



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

September 26, 2014

Ms. Theresa Swinehart
Senior Advisor to the President on Strategy
Internet Corporation of Assigned Names and Numbers
Washington, D.C

VIA ELECTRONIC TRANSMISSION

Re: Call for Public Input: Design of the Enhancing ICANN Accountability Process

Dear Ms. Swinehart:

The U.S. Council for International Business (USCIB) is pleased to respond to ICANN's September 6, 2014 call for public comments about the design of the process aimed at enhancing ICANN's accountability. [USCIB](#) is a trade association composed of more than 300 multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members, who include members of both the non-contracted and contracted houses of ICANN, welcome this opportunity to offer a cross-community, cross-sectoral perspective on this important issue.

In view of the many questions raised by stakeholder groups shortly after the proposed accountability enhancement process was posted on August 14, we think ICANN responded appropriately in issuing this special call for additional community input. We also appreciated ICANN's willingness to address the 20 questions pertaining to the proposed process posed by the SO/AC/SG/C leadership in its September 4 letter to Fadi Chehade and Steve Crocker. USCIB as well as many of our individual members participate in various stakeholder groups and supported this letter. Our comments below were informed by ICANN's September 18 reply and largely are aligned with those of the Business Constituency (BC) and Registry Stakeholder Group (RySG).

Board Consideration of Accountability Recommendations – ICANN's September 18 letter acknowledges that development of a process to address a potential rejection by the Board of one of the outcomes of the Enhancing Accountability review "may be a way to gain trust" -- but then fails to lay out concrete steps for such a process. We concur with the BC and RySG that there must be a predictable, pre-defined, and mutually agreed-to process to enable the community to appeal a Board decision to reject or alter a consensus recommendation from the Coordinating Group (CG). In particular, this process should require the Board to explain its rationale for rejecting or altering any CG recommendation.

- Bylaws Section 7 -- Also important, ICANN's response that the Board's interests are "strongly aligned with the community's," and that "there is no inherent conflict between the Board's interests and the community," misses an important issue related to trust and

confidence-building. The fiduciary responsibility of Board members is to the California-based not-for-profit corporation first, and to the community's interests second. While we do not assume that the Board governing ICANN in the absence of the NTIA contract, indeed, would subordinate the community's interests, we acknowledge the reality as set forth in the Bylaws. Section 7 obliges the Board to first and foremost protect the corporation's interests. Thus, the community needs to be assured *at this juncture* that the Board will not be empowered to reject or selectively accept the CG's recommendations simply based on advice from ICANN General Counsel.

Checkpoints and Appeal Mechanisms -- Related to this point, the September 18 letter also acknowledges the community's view that one way to safeguard against an improper rejection by the Board would be through developing regular checkpoints between the CG and the ICANN Board, Staff and General Counsel to identify any procedural or legal concerns prior to delivery of a recommendation. Another way would be to establish higher voting thresholds in the event a recommendation is not accepted.

We are disappointed that ICANN is unwilling at this time to offer a firm commitment to develop such processes and to adjust voting thresholds, saying that both matters must first be considered by the Board. If that is the case, we ask that ICANN raise these issues with the Board expeditiously. ICANN should commit to the development of appeal mechanisms. We feel that defining appeal mechanisms at the outset takes advantage of the present opportunity to bridge the "trust gap" through greater responsiveness to and engagement with the community and will result in a more rational and thoughtful appeals process should one be needed. We would welcome the opportunity to work with ICANN in fleshing out the details of such appeal mechanisms.

The method by which the ICANN Board accepts or rejects community recommendations for accountability enhancements should be discussed and determined by the community as part of the process, and not determined by ICANN unilaterally. Additionally, Board discussions at which recommendations are considered, adopted or rejected should be completely transparent and open.

Roles and Composition of the CCG and CG – We appreciate ICANN's clarification that the CCG would be able to identify issues for the CG as well as recommend solutions. We urge that the designated CCG representatives on the CG serve as the conduits for community-recommended solutions. CCG-originated solutions should be considered and discussed on an equal footing with those developed within the CG and/or proposed by the expert advisors.

- CG Expert Advisor Qualifications – We seek further clarification regarding the role and selection of the outside experts who will be brought in to advise the CG and "help us all to reframe the dialogue in meaningful and constructive ways." The September 18 letter says that the Public Experts Group charged with appointing the experts will determine whether candidates meet the "required qualifications for service." ICANN should provide greater clarity about the qualifications and the value they will add to the process.

- Role of CG Expert Advisors – We appreciated the point made by Assistant Secretary of Commerce Lawrence Strickling at the Internet Governance Forum (IGF) earlier this month, when he suggested that outside experts can offer fresh points of view concerning accountability best practices and stress testing, among other issues with which both the CCG and CG will be grappling. We also appreciated ICANN’s clarification in the September 18 letter that the expert advisors will be expected to perform their work in an open and transparent manner and to interact with both the CCG and the CG. In addition, we feel it would be helpful to clarify that the role of the expert advisors will be *advisory*. They should not have a decisional role in shaping the CG consensus or otherwise overshadowing the participation of the SO-AC-SG representatives in crafting the eventual accountability recommendations.

Scope of CCG and CG Charters – The proposed Enhancing Accountability process would enable the CCG and CG to develop their own charters, but it gives the Board authority to review them and “help to maintain that scope.” This initially struck us as limiting the ability of the community to propose new accountability mechanisms on ICANN’s board and management. We favor an approach that would enable the CCG and CG to develop their charters in consultation with the broader community, taking into account Board inputs. However, final approval of the charters should lie with the CCG and CG.

Again, we note Assistant Secretary Strickling’s remarks at the IGF, which emphasized that the accountability deliberations should focus on the bigger-picture issue “what does it mean when the U.S. Government steps aside.” He urged that the enhancing accountability discussions should not duplicate existing ICANN accountability mechanisms, such as the ATRT reviews, or address budgetary or operational issues for which there already are means for addressing. The September 18 letter reiterated this explanation and recommended that the CCG and CG charters be designed “with this limitation in mind.”

We welcome this information concerning ICANN and US Government conceptions of scope. We also agree that the accountability process should be focused on structural changes that can enhance ICANN’s accountability in the absence of the IANA functions contract. However, we still are not wholly supportive of giving the Board final approval of the charters. Thus, we urge that the following statement in the September 18 letter be included in all documents detailing the accountability process to ensure appropriate community consultation: “If a matter is deemed to be outside of scope by the Board, the Board and the chartering group should – with community input – reach agreement on whether, where, and how that matter will be addressed in ICANN.”

Transparency – To further enhance confidence in the accountability process, we urge that all Board meetings, teleconferences, discussions and email on the accountability issue must be open, including exchanges with the ICANN General Council, the Board liaison, Staff liaison and other ICANN staff.

USCIB appreciates this opportunity to provide input aimed at improving the ICANN’s proposed design of the Enhancing Accountability Process. It is imperative that this process produce new

mechanisms that inspire confidence among the growing legions of global Internet users in ICANN's technical competence and organizational integrity.

Sincerely,

A handwritten signature in cursive script, reading "Barbara P. Wanner". The ink is dark and the signature is fluid, with a large initial 'B' and a stylized 'W'.

Barbara P. Wanner
Vice President, ICT Policy

cc: Peter Robinson, President
Robert Mulligan, Senior Vice President, Policy and Government Affairs