



## CENTRE FOR INTERNET & SOCIETY, INDIA

W: <http://cis-india.org>

### **Introduction:**

On March 14, 2014, the US National Telecommunications and Information Administration announced its intent to transition key Internet domain name functions to the global multi-stakeholder Internet governance community.<sup>1</sup> ICANN was tasked with the development of a proposal for transition of IANA stewardship, for which ICANN subsequently called for public comments.<sup>2</sup> At NETmundial, ICANN President and CEO Fadi Chehadé acknowledged that the IANA stewardship transition and improved ICANN accountability were inter-related issues,<sup>3</sup> and announced the impending launch of a process to strengthen and enhance ICANN accountability in the absence of US government oversight.<sup>4</sup> The subsequent call for public comments on “Enhancing ICANN Accountability” may be found [here](#).

### **Suggestions for improved accountability:**

In the event, Centre for Internet and Society (“CIS”) wishes to limit its suggestions for improved ICANN accountability to matters of reactive or responsive transparency on the part of ICANN to the global multi-stakeholder community. We propose the creation and implementation of a robust “freedom or right to information” process from ICANN, accompanied by an independent review mechanism.

Article III of ICANN Bye-laws note that “*ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness*”. As part of this, Article III(2) note that ICANN shall make publicly available information on, *inter alia*, ICANN’s budget, annual audit, financial contributors and the amount of their contributions, as well as information on accountability mechanisms and the outcome of specific requests and complaints regarding the same. Such accountability mechanisms include reconsideration (Article IV(2)), independent review of Board actions (Article IV(3)), periodic reviews (Article IV(4)) and the Ombudsman (Article V).

Further, ICANN’s Documentary Information Disclosure Policy (“DIDP”) sets forth a process by which members of the public may request information “*not already publicly available*”. ICANN may respond (either affirmatively or in denial) to such requests within 30 days.<sup>5</sup> Appeals to denials under the DIDP are available under the reconsideration or independent review procedures, to the extent applicable.

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<sup>1</sup> See <<http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>>.

<sup>2</sup> See <<https://www.icann.org/resources/pages/draft-proposal-2014-04-08-en>>.

<sup>3</sup> See <<http://www.internetcommerce.org/issuance-of-netmundial-multistakeholder-statement-concludes-act-one-of-2014-internet-governance-trifecta/>>.

<sup>4</sup> See <<http://blog.icann.org/2014/05/icanns-accountability-in-the-wake-of-the-iana-functions-stewardship-transition/>>.

<sup>5</sup> See <<https://www.icann.org/resources/pages/didp-2012-02-25-en>>.

While ICANN has historically been prompt in its response to DIDP Requests, CIS is of the view that absent the commitments in the AoC following IANA stewardship transition, it would be desirable to amend and strengthen Response and Appeal procedures for DIDP and other, broader disclosures. Our concerns stem from the fact that, *first*, the substantive scope of appeal under the DIDP, on the basis of documents requested, is unclear (say, contracts or financial documents regarding payments to Registries or Registrars, or a detailed, granular break-up of ICANN's revenue and expenditures); and *second*, that grievances with decisions of the Board Governance Committee or the Independent Review Panel cannot be appealed.

Therefore, CIS proposes a mechanism based on "right to information" best practices, which results in transparent and accountable governance at governmental levels.

*First*, we propose that designated members of ICANN staff shoulder responsibility to respond to information requests. The identity of such members (information officers, say) ought to be made public, including in the response document.

*Second*, an independent, third party body should be constituted to sit in appeal over information officers' decisions to provide or decline to provide information. Such body may be composed of nominated members from the global multi-stakeholder community, with adequate stakeholder-, regional- and gender-representation. However, such members should not have held prior positions in ICANN or its related organizations. During the appointed term of the body, the terms and conditions of service ought to remain beyond the purview of ICANN, similar to globally accepted principles of an independent judiciary. For instance, the Constitution of India forbids any disadvantageous alteration of privileges and allowances of judges of the Supreme Court<sup>6</sup> and High Courts<sup>7</sup> during tenure.

*Third*, and importantly, punitive measures ought to follow unreasonable, unexplained or illegitimate denials of requests by ICANN information officers. In order to ensure compliance, penalties should be made continuing (a certain prescribed fine for each day of information-denial) on concerned officers. Such punitive measures are accepted, for instance, in Section 20 of India's Right to Information Act, 2005, where the review body may impose continuing penalties on any defaulting officer.

*Finally*, exceptions to disclosure should be finite and time-bound. Any and all information exempted from disclosure should be clearly set out (and not merely as categories of exempted information). Further, all exempted information should be made public after a prescribed period of time (say, 1 year), after which any member of the public may request for the same if it continues to be unavailable.

CIS hopes that ICANN shall deliver on its promise to ensure and enhance its accountability and transparency to the global multi-stakeholder community. To that end, we hope our suggestions may be positively considered.

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<sup>6</sup> See <<http://www.constitution.org/cons/india/p05125.html>>.

<sup>7</sup> See <<http://www.constitution.org/cons/india/p06221.html>>.