

CCWG Accountability WS1 – Further Inventory of Accountability Mechanisms
 Draft as of 22 December 2014

Mechanism	Who	To whom	For what?	Review, Redress or Check & Balance	Worth keeping (yes/no)
	is accountable?				
ICANN Bylaws					
REDRESS Mechanisms					
Reconsideration	ICANN staff; ICANN Board	Injured party; ICANN community	Violations of ICANN process/policy; Decisions without material information; Decisions on inaccurate info	Redress Redress	
Independent Review	ICANN Board	Injured party; ICANN community	Decisions inconsistent with Bylaws or Articles of Incorporation	Redress	
Periodic Structural Reviews	Component organizations	ICANN Community	Continuing purpose in ICANN structure; performance enhancements or modifications	Review	
Ombudsman	ICANN Board; ICANN staff; ICANN component organizations	Injured party; ICANN community	Unfairness in treatment	Redress	
Policy Consideration Requirements					
GNSO	ICANN Board	GNSO; ICANN community	Consideration of policy recommendations in expected manner	Check and Balance	

Mechanism	Who	To whom	For what?	Review, Redress or Check & Balance	Worth keeping (yes/no)
	is accountable?				
ccNSO	ICANN Board	ccNSO; ccTLDs; ICANN community	Consideration of policy recommendations in expected manner	Check and Balance	
ASO	ICANN Board	ASO/NRO	Consideration of policy recommendations in expected manner	Check and Balance	
Advisory Mechanisms					
SSAC	; ICANN Board	SSAC; ICANN Community	Solicitation of and consideration of security-related advice in expected manner	Check and Balance Check and Balance	
GAC	ICANN Board	GAC; ICANN Community	Solicitation of and consideration of GAC's public policy advice in expected manner	Check and Balance Check and Balance	
ALAC	ICANN Board	ALAC; At-Large Community; ICANN Community	Solicitation of and consideration of advice on activities of ICANN insofar as they relate to the Internet end user in expected manner	Check and Balance Check and Balance	
RSSAC	; ICANN Board	RSSAC; Root server operators; ICANN community	Solicitation of and consideration of advise on matters relating to root server system in expected manner	Check and Balance Check and Balance	
Affirmation of Commitments					

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Mechanism	Who	To whom	For what?	Review, Redress or Check & Balance	Worth keeping (yes/no)
	is accountable?				
AOC	ICANN; DoC	DoC's obligations to ICANN and the ICANN community; ICANN's obligations to DoC and ICANN Community	Upholding single, interoperable Internet; remain US headquartered organization; upholding multi-stakeholder model; taking decisions with published rationale; transparent, accountable, fact-based processes; Variety of reports and reviews	Review and Check and Balance	
Jurisdictions of State of California					
California & US laws	ICANN	California Secretary of State; California and U.S. Courts	Compliance with laws and obligations, including tax-exempt status regulations	Redress and Check and Balance	
Jurisdiction of laws of other nations where ICANN has a presence					
Jurisdictions where ICANN has a presence	ICANN	Applicable oversight/regulatory bodies	Compliance with laws and obligations	Redress and Check and Balance	
Contractual requirements					

Mechanism	Who	To whom	For what?	Review, Redress or Check & Balance	Worth keeping (yes/no)
	is accountable?				
NTIA	ICANN	NTIA; Customers of IANA function	Respect of separation of policy and operational roles; performance standards; required reports; required performance; security requirements	Redress and Check and Balance	
Registry & Registrar Agreements	ICANN; Registries; Registrars	ICANN Contracted Party	Performance standards; detailed obligations; commitment to dispute resolution mechanisms set out in agreements	Redress and Check and Balance	

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SubGroup 1

Establishing an inventory of existing accountability mechanisms / ATRT recommendations

1. ICANN Bylaws
 - a. **REDRESS Mechanisms:** ICANN Bylaws specifically provide four avenues for review of perceived failures of accountability:
 - i. Request for Reconsideration (Art. IV, Sec. 2) of
 1. one or more staff actions or inactions that contradict established ICANN policy(ies); or
 2. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

3. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
 - ii. Process for “independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws” (Art. IV, Sec. 3)¹
 - iii. “Periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review . . . to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.” (Art. IV, Sec. 4)
 - iv. Office of an Ombudsman (Art. V) “to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly.”
- b. **Policy Consideration requirements:** requirements for how the Board shall consider policy recommendations from its advisory committees
 - i. GNSO
 - ii. ccNSO
 - iii. ASO
 - c. **Bylaws-based ADVISORY mechanisms:** requirements for the Board obtaining and considering advice from its Advisory Committees
 - i. Security and Stability Advisory Committee (SSAC) recommendations

¹Until April 2013, the standard of review was:

“Requests for such independent review shall be referred to an Independent Review Panel (“IRP”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.”

Effective in April 2013, the Board specified three areas for allowable review:

“The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a.) did the Board act without conflict of interest in taking its decision?
- b.) did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c.) did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?”

- ii. Governmental Advisory Committee (GAC) advice
 - iii. At-Large Advisory Committee (ALAC) advice
 - iv. Root Server Stability Advisory Committee (RSSAC)
2. Affirmation of Commitments (AoC)
 - a. AoC requires multiple reviews to be undertaken, specifically the Accountability and Transparency Reviews (see below for high-level summary of recommendations)
 3. Jurisdiction of California and United States, enforced by:
 - a. Secretary of State of California
 - b. Courts (California and U.S. Federal)
 4. Jurisdiction of laws of other nations where ICANN has a presence
 5. Contractual requirements
 - a. Relevant requirements of binding commitments by ICANN entered into with NTIA (for example, clauses C.2.9.2.c and C2.9.2.d of the IANA Functions Contract).
 - b. Registry and Registrar Agreements

ATRT1 Recommendations:

- **Rec 1 Board Operations, Composition & Review of Decisions**
1.a-d Mechanisms for identifying collective Board skill-set; benchmarking Board/Board Governance Committee skill-sets; tailoring & consulting on skills; reviewing for each Nominating Committee (NomCom); publishing outcomes & requirements with NomCom's notice.
- **Rec 2 Board Operations, Composition & Review of Decisions**
Regularly reinforce/review training & skills building.
- **Rec 3 Board Operations, Composition & Review of Decisions**
Increase transparency of NomCom's deliberations & decision-making process. ASAP but starting no later than next Nom Com.

- **Rec 4 Board Operations, Composition & Review of Decisions**
Continue to enhance Board performance & work practices.
- **Rec 5 Board Operations, Composition & Review of Decisions**
Implement compensation scheme for voting Board Directors.
- **Rec 6 Board Operations, Composition & Review of Decisions**
Clarify distinction between Policy Development & executive function issues
- **Rec 7 Board Operations, Composition & Review of Decisions**
7.1 Promptly publish all appropriate Board materials related to decision-making processes.
7.2 Publish rationale for Board decisions and for accepting or rejecting public & community input.
- **Rec 8 Board Operations, Composition & Review of Decisions**
Publish redaction conditions.
- **Rec 9 Governmental Advisory Committee (GAC) Operations, Engagement, Interaction with Board**
Clarify what constitutes GAC public policy “advice” under the Bylaws.
- **Rec 10 GAC Operations, Engagement, Interaction with Board**
Create formal, documented process for requesting, tracking GAC advice.
- **Rec 11 GAC Operations, Engagement, Interaction with Board**
Ensure timely provision & consideration of GAC advice and mechanisms for Board follow-up.
- **Rec 12 & 13 GAC Operations, Engagement, Interaction with Board**
Board, acting through the JWG, should develop & implement a process to engage the GAC earlier in the policy development process; ensure GAC is fully informed of policy agenda & policy staff is aware of GAC concerns.
- **Rec 14 GAC Operations, Engagement, Interaction with Board**
Increase support & commitment of governments to the GAC process.
- **Rec 15 Public input & Multilingual Access**
Implement stratified, prioritized public Notice & Comment processes.
- **Rec 16 & 17 Public input & Multilingual Access**
Provide “Comment” cycle & a “Reply Comment” comment cycles; review and adjust fixed timelines for Notice & Comment
- **Rec 18 Public input & Multilingual Access**
Ensure multilingual access in Policy Development Processes (PDP) to maximum extent feasible.

- **Rec 19 Board Operations, Composition & Review of Decisions**
Publish translated Board material within 21 days.
- **Rec 20 Board Operations, Composition & Review of Decisions**
Ensure/certify that inputs in policymaking processes are considered by the Board.
- **Rec 21 Public input & Multilingual Access**
Create annual public comment forecast.
- **Rec 22 Public input & Multilingual Access**
Ensure senior staffing arrangements are appropriately multilingual.
- **Rec 23 Board Operations, Composition & Review of Decisions**
Get input from committee of independent experts on restructuring review mechanisms.
- **Rec 24 Board Operations, Composition & Review of Decisions**
Assess Ombudsman relationship and confirm framework is consistent with international standards.
- **Rec 25 Board Operations, Composition & Review of Decisions**
Clarify standard for Reconsideration requests.
- **Rec 26 Board Operations, Composition & Review of Decisions**
Adopt standard timeline & format for Reconsideration Requests.
- **Rec 27 Measuring Success**
Evaluate and report on progress on recommendations and accountability & transparency commitments in the AoC.

ATRT2 Recommendations

- **Rec 1 Board Performance & Work Practices**
Develop and analyze measures for determining the quality of ICANN Board members.
- **Rec 2 Board Performance & Work Practices**
Develop and analyze measures of effectiveness of the Board's functioning and improvement efforts.
- **Rec 3 Board Performance & Work Practices**
Analyze qualifications of Board candidate pools, and assess Director's compensation levels against prevailing standards.

- **Rec 4 Policy/Implementation/Executive Function**
Develop understanding of the distinction between policy development and policy implementation. Develop mechanisms for SO/ACs to consult with the Board on matters, including but not limited to policy, implementation and administrative matters, on which the Board makes decisions.
- **Rec 5 Decision Making Transparency & Appeals**
Create a single published redaction policy. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.
- **Rec 6 GAC Operations & Interaction**
 - 6.1. Make deliberations more transparent and better understood.
 - 6.2. Adopt a policy of open meetings to increase transparency.
 - 6.3. Develop and publish rationales for GAC Advice, using the GAC register.
 - 6.4. Develop and document a formal process for notifying and requesting GAC advice (see ATRT1 Recommendation 10).
 - 6.5. Vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation (see ATRT1 Recommendation 11).
 - 6.6. Remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. Improve its procedures to ensure more efficient, transparent and inclusive decision-making.
 - 6.7. Regularize senior officials' meetings.
 - 6.8. Work with ICANN's Global Stakeholder Engagement group (GSE) to develop guidelines for engaging governments.
 - 6.9. Develop a baseline and set of measurable goals for stakeholder engagement.
- **Rec 7 Decision Making Transparency & Appeals**
 - 7.1. Improve Public Comment process.
 - 7.2. Implement a process of correcting inaccuracies within comment summaries.
- **Rec 8 Multilingualism**
Improve translation quality and timeliness and interpretation quality. Implement continuous improvement.
- **Rec 9 Decision Making Transparency & Appeals**
 - 9.1. Mandate Board Response to Advisory Committee Formal Advice.
 - 9.2. Explore Options for Restructuring Current Review Mechanisms.
 - 9.3. Review Ombudsman Role

9.4. Develop Transparency Metrics and Reporting

9.5. Arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

- **Rec 10 Cross-Community Deliberation**

10.1. Enhance GNSO policy development processes and methodologies to better meet community needs and be more suitable for addressing complex problems, including funding for professional services to assist GNSO policy development WGs and for face-to-face meetings and methodologies to utilize volunteer time more effectively.

10.2. Develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes.

10.3. Ensure more global participation in GNSO policy development processes, as well as other GNSO processes.

10.4. Clarify circumstances under which the Board may establish or alter gTLD policy .

10.5. Facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.

- **Rec 11 AoC Review Process Effectiveness**

11.1. Ensure that the ongoing work of the AoC reviews is fed into the work of other ICANN strategic activities.

11.2. Coordinate various review processes so as to have all reviews complete before next ATRT review begins, and with the proper linkage of issues as framed by the AoC. 11.3. Ensure that AoC Review Teams are appointed in a timely fashion and have sufficient time to complete their work.

11.4. Prepare implementation report, including benchmarks and metrics, to be ready by review kick-off.

11.5. Allocate sufficient resources for Review Teams to fulfill their mandates and make the budget and rationale available at the start of the review.. This should include, but is not limited to, accommodation of Review Team requests to appoint independent experts/consultants if deemed necessary by the teams.

11.6. Address all AoC Review Team recommendations in a clear and unambiguous manner, indicating to what extent they are accepting each recommendation.

11.7. Provide an expected time frame for implementation

- **Rec 12 Financial Accountability & Transparency**

12.1. Ensure that the ICANN community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing of work.

- 12.2. Consider the cost-effectiveness of ICANN's operations , in keeping with ICANN's status as a non-profit organization operating and delivering services in a non-competitive environment.
- 12.3. Conduct a benchmarking analysis.
- 12.4. Implement a multi-annual strategic plan and corresponding financial framework.
- 12.5. Improve the budget consultation process.

