



# Information Technology Industry Council

## “Enhancing ICANN Accountability Process”

### ICT Industry Comments

September 2014

The Information Technology Industry Council, ITI, is pleased to have the opportunity to share our comments on the design of the “Enhancing ICANN Accountability Process.” We thank ICANN for reopening the comment period to facilitate a continued discussion on this important issue.

ITI is the premier advocacy and policy organization for [the world’s leading innovation companies](#). Our members pioneer cutting-edge products and services that improve people’s daily lives. Forbes ranks our members among the most innovative companies on the planet, and ten of our companies are among the world’s 50 largest corporations.

Our comments echo those offered by other stakeholders in earlier rounds regarding ICANN’s proposal to develop a new process for developing and recommending new accountability mechanisms. We firmly believe that these issues are critical to the core tasks entrusted to ICANN, and must be implemented in order to sustain confidence in ICANN’s stewardship of the IANA functions. Our recommendations follow.

Historically, ICANN has solicited solutions from the multistakeholder community via the formation of Cross Community Working Groups (“CCWG”). CCWGs are essentially a group of willing volunteers who come together to deal with a particular topic or area of interest that potentially strongly impacts more than one key stakeholder group within the ICANN structure. Contributors to a CCWG may participate as individuals or as representatives of organizations or their employer. Currently, a CCWG is the most direct way of ensuring the Internet community is fully engaged in this crucial process. Accordingly, we strongly recommend that an Accountability CCWG be organized for at least the duration of the IANA transition, to ensure that the broad universe of stakeholders has an effective channel for conveying ideas and concerns, and that ICANN remains responsive to stakeholder concerns regarding Internet governance and ICANN transparency. This CCWG should determine what oversight-mechanisms are required with regards to the implementation of accountability enhancements and to ensure that ICANN accountability reform continues to be implemented following the IANA transition. Further, this CCWG should be formed as they have historically been formed, via a bottom-up selection process and through the collective drafting of a charter to determine scope and mission, and not as newly defined and restricted by ICANN staff.

Currently, the process employed by ICANN to ensure accountability and transparency unnecessarily insulates the ICANN Board from the larger Internet community. As a result, ICANN staff and their appointees assume a major role in deciding ICANN's own accountability measures without effective stakeholder participation. ICANN's proposed accountability process does not provide a remedy, and may even exacerbate this isolation by cutting off the flow of community contributions for possible inclusion into the final recommendations. Such an outcome would undermine the "bottom-up" multistakeholder governance model that has been critical to ICANN's success since its founding.

Another concern is that the proposed accountability process creates three groups, only one of which is directly comprised of participants from the Internet stakeholder community at large. The proposed "Cross Community Group" ("CCG") would only be able to choose a few representatives from the broader, existing stakeholder groups, thereby potentially limiting its voice and influence in ICANN decision making, including those related to enhancing ICANN accountability.

The CCG's influence would be diluted further by requiring it to submit any input to a "Coordination Group." This group would be the only one authorized to make recommendations for possible changes to the ICANN Board. Moreover, the Coordination Group is under no obligation to accept the recommendations of the CCG or the broader Internet community, or could potentially modify CCG recommendations before they reach the Board's formal decision phase.

The third proposed "Public Experts Group" ("PEG") is comprised exclusively of individuals chosen directly by the ICANN CEO. This creates an inherent conflict of interest. The CEO has a fiduciary responsibility to ICANN the organization, which is inherently at odds with a process designed to facilitate increased accountability available to the ICANN community and transparency mechanisms to ensure that organization continues to adhere to its intended charter and mission. Vesting the ICANN CEO with authority to select the PEG members would again create an untenable scenario where ICANN staff would have unreasonable influence in the process to determine accountability and transparency mechanisms intended for the entire organization. Further, the accountability proposal tasks the PEG with selecting a number of expert participants for the Coordination Group. The net result would be a Coordination Group comprised largely of individuals directly or indirectly chosen by the ICANN CEO.

Clearly, the process described above is not reflective of bottom-up governance. Rather, it epitomizes the very "top-down" leadership process that accountability reforms would be designed to avoid.

As a means of alleviating the concerns outlined here and as noted previously above, we support the creation of an Accountability CCWG as defined by the community, not ICANN staff, which would allow all stakeholders, as well as interested individuals, to appoint representatives to ensure that the various viewpoints are heard and considered and that the final recommendations are developed through a bottom-up and multistakeholder fashion.

In order to avoid the problems identified herein and achieve genuine accountability within ICANN processes, ITI offers the following recommendations:

1. The ICANN community should organize an Accountability CCWG for at least the duration of the IANA transition and the implementation of the enhanced accountability mechanisms, to give the broader Internet community an effective channel for conveying ideas and concerns and to help ensure ICANN remains responsive to stakeholders throughout the process. This CCWG should determine what oversight mechanisms are required with regards to implementation of accountability enhancements and to ensure that ICANN accountability reform continues to be implemented following the IANA transition.
2. Membership in the CCG should be determined by the CCWG. The CCG would be responsible for evaluating accountability recommendations from the CCWG. The CCWG and Board would oversee implementation of the recommendations. This should make the creation of a “Coordination Group” unnecessary.
3. Members of the PEG would be appointed by the Supporting Organizations, in consultation with the CCWG and the ICANN CEO. The PEG would advise the CCG on development of the accountability recommendations.

ITI, in conjunction with other stakeholders, has endorsed a list of additional recommendations which could be incorporated into either this process or into follow-on accountability processes. The document, entitled “ITI Views – Key Principles for Coordination of DNA Identifiers,” is attached. It may also be accessed via the [ITI web site](#).

Again, thank you for the opportunity to submit comments on the critical issue of ICANN accountability. We welcome any questions that you may have regarding our recommendations and the attached document.

For further information, please contact Mr. Ken J. Salaets, Director of Global Policy, at [ksalaets@itic.org](mailto:ksalaets@itic.org) or the phone number listed below.



## KEY PRINCIPLES FOR COORDINATION OF INTERNET UNIQUE IDENTIFIERS

On March 14, 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intention to transition key Internet domain name functions to the global multistakeholder community. NTIA laid out four conditions for this transfer:

- Support and enhance the multistakeholder model
- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectations of the global customers and partners of the IANA services, and
- Maintain the openness of the Internet.

NTIA also advised that it will not accept a proposal that replaces the NTIA role with a government-led or inter-governmental organization solution.

In August, a document started circulating among various industry organizations proposing specific recommendations for ensuring the continued appropriate coordination of Internet unique identifiers. The Information Technology Industry Council, ITI, reviewed the recommendations, supporting many of them, while making refinements to others. This document represents the consensus view of ITI member companies regarding the critical transition of key Internet domain functions to the global multistakeholder community. Like others, we believe that it is absolutely essential that ICANN be structured in a way that meets each of these essential conditions before the aforementioned transition.

To accomplish this outcome, we strongly recommend that the key principles and mechanisms outlined below be embedded into the structure of ICANN through the multistakeholder accountability process.

1. **Community of Stakeholders as Ultimate Authority:** The community of Internet stakeholders should be the *ultimate overseer* of the DNS, responsible for: promoting a single, decentralized, open, and interoperable Internet; preserving the integrity, transparency and accountability of IP numbers and their assignments; managing domain names, and protocol number assignments; maintaining the security, stability and resiliency of the DNS; and meeting the needs and expectations of global customers and partners of the DNS.
2. **Separation of Functions:** To ensure appropriate oversight and accountability for distinct functions, there should be a clear separation between policy work (development and

implementation) on one hand and dispute resolution and enforcement on the other. ICANN must be accountable to its policy development organizations for both policy making and implementation of approved policy, while dispute resolution processes independent of ICANN must be in place to enforce accountability.

3. **Policy Making Function:** ICANN's existing structure of Supporting Organizations (SOs) and Advisory Committees (ACs), which provide technical and policy guidance and which comprise its bottom-up, consensus-based multi-stakeholder model, should continue to be responsible for *policy making*. Their membership should be representative of the community of Internet stakeholders and of the different regions of the world, including developing and developed countries. They should also play a role in selecting ICANN's CEO and members of an independent dispute resolution panel.
4. **Dispute Resolution Function:** In the interests of increasing the accountability of ICANN's Board of Directors and leadership there must be a secondary check on decisions reached through the normal ICANN processes. To that end, there must be an independent and robust dispute resolution process that is transparent, accessible and timely. A possible option for accomplishing this objective could be to expand the current Independent Review Panel to ensure a balanced structure with multi-stakeholder participation strengthened into a new and truly independent panel responsible for resolving disputes between stakeholders and the ICANN Board and that is endowed with the final authority to impose significant and appropriate discipline and sanctions."
5. **Implementation Function:** ICANN's limited executive function should be confined to *implementing policies* pertaining to the coordination of the Internet's unique identifiers and to recommending policy changes for consideration and ultimate decision-making by the SOs and ACs. ICANN should oversee the technical functions of the DNS but should continue to outsource technical operations to organizations with a proven track record. ICANN should remain a non-profit corporation operating under California law. Policy implementation should be done in close coordination with SOs and ACs who have the ultimate responsibility to ensure that policies they develop are implemented as intended.
6. **Protection from Government Capture:** Government representatives are core stakeholders within the multi-stakeholder model, and government involvement is appropriately conducted through the Governmental Advisory Committee, in coordination with the SO/AC policy development process. In particular, neither the CEO nor the voting members of the Board of Directors should be a member of a government or government-controlled organization. ICANN should prudently engage with government officials, focusing primarily on issues pertaining to the coordination of the Internet's unique identifiers, whether directly or indirectly through a third-party and such engagements and the topics covered should be made public in a timely fashion.

7. **Transparency:** ICANN should be audited annually by an independent accounting firm, and transcripts and detailed minutes of all meetings, including those of ICANN's Board of Directors, as well as complete documents and records should be made readily available.
8. **Specific Rights and Responsibilities Appropriate for Each Function:** Each function, as outlined in Principles 3, 4, and 5 should only encompass those explicitly assigned rights, responsibilities and authorities that have been formulated through the multistakeholder accountability process. The accountability process will identify all significant functions and responsibilities, and designate them appropriately and explicitly. The accountability process should be thorough, and map specific rights, responsibilities and authorities to the appropriate function. All other rights, responsibilities and authorities should be reserved to the community of ICANN stakeholders.
9. **Consensus:** A significant majority of the Board and the appropriate community groups should be required for final action on certain policy decisions, as defined by the working group on accountability, to demonstrate broad support by the community of ICANN stakeholders.
10. **Budget and Revenue Limitations:** ICANN's budget and the revenue to support it should be limited to meeting ICANN's specific responsibilities and should not change without SO and AC approval and the agreement of the registries and registrars who pay ICANN fees.
11. **Equitable Agreements:** All registries and registrars should operate under equitable agreements with ICANN that set nondiscriminatory fees to be paid to ICANN in support of its budget. ICANN may not set or regulate fees charged by registries or registrars to their customers.
12. **Prior Adoption:** These principles and their assured implementation should be adopted and made effective *prior* to the transfer of the IANA contract to ICANN, or to any other party that replaces the U.S. as contract counterparty; should be embedded in ICANN's Articles of Incorporation and Bylaws so that they are fully enforceable by the new independent dispute resolution panel; and should form the basis for the replacement of NTIA's current DNS agreements.

For further information, please contact Mr. Ken J. Salaets, Director of Global Policy, at [ksalaets@itic.org](mailto:ksalaets@itic.org) or the phone number listed below.