

# *CCWG-Accountability*

**Afnic comments**

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**afnic**

*About Afnic :*

*Afnic is a multi-registry operator of the top-level domains corresponding to the national territory of France (the .fr TLD and those of several of the overseas territories) and of French projects for new Internet top level domains (TLDs).*

*Afnic is a member of CCNSO, Centr, and APTLD.*

## Public Comment Input Framework

Afnic thanks the CCWG – Accountability for the work done so far and in particular for having taken into account the main inputs gathered from the community.

In this initial draft, the CCWG-Accountability has laid the foundation for both a rapid and profound enhancement of ICANN accountability, necessary for the achievement of the IANA stewardship transition (Work stream 1), and the implementation of a sustainable accountability mechanism for the long term (Work stream 2).

Given the sometimes complex and, in any case, technical nature of this exercise, Afnic wants to commend all participants of this group for their implication and their involvement, as well as for the very intensive outreach work done.

Having participated to this outreach by organizing a French event on the ICANN accountability and IANA transition, Afnic can witness that moving from the accountability principle stage to the principles implementation stage, while trying to maintain a global consensus, is indeed very difficult.

Afnic wants to seize the occasion of this public comment to recall the paramount importance of this accountability work, in order to achieve the IANA stewardship transition. As a member of the CCTLD community, Afnic is committed to help achieving this process which, if well done, is an answer to most of the griefs we had for years. Better efficiency, transparency and accountability are now within reach.

### Revised Mission, Commitments & Core Values

The revised Mission, Commitments and Core Values are more specific in the current draft that they were before. Clearer bylaws are an obvious enhancement for accountability.

### Fundamental Bylaws

Afnic supports the idea of fundamental bylaws, in the sense it's a way to balance the powers of the Board through the empowerment of the Community (see below). This set of fundamental bylaws is interesting only if the empowered community is put in place.

Afnic agrees with the list of fundamental bylaws proposed and, in order to achieve the IANA stewardship transition, insist on the importance of including in the fundamental bylaws the provisions for reviews that are part of CWG-Stewardship work as well as the creation of the CSC.

## Independent Review Panel Enhancement

Afnic is of the opinion that the IRP is an answer long awaited by the community, to have an independent, affordable and binding decision making body that allows affected parties to challenge ICANN's decisions.

Afnic is also convinced that the existence of such an IRP has to be included in the fundamental bylaws, along with the obligation for ICANN to fund adequately this process.

However, in the spirit of enhancing the Community powers, and of recognizing the international nature of this IRP, Afnic suggests the following amendments:

- 11: The geographical diversity shouldn't be achieved only by "reasonable efforts". Here like in other parts of the proposal (see below) Afnic recommends to strengthen this diversity, by including the following provision: ***no more than 2 members of the panel from the same region (5 regions)***.
- 14. a.: Prior to the submission by "third party international bodies" it should be stated the ICANN has to launch an international public tender.
- 14. b: Icnann Board should send to the "community mechanism" not only the list of candidates it has selected, but the full list of eligible candidates, in which it should isolate the candidates proposed by the board.
- 19: as for pro bono representation, the complainants should ask for it from the start directly to the panel. The panel (and not ICANN) would allow the complainant to have free access, after examining the non-frivolous nature of its complaint, and the impossibility to afford the expense of the IRP. There's no reason why only community and non for profit complainants should access this pro bono representation, as some SME's (small or medium size enterprise) or individuals can be affected by decisions ICANN makes. In order to avoid the multiplication of complaints by individuals, collective complaints should also be considered as eligible.

## Reconsideration Process Enhancement

Afnic agrees that there is a strong need to enhance the reconsideration process. Ombudsman implication is a good step. Furthermore, and as long as reconsideration requests are taken in charge by the Board Governance Committee, the implementation of a thorough and independent annual audit on Board members potential conflict of interest seems to be needed.

## Mechanism to empower the Community

Provided that the legal advice states that the establishment of an "empowered community" assembly, being the assembly of members, will not change the liability and risks for all ICANN participants, this proposal only brings added value to the current situation (ref : 180. 5)

Afnic welcomes this proposal that applies the accountability principles to the multistakeholder nature of ICANN. As the current organization of SOs and ACs is supposed to represent all the stakeholders, it's essential that these stakeholders should be fully empowered to undertake the checks, balance, review and redress process that come with accountability.

Actually, this community empowerment proposal shows what is currently missing in ICANN, to make this organization a truly multistakeholder one. Without the powers given to the community, ICANN is more in a “representative democracy” model, and not even, because all Board members are not elected.

As for the reference model, Afnic is of the opinion that 5 seats per SOs/ACs (except for RSSAC and SSAC) is a good number. Afnic notes the rationale for it, which is to allow geographical diversity, but advise that this geographical diversity should be included in the bylaws, along with the provisions for the empowered community. It should therefore be stated that each SOs/ACs should designate no more than two representatives from the same region.

Finally, Afnic feels that the designation rules for each SOs/ACs, if they should be set by the constituency themselves, should be aligned between constituencies, and fully transparent. Furthermore, the designation mechanism itself should be, either organized by a third party to the constituency (for instance, an ICANN election office) or reviewed by external observers.

### Power: reconsider/reject budget or strategy/operating plans

Afnic strongly support this proposal. Not only it is necessary for the empowered community to be able to review the IANA functions budget (as clearly stated by the CWG-Stewardship) but also this will allow better quality interactions between staff, board and community on the budget and strategy BEFORE it's approved by the Board.

The limitation of powers such as not rewriting the budget or the super-majority needed to reject the budget twice seems reasonable.

### Power: reconsider/reject changes to ICANN "standard" Bylaws

Afnic support this proposal.

Nevertheless, if the change proposed by the Board can modify the number of SOs/ACs and subsequently their respective weights within the members' assembly, this change should be approved with a supermajority as described below (ref: 5.4).

### Power: approve changes to "Fundamental" Bylaws

Afnic supports this proposal.

## Power: Recalling individual ICANN Directors

Afnic supports this proposal.

Furthermore, Afnic wants to recall that mechanisms set by ACs and SOs for the removal of the board member they appointed should be transparent and aligned between constituencies.

As for the nominating committee, the rationale behind point 234 seems contradictory.

*“The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters [removing a NomCom appointed board member]. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate.”*

Afnic is of the opinion that it's not a burden but a duty of the NomCom to nominate and, therefore, to remove.

## Power: Recalling the entire ICANN Board

Afnic supports this proposal and the limitation of powers it includes.

## Incorporating the Affirmation of Commitments into the ICANN Bylaws

Incorporating the AoC into the ICANN Bylaws is a coherent step toward the termination of the unique US oversight role for ICANN. Therefore, Afnic supports this proposal, along with the revised version of the Bylaws proposed at 3.1 and including the IANA function review.

## Bylaws changes suggested by Stress Tests

Afnic strongly supports the implementation of ATRT2 recommendation 9, which modifies the Bylaws in order to mandate Board response to AC formal advice.

As far as stress test 18 is concerned (GAC advice by majority within the GAC and not by consensus), Afnic is of the opinion that every constituency has the right to set its own decision making process, as long as this is done in a transparent manner.

## Items for Consideration in Work Stream 2

The work plan established by the CCWG-accountability is coherent with the necessity to propose accountability improvements together with the IANA stewardship transition proposal.

This may not divert the ICANN community from the necessary work of enhancing further the ICANN accountability. Therefore, each accountability mechanism proposed in the current draft (including the list of the items to be considered as part of work stream 2) should be included in the Bylaws prior to the transition.

It doesn't prevent of course CCWG-Accountability to come back to the community with a final proposal that includes improvements related to the current work stream 2 list, if feasible.

For instance, Afnic strongly believes that item 8 “improve diversity in all aspects at all levels of the organization” could already be better reflected in work stream 1 proposal./