Brasília, 27 September 2014

**Comments of the Brazilian government on the "Enhancing ICANN Accountability and Governance Process"**

The government of Brazil welcomes ICANN´s decision to launch a public comment period to consider the Enhancing ICANN Accountability and Governance Process in conjunction with the IANA stewardship transition.

Brazil believes that the main goal of this exercise should be to ensure ICANN is fully accountable to the global multistakeholder community after the US Government role ends. In other words, the challenge ahead will be to ensure that once the transition is implemented the right checks and balances are in place for ICANN to abide by the highest levels of accountability and transparency.

**Preliminary Suggestions and Comments**

* The global multistakeholder community gathered in São Paulo on 23-24 April 2014 and adopted the "NETmundial Multistakeholder Statement", which, among other things, recommends that the transition of the stewardship of IANA functions takes place "through an open process with the participation of all stakeholders extending beyond the ICANN community" (Roadmap, Chapter II, §5). Brazil considers that the same approach should be applied to the Enhancing ICANN Accountability Process;
* Accordingly, the Accountability Process should be open and transparent andshould therefore allow for the participation of any interested group or individual at any stage – be they preparatory or decision-making – with a view to being conducive towards an environment in which all stakeholders, including governments, participate on an equal footing. In order to reinforce the globalization of the accountability of ICANN, it is essential to promote greater engagement of stakeholders from across the world and outside the ICANN community, ensuring diverse regional representation;
* As per the "NETmundial Multistakeholder Statement", the IANA Transition process should lead to "a truly international and global organization serving the public interest with clearly implementable and verifiable accountability and transparency mechanismsthat satisfy requirements from both internal stakeholders and the global community" (Roadmap, Chapter II, § 6). Brazil believes the concept of public interest mentioned in the NETmundial Statement should be seen as encompassing the larger interest of the different communities involved in the Internet Governance processes and not be limited to the interests and objectives of private corporations;
* It might defeat the purpose for which the accountability process was established if it were to be guided by a purely technical perspective without the necessary political endorsement. Brazil believes it is crucial to make sure the this process is structured in a way that all stakeholders feel fully involved – including governments - in order to ensure that the final outcome of the exercise is also considered legitimate by all participants;
* Our experience in Brazil in organizing NETmundial last April has demonstrated the importance that multistakeholder processes be structured from its inception in a transparent, inclusive and participatory way.  In other words, multistakeholder processes must be seen as legitimate by ALL stakeholders. Procedural decisions - which in the end are also political decisions - should be taken in a careful way. Interested parties should not rush into decisions that might be later on challenged based on allegations they were made in a process that was not inclusive or transparent enough;
* Brazil thus believes the consultation efforts conducted so far on the Enhancing ICANN Accountability Process have not provided interested stakeholders with sufficient time for comments. Considering that Governments and International Organizations in particular have complex and long decision-making processes, new public consultations should have longer duration;
* Brazil believes that both the transition and accountability processes should be delivered simultaneously by September 2015 when the IANA contract expires.

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* On a more substantive point, Brazil believes there is an urgent need for an overhaul of ICANN´s procedures, rules and decision making processes with a view to a more transparent, clear, effective and predictable policy development. The "rules of the game" should be clearly set forth and should include appropriate community-driven redress, appeal and enforcement mechanisms;
* ICANN’s accountability problem is somehow built into its own organizational structure.  Unfortunately, the corporation constitutes a form of governance in which there is no clear separation and independence of powers. The legislature, the executive power and a judiciary instance are all combined and intertwined. In other words, as the state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches, ICANN´s operation should somehow be based in a form of governance with effective judicial review, along with clear and separate functions and areas of responsibility;
* To achieve that framework, a multistakeholder consensus would be needed that among other issues accepts and recognizes ICANN's status as an institution that provides global Internet governance.  This effort should provide lawful constraints to the corporate´s operation and adequate checks on the abuse of its authority. Governments should be involved not as "oversight" authorities or “sole public policy makers” but as an interested stakeholder that carries out its role and responsibility, on an equal footing, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues;
* With all due respect to the ongoing efforts carried out in the context of the *Accountability* a*nd Transparency Review Teams (*ATRTs), Brazil believes self-review and nonbinding reports should not be deemed as real accountability;
* Moreover, consensual suggestions that arise from interested communities involved with the ICANN Accountability and Governance Process should be implemented without being submitted to prior filters or external expert review of some sort. Arbitrary and non-transparent changes or amendments to consensual community proposals should not be accepted;
* ICANN’s staff should not play a major role in the accountability process – limited perhaps to a supporting role - since ICANN would have a clear conflict of interest in that regard. In particular, ICANN´s staff for instance should not be allowed to unilaterally amend registry contracts;
* Brazil believes the ICANN Accountability & Governance Cross Community Group, which is rightly open to all including those beyond the SO/ACs, should not be precluded from being able to identify potential solutions to the Coordination Group, for prioritization and consideration;
* Further attention should be devoted to assessing the role and effectiveness of the Governmental Advisory Committee (GAC) and its interaction with the Board. In this context, revision to existing policies and substantive changes are highly needed with a view to ensuring governments have a proper role on public policy aspects of the technical coordination of the DNS as well as ensuring that the advice of the GAC on public policy matters is duly taken into account, both in the formulation and adoption of policies.

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