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Report of Public Comments

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Section I: General Overview and Next Steps

Comments on the proposed process for the Enhancing ICANN Accountability review were collected following the posting of the process on 6 May 2014. ICANN also had multiple opportunities at its June 2014 meeting in London, England for stakeholders to comment and discuss the development of this Enhancing ICANN Accountability work.

Along with this Summary and Analysis, ICANN is posting the revised process documentation for the Accountability and Governance review so that the work can proceed. This Summary and Analysis does not lay out the full process; it identifies how the comments received were taken into account in the revision of the process.

The next step is for the ICANN Accountability & Governance Review to proceed. Stakeholders will have the opportunity to participate without limitation in the Cross Community Group. That group will be responsible for both for starting to discuss issues for further development in the process and for making sure that appointments to the Coordination Group are completed so that both parts of the process can get underway.

Section II: Contributors

At the time this report was prepared, a total of 49 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Just Net Coalition	Richard Hill	/
Afnic	Pierre Bonis	/
Business Constituency	Steve DelBianco	BC
Technology Policy Institute	Amy Smorodin	TPI
USCIB	Barbara Wanner	USCIB
European Commission	Camino Manjon-Sierra	EC
Donuts	Jonathon Nevett	/
InternetNZ	Jordan Carter	/
CENTR	Wim Degezelle	/
Registry Stakeholder Group	Paul Diaz	RySG
Google	Aparna Sridhar	/
CATR	Liu Yue	/
LACTLD	Carolina Aguerre	/
Software & Information Industry Association	Carl Schonander	SIIA
Brazilian Government	Pedro Ivo Ferraz da Silva	/
Verizon	Cheryl Miller	/
China Internet Network Information Center	Hongbin Zhu	CNNIC
Motion Picture Association of America	Alex Deacon	MPAA
Internet Society of China	Rui Zhong	ISC
Non-Commercial Stakeholder Group	Rafik Dammak	NCSG
Coalition for Online Accountability	Steven Metalitz	COA
Domain Mondo	John Poole	/
Centre for Internet and Society	Geetha Hariharan	CIS
Spain	Gema Campillos	/
NRO	Paul Wilson	/
ccNSO	Byron Holland	/
The Heritage Foundation	Brett Schaefer	/
Business Constituency (Reply)	Steve DelBianco	BC (Reply)
International Trademark Association	Kate Badura	INTA
Domain Name Association	Kurt Pritz	DNA

Individuals:

Name	Affiliation (if provided)	Initials
Deedee Halleck	/	/
Richard Hill	/	/
Brian Carpenter	/	/
Kilnam Chon	/	/
Konrad Von Fickenstein	/	/
Tamer Rizk	/	/
Garth Graham	/	/
Fiona Asonga	/	/
Graham	/	/
Avri Doria	/	/
Paul Twomey	/	/
Robin Gross	/	/
Sivasubramanian Muthusamy	/	/
Milton Mueller	/	/
Seun Ojedeji	/	/
Edward Morris	/	/

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

The comments received in response to this posting can be divided into three categories:

- 1) Comments on the proposed process for the Enhancing ICANN Accountability Review
- 2) Comments on issues for consideration during the Enhancing ICANN Accountability Review
- 3) Proposed solutions for enhancements to ICANN's accountability.

For the purposes of this public comment summary and analysis, only the comments on the proposed process are summarized and analyzed here. The collection of issues identified for consideration during the Enhancing ICANN Accountability review, as well as proposed solutions, are collected in attachments to this document and are expected to be the first inputs into the review process. As ICANN stakeholder work is needed to further identify and prioritize the issues for the review, we are not providing any analysis on those issues. Similarly, the solutions to the issues that are prioritized for consideration are not appropriate for analysis here.

Relationship to IANA Stewardship Transition Process

The MPAA, USCIB, SIIA, Robin Gross, Verizon, ccNSO, CNNIC, Donuts, Google, Heritage Foundation, the Government of Brazil, Edward Morris and NCSG each commented on the linkage between the IANA Stewardship Transition Process and the accountability work, with multiple commenters stating a

preference for varying levels of completion of the accountability track work and the timing of the completion of the transition of stewardship. For example, Verizon called for a “concrete plan [on accountability] vetted and approved” through the multi-stakeholder process prior to the transition taking place, SIIA called for agreement on new consensus ICANN accountability mechanisms being reached prior to a decision on the transition, Robin Gross calls for the resolution of ICANN’s accountability issues as a necessary prerequisite to the transition, USCIB called for new mechanisms to be incorporated into the Bylaws and procedures of ICANN prior to the transition, and MPAA sought a “firm commitment” from ICANN to complete and codify the improvements of the accountability process prior to finalizing a transition recommendation.

The ccNSO provided comments on the need to coordinate understanding and issues between the two processes to enable an understanding among the community, avoid overlap between the discussions, reduce risk of divergence among proposal and to coordinate outcomes. The ccNSO also noted that the processes could benefit from a similar framework, and that input was needed on the amount of type of resources – including independent facilitation – to support the work and to coordinate this with other work on the “critical path” of the transition. The RySG also called for community input on the question of how the two processes interact.

ICANN’s Role in Process

The RySG stated that ICANN should support the community-determined process through provision of resources and coordination support, as requested by the community-appointed leaders. The issue of the amount of ICANN resources to be devoted to the effort should be put out to the community for input; the current document is an ICANN attempt to “steer the accountability process.” The role of ICANN staff, as well as the Board, should be put to the community for input as well. The ccNSO similarly suggested that the role of the ICANN staff and Board in the output of the group be put out for additional input, and suggested that there be a role for the SOs and ACs to review/consider/support/reject the recommendations as a community prior to Board consideration.

Afnic commented that ICANN’s role is of a coordinator, and it should rely on independent and professional consultants trained in problem solving, as well as for a secretariat function.

Role of and Selection of Experts

Both the MPAA and the COA called for the expertise topics set out in the posted document to be expanded to include expertise on intellectual property and the rule of law on the Internet.

INTA stated that ICANN placing experts onto the working group would be a conflict of interest violation of the neutral facilitator role that NTIA requested ICANN to assume. ICANN should make supportive resources, including experts, available to the WG at the WG’s initiative and request. The ccNSO also commented that ICANN should not reserve the ability to appoint an unspecified number of experts because ICANN’s self interest in the outcome makes that reservation “inappropriate.” Robin Gross called for expertise identification by the community based upon the needs identified by the community.

LACTLD commented that identification of experts should be a joint effort of ICANN staff, the community and the WG. The COA stated its assumption that expert selection would happen with input from the community. CENTR commented that identification of external experts should be a “joint and balanced effort” on behalf of ICANN staff and community.

The RySG called for ICANN to seek community input on the role of experts in this process.

Composition of Community Representatives on Review Team

Multiple commenters addressed issues of composition and selection of review team members.

Afnic commented that independent audit committees serve as a model for composition of this group, such that a majority of the seats should be held for those that are independent, such as not having exercised any ICANN mandate in the past three years (ex: ATRT member). Conflicts of interest issues have to be considered in this process.

CATR commented that the process should avoid having members of the working group mainly from ICANN's inner circle. In order to increase global acceptance to ICANN, the working group should be widely incorporated into all areas of personnel, and should be open to UN and government representatives. NCSG also commented that consultative processes on accountability should extend beyond the ICANN community and into the broader Internet governance ecosystem.

MPAA commented that the steering or drafting committee should have representation from all major stakeholder groups, with the community – not ICANN – determining participation. INTA stated that the community should determine the composition of the WG. Robin Gross supported that Supporting Committees and Advisory Committees should select their own representatives and cautioned that governments should not be privileged over others.

The BC sought clarification as to whether the group would be selected similar to the ATRT process, or if it would be a cross-community working group populated by the community. The BC stated its preference for the cross-community working group model, and expressed concern that ICANN is seeking to limit the size of the WG. The BC noted that it would object if there were to be an equal allocation of limited slots among the SOs and AC. The COA also raised the question that it is unclear how the SO and AC participants will be selected. CNNIC also sought clarification on the principles of the WG’s constitution, personnel assignment and member election.

The ccNSO commented that ICANN should first seek comment on whether a WG approach makes sense.

Seun Ojedeji commented that working group should be as inclusive as possible to avoid capture.

DeeDee Halleck called for ICANN to increase geographical and economic participation on the working group. CNNIC also called for equality and representation of all regions into full account, ensuring the

participation of the developing countries.

The RySG suggests that the composition of the WG should be a topic of further community input.

Charter Development

Some comments addressed either the need for, or a discussion of who should be responsible for, the development of a charter. The BC asked for confirmation on how the chartering would work, and if there are any constraints on the topics the group might explore. INTA noted that a clear and comprehensive charter should be adopted by the WG, and the community should control the scope of the effort. The RySG stated that the charter should be developed by the ICANN SOs and ACs after community input on a group of questions set forth in the RySG submission.

In terms of work processes that could be incorporated into charter, Afnic recommends that structured problem solving approach be put in place (problem definition, current state assessment, root cause analysis, elaboration of countermeasure/solutions/experimentations/effect confirmation/follow-up actions), with stakeholder interaction at each phase.

The ccNSO suggested that if a WG model is the right way forward, then ICANN should develop community consensus on the expected outcomes, deliverables, size, make-up and mode of operation, perhaps through the development of a cross-community working group to address these issues.

Goal of Process

Multiple comments were received on some of the characteristics of the process that are important to make it successful. For example, the NCSG called for the process to be run in an open and transparent fashion, and there has to be meaningful stakeholder participation in the acceptance of the proposals.

Afnic called for clearly defining the goal of the process from the outset, including using a clear definition of accountability such as the definition as adopted the NetMundial statement.

The ccNSO suggested that the goal of the process be aligned with the 2016-20 Strategic Vision statement: “enable ICANN to be trusted by all stakeholders.”

Board Acceptance of Recommendations/Outcomes of Review

A couple of commenters raised the issue of the Board’s ability to reject the recommendations from the review team and asked for clarity around that process. INTA commented that the Board should be required to provide a detailed rationale for any rejection of modification of any part of the community-developed accountability plan, and there should be a clear ability to appeal the Board’s rejection. The BC expressed similar concerns and a request for an appeals mechanism.

Timeline of Process

On timeline, commenters raised issues of the shortness of timeframe set out in the posted document, as well as requests for full timeframes for the process.

LACTLD commented that though minimum timeframes are respected, the time for community input is too short.

The EC requested a clear timeframe for the process. INTA stated that the community should control the speed of the process, and no artificial deadline should be in place.

CENTR stated that the timeline seems very short, and ICANN should allow for longer comment periods in the process as opposed to working towards a fast outcome. The BC called the timeframe “ambitious.” The COA commented that the timetable for selection of membership seems short.

Other Process Issues

Spain stated: “NTIA's withdrawal cannot [be] seen as some kind of graduation party, but a heavy burden on ICANN, who has now the responsibility of showing the world that it can actually manage resources that belong to the global community . . . Every effort should be made by ICANN to come up to standard and to fulfill the expectations created.”

The ccNSO stated that the process should begin with a disinterested assessment of accountability efforts, not simply relying on the inventory produced by ICANN. The scope for the process is too narrow, as it limits to consideration of tools and is based on an assumption that ICANN is already adequately accountable.

CENTR suggested that ICANN consider launching broader consultation to reach consensus on what ICANN should be accountable for.

Paul Twomey suggested that historical education on the accountability efforts at ICANN be incorporated into the process.

Sivasubramanian Muthusamy cautioned for simplicity: “The Process . . . could be approached not as a task of establishing or strengthening oversight, audit or scrutiny systems, nota sa process of creating more rules for greater complexity, but rather as a larger, ongoing exercise of constantly strengthening the foundation of ICANN, its multi-stakeholder model, and constantly improving the overall design of the framework for the processes.” CENTR and Edward Morris also supported the notion of simplicity.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Taking these procedural comments into consideration, ICANN has developed a revised process for the Enhancing ICANN Accountability review. Accompanying the summary and analysis posting is a revised process document as well as a graphical depiction of the process. This analysis section details how ICANN took stakeholder comment into consideration when revising the process.

Relationship to IANA Stewardship Transition Process

In recognition of the community comments on the linkage between the IANA Stewardship Transition Process and this accountability work, as well as the need for coordination between the two processes, ICANN has added a liaison from the IANA Stewardship Transition Coordination Group (ICG) to the ICANN Accountability & Governance Coordination Group. This liaison role is expected to assist in countering potential duplication of efforts or diverging solutions. Having a liaison between the processes can also assist in monitoring the timing of the conclusion of each of the processes. Because timeframes for both the ICG and this accountability work are still unknown, ICANN is not in a position to commit to any one of the varying preconditions for submitting a transition proposal to the NTIA in line with the NTIA's expectations, as suggested by commenters.

ICANN's Role in Process

A few stakeholders who submitted comments suggested that ICANN should sit only in a neutral or coordination role in relationship to the accountability work, and should be in a place to provide resources in the form of independent consultants and secretariats, or as directed by a stakeholder-comprised group. While ICANN has shifted the composition of the accountability processes to have a clearer stakeholder voice, as well as independent and stakeholder expertise, ICANN's role in the accountability is far more than just acting as a neutral convener or facilitator. This is in contrast to the NTIA-imposed requirements of ICANN's role in the ICG work. The NTIA did not direct ICANN to initiate this accountability work – ICANN heard the broader stakeholder concern on accountability that came to the forefront after the announcement on the NTIA's intent to transition its stewardship of the IANA functions, and ICANN initiated this accountability process. 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. In line with stakeholder comments, however, ICANN has made clearer (and broadened) other stakeholders' participation in this process as well as expanded ability for the identification of expertise to provide more balance between ICANN and other stakeholder inputs.

Role of and Selection of Experts

In response to comments, ICANN has modified the expert/advisory component of the accountability review. Instead of ICANN staff or Board being the sole selector of independent advisors, ICANN is now bringing together four respected individuals with strong backgrounds in academia, governmental relations, global insight, and the AoC, to form the Accountability & Governance Public Experts Group. These four individuals - who are not part of ICANN's staff or Board - will be responsible for the selection of up to 7 advisors to the Coordination Group. The remainder of the Coordination Group will be comprised of stakeholders – one participant appointed from each of ICANN's SOs and ACs (with the exception of the GNSO, which may appoint up to four participants) who are suggested to also bring expertise in any of the areas identified in the process document. This re-design also incorporates limits to the number of advisors, which was cited as a concern in the comments.

In response to the suggested topics for expansion of the potential areas of expertise, ICANN has expanded the topic area of Internet Consumer Protection to include issues of privacy, human rights and property rights, as intellectual property concerns are a subset of this broader issue. The rule of law on the Internet can be considered as part of jurisprudence. As ICANN has refined this process and considered the full range of comments, issues of governmental engagement and relations as well as multistakeholder governance were at the forefront of many of the issues or solutions identified in the comments. As a result, ICANN has added these two items as potential areas for expertise.

Because there are now a limited number of external advisors, there may be areas where additional external expertise will be valuable in identifying best practices and bringing in research and advice. The advisor group may wish to call on a network of experts that they cultivate, if they so wish.

As discussed above, the suggestion that ICANN is limited to a neutral facilitator role in the accountability process and should therefore not have a role in the selection of advisors does not reflect the actual role of ICANN in this accountability process. However, the revised process takes the appointment of experts out of ICANN's responsibilities in line with stakeholder comments.

Composition of Community Representatives on Review Team

One of the main comments received was that stakeholders need to be assured that they have a direct voice in the selection of working group members, and that ICANN not place constraints on membership. The initial process was criticized for lack of clarity on this point. To address these concerns and create a balance between the calls for broad representation and expertise, there are now two places for stakeholder participation: first, in the Cross Community Group on ICANN Accountability & Governance, the membership of which is open to all who wish to participate, which will allow for diverse membership. The Cross Community Group will be where issues are identified for further consideration. ICANN is not imposing limitations on the scope of issues that this Group, or the Coordination Group to which issues are referred, may consider. Secondly, there will be stakeholder participation on the ICANN Accountability & Governance Coordination Group, where SOs and ACs will appoint expert members to sit alongside the external advisors. The incorporation of external advisors into the process helps address some of the independence concerns as raised by Afnic.

Though some commenters suggest that ICANN should first seek community input on the use of the working group mechanism, it is important to focus on how to get this process underway as soon as possible, as opposed to devoting multiple cycles to designing the process. With a clear path for broad representation, mixed with a smaller expert panel, there are multiple opportunities for community interface.

Charter Development & Goals of Process

In response to the comments, ICANN confirms that a charter will be developed by the Board for both the Cross Community Group and the Coordination Group. This is different from the model where a cross community group would be chartered through the various SOs and ACs. However, the charter that will be developed for each group will allow for great substantive leeway. The main function of the charters will be to define the working methods of the respective groups, not to narrowly scope the work that is being performed.

The goals of this process, which will be embodied in the charter, are two-fold: 1) ensuring ICANN remains accountable in the absence of its historical contractual relationship with the U.S. Government (USG), and the perceived backstop with regard to ICANN's organization-wide accountability provided by that role; and 2) identifying new (or enhanced) mechanisms for ICANN accountability through the incorporation of best practices and expert advice and research. This can include assessing whether issues identified by the community are possible to address adequately through existing processes. While the definitions suggested in the comments can be beneficial, further community input is appropriate prior to imposing a definition of accountability.

Board Acceptance of Recommendations/Outcomes of Review

The comments regarding the Board's ability to reject the recommendations arising out of the work, and the need for detailed rationale if that were to happen are well taken. The process has been updated to require detailed rationale statements if the Board rejects a recommendation. Further, the incorporation of a staff member on the Coordination Group as well as a Board liaison can serve as a touch point for early feasibility assessment of potential recommendations. Because the process itself is about the development of accountability mechanisms, it does not seem advisable for ICANN to unilaterally create an appeals mechanism in the event of community disagreement with the Board's action on a recommendation. To be clear, ICANN's goal is to have this work develop recommendations that are capable of implementation, and not solely to go through the exercise of a review. Because there are multiple allowances for community interaction, the recommendation by one commenter that the SOs and ACs provide a review step over the final report prior to Board action seems to place the community voice too late in the process. There will be multiple opportunities for comment throughout the review, which is anticipated to result in a report that already has community support behind it.

Timeline of Process

Because of the time that has elapsed between the posting of the original Enhancing ICANN Accountability document and the present, some of the concerns that were raised about the shortness of the timeline for selection of members to the proposed working groups could be somewhat alleviated. Though the exact form for this work was not finalized, the stakeholder community has now been aware for a matter of months of the need to consider selecting participants, and commenters such as the BC indicated that outreach for participation has already occurred within its group. Indeed, the timelines for this work will continue to be short – there is a lot of work to be done and it is time for the process to commence. However, commenters are also correct that ample time is given for participation in this process – public comment practices and document sharing deadlines should be respected, and opportunities for public consultation should be encouraged.

There are some dates that are known: stakeholders are encouraged to have the Cross Community Group representation in place for a first virtual meeting around 15 September 2015. The Coordination Group selections should be completed in time for the Coordination Group to meet at the ICANN meeting in Los Angeles in October 2014.

There are other dates that are not known: part of the work of this accountability and governance review is to identify not only proposed solutions, but timelines for the implementation of those solutions. Community agreement on feasibility and priority are needed before timetables are set forth on the completion of this work. The work, however, needs to proceed and needs to proceed in earnest.

Other Process Issues

As encouraged by commenters, ICANN recognizes the great responsibility it has in working across the stakeholders community to advance ICANN's accountability and governance practices. This may take the shape of new mechanisms, structures, modes of interaction or other forms – the outcome is not predetermined. The caution for simplicity in design is well taken, as well as the suggestion that the historical work on accountability in ICANN must be considered in this effort. This is not just an effort in seeing if past practices can be improved; this is indeed an inflection point of how the notions of accountability and governance can be improved to best serve the multistakeholder model.