



U.S. CHAMBER OF COMMERCE

1615 H Street, NW
Washington, DC 20062-2000
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September 26, 2014

Ms. Theresa Swinehart
Senior Advisor to the President on Strategy
Internet Corporation of Assigned Names and Numbers
801 17th Street NW, Suite 400
Washington, D.C

Re: Comments on ICANN Accountability Process

Dear Ms. Swinehart:

The U.S. Chamber of Commerce (Chamber), the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, appreciate the opportunity to offer comments on the ICANN accountability process.

The Internet has revolutionized the way business is conducted, and Chamber members of all sectors and sizes use the Internet to interact with existing and potential customers, business partners around the world, and employees. Businesses may be faced with significant impacts from the impending transition of U.S. government oversight of critically important Internet Assigned Numbers Authority (IANA) functions, and our member companies are especially concerned that issues such as accountability and transparency are addressed as ICANN moves from its contractual arrangement with the Department of Commerce. The U.S. government's contract with ICANN provides a backstop of accountability not only for ICANN's performance of the IANA functions, but also for its broader activities in the Internet naming and addressing space. As a result, now is the time to address improved accountability measures.

The Chamber thanks ICANN for the opportunity to comment on the process developed for enhancing accountability. Sound process mechanisms to ensure meaningful transparency and stakeholder engagement serve as the foundation for good governance and are a basic tenet of globally accepted good regulatory practices.¹ Although the scope of these comments is limited to process, it is important to recognize that achieving real positive change is dependent on substantive discussions. Therefore, we expect ICANN to provide an even greater opportunity for meaningful engagement on the *substance* of accountability enhancement.

¹ For more examples and details on good regulatory practices see e.g. APEC-OECD (<http://www.oecd.org/regreform/34989455.pdf>), WTO Agreement on Technical Barriers to Trade (http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm), United States-Europe Guidelines on Regulatory Cooperation and Transparency (<http://www.whitehouse.gov/sites/default/files/omb/oira/irc/2002-guidelines-on-reg-coop-and-transparency.pdf>).

The proposed accountability process can be improved by incorporating globally accepted best practices for stakeholder engagement and transparency. As a first step, we would suggest borrowing from notice and comment best practices by developing a timeline that clearly highlights several inflection points where draft plans will be made available for community input. We appreciate ICANN's September 18 response to SO/AC/SG and Constituency Leadership questions and hope that ICANN leadership remains committed to ensuring transparency by responding to questions throughout the accountability process.²

We also appreciate that the FAQs³ explain that the Coordination Group will be transparent and reports will be available for comment. In order to be aligned with international best practices we would suggest the accountability process expressly state that there must be responses to all substantive comments and incorporation of suggestions when appropriate. General international best practices suggest providing sixty days for comment whenever possible and ICANN should also consider an extended comment period longer than the usual 21 days for comment and 21 days for responses to allow for more robust input. Importantly, based on the number of comments for previous ICANN requests on accountability, it is unlikely that creating additional requirements for notice and comment will slow down the process.

Much of the September 18 response letter seemed to focus on the need to develop trust between the ICANN Board and those stakeholders involved in the accountability process. While we are confident the Board will act in the best interests of the global community, the Chamber suggests injecting transparency into the role and responsibility of the Board. First, any decision to reject recommendations from the Coordination Group should only be made with a 2/3 majority vote. Furthermore, the FAQ section should be amended to clarify that any decision not to implement a recommendation be preceded by a dialogue *prior to finalization* with an opportunity for all stakeholders to provide input on the proposed reasoning for the rejection.

Concerns around trust and undue influence of the Board can be further obviated by incorporating global good regulatory practices on the creation of checks and balances among decision makers. In the United States, a system of judicial redress creates a backstop to ensure that regulators follow procedural requirements and make decisions based on evidence. This principle can easily be applied to the ICANN accountability process. An independent third party panel of mediators, possibly a strengthened Ombudsman, should be appointed to ensure the proper procedural and substantive safeguards are enforced. In the event of an impasse between the Coordination Group and the Board, these parties should submit to non-binding mediation before the panel in order to facilitate resolution of such differences

Even if these safeguards are not likely to be used, (accountability and transparency are essential) it seems essential that accountability and transparency be apparent in a process itself designed to enhance accountability. This will mitigate concerns surrounding the inherent conflict of interest for holding final say on decisions that will affect the Board's future roles and power.

² Available at <https://www.icann.org/en/system/files/correspondence/crocker-chehade-to-soac-et-al-18sep14-en.pdf>.

³ ICANN accountability process frequently asked questions available at <https://www.icann.org/resources/pages/enhancing-accountability-faqs-2014-08-22-en>.

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The Chamber appreciates the FAQ focus on establishing transparency in the Coordination Group and we offer our support for the September 18 response letter suggestion that the Cross Community Group develop solutions and serve as an issue spotter.

The Chamber thanks ICANN for the opportunity to provide comments and looks forward to continued engagement on creating substantive long-term accountability measures throughout the accountability process.

Sincerely,

Adam Schlosser
Director
Center for Global Regulatory Cooperation
U.S. Chamber of Commerce