The ICANN GNSO "Business Constituency"

Initial Comment on Enhancing ICANN Accountability

Status: FINAL

Version: 2

27-May-2014

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC). The BC's comments arise from the perspective of Business users and registrants, as defined in our Charter[1]:

> The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:
> 1. promotes end-user confidence because it is a safe place to conduct business
> 2. is competitive in the supply of registry and registrar and related services
> 3. is technically stable, secure and reliable.

On 6-May-2014, ICANN opened a public comment period on Enhancing ICANN Accountability, to examine "how ICANN remains accountable in the absence of its historical contractual relationship to the U.S. Government and the perceived backstop with regard to ICANN's organization-wide accountability provided by that role."[2] ICANN posed six questions to be addressed:

- What issues does the community identify as being core to strengthening ICANN's overall accountability in the absence of its historical contractual relationship to the U.S. Government?

- What should be the guiding principles to ensure that the notion of accountability is understood and accepted globally? What are the consequences if the ICANN Board is not being accountable to the community? Is there anything that should be added to the Working Group's mandate?

- Do the Affirmation of Commitments and the values expressed therein need to evolve to support global acceptance of ICANN's accountability and so, how?

- What are the means by which the Community is assured that ICANN is meeting its accountability commitments?

- Are there other mechanisms that would better ensure that ICANN lives up to its commitments?

- Additional comments that could be of use to the ICANN Accountability Working Group?

BC Initial Comments

The BC welcomes this discussion, which signals that ICANN management appreciates the need for new accountability mechanisms and structures in light of the pending transition of the U.S Government's IANA contract relationship.

Before the end of the reply comment period (18-Jun-2014), the BC will respond to the specific questions posed by ICANN, including suggestions for "other mechanisms that would better ensure that ICANN lives up to its commitments."

In our initial submission, the BC wishes to raise concerns and state our assumptions about the proposed process and structure for this new ICANN Accountability Working Group.

---

[1] Business Constituency Charter, at http://www.bizconst.org/charter.htm.

[2] https://www.icann.org/public-comments/enhancing-accountability-2014-05-06-en

1. Composition of the Working Group (WG). ICANN is inviting community members "to have their names put forward" for participation on the WG.[3] We note that ICANN suggests, "sub-working groups on specialized subject areas will be useful and open to all including experts." But our concern is with the potentially restricted composition of the main WG that would be tasked with developing written recommendations for enhancing ICANN Accountability.

Several BC members are interested in participating, so we are concerned that ICANN might be proposing to limit the size of the WG. Moreover, we would object if there were to be an equal allocation of limited slots among Advisory Committees and Stakeholder Organizations.

We have experience with ICANN Affirmation Review teams where members are appointed and apportioned to AC/SO groups. And we have experience with cross-community working groups where participation was not constrained. We are asking which of those models is being proposed for Enhancing ICANN Accountability, and we express our strong preference for the open participation model used in most cross-community working groups. It would benefit all community members if ICANN were to clarify these questions before the end of the public comment period, so that reply comments could be more relevant and responsive.

2. Scope of Accountability Mechanisms. ICANN listed an inventory of accountability mechanisms that incudes existing documents such as the Affirmation of Commitments and ICANN Bylaws. We assume that this inventory is suggestive and not restrictive of the available accountability mechanisms. We also assume that the WG could recommend significant changes to ICANN Bylaws, such as incorporating the Affirmation Reviews into the Bylaws themselves. If our assumptions do not fit with ICANN board and management expectations, then we ask ICANN to clarify any scope limitations before the end of the public comment period.

3. Charter of the Accountability WG.   On the web page for *Enhancing ICANN Accountability*, there is no mention of creating a charter for this WG. The BC assumes that the WG could create its own charter after it convenes, drawing upon ICANN's proposed questions and inventory of accountability mechanisms. We ask ICANN to affirm our assumption or clarify its expectations regarding a charter for this WG.

4. Criteria for Board Approval of Recommendations. ICANN proposes that a draft WG report would be posted for public comment, and the final report would go to the ICANN Board to, "**consider whether to adopt all or parts of it**, and direct the CEO to implement those parts it has accepted once that decision is made."

The BC is concerned that widely-supported recommendations for accountability enhancements could still be rejected by ICANN's Board. This is a very real risk in a process where the community could well recommend significant enhancements that affect the autonomy, accountability, and transparency of ICANN Board operation.

Before the end of this public comment period, we request that ICANN inform the community of criteria the Board could use to reject WG recommendations. ICANN should also describe a process for explaining the Board's decision to reject WG recommendations, along with a mechanism for the community to appeal the Board's rejection decisions.

---

[3] https://www.icann.org/resources/pages/enhancing-accountability-2014-05-06-en

Moreover, we recommend a process to review the subsequent **implementation** of recommendations by ICANN management, perhaps as part of future Accountability & Transparency Reviews required under the present Affirmation of Commitments.

5. Timing. ICANN's proposal to convene the WG before London meeting is ambitious but possible, absent controversy over limits placed on WG composition.   However, the BC has a broader concern about timing, regarding the relationship between ICANN Accountability enhancements the transition of IANA functions. As we noted in our comments in IANA Transition, the BC believes that IANA transition should follow approval of recommendations made by the WG on Enhancing ICANN Accountability.

These comments were drafted by Steve DelBianco with help from Susan Kawaguchi, Phil Corwin, and Aparna Sridhar. It was approved in accordance with the BC charter.