The Internet Corporation for Assigned Names and Numbers

ICANN

18 September 2014

Dear SO/AC/SG and Constituency Leadership,

We thank you for your 4 September letter outlining questions regarding the Enhancing ICANN Accountability process. We have also appreciated the very useful discussions carried out during the IGF, both at the Town Hall meeting and other respective sessions. The topic of accountability, and the process that is being undertaken in light of ICANN's changing historical relationship with the U.S., is an important and unique one. It's also a unique opportunity for the community as a whole (the stakeholders, staff, ICANN Board, all) to come together and work towards a long-term standing objective, namely putting in place the right environment to enable the transition of NTIA's stewardship role in relation to the IANA functions.

Responses to the specific questions contained in the 4 September letter are below. However, we feel that this approach, while respecting it, is perhaps at the wrong level and risks creating a sense of distance, rather than partnership amongst the ICANN community. ICANN has already incorporated some of these valuable inputs in its 21-day public comment posting on the process design. The outcomes of that comment period may address or further clarify some of the issues raised below. In the meantime, we want to touch on some key topics we believe are important to this pivotal time for the organization. One is trust and engagement, and the other is the Board role in the process.

Trust and engagement: New opportunities for the organization have always brought with them new challenges. Whether during ICANN's reform, the introduction of IDNs, or the new TLD process, the community – that is, the stakeholders, staff and ICANN Board – has always come together to face challenges and to work hard towards identifying an appropriate direction. This ability to engage and utilize the multistakeholder model is what has made the Internet successful. We appreciate that the IANA Stewardship Transition has raised new challenges for the community, and for ICANN as a whole. We also appreciate that in trying to manage new issues, we are committed to working together to find approaches that work for a wide range of interests and stakeholders. This is true particularly in this accountability process given its importance to the multistakeholder community, and ultimately, the

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transition of the USG out of its historical role.

We are at an unprecedented time in the history of ICANN and the Internet – this is a time to strengthen our engagement as an ICANN community.

Board role in the process: Several have questioned what will occur if the Board is to not accept recommendations formed from the process, and this in part goes back to the topic above about having assurance in all of our respective roles. We have full confidence that an open, transparent, and engaging process will result in a final report and recommendations that have been well vetted and discussed within the community and respective expertise, and be within the scope of the process. The Board, in its receipt of the report and recommendations, will take this outcome seriously. The Board's interests are strongly aligned with the community's. There is no inherent conflict between the Board's interests and the community's. We must have confidence in each other, and our respective processes.

We hope that the above is helpful to our ongoing discussion, and we are confident that together we will bring this transition to a successful conclusion.

Sincerely,

Stephen D. Crocker
Chair, ICANN Board

Fadi Chehadé
President & CEO

The Internet Corporation for Assigned Names and Numbers

ICANN

18 September 2014

Responses to questions contained in the

SO/AC/SG/C Leadership letter of 4 September 2014

Dear SO/AC/SG and Constituency Leadership:

Thank you for the detailed questions and inputs of 4 September 2014 on the Enhancing ICANN Accountability process. ICANN has already incorporated some of these valuable inputs into its 21-day public comment posting on the process design. The outcomes of that comment period may address or further clarify some of the issues raised below. These answers should provide clarification on issues regarding the Enhancing ICANN Accountability process, and they will be incorporated into updated FAQs to make sure that the entire ICANN community has full access.

1) *The staff proposal appears to allow the Board to reject the outcome put forward by the community. However, the Board's institutional interest in the outcome of such process may be at odds with the community's interests and consensus recommendations.*
   a) *Under what standards do the ICANN leadership and Board believe it would be appropriate to reject an output developed by the community through the proposed process?*
   b) *What process will be made available for the community to appeal a determination by the Board to reject any element of the community-developed output? What redress will be available to the Coordinating Group and/or community if the Board rejects consensus recommendations?*
   c) *What voting threshold will be used by the Board if it rejects any community recommendation delivered by the Coordinating Group? If the Board will be able to reject the community recommendation on a less than unanimous vote, what is the rationale for such a standard?*
   d) *The proposed plan requires further procedural clarification regarding the final stage of ICANN Board acceptance, referral or rejection of consensus recommendations delivered by community via Coordinating Group (CG). This raises a number of issues that require clarification.*

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i) *Will there be regular checkpoints between the CG and the ICANN Board, Staff and General Counsel to identify any procedural or legal concerns prior to delivery of recommendation?*

ii) *Should the Board find some aspects of the proposal unacceptable, what level of Board support will be required to reject a proposal and will the Board then seek clarifications or changes from the community?*

iii) *Will the Board be fully open e.g. including exchanges between the CG, the Board and Staff liaisons and other staff regarding its deliberations on this overall issue?*

Response: The Board's interests are not at odds with the community's interests or the consensus process. We appreciate the interest in developing processes to safeguard against a concern that the Board may not accept one or some recommendations resulting from the Enhancing ICANN Accountability review. We sought to address this concern in the FAQs posted on the 22 August, but would like to elaborate further in response to your questions. As suggested in your letter, one way to safeguard against an improper rejection by the Board could be through developing a detailed process - for example, regular check points and/or a requirement of reaching a high voting threshold in the event a recommendation is not accepted.

Dialogue between ICANN Board, staff, the Coordination Group and/or the Cross Community Group within the Enhancing ICANN Accountability review should enable early identification of implementation issues during the development of recommendations, which can then be considered in the final report and recommendations. These exchanges should be performed in an open, transparent and documented manner, and ICANN staff should be actively engaged early in this work. Concerns that would warrant the Board to not abide by one of the outcomes of the Enhancing ICANN Accountability review should be raised and discussed within the review process before submission of the final report. It is our hope that, even if a "rejection" process is designed, there will not be an opportunity to use it.

For topics such as a voting threshold, the full Board must be aligned on this issue. We cannot yet commit to a specific process or threshold without gaining the consensus of the Board. However, we are committed to work through this and will engage further on this topic to reach a resolution that is satisfactory, and we expect a solution well before any accountability recommendations are ready for Board consideration.

While the development of a "rejection" process may be a way to gain trust, we do not want to focus solely on process development and circumvent the more important, fundamental conversation of: How can we strengthen the trust between all parts of the ICANN stakeholder community?

After reading through many of the questions posed, the emerging theme seems to be about building trust. How can we trust the Board will do the right thing? How can we trust ICANN staff in this process? How can we trust that those who are not yet actively involved with the ICANN community will respect the views of longstanding participants and stakeholders? How can those not yet actively involved with the ICANN community trust that longstanding participants and stakeholders will be receptive to new inputs? How can we trust that there will be a forum for us to raise all issues that we think need to be brought to the forefront? These are just some of the questions that sit just beneath the surface of the questions asked in this letter.

2) *The Report of Public Comments says "ICANN itself is a stakeholder in this process – it has a responsibility to have an active voice in the resources consumed in this effort, and in helping to assess not just the feasibility but also the organizational and public benefit impacts of the potential recommendations."*
   a) *How does ICANN as an organization conceive of its role as a stakeholder in the process?*
   b) *How does ICANN as an organization intend to participate in the process?*
   c) *How does ICANN intend to handle the inherent conflict of interest with developing its own accountability plan?*
   d) *How does ICANN intend to handle the conflict of interest that board members, lawyers, senior staff, and other decision makers have to rigorously pursue reform given their legal obligations to protect the organization?*

Response: ICANN has always been committed to evolving. The organizational review processes, the AoC and other mechanisms seek to ensure that ICANN as an organization – which includes the stakeholders, staff, and Board – can evolve. With regards to this Enhancing ICANN Accountability process, this question raises the concern of how can the community be engaged and trust that ICANN won't get in the way of meaningful change? It is clear that there is a difference in perspective: the question suggests that ICANN, because it has an interest in the outcome of this accountability work, has a conflict of interest when participating in discussions of how its accountability can be enhanced in light of the end of the contractual relationship with the U.S. Government. We do not deny that ICANN has an interest, however, having an interest does not automatically create a conflict of interest. ICANN will serve in the Enhancing ICANN Accountability work similarly to how different constituencies and participants engage, for example, in GNSO activities. There, participants are engaged *because* of the lens and experience they bring. We see all parts of the ICANN community participating in the Enhancing ICANN Accountability work in this way. It will be important to understand the interests that each participant brings to the table through a rigorous and transparent statement of interest process.

ICANN has a role in helping to refine and/or design the processes and mechanisms through which it remains accountable to the global Internet community. ICANN needs to be at the table alongside those stakeholders who serve through different parts of the ICANN community to make this a robust and meaningful conversation. Each person that joins this conversation is anticipated to participate to achieve results with the best interests of ICANN as an organization. The hope is that this process will bring to light that we really do share a common goal, and rigorous reform may be the way that is achieved.

3) *Like the proposed Cross Community Group, Cross Community Working Groups (CCWGs) operate on the basis of consensus. CCWGs almost always permit anyone to participate in all activities except consensus calls and associated polling. Because CCWGs work on consensus, there are no real limits on participation. Designated participation serves only to ensure that the CCWG has a workable number of members, for scheduling and other reasons, and includes participants from all interested SO/ACs. A CCWG creates its own charter, which must be approved by each of the participating SO/ACs. Nothing in the CCWG process would prevent ICANN or the ICANN Board from raising questions for discussion.*
   a) *Why did ICANN propose the "Cross Community Group" rather than a standard CCWG?*

Response: The ICANN community has several mechanisms through which it can address topic areas, including the AoC review mechanism, CCWGs, or other models. The implementation of this hybrid mechanism for the Enhancing ICANN Accountability review is not a matter of not trusting one approach over another, it is a matter of identifying a mechanism that will work best for the specific topic area at hand. In this case, the Enhancing ICANN Accountability conversation is a broader conversation, reaching stakeholders beyond those associated with SO/ACs and groups that are typically within CCWG activities. As such, the CCWG model does not best fit the needs of the process.

The proposed process allows for participation from across ICANN, with the Cross Community Group preparing its own charter. If there is a concern that either of the charters developed exceed the scope there will be a dialogue between the Board and the respective group (see also FAQ 17). This is distinct from the distributed charter development of the CCWG. The Cross Community Group also does not automatically preclude new participants from having a voice in consensus or polling activities.

The global community is interested in the evolution of ICANN. Addressing the enhancement of ICANN accountability in light of its changing relationship with the U.S. Government brings new stakeholders to ICANN. In some cases, these new participants interested in joining this conversation may not yet

know with which constituency group their opinions and expertise are most closely aligned, or which group they may wish to join, if any. Those new stakeholders should equally have a meaningful voice, and that is not clearly provided through the CCWG model as it is currently in practice and as described.

The openness of the membership of the Cross Community Group assures SO and AC participation in the chartering of the group, as the SOs and ACs may appoint representatives to the Cross Community Group to participate in the chartering effort. The Cross Community Group is designed to expand the process to even broader participation and put in requirements for open and transparent working methods.

Further discussion of the use and composition of the Cross Community Group model is explicitly sought in the public comment.

4) *Typically, the recommendations/report of any CCWG goes back to each participating SO/AC for endorsement. This step promotes transparency and communication and permits each of the SO/ACs to follow their own procedures for review and approval.*
    a) *Will the final report/recommendations of the Coordination Group be submitted to the SO/ACs for approval before being finalized? If not, why not?*

Response: We hope that you will provide some input on this issue through the public comment process. How the Cross Community Group and Coordination Group operate and define working methodologies in their charters are for those respective groups to develop. Recommendations made by the Coordination Group should require input by the global community, which means consultations similar to any public consultation of any ICANN process. This includes consultation and input from the SO/ACs through the consultation process anticipated to be established by the Coordination Group.

In relation to the question posed above, there are some factors to consider, including: What does "approval" mean? What if one SO or AC withholds approval, should that be sufficient to hold back implementation? How does one ensure global participatory engagement in consultations and input? Are there specific safeguards that can be identified and introduced that would help ensure SO/AC approval? Coming to the end of this process with the potential for a particular SO or AC not agreeing with the outcomes (i.e., not accepting potential compromise, consensus based solutions) should be a highly unlikely outcome, and considerations should be made now as to how all stakeholders can work together to avoid that potential. Within this, we also need to consider the timeline. If a process has sufficient consultation built in, what review cycles are needed on top of

those consultation processes, and how can those be performed in the expeditious timeframe required for this work?

5) *The process provides for a participant from a past ATRT Team, as well as a liaison each from the IANA Stewardship Transition Coordination Group and the ICANN Board.*
   a) *How will the ATRT participant and the IANA Transition Liaison be selected for the Coordination Group?*
   b) *What is the role of the Board and Staff Liaisons to the Coordination Group?*

Response: The IANA Stewardship Transition Coordination Group (ICG) will be asked to identify a liaison to the Coordination Group discussed here.

For the participant from a past ATRT, as those groups are each no longer operational, ICANN will reach out to ATRT1 and ATRT2 participants to make a call for participants from ATRT1 and ATRT2 to express interest, and ask the prior leadership of ATRT1 and ATRT2 to assist in selecting the liaison.

The Board liaison role is expected to be robust. The Board liaison should be an active member of the Coordination Group, bringing the voice of the Board and Board experience to the Coordination Group activities and deliberations.

The ICANN staff member on the Coordination Group is expected to provide inputs to the Coordination Group from an ICANN perspective, including information on respective reviews and mechanisms to address areas of accountability already being addressed, including those through the ATRT process. ICANN is preparing to identify a staff member with relationships across departments and who is familiar with the existing accountability mechanisms to help bring internal knowledge and experience to the work of the Coordination Group.

The Board liaison and staff member will also be integral to conversations on feasibility and implementability as discussed in response to Question 1.

ICANN will also provide separate staff services to support this work.

6) *The process establishes that the role of the Cross Community Group is to identify issues for   the Coordination Group.*
   a) *Why is the Cross Community Group not also encouraged to recommend solutions to the Coordination Group?*

Response: We agree that the Cross Community Group could be valuable in recommending proposals for solutions to the Coordination Group and look forward to the public comments that may address this topic.

7) *The creation of an "other" category suggests that there are ICANN stakeholder groups that are not reflected in the SO/AC/SG/C structure.*
   a) *What stakeholders are ICANN seeking to include that cannot be accounted for within the existing SO/AC/SG/C structure*
   b) *The creation of undefined stakeholder categories creates opportunities for capture. How does the Board intend to address this issue and prevent capture?*

Response: As noted in the response to Question 2, this question clearly raises the issue of "How can we trust that those who are not yet actively involved with the ICANN community will respect the views of longstanding participants and stakeholders?" There, of course, could be those who are new to the ICANN community who see this concern through a different lens: "How can those not yet actively involved with the ICANN community trust that longstanding participants and stakeholders will be receptive to new inputs?" These are both questions that we need to discuss as a community. Initially, a discussion about ICANN accountability must include ways to welcome those into the process who may not be directly associated with an SO or AC, or may be new to ICANN and still learning about the organization.

ICANN's ongoing globalization work, the IANA stewardship transition discussion and the beginning of this accountability dialogue have all brought new people to ICANN. As seen in the Cross Community Group membership, there are already people volunteering who do not identify with any particular SO/AC to date.

However, addressing any risk of inappropriate influence either within an SO/AC or from those who are new to ICANN is an important topic. While the addition of "undefined" or "other" categories of interested participants may change the traditional make up of a working group, the opportunity for wide participation from the existing SO/AC participants, combined with the transparency principles required of the Cross Community Group, minimalizes the ability for capture of this group.

If there is a specific risk of capture or undue influence that led to the posing of this question, please address this issue in the public comment so that we as a community can discuss mitigation efforts.

Separately, we will work with those who are new to the ICANN community to see how these newcomers can continue to engage in ICANN and/or join an existing stakeholder group as appropriate.

8) *Referring to the staff-developed plan, the fourth paragraph of the section about the Cross Community Group ends with: "The Cross Community Group will have wide latitude in its discussions, so long as the scope of the process as set forth above is maintained."*
    a) *What discussions related to Enhancing ICANN Accountability would be considered outside of scope? Who determines that scope?*

Response: The Enhancing ICANN Accountability process focuses on enhancing or strengthening ICANN's accountability in light of its changing historical relationship with the U.S. Government. This process is intended to deal with focused systemic issues caused by the changing historical relationship with the United States, including for example, by "stress testing" against internal or external captures or takeovers and safeguards against capture at all levels – a pre-condition of the IANA stewardship transition. In short, ensuring ICANN remains accountable in the absence of its contractual relationship with the U.S. Government. This process could potentially include an evolution of the AoC, but does not replace or duplicate existing ICANN accountability processes such as the Accountability and Transparency Reviews (ATRT) that deal with the routine execution of tasks.

The charter for the Cross Community Group should be designed with this limitation in mind. The Board, in its review of charters, will help maintain that scope. To the extent that there are additional topics that do not fit into this scope and are raised as issues of clear importance to the community, ICANN will work with the stakeholders to identify the appropriate mechanism to allow for those conversations to move forward. For example, some discussions that are clear follow-ons to the work of the ATRT1 or ATRT2 should be carefully detailed and maintained as inputs to the next ATRT.

9) *The plan provides for a Public Experts Group that will appoint 7 Advisors to the process.*
    a) *Will the Public Experts Group issue a call for Expressions of Interest from prospective "expert advisors"? If not, why not?*
    b) *Why was the "Call for Candidates: Seeking Advisors to ICANN Accountability & Governance Coordination Group posted on 29 August 2014, some days prior to an agreed deadline for receiving community input to the staff plan?"*

Response: The Call for Advisors and Expressions of Interest is to the entire community to identify possible candidates. As noted above, the open call for expressions of interest was posted on 29 August. However, the Public Experts Group determined during their organizational call on 26 August to begin operational work as soon as possible (as reflected in the Public Experts Community Wiki Space, https://community.icann.org/x/_wPxAg). That decision was made prior to the 27 August stakeholder letter noting that additional questions and comments would be provided in seven days regarding the Enhancing ICANN Accountability and Governance Process.

Since the opening of the community-requested additional 21-day comment period, ICANN has clarified that no substantive work will proceed in the Public Experts Group (or the Cross Community Working Group) during the public comment period. In acknowledgement of this, the Experts have extended the Call for Candidates to beyond the close of the public comment period. Please see https://www.icann.org/news/announcement-3-2014-09-09-en for more information.

10) *FAQ 2 provides that the role of the 7 Advisors appointed by the Public Experts Group will be to engage with the broader network of public accountability and governance experts as needed; and support the Coordination Group with expert advice and research.*
   a) *How will the Advisors selected by the Public Experts Group "engage with the broader network of public accountability and governance experts" and for what purpose?*
   b) *How will ICANN ensure that engagement, advice, and research by these Advisors are provided in a manner that is fully open and transparent?*
   c) *Will the Advisors also engage with the Cross Community Group and, if so, how will such engagement take place? If not, why not?*

Response: As seen in the posted process, there are a wide variety of topics for which expertise is envisioned to be important for the Enhancing ICANN Accountability work. Community comment to date has not questioned the topics listed; indeed, additional topics were suggested. It would be highly unlikely that the advisors appointed will be expert on the full complement of topics, and it is important that the Coordination Group not be overpopulated by external experts. Similarly, it is likely that even with the stakeholder experts, there will be gaps in expertise. What is important though is the ability to, within the process, reach out and obtain external expertise to bring in best practices from among a varied team. The ability to engage with a network of additional experts is a way to expand the inputs available to the process without adding people to the Coordination Group.

In the event that members of the Coordination Group determine that there is an identified need for additional independent input or expertise, the advisors may seek this additional input through the Public Experts Group or their own networks.

<div align="right">Crocker and Chehadé to SO-AC-SG-C Leadership</div>

The work of the advisors within the Coordination Group is expected to be performed in an open and transparent way, which will be embodied in the working methods of the Coordination Group. The Public Experts Group is considering issues such as the recommended terms of engagement of the advisors, and those discussions are being publicly archived. To the extent that ICANN formally engages any of the advisors, information on those engagements will be made public to the extent feasible.

The advisors are part of the Coordination Group. As the Coordination Group is expected to engage with the Cross Community Group as needed, so will the advisors. It could also be anticipated that the advisors may need to reach out to the Cross Community Group, or others, in performance of their work. That outreach should be performed in an open and transparent manner.

11) *FAQ 3 says that the Advisors should come from 'outside the ICANN community' and are not limited to engaging with the Coordination Group.*
   a) *What does it mean to come from 'outside the ICANN community'?*
   b) *Would this exclude experts who are associated with one of ICANN's SOs, ACs, SGs, or Cs?*
   c) *Who determines whether an Advisor comes from outside the ICANN community?*
   d) *Although the Advisors are not limited to engaging with the Coordination Group, are there other limits on the Advisors' engagement and, if so, what are they?*

Response: The reference to "outside the ICANN community" is to those that are not directly associated with SOs or ACs (or SGs or constituencies), and/or those that are not under contract with ICANN (nor have been within a reasonable time frame prior to the initiation of this work). This brings in new voices, views, expertise and experience that can contribute to the important discussions.

While it is essential that there are members of the Coordination Group that understand ICANN, that does not mean that every member of the Coordination Group must be from the ICANN community. This review is an opportunity to seek state-of-the-art best practice inputs on accountability and governance issues from outside of the normal range of discussion participants. The use of a group of advisors, as opposed to identifying a single expert (as was done in an ATRT review, for example), allows an even broader range of inputs for consideration. There is great value in bringing in lessons from outside of ICANN and viewing some of the governance and accountability challenges with a fresh perspective. Though some believe that only those who are intricately familiar with ICANN should be participating in this work, the value of an external viewpoint was seen, for example, in Professor Jan Aart Scholte's moderation of the accountability session at ICANN50 in London, England. External voices have the ability to help us all reframe the dialogue in meaningful and constructive ways.

Crocker and Chehadé to SO-AC-SG-C Leadership

The Public Experts Group charged with appointing the advisors will be responsible for determining whether each candidate meets the required qualifications for service. Once appointed, the advisors will be expected to perform their work in an open and transparent manner. As the full range of work of the Coordination Group is not yet known, there are no other limitations on the work of the advisors at this time.

12) *FAQs 6, 7 & 8 specify requirements for the Cross Community Group.*
   a) *Are these requirements absolute requirements even if the Cross Community Group, in developing its charter, believes that there are better ways to handle the applicable issues?*

Response: See response to Question 3 for additional discussion of the considerations that went into the composition of the Cross Community Group and the differentiation between the Cross Community Group and a CCWG.

While there could indeed be "better ways" to handle issues within the Cross Community Group, it is difficult to anticipate what those might be and how those suggestions would be considered. To allow for a more consideration of these issues, we recommend that suggestions as to what those potential improvements could be should be raised in the public comment to allow for broader community input. In general, the recommendation of working methods designed to enhance transparency or broad participation would likely be well received.

13) *FAQ 9 states that "the first task of the Cross Community Group will be to confirm the appointment of the stakeholder expert members of the Coordination Group as identified by the SO/AC/SGs."*
   a) *Why is this confirmation necessary or desirable?*
   b) *What standard will the Cross Community Group apply in confirming SO/AC members of the Coordination Group?*
   c) *Is there any basis on which the Cross Community Group may refuse to confirm SO/AC members of the Coordination Group and, if so, what is it?*
   d) *Will any role exist for the Public Experts Group beyond the appointment of the 7 Advisors?*
   e) *Will the Public Experts Group engage with the Advisors that it appoints and, if so, to what ends?*

Response: Upon reflection, the Cross Community Group's role in confirming the SO, AC and SG

expert appointments to the Coordination Group is not a necessary step, and public comments may suggest a view of not having this. It was proposed to allow for a close connection between the two groups, but it is not essential. The initial theory was that the Cross Community Group could help assure that there was some level of diversity among the stakeholder experts (in subject matter as well as geography and gender), however that still leaves a void in how the Cross Community Group would determine which stakeholder experts would not be confirmed as a means to achieve greater balance. On whole, the SO, AC and SG selections of stakeholder experts to the Coordination Group should stand without interference from the Cross Community Group. Assuming that such a change is supported through the public comment process, ICANN stands ready to implement this modification.

As contemplated in response to Question 10, the Public Experts Group will remain available to assist the advisors in reaching out to a broader network of experts if additional independent inputs or expertise are needed to assist in the work of the Coordination Group. The work of the Public Experts Group (with the exception of deliberation of candidates) is publicly available.

14) *FAQ 12 established several criteria that should be considered by the SOs, ACs, and SGs in appo-inting stakeholder expert members to the Coordination Group.*
   a) *Are SO/AC participants expected to represent their respective SO/AC or independently?*
   b) *What is the proposed process if the Cross Community Group challenges any such appointments?*

Response: ICANN does not have a position on how any individual SO, AC or SG should select a stakeholder expert to the Coordination Group; nor does it have an expectation that the selected stakeholder expert should serve a representative role on the Coordination Group. Each SO, AC, or SG is encouraged to appoint a stakeholder expert that has proficiency in at least one of the identified areas of expertise, and we anticipate that the appointed stakeholder expert will also have views aligned with those of the appointing group. Because the Coordination Group is focused on expertise over representation, this does not replace the need for full SO/AC/SG participation in the public processes and discussions.

All groups within the ICANN community should participate in the public processes, including comment periods and other various foras that will be made available, to make sure that entity-specific positions are placed on the record. SOs, ACs and SGs are encouraged to make stakeholder expert appointments with the intention of placing people in the Coordination Group who will work collectively in the best interest of the entire ICANN community in determining enhancements to ICANN's accountability and governance practices.

See response to Question 13 for more information on the Cross Community Group role in the selection of stakeholder experts.

15) *FAQ 17 provides that the Cross Community Group and the Coordination Group may develop their charters that will be reviewed by the Board for scope and that if there is a concern regarding scope there will be a dialogue between the board and the respective group.*
    a) *What topics related to enhancing ICANN accountability do ICANN leadership or the ICANN Board consider to be out of scope?*
    b) *What process will be undertaken if, through discussion, the ICANN Board and the respective group do not come to an agreement regarding scope? Will the view of the Board be deemed to prevail?*
    c) *Under what conditions does the ICANN Board believe it would be appropriate for it to reject a charter developed by one of the respective groups?*

Response: The scope of the Enhancing ICANN Accountability process is discussed in response to Question 8.

This process is intended to deal with focused systemic issues caused by the changing historical relationship with the United States. We do not anticipate there will be substantive disagreement between the Board and a chartering group. If there is, it may be appropriate to seek counsel from the U.S. Government. Because of the declared intention of the U.S. Government to expect to see progress on this accountability review when considering any proposal on IANA stewardship transition, ICANN, together with other stakeholders, is responsible for delivering the expected review. Seeking outside reference may be beneficial in solving a stalemate (if one should occur), but 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 within ICANN.

The Board and chartering group should work together closely to avoid any need for the Board to fully reject a charter. Larry Strickling's remarks at the IGF in Istanbul provided a bit of clarification as to the expected scope of the accountability deliberations and may be helpful in formulating the charter.

16) *Given that the Coordination Group consists of 21 people, are we correct in understanding that the seven advisors are advisory only and will not be included in any vote or consensus call?*

Response: ICANN anticipates that the (up to) seven advisors appointed by the Public Experts Group

will have a voice in the final recommendations issued by the Coordination Group. It is expected that the Coordination Group operate by consensus, meaning no formal voting for any participants. In the spirit of the multistakeholder model of input, the consensus should be inclusive of all opinions, including the advisors. This was also addressed in FAQs 16 and 18.

17) *Initially the proposal was made that the Board was going to draft and approve the charters of the two working groups. The FAQ appears to now have been amended to say that the two working groups will be able to draft their own Charters, but that those charters will be vetted by the Board. Please explain any rationale and clarify this point.*

Response: Reinforcing the discussion from Question 15, ICANN amended the process to allow for the Cross Community Group and the Coordination Group to develop their own charters in response to discussions raised after the posting of the Enhancing ICANN Accountability process. As a matter of form, the Board will review the charter for scope. If there is a concern that the developed charters exceed the scope of this process, there will be a dialogue between the Board and the respective group. This achieves a balance between the stakeholder requests to have more ownership of the process, while also acknowledging the responsibility the Board has in supporting the work of the community.

18) *Why didn't ICANN invite proposals from the community and why wasn't the community involved in the drafting of the staff plan?*

Response: Similar to Question 3 on the CCWG model, this question seems to be raising the concern of "why didn't ICANN trust the community to do this on our own?" This question raises far larger issues than about the design of the Enhancing ICANN Accountability process, and a dialogue is clearly needed on the different roles and responsibilities of all stakeholders within ICANN when a process is being developed that is not within the policy development mechanism, but rather has a broader impact on the organization as a whole.

This process was framed by ICANN, in recognition of the parallel nature and interdependency with the IANA Stewardship Transition Process. To move forward, stakeholders were involved in the evolution of the process. The discussions on ICANN's accountability in light of its changing historical relationship with the U.S. Government began after NTIA announced its intention to transition its stewardship role of the IANA functions in March. Based on community discussions, ICANN posted a proposed framework and process on 6 May, with an extended comment period

(responding to community requests) to 27 June. During the public comment period, the majority of comments received focused on substantive topics and proposed solutions, and the comments received on *process* were considered within the final 14 August version.

In addition to the community involvement within the public consultation posting process, ICANN also held a public session on accountability at the ICANN50 meeting in June 2014 where few (if any) commenters addressed the process design. Instead, the focus of the discussion was on potential issues for consideration within the review itself. In reviewing the public comments, and preparing the proposed process, ICANN sought to ensure it was addressing the wide range of interests and views while retaining the scope of the work.

Additionally, ICANN previewed three separate iterations of the proposed process addressing process comments during the comment period with the SO/AC/SG leadership prior to the August posting.   After the first preview, each of the two subsequent straw man proposals with the SO/AC/SG leadership incorporated modifications addressing concerns and comments raised by the leadership.

On a 4 August call, in response to the SO/AC/SG dialogue, ICANN made the following adjustments to the proposed process (1) identifying 4 respected community members to select the up to 7 Advisors to the Coordination Group; (2) adjusted nomenclature; and (3) adopted a process that more strongly empowers the SO/AC/SG roles, specifically with the addition of a Cross Community Group and selection of representation to the Coordination Group.

The key changes made between the draft proposal published in May and the final version published in August (including all consultations) include:

- **Empowerment of SO/AC/SGs by creating two community groups** – The development of the Cross Community Group addresses comments made regarding the need for representation across ICANN's SOs, ACs, and the GNSO SGs in a way that is fully community directed. The community – not ICANN leadership – selects the members. Membership in the Cross Community Group is open to any stakeholder, with no prescribed membership numbers or methods of selection to this group. With the development of the larger Cross Community Group, the Coordination Group is a smaller, more intensive work group. This group will have approximately 21 participants, half of whom are SO/AC/SG representatives.
- **Elimination of the ICANN Staff or board role in the selection of experts** – Some stakeholders called for stakeholder selection of the advisors, and suggested that ICANN involvement in this process is not appropriate, while others called for coordination between ICANN and stakeholders in the selection of advisors. In response to these comments, ICANN modified the expert/advisory component of the accountability review to be conducted by a

Public Experts Group comprised of four respected individuals outside of ICANN staff or Board, tasked with selecting up to 7 advisors to the Coordination Group.

- **Modification of the ICANN Board role** – The process notes that any decision by the Board to not implement a recommendation (or portion of a recommendation) will be accompanied by a detailed rationale. Any decision not to implement a recommendation would be preceded by a dialogue with the Coordination Group and community. The Cross Community Group and the Coordination Group should prepare their own charters that will be reviewed by the Board for scope. If there is a concern that the charters exceed the scope of this process, there will be a dialogue between the Board and the respective group.
- **Synchronization of the two processes by adding an ICG liaison** – The draft charter of the IANA Stewardship Transition Coordination Group (ICG) included commentary on enhancing ICANN's accountability and their desire to coordinate work between the two processes. In response, the addition of a Liaison between the ICG and the ICANN Accountability & Governance Coordination Group was introduced.

Additionally, ICANN provided FAQs in response to additional community feedback for clarification purposes, and most recently, the community request for an additional 21-day comment period was taken on by ICANN. That comment period is now open.

19) *What is the rationale for so many non-stakeholder decision makers on the Coordination Group, given democratic principles of self-governance?*

Response: Also touched on in FAQ 11, there is strong community participation on the Coordination Group. While it is not clear what is meant by non-stakeholder decision makers, the process on Enhancing ICANN Accountability involves a range of views, interests and expertise, including specialized substantive expertise. As discussed in responses to Questions 7, 10 and 11, the decisions to honor the voices of those not yet active within ICANN and to include up to seven external advisors were carefully considered.

If the premise suggested by this question is that only those who are currently stakeholders within ICANN should have a role in making fundamental decisions on ICANN governance and accountability issues, this would seem exclusionary to the wide range of stakeholders interested in engaging in the process, and contrary to the spirit of a multistakeholder inclusive community.

20) *What is the organization's response to the ICANN #50 Statement of all 4 GNSO Stakeholder*

Groups calling for an independent accountability mechanism?

Response: The GNSO Stakeholder Group statement proposed a substantive solution to the accountability process calling for an independent accountability mechanism. This proposal is an important substantive contribution to the accountability process, for community discussion and consideration in that process. As noted in the Board's response on 7 July 2014, we are looking forward to the proposal being included in the deliberations of the Cross Community Group and their resulting output.

Sincerely,

Stephen D. Crocker   Fadi Chehadé
Chair, ICANN Board   President & CEO