

ccNSO Council Submission Enhancement ICANN's Accountability Process

25 September 2014

The ccNSO Council welcomes ICANN's decision to conduct a public consultation on the proposed "Enhancing Accountability" process and appreciates the responses to various questions posed by the community. As we have previously stated, improved accountability is both a means and a prerequisite for ICANN to achieve its 2016-2020 strategic vision statement, to *"enable ICANN to be trusted by all stakeholders."* It goes without saying that any process intended to enhance and reinforce trust must itself be trusted.

Over time and through experience, ICANN stakeholders have come to trust the cross-community working group (CCWG) process. Having participated in and listened carefully to the exchange of views between ICANN staff and the SO/AC/SGs on this point over the past several weeks, the ccNSO Council is not persuaded that the "community working group" proposed by ICANN improves upon or offers any benefits or advantages over the trusted CCWG model. The main argument for creating the "community working group" appears to be ensuring the inclusion of persons in the process, who consider themselves either not affiliated with a Supporting Organization or Advisory Committee or a "newcomer". Serious thought needs to be given to how to enable these persons to engage in the process as a whole effectively and in a way that does not undermine the existing engagement structure. Accordingly, we call on the staff and board to endorse the creation of a standard CCWG as the locus for bottom-up, multistakeholder development of mechanism to enhance ICANN's accountability.

As a standard CCWG, participating SO/AC/SGs should be charged with developing the group's charter, including the scope of its responsibility. Consistent with the NetMundial conclusions, the goal of the Enhancing Accountability process should be to ensure that a system of checks and balances is in place to ensure that ICANN operates in accordance with an agreed set of principles and that meaningful redress is available to those who are harmed by ICANN actions or inactions in contravention of those principles. The CCWG should have full authority to explore and recommend approaches to achieve that goal.

The CCWG should have authority to determine the size and structure of the group, as well as its working methodology. Given the importance of the work to be undertaken and the need to work to deadline, the ccNSO believes that ICANN should provide support for an independent secretariat, including a non-voting CCWG chair. It is also

the view of the Council that the CCWG should select the Chair, who should have demonstrated skills and experience in chairing.

Ideally, the CCWG itself should be responsible for selecting, through an open nomination process, non-voting advisors with predefined expertise ("Accountability Advisors"). In the interests of time, however, we acknowledge the potential utility in kicking off the selection process before the CCWG is set up. ICANN could usefully identify a pool of experts, among which the CCWG could select its Advisors, as soon as the CCWG is set up. The ccNSO Council also believes that the paramount concern should be to look for independent experts with a proven track record in their area of expertise. In this context we urge ICANN to reconsider its proposal not to compensate the Accountability Advisors.

Under the circumstances, the ccNSO agrees that smaller subgroups consisting of members identified by the SO/AC/SGs and the Accountability Advisors could be formed within the CCWG in order to organize and deliver research and expert advice needed by the CCWG, as well as interface more intensely with ICANN and its counsel on accountability mechanisms recommended by the CCWG, or liaise with the IANA Transition working group, etc.

The ccNSO has previously stated that adequate accountability mechanisms relative to the IANA Stewardship Transition must be in place at the time of the IANA transition in one year from now. We have also recognized that the potential recommendations and mechanisms to enhance ICANN's accountability may be broader i.e. not limited to accountability mechanisms related to the IANA Stewardship Transition Process and it may take time to considerable time to implement all of these recommendations and mechanisms. Accordingly, we also recommend that the CCWG and any coordinating body should work closely with ICANN to identify those mechanisms that must be in place for a successful IANA Stewardship Transition and to prioritize the implementation of those mechanisms. In addition the CCWG and any coordinating body should also agree on a timeline for full implementation, which may extend beyond the IANA Stewardship Transition.

We understand that the ICANN Board must reach agreement on the process it will use to consider and act on recommendations developed through this process. The community has expressed a strong preference to have a clearly defined process, including dialogue and consultation with the community before any recommendation is rejected. The ccNSO Council believes that the presumption should be that community recommendations will be accepted absent a compelling reason for rejection. We urge the Board to develop and publish for public comment its proposed methodology for

considering and acting on accountability-related recommendations in the very near term, in any case before the process has commenced fully. As a suggestion the Board may look at the processes and mechanisms used to consider and act upon policy recommendations developed through the policy development processes of the Supporting Organizations and defined through the ICANN Bylaws.