyzed and incorporated. Many difficult issues were resolved, with compromises across the community. In the end, the multistakeholder community developed recommendations that reserve to it unprecedented power in ICANN, with meaningful and binding escalation paths to enforce these new rights. The CCWG-Accountability also has considered how to make sure the key commitments from the existing Affirmation of Commitments remain in place through incorporation into the Bylaws, and other enhancements to

enhance accountability and transparency in ICANN's operations. The Report is supported by a consensus of the CCWG-Accountability, and approved by all but one Chartering Organization, which has noted its non-objection to submitting the Report to ICANN. Accepting this Report is an important step in maintaining accountability to the multistakeholder community, and the Board serves the public interest in taking this decision.

This is an Organizational Administrative Function that has been subject to multiple levels of public comment.