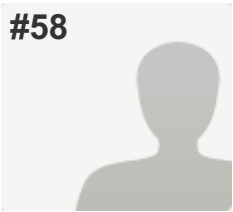


#58



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PAGE 2: Personal Information

Q1: Name	Nicola Treloar
Q2: Affiliation	GAC Representative; Ministry of Business, Innovation and Employment
Q3: Responding on behalf of	New Zealand Government

PAGE 3: Recommendation 1

Q4: Is establishing an Empowered Community for enforcing Community Powers a solution that is acceptable to you?(Please see Annex 1 - Recommendation #1: Establishing An Empowered Community For Enforcing Community Powers for more information)

Yes, I support this recommendation. ,

Comment

The proposal enables an SO or AC to decide, on a case-by-case basis, whether to participate in the community mechanism. The GAC plays an important advisory role in the ICANN community by providing advice on international public policy matters. We acknowledge that the design of the community mechanism enables GAC to choose the most appropriate way to participate in any decision making, which could include providing advice to the community or Board, or participating as a decisional participant. However, the ability for the GAC to decide whether to be a decisional participant could create a bylaws conflict for the Board. Under the current Bylaws, the Board must try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution if it decides not to follow consensus GAC advice. Under the proposed community mechanism, the Board is required to adhere to the decision of a community escalation process. This could result in a situation where the GAC has advised the Board not to follow the decision of a community escalation process. We consider it is important that the GAC develops guidelines on how it will participate in the community mechanism, in order to avoid placing the Board in a situation where it is caught in a bylaws conflict.

PAGE 4: Recommendation 2

Q5: Is empowering the community through consensus: engage, escalate, enforce a solution that is acceptable to you?(Please see Annex 02 - Recommendation #2: Empowering The Community Through Consensus: Engage, Escalate, Enforce for more information)

Yes, I support this recommendation.,

Comment

We support this recommendation, but would note that it is not clear how the thresholds for consensus support would operate if an SO or AC abstains/decides not to participate. We would appreciate clarification of whether the same thresholds would apply if the number of participants was less than five.

PAGE 5: Recommendation 3

Q6: Is redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws' a solution that is acceptable to you?(Please see Annex 03 - Recommendation #3: Redefining ICANN's Bylaws As 'Standard Bylaws' And 'Fundamental Bylaws' for more information)

Yes, I support this recommendation.

PAGE 6: Recommendation 4

Q7: Is ensuring community involvement in ICANN decision-making: seven new Community Powers a solution that is acceptable to you? (Please refer to Annex 04: Details on Recommendation 4: Ensuring Community Involvement In ICANN Decision-Making: Seven New Community Powers for more information)

Yes, I support this recommendation.

PAGE 7: Recommendation 5

Q8: Is changing aspects of ICANN's Mission, Commitments and Core Values a solution that is acceptable to you?(Please refer to Annex 05 - Details on Recommendation #5: Changing Aspects Of ICANN's Mission, Commitments And Core Values for more information)

Yes, I support this recommendation.,

Comment

We support the Mission in principle, providing it does not affect the Public Interest Commitments within existing contracts, or the ability for ICANN to introduce Public Interest Commitments into new Registry Agreements to respond to public policy advice provided by the GAC.

PAGE 8: Recommendation 6

Q9: Is reaffirming ICANN's commitment to respect internationally recognized human rights as it carries out its Mission a solution that is acceptable to you?(Please refer to Annex 06 - Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out Its Mission for more information)

No, I do not support this recommendation.,

Comment

We continue to express concerns regarding the inclusion of a Human Rights bylaw within Workstream 1. We welcome the opportunity to discuss how ICANN can support internet users in exercising their fundamental human rights, and note the existing work of the UN Guiding Principles on Business and Human Rights, which provides a framework for how businesses can recognise and support human rights. The establishment of the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights and the GAC Working Group on Human Rights and International Law, indicates there is substantial community interest in developing a shared understand of ICANN's role in human rights. However, these working groups have also indicated that there is significant discussion to be had in order to develop a shared understanding of what ICANN's role should be in human rights. However, we consider it is premature to include text regarding human rights without a clear agreement of the scope and impact of this bylaw. Without a clear understanding of the expectations this bylaw will place on the ICANN Board, there is a risk that ICANN's actions to recognise human rights may conflict with the views of states (either independently or through the GAC), who have an obligation to uphold and respect human rights. We do not consider the addition of such text is a necessary for the successful transition of the IANA Stewardship role. It would be more appropriate to consider this bylaw in its entirety in the context of Work Stream 2, allowing further time for the community to reach consensus.

Q10: Is strengthening ICANN's Independent Review Process a solution that is acceptable to you?(Please refer to Annex 07: Recommendation 7: Strengthening ICANN's Independent Review Process for more information)

Yes, I support this recommendation.

Comment

We support this recommendation in principle, however we have two concerns with the proposed changes to the recommendation: 1. We do not support the exclusion of ccTLD delegation/re-delegation from the IRP. While we acknowledge the commitment of the ccNSO in developing a clearer process for ccTLD delegation/redelegation, we do not consider a potential PDP is sufficient rationale for excluding ccTLD delegation/redelegation from the IRP. The PDP process will need to balance the expectations of both governments and ccTLD managers, and the breadth of approaches taken to ccTLDs means the PDP will not be a quick. If ccTLD delegation/redelegation is excluded from the IRP, this risks leaving both existing ccTLD managers and governments in limbo in the event of a dispute. While we recognise that the existing process for delegation/redelegation needs improvement, these decisions should still be subject to review to ensure that due process has been followed and documented. This concern were raised in previous public comment periods, but were not addressed in responses to public comments. 2. The recommendations for Workstream 2 include consideration of whether the IRP would also be applicable to supporting organisation and advisory committee activities. The IRP is designed to review the decisions of the Board, which are made taking in to account the work of the SOs and ACs. The SOs and ACs are independent communities with their own established procedures, and are not the ultimate decision making authority within ICANN. We do not support the extension of the IRP to SOs and ACs, particularly anything that would suggest an intention to bind governments to IRP decisions.

PAGE 10: Recommendation 8

Q11: Is fortifying ICANN's request for reconsideration process a solution that is acceptable to you?(Please refer to Annex 08 - Recommendation #8: Improving ICANN's Request For Reconsideration Process for more information)

Yes, I support this recommendation.

PAGE 11: Recommendation 9

Q12: Is incorporation of the Affirmation of Commitments a solution that is acceptable to you?(Please refer to Annex 09 - Recommendation #9: Incorporation of the Affirmation of Commitments for more information)

Yes, I support this recommendation.

PAGE 12: Recommendation 10

Q13: Is enhancing the accountability of Supporting Organizations and Advisory Committees a solution that is acceptable to you?(Please refer to Annex 10 - Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees for more information)

Yes, I support this recommendation. ,

Comment

We do not support the recommendations for Workstream 2 to include consideration of whether the IRP would also be applicable to supporting organisation and advisory committee activities. The IRP is designed to review the decisions of the Board, which are made taking in to account the work of the SOs and ACs. The SOs and ACs are independent communities with their own established procedures, and are not the ultimate decision making authority within ICANN. We do not support the extension of the IRP to SOs and ACs, particularly anything that would suggest an intention to bind governments to IRP decisions.

PAGE 13: Recommendation 11

Q14: Is Board obligations regarding GAC Advice (Stress Test 18) a solution that is acceptable to you?(Please refer to Annex 11 - Recommendation #11: Board obligations regarding GAC Advice)

Yes, I support this recommendation. ,

Comment

We agree with the proposed bylaws revision for how the ICANN Board responds to GAC advice, and acknowledge the work of the CCWG in responding to the comments in GAC's Dublin Communique. We note that the proposed revision only applies to the Board's obligation to respond. The proposed text supports the Board to engage with the GAC where it chooses not to accept consensus advice. At the same time, it recognises the principles sovereignty and each representatives' responsibility to convey its national views by making it clear that if multiple views are expressed, the Board is not required to negotiate between conflicting government positions within the GAC. We consider that the proposed text upholds GAC's autonomy to define consensus and to convey a range of views to the Board, if appropriate. New Zealand supports the GAC's current practice of consensus, understood to mean the adopting decisions in the absence of any formal objection, as the most effective way for the GAC to convey public policy advice. This ensures that the views of individual governments or small groups of governments are respected, and wherever possible we work to find mutually acceptable solutions within the GAC.

PAGE 14: Recommendation 12

CCWG-Accountability Draft Proposal on Work Stream 1 Recommendations

Q15: Is committing to further accountability work in Work Stream 2 a solution that is acceptable to you? (Please refer to Annex 12 - Recommendation #12: Committing to further accountability work in Work Stream 2)

Yes, I support this recommendation.,

Comment

As noted in our comments on Recommendation #6, we consider the inclusion of a human rights bylaw should be considered as part of Workstream 2.

PAGE 15: Additional Information

Q16: Please submit comments you have in addition to the information provided above, including on NTIA criteria, CWG-Stewardship requirements and Stress Tests.

Respondent skipped this question
