Center for Democracy & Technology

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Response to the Public Consultation on the CCWG-Accountability 2nd Draft Proposal on Work Stream 1 Recommendations

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The Center for Democracy & Technology (CDT) is pleased to submit these comments to the public consultation on the 2nd draft of the Work Stream 1 recommendations by the CCWG Accountability.

CDT believes that the current proposal is robust, well thought through, appropriately stress tested and satisfies the related criteria and dependencies. The proposal empowers the community and enhances existing accountability mechanisms in ways that will appropriately hold ICANN to account in the post transition governance ecosystem.

There remain, however, some issues that need to be noted/addressed as outlined in the following comments (section numbering is that of the proposal dated 7th August):

90

CDT believes that the current proposal satisfies the dependencies outlined in the CWG Stewardship proposal. We would note, however, that the CWG proposal is "significantly dependent and expressly conditioned" on the work of the CCWG and we would not want to see the powers and enhancements that the CCWG is proposing be weakened or undermined. If they were to be weakened or undermined the transition would be in jeopardy.

151

CDT encourages the inclusion of a mention of human rights in the ICANN Bylaws and of the two examples presented in the proposal supports option 2. An alternative could be to add a clause specifically noting human rights in section 4 of the Articles of Incorporation. CDT recognizes that there is much further work and analysis work to be done on this issue in WS2, work which we would recommend be coordinated with the CCWP on Human Rights.

188

CDT believes it important to have clarity when it comes to the organization's role vis-a-vis content and suggests that the following minor edit in 188 would go some way to

contributing to such clarity: "… shall not engage in or use its powers to ~~attempt the~~ regulate~~ion of~~ services…"

225

It is unclear to CDT why the text at the end of 225 on advice from governments and public authorities has been deleted. Without adequate justification the text should remain.

268/295

We note the need for greater transparency at ICANN and support the call for existing transparency processes, in particular the DIDP, to be reviewed and enhanced as a part of WS2. We also believe that as a part of this review the community should consider whether it would be appropriate for the interactions between ICANN senior management and the Board on the one hand and governments on the other to be made more transparent.

319

CDT broadly supports the Sole Member Model (SMM) and finds it the most suited model for exercising the much needed community powers outlined in the proposal.

However, there is a fundamental issue that needs revisiting, and that is the voting distribution as outlined in 319. We do not support the reference model. We find this model at odds with the CCWG's own statement in 300 where the WG agreed that the mechanism to empower the community should be "…as restrained as possible in the degree of structural or organizing changes required in ICANN to create the mechanism for these powers." By allocating 5 votes to the SOs, the GAC and ALAC (and 2 for SSAC and RSSAC) the voting distribution fundamentally changes the balance between the SOs and ACs, as well as potentially enhancing the role and influence of the GAC. The purpose of the CCWG's work was to empower the overall community, not to disproportionately empower parts of the community over others in a manner that is a significant departure from the existing community model and accepted voting/representation models such as the direct selection of board members.   The reference model is a far cry from being "restrained … in the degree of structural or organizing changes…".   Given the above, CDT supports the third minority view (or a variant thereof) outlined in 334.

CDT also has concerns with the appearance of built-in uncertainty with *if, when and how* the SOs and ACs would opt-in or participate in the SMM (309) and suggests that this be revisited.   This is uncertainty is exacerbated by the lack of clarity as to whether certain ACs would in fact exercise their right to vote.

348

The ICANN Community Forum is the one space in which the community would have an opportunity to discuss whether or not a particular community power should be exercised. Given its central role in the process by which a decision to exercise a community power would be taken the Forum deserves greater consideration and elaboration as a part of WS1.

413

With regard to the development of community standards for the removal of Directors that is to occur in WS2, CDT suggests that such work look to accepted corporate governance best practices for guidance.

1031

CDT supports the proposal for a transitional bylaw to commit ICANN to implementing the WS2 post transition accountability recommendations.

1033

We agree that further work on the operational details of WS1 proposal is essential. While implementation of many of the WS1 enhancements will occur before transition, we also believe that an on-going review of the implementation of WS1 proposals is essential. We therefore suggest that there should be component of WS2 work that assesses the implementation of WS1 proposals for a limited period of time (to be determined, possibly 6 months or 1 year) post transition.

1055

CDT has every confidence that the community can implement the proposed WS1 accountability recommendations within the new timeframe to bring about the much anticipated IANA transition by September 2016.

As a participant in the CCWG, CDT would like to note its appreciation for the openness, inclusivity and transparency of the WG and its processes. CDT trusts that the WG's collaborative and productive approach will continue during the implementation of WS1 and the continuing work of WS2.