



Domain Name Association Comments on Enhancing ICANN Accountability
(<https://www.icann.org/public-comments/enhancing-accountability-2014-05-06-en>)

Management summary

The Domain Name Association, representing the interests of the Domain Name Industry, offers the following comment on the subject of enhancing ICANN’s accountability. Having read and synthesized the comments made to date, the Domain Name Association (DNA) appreciates the opportunity to add these thoughts to those who contributed earlier.

As stated today by the GNSO at ICANN’s meeting in London, “the multi-stakeholder community has the opportunity and responsibility to propose meaningful accountability structures that go beyond just the IANA-specific accountability issues. We are committed to coming together and developing recommendations for creation of these mechanisms. We ask the ICANN Board and Staff to fulfill their obligations and support this community driven, multi-stakeholder initiative.”

In addition, the following specific areas of concern should be addressed in the development of new accountability mechanisms.

First, the DNA believes a strong emphasis on fiscal accountability must be added as an accountability measure. ICANN is growing fast and mechanisms must put in place to avoid waste, adjudge return on investment, and report fully to the community.

Second, ICANN must reform or re-invent its review mechanisms. For example, the ICANN Board Reconsideration Process proved to be ineffectual to new gTLD applicants seeking to address important inconsistencies in the new gTLD process. Reconsideration and other review mechanisms should be reformed to ensure there are adequate, independent reviews of Board and ICANN staff actions.

Third, ICANN must define its accountability duty to domain name registry operators and their registrar partners in a unique way. Because they control critical Internet infrastructure, have close relationships with registrants, and collect and forward nearly all of ICANN’s operating revenue, ICANN should develop a relationship that put the domain name registry operators’ and their domain name registrars’ unique experiences and position to use.

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Budget and fiscal accountability

Accountability in ICANN has often come to mean: “describe what you are going to accomplish,” and then “did you in fact accomplish that?” To this, the DNA recommends a third leg be added, “what did it cost, and was that cost worth it?” I.e., did the community receive an appropriate return for the scarce resources and registrant fees expended on the effort?

In the ICANN environment, “describing what you are going to accomplish” is no small task. It requires community participation in the formulation of policy and the implementation of that policy. The community must collaborate in goal setting. If there hasn’t been sufficient public participation, then ICANN has failed in its task to clearly “describe what you are going to accomplish.”

“Accomplish that” requires project plans, metrics, and feedback. Too rarely has there been post-project analyses done to grade past and improve future performances. There have been “lessons learned” documents published but there is not follow-up of institutional or systemic changes being made as a result. We agree with others that post-project reviews should be formalized.

Another element should be added to this accountability paradigm: “how much does it cost and what is the return?” When ICANN sets out to accomplish something, part of the discussion should be the investment required.

Even if cost and return cannot be accurately ascertained beforehand, it must always be calculated and reported after the fact. For large investments, an independent, public assessment should be made of the utility and worth of the work and compare that worth against the investment. “What is measured usually is improved.” Reporting return on investment would improve future decision-making.

This is important because each investment is made up of tiny bits – each is the ~\$0.43 in fees paid to ICANN by registrants for a domain name registration. A \$1,000,000 outlay is balanced on the back of 2,325,581 individual name registrations. Each of those represents a hard-earned sale and services provided to a customer.

With ICANN undergoing rapid growth, both in revenue and staff, public fiscal accountability is vital. A series of poor investment decisions can ruin the reputation and threaten the existence of the entity. There must be no headlines describing bloat or wastefulness. Shining a light on finances and performing frequent return on investment analyses will avoid that threat.

Review mechanisms

The DNA agrees with other commenters that review mechanisms must be reviewed and reinvented. Often, there is no viable path for redress.

The ineffectiveness of the ICANN Board Reconsideration process to provide redress has been brought into sharp focus by the new gTLD program. New gTLD applicants with clearly questionable dispute resolution decisions in hand often sought review in Reconsideration. (We say they are “clearly questionable” because some sets of decisions were clearly inconsistent

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with one another, meaning that one decision or another must be inconsistent with the published standard.) When decision after decision by the ICANN Board Governance Committee indicated that the merits of these cases would not be examined, applicants attempted novel approaches in their briefs in an attempt to be heard. Applicants attempted to find magic words or formulas in order get their case heard on the merits.

The Reconsideration process should be re-formed (or a new independent process developed) so that incorrect actions taking by Board, staff and their contracted parties can be remedied.

Similarly, the Ombudsman, while welcoming, offers no certainty of process or timeline. New gTLD applications are delayed while the Ombudsman considers appeals from contending applications. There is no due date or timetable for resolution. This lack of accountability is unhealthy for not only the new gTLD program, but also the domain name ecosystem in general.

In order for ICANN to fulfill its accountability and transparency goals, there must be an adequate and independent set of review mechanisms and checks on ICANN Board and staff actions.

Representation of Domain Name Registries and Registrars

Domain name registry operators and their domain name registrars are vital components of the ICANN ecosystem, operating key Internet infrastructure. Registry hardware and software resolves each and every domain query made — millions per second. In addition, those same parties collect and pay nearly all day-to-day operating funds received by ICANN. Finally, domain name registry operators and registrars are the single point of operational contact with registrants. If we want to know the effect of ICANN's policies on the millions of registrants worldwide and the effectiveness of policy, domain name registry operators and registrars are the window into that query and can provide instant and meaningful feedback (as they have already with regard to New gTLD trademark and RAA abuse protections).

Domain name registry operators and registrars are a unique source of vital information whose mechanisms successfully resolve all domain name queries and also successfully fund ICANN.

Despite this, there is a trend to exclude this vital source of expertise and knowledge in important policy discussions. The IANA oversight transition steering committee, as originally configured, essentially excluded domain name registry operators. Even in the reconfigured IANA Transition Steering Committee, domain name registry operators are under-represented in comparison with other groups on the committee. In another case the recently concluded work of four ICANN Strategy Panels did not benefit as it could have from this vital source of expertise.

In creating high-level policies, an accountable ICANN owes it to the community to include this singular, vital expertise. ICANN must also include and therefore be accountable to the registries operators and registrars that implement policies, successfully resolve domain name queries, and forward nearly all ICANN fees.