

Center for Democracy & Technology

Comments on the Cross Community Working Group (CCWG) on Enhancing ICANN Accountability's Proposed Accountability Enhancements (Work Stream 1)

3 June 2015

General comment

CDT is pleased to provide these comments in response to the CCWG Accountability's request for public comment on its Work Stream 1 proposals. CDT has had the pleasure of participating in the CCWG and congratulates the CCWG for the work it has accomplished to date and the thoroughness of the proposal it has presented for public comment. This is a significant achievement.

Do you have any general feedback or suggestion on the interim Work Stream 1 proposals?

CDT has long called for ICANN to have greater accountability to its community and for its mission to be appropriately circumscribed. The measures proposed by the CCWG go a long way to satisfying both of CDT's priorities.

We have been a participant in both the CWG Stewardship and CCWG Accountability. As both of these WGs have progressed their work, the intertwined nature of the work on both the IANA transition and enhancing ICANN's accountability has become more pronounced.

As the work on the CWG has focused increasingly on an ICANN affiliate structure for the post transition IANA (PTI) – a model that effectively makes ICANN the IANA steward, contracting party and operator (at least initially) - the dependencies on the work of the CCWG Accountability, and particularly Work Stream 1, have grown. A mechanism that empowers the ICANN community – as is outlined in the proposal – has therefore become central, indeed essential, to the neutrality, transparency and effectiveness of the IANA functions – and therefore the stability, security and resilience of the DNS.

Revised Mission, Commitments & Core Values

CDT has long called for ICANN to act in a manner that is consistent with its limited mandate and technical mission. We therefore fully support the proposed changes to ICANN's Mission, Commitments and Core values. We believe that these changes – and particularly the notion of enumerated powers – should ensure that ICANN respects and

acts in conformance with its mission and that any attempts to change that mission must be subject to greater thresholds and to community assent.

We support the more detailed elaboration of the core values and commitments and agree with the strict limitations that the proposal suggests with regard to “balancing” one core value with another.

Further, we support the incorporation of the Affirmation of Commitments (AoC). The AoC’s reviews and other provisions that specifically lay out a series of expectations of behavior and similar commitments are key components of the overall enhancement of ICANN’s accountability. Their inclusion is essential.

Fundamental Bylaws

CDT agrees that the addition of fundamental bylaws enhances ICANN accountability and supports a role for the community with regard to approving new bylaws or changes to existing bylaws. The latter is a critical element in ensuring that ICANN does not stray from its mission, commitments and core values.

We support the proposed list of current bylaws that would become fundamental bylaws. We also support the inclusion of the IANA Function Review (the periodicity of the review, as well as the Special Review) and the Customer Standing Committee (CSC) as a minimum set of IANA related mechanisms that should be brought into the fundamental bylaws.

Independent Review Panel Enhancement

CDT supports the enhancements proposed for the Independent Review Process. The IRP is in need of an overhaul and the proposed enhancements – a binding, accessible and independent process that would hold ICANN to a substantive standard of behavior – will contribute significantly to ICANN’s overall accountability and to ensuring that ICANN does not stray from its mission and its commitment to its multistakeholder community.

Reconsideration Process Enhancement

As with the IRP enhancements we also support the proposed changes to the Reconsideration Process. Again, these enhancements are central to ICANN’s overall accountability and to empowering the community. CDT supports the increased role of the Ombudsman in lieu of ICANN’s lawyers and encourages greater responsiveness by ICANN’s DIDP.

Mechanism to empower the Community

CDT is convinced that a community empowerment mechanism is essential to realizing the levels of accountability and responsiveness to the community that will be required for ICANN and its multistakeholder community to thrive in the future.

We commend the CCWG and its advisors for identifying models that would allow for the community to exercise the proposed powers. We do not subscribe to the view that expansion of community powers through the bylaws without the enforcement capability of a community mechanism would be adequate. Not only would this lessen and inhibit the community's empowerment, it could imperil the IANA transition model proposed by the CWG Stewardship – the lack of enforcement would remove the checks and balances needed to ensure that ICANN heeds the community when it acts as the IANA steward, contracting party and operator.

While recognizing that there is still discussion around the various models, we agree that the proposed membership model – including “legal personality” through unincorporated associations (UA) – could offer the greatest opportunity for the new community powers to be fully and most effectively realized.

CDT supports the powers that are outlined in the CCWG proposal, sections 5.2 – 5.6. We believe that each of these powers enhances ICANN's accountability and empowers the community and are essential to the future of the organization and the community.

Incorporating the Affirmation of Commitments into the ICANN Bylaws

CDT supports the inclusion of key Affirmation of Commitments (AoC) principles and reviews. The AoC is an important document that has significantly improved ICANN's accountability and transparency. Importantly, the AoC also outlines criteria and characteristics of the organization's relationship with its community including, among others, the importance of the multistakeholder, bottom-up policy development model. The proposal does a thorough job of bringing these key elements into the bylaws.

Items for Consideration in Work Stream 2

CDT supports the proposed Work Stream 2 items. We do believe that it is important that the CCWG ensure that Work Stream 2 items will be addressed as this process moves forward. As has been proposed within the CCWG, we support a specific mention and an appropriate measure to ensure that future accountability work does occur post transition.

Further, CDT believes that the CCWG also needs to discuss and develop an appropriate mechanism, possibly as a part of the Work Stream 2, which assesses, evaluates and if necessary proposes changes to the Work Stream 1 accountability enhancements if those enhancements are not meeting the expectations of the community and/or are not fulfilling their intended purpose. Implementation of the proposed accountability enhancements should be monitored – the continued assessment of those measures will be an important part of ensuring that the work of this CCWG comes to fruition and that the ICANN community truly benefits from it.