



Comments from the Internet Infrastructure Coalition (i2Coalition)

September 12, 2015

The Internet Infrastructure Coalition (i2Coalition) appreciates the opportunity to comment on Cross Community Working Group on Enhancing ICANN Accountability 2nd Draft Report (Work Stream 1).

The i2Coalition's diverse membership represents both large and small Internet infrastructure providers such as web hosting companies, software services providers, data centers, registrars and registries. The i2Coalition has several key goals within ICANN, but chief among them is continuing to build a voice for underrepresented parts of the Internet ecosystem – in particular web hosts, data centers and cloud infrastructure providers – and ensuring that accountability and transparency are paramount. The i2Coalition brings unique representation to ICANN as it is made up of companies representing the whole broad ecosystem of Internet infrastructure companies.

The i2Coalition appreciates the work of the CCWG, and we broadly support the proposal's direction. In particular, we appreciate that the CCWG shares two of our key goals: (1) ensuring that ICANN remains focused on its core mission of coordinating the global Internet's systems of unique identifiers and ensuring the stable and secure operation of the Internet's unique identifier systems, and (2) creating a binding mechanism by which actions outside of or in contravention of ICANN's bylaws can be challenged. Crucially, we also applaud the CCWG's work in developing a mechanism to provide the Community with certain prescribed and enforceable powers. We acknowledge the deliberative process in which the CCWG engaged and which resulted in the proposed Sole Member Model. We concur with the findings of the group that the Sole Member Model is the best way to properly empower the Community and note our strong opinion that enforceable Community accountability powers are a necessary aspect of the transition.

With those principles in mind, we offer general comments on the Draft Report.

Support For the CCWG Process



At a time when the NTIA contract is being extended for an additional year, and the United States Congress is watching developments within ICANN with interest, the i2Coalition reiterates that we strongly support in the ongoing work of the CCWG. The work of this group is critical, and the progress made cannot be understated. We wish to start our comments with great thanks to you, and to note generally that we have confidence in this process and believe that it will generate the right outcomes.

The i2Coalition wishes to call particular to the following areas of support:

- The i2Coalition agrees with the CCWG's decision to incorporate the Affirmation of Commitments into ICANN's bylaws;
- The i2Coalition supports the efforts of the CCWG to update and revise the Bylaws pertaining to ICANN's Mission Statement, Commitments, and Core Values. With respect to human rights, i2C cautions that any ICANN action touching on human rights must remain within ICANN's existing narrow role and remit in the security, stability & resiliency of the Internet's unique identifier systems, and notes that the CCWG cannot create its own legal standard around 'human rights' through the working group process;
- The i2Coalition strongly supports the clarification that ICANN's mission does not include the regulation of services that use the global DNS or the regulation of the content that those services provide;
- The i2Coalition appreciates the CCWG's efforts in creating a process for meaningful review of ICANN Board or staff actions through a standing, independent group of experts;
- The i2Coalition supports CCWG efforts in creating a process to recall individual ICANN Board members in exceptional circumstances;
- The i2Coalition supports the findings of Stress Test 18. It agrees that the Bylaws should be amended to clarify that, with respect to instances in which the Board does not accept GAC advice, the Board is required to find a mutually acceptable solution only when GAC advice is supported by consensus, as is required by the NTIA to meet the criteria for transition.

Areas for Potential Refinement

There are a number of areas where the i2Coalition seeks further consideration from the CCWG to resolve ongoing concerns regarding ICANN accountability issues. Below, we note these areas of concern.



1. **ICANN's bylaws should retain language ensuring that any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values.** With regard to existing Core Value 11, we disagree with the CCWG's decision to eliminate language requiring that any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values (154). It should never be acceptable for the ICANN board to act in a manner inconsistent with its Commitments and Core Values. This change creates significant concern because the CCWG has removed this language in response to governments, thereby suggesting that some public authorities might in the future seek to issue actionable advice to the ICANN board that is inconsistent with ICANN's Commitments and Core Values. Nor is it sufficient to rely solely on the Independent Review Process (IRP) to correct such violations; instead, ICANN must uphold its Commitments and Core Values without regard to government pressure.
2. **The CCWG should include a requirement to participate in a public comment before requesting reconsideration or independent review.** The i2Coalition has some concern the IRP process, as currently proposed by the CCWG, would allow parties to bring new arguments to the IRP without first vetting them through the community's policy development channels. We are concerned that the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded. Such an approach could create operational inefficiency and undermine the bottom-up, consensus-based process for developing policy within ICANN. The i2Coalition suggests that the CCWG carefully consider whether additional safeguards -- such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy -- could prevent these eventualities while still preserving an accessible IRP. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment. These same considerations apply with equal force to reconsideration requests.
3. **A single SO should not be permitted recall the entire Board.** The CCWG's proposal notes a minority viewpoint suggesting that a single SO should be permitted to recall the entire Board. Such an action would be deeply destabilizing. A true multistakeholder approach to accountability should require more than one single community to exercise this emergency power.



4. **Vetoes of the budget and strategic plan should not be open-ended.** With respect to the power to reject a budget, the CCWG requires that any veto be accompanied by consensus rationale. On the other hand, the veto itself is not subject to a consensus requirement; instead, it can be adopted by a vote. Unless the veto itself is supported by consensus, it seems unlikely that the community will be able to develop a consensus rationale. Instead, the rationale should be agreed upon by a consensus of those voting in support of the veto. The i2Coalition is also concerned with the possibility of a cyclical and dysfunctional budget process in which the community repeatedly vetoes Board approved budgets. We therefore believe that no additional vetoes should be permitted after the second veto. The community would then be free to avail itself of other mechanism, including reconsideration, Independent Review, and recall of individual Board members in order to ensure that the Board considers the community's wishes in developing a budget and strategic plan.

5. **The CCWG should consider giving the GNSO's votes additional weight in the case of a budget veto.** The i2Coalition encourages the CCWG to modify the voting criteria for a budget veto, giving additional weight to GNSO votes, on the practical grounds that it is this group that generates the revenue in the budget, and this group that will be responsible for bearing the cost of any budget increases, through an expansion of their fees.

6. **Where a bylaws change disproportionately affects one SO or AC, those SO or ACs should receive additional weight in any community approval or veto process.** Some Bylaws are exclusive for certain SO/ACs - specifically bylaws 8, 9, 10 & 11. The criteria for veto should not have the same voting structure as ones that affects all of ICANN, as they narrowly affect a single body. A separate, weighted standard should be developed to address this.

Concluding Comments

Again, we appreciate the work of the CCWG and believe it continues to build towards a framework that will dramatically improve ICANN's accountability. We look forward to continuing the work with the group as it moves toward finalizing the proposals.