

JPNIC Response to Proposed Accountability Enhancements by CCWG-Accountability

Thank you for providing the opportunity to submit a public comment on the proposed accountability enhancements developed by CCWG. We would also like to express our appreciation for the tremendous time and efforts devoted by the Chairs, rapporteurs of the Work Parties and all members of the CCWG, in developing this draft proposal.

It is important to maintain the stability of ICANN, as an organization operating the management of the critical internet resources, as well as a forum of policy development for the names related policies.

JPNIC would like to recommend the following general principles in considering ICANN Accountabilities.

- Accountability proposal should ensures open, bottom-up and community based decision making process in policy development
- Proposed accountability mechanism should be simple to be comprehensible and pragmatically adoptable in reasonable timeframe.
- Accountability proposal and its implementation should not be a delaying factor in the IANA Stewardship Transition

We would like to raise caution of over considering accountability measures which could lead to destabilizing the organization by putting excessive challenges to ICANN Board and/or secretariat decision, which are needed to carry out the activities under its mission. Further, overly complex system often leads to instability, with unintended affect which makes it harder to be identified when making changes, and it makes it harder for the parties to use such mechanisms when in needs.

[Comments to the questions listed on the call for Public Comment on Draft Recommendations]

Revised Mission, Commitments & Core Values

1. Do you agree that these recommended changes to ICANN's Mission, Commitments and Core Values would enhance ICANN's accountability?

Yes. We believe it enhances ICANN's accountability by clearly defining the scope of ICANN's missions, to ensure ICANN focuses to conduct its activities within this scope. We especially find it important, that "ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide"

We also agree to designate certain Core Values as Commitments listed below, which are all essential principles in ensuring ICANN remains accountable in maintaining the stability of the Internet and how the Internet and bottom up, transparent, open form should be facilitated.

1. Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet
2. Limit its activities to those within ICANN's Mission that require or significantly benefit from global coordination;
3. Employ open, transparent, bottom-up, multistakeholder processes; and
4. Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.

2. Do you agree with the list of requirements for this recommendation? If not, please detail how you would amend these requirements

Yes. The requirements listed help ensure that ICANN's mission is more clearly described, based on what has been commonly shared and agreed by the ICANN community, that

ICANN conducts its activities under its scope, ensures stability and reliability of its services. We also agree that ICANN should defer to input from public authorities to be consistent with ICANN's Commitments and Core Values. This is an important point to cover.

Fundamental Bylaws

3. Do you agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability?

Yes. By distinguishing Fundamental Bylaws from the other Bylaws, with explicit community approval required for its changes, it ensures changes to key components of the Bylaws will only take place with clear community support, and avoids the Board passing Fundamental Bylaw changes without getting noticed by the community. We also recognize the need for Fundamental Bylaws is identified by CWG-Stewardship.

4. Do you agree with the list of requirements for this recommendation, including the list of which Bylaws should become Fundamental Bylaws? If not, please detail how you would recommend amending these requirements.

Yes, we agree all of them to be included in the Fundamental Bylaws.

1. The Mission / Commitments/ Core Values;
2. The Independent Review process;
3. The manner in which Fundamental Bylaw can be amended;
4. The powers set out in Section 5 of this report;
5. Reviews that are part of the CWG-Stewardship's work – the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee.

Independent Review Panel Enhancement

- 5. Do you agree that the proposed improvements to the IRP would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.**

Overall, we agree that improvements to the IRP would enhance ICANN's accountability. However, we recommend to review whether all requirements listed for IRP must be in WS1 or can be considered as further improvements in WS2. For example, we see geographic diversity as an improvement but it may not be critical before the transition and there may be a few other elements which is not a must to agree as WS1.

We further recommend that if this its implementation becomes a delaying factor in the IANA Stewardship Transition, to consider its implementation post transition, given there is assurance from the ICANN Board to implement the proposal on IRP. The CWG-Stewardship has identified that ccTLD delegation and re-delegation as outside the scope of ICANN Accountability CCWG. The budget, which is another core related to the IANA function will be addressed by the community empowerment mechanism.

Reconsideration Process Enhancement

- 6. Do you agree that the proposed improvements to the reconsideration process would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements. Are the timeframes and deadlines proposed herein sufficient to meet the community's needs? Is the scope of permissible requests broad / narrow enough to meet the community's needs?**

Overall, we agree that improvements to the reconsideration process would enhance ICANN's accountability. However, we would like to request for more clarifications on why this must be in WS1, given there are other accountability mechanisms to be in place. We generally support improvements and further consideration on reconsiderations but if there are any contentious issues, which does not get resolved before the IANA Stewardship transition, we recommend that some of the requirements to be added as further improvements of reconsideration as WS2.

Mechanism to empower the Community

- 7. What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.**

We agree with the proposal to enhance community empowerment based on existing SOs/AC mechanisms, based on long tested experience, rather than basing it on a completely new mechanism. We have no objections to the composition currently suggested by the CCWG on representations from SOs and ACs.

Power: reconsider/reject budget or strategy/operating plans

- 8. Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.**

It is a common practice for stakeholders who appoint Board

members within an non-profit organization, to have the powers over key decisions made for the organization. We also recognize this as the power identified as required by the CWG-Stewardship.

Power: reconsider/reject changes to ICANN "standard" Bylaws

- 9. Do you agree that the power for the community to reject a proposed Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.**

Yes. Bylaws include Core Values, Mission and the clearly defines the scope of ICANN's activities. The community should have the ability to request for reconsideration or reject changes to the document which is such core to the organization.

Power: approve changes to "Fundamental" Bylaws

- 10. Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.**

This is a common mechanism for non-profit organization. It is good to have checks and balances on the Board decisions. We recognize this is again listed as a requirement by the CWG-Stewardship.

Power: Recalling individual ICANN Directors

- 11. Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you**

would recommend amending these requirements.

Yes. While it should not be abused, and discourage a Board member to act according to its fiduciary duties to please a particular stakeholder, it would be reasonable for the community to have this ability.

Power: Recalling the entire ICANN Board

12. Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

We would like to understand, what the specific circumstances are, to require the recall of the entire Board, and why this is needed in addition to have the ability to recall individual Board members. Until they are clear, we are not sure at this stage whether this further enhances ICANN's accountability, in balance with the risk of destabilizing the organization and the overhead of preparation needed to prepare for such situation.

In case there are specific circumstances for this need, out of the options provided in paragraph 246, we do not think option 1) makes sense, if we are overthrowing the entire Board due to its lack of accountability, to ask this board to act as "caretaker", as there must be very serious reasons to overthrow the entire existing Board.

Incorporating the Affirmation of Commitments into the ICANN Bylaws

13. Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the

list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

14. (The question on the website looks like the same as 13)

Binding the AoC related to Accountability into the Bylaws would ensure that ICANN will be committed to them. However, instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, we suggest to reference relevant sections of the AoC in the Bylaws and bind referred sections by the Bylaws. This would avoid a situation in the future where the Bylaws or AoC was changed but the other document remains unchanged.

Bylaws changes suggested by Stress Tests

15. Do you agree that the incorporation into ICANN's Bylaws of the above changes, as suggested by stress tests, would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

We would like to defer the comments to those who will be directly affected. i.e., SSAC, ALAC, GAC, RSSAC for “Forcing the Board to respond to Advisory Committee formal advice” and GAC for “Require consultation and mutually acceptable solution for GAC advice that is backed by consensus”.

Additional Questions:

- 1. The CCWG-Accountability welcomes feedback on whether there is a need, as part of Work Stream 1 (pre-Transition), to provide**

for any other means for other parts of the ICANN system to be able to propose new Fundamental Bylaws or changes to existing ones. In particular, the CCWG-Accountability welcomes feedback on whether the Mission should be subject to even higher thresholds of Board or community assent.

(paragraph 126 of the CCWG-Accountability proposal)

We do not see a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to proposal new Fundamental Bylaws or changes to existing ones. It is not clear how this enhances accountability and implications of adopting such system. This may be something for consideration in the long term, as a part of Work Steam 2, if such needs are identified.

- 2. Do you agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability?**

(paragraph 189 of the CCWG-Accountability proposal)

Yes, it is a common practice for stakeholders who appoint Board members within an non-profit organization, to have such mechanism. At the same time, we should seek for a balance of such powers, not to destabilize the system with too many challenges to move forward in key decisions needed to keep the organization running.

- 3. What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.**

(paragraph 190 of the CCWG-Accountability proposal)

As for the community empowerment in general, we would like to see its implementation to be simple, while ensuring

that it gives the community the powers it needs. Too much overhead should be avoided, and preference should be given to simplicity in its adoption.

We are not sure whether it is essential for the SOs and ACs to have a legal standing while we note it is considered preferable by some members of the community. We would like to understand the reason that the legal standing is considered necessary, in balance with the possible cost implications and instability for ICANN. We would like to confirm whether there is a way to prevent abuse of this standing by the community, for stability of ICANN as an organization.