

# CCWG Accountability

## Mailing List Discussions

### Week: 16 -22 January 2015

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#### CCWG accountability ([archives](#))

- **Contingencies**
  - Members invited to analyze contingencies and to determine whether these are addressed by existing accountability mechanisms.
  - A new contingency suggested for the inventory that ICANN delegate or subcontract its obligations under a future IANA agreement to a third party, this presented as a follow-up to the conversation held in Frankfurt.
- **Work Area 2**
  - The WA2 rapporteur encouraged the CCWG to review the [revised inventory](#) and to provide comments prioritization.
  - [Proposed requirements](#) were extracted from the Work Area 2 to advance the inventory for Work Stream 1 requirements in advance of discussion in Frankfurt.
- **Work Stream Definitions & Requirements**
  - The CCWG shared their thoughts and support, as appropriate, in reaction to a proposed definition of work stream 1.
  - Work Stream 1 requirements were shared on the list. Key suggestions made: (1) amending the ICANN Bylaws to incorporate the AoC accountability and transparency obligations, (2) consideration should be given to ICANN adopting a membership, (3) creation of a binding Independent Review Process.
  - A [note](#) was circulated suggesting the closer coordination of names and numbers functions be considered as relevant to Work Stream 2.
  - Frankfurt meeting resulted in the creation of a [draft mind map](#), which will be a roadmap for the next phase of the group's work.
- **Accountability Measures Required by CWG Proposal(s)**
  - Contributors offered comments on accountability measures required by the [CWG proposal](#) (note, this is a living document being updated by CWG).
  - GAC principles and the [Framework of Interpretation](#) (FOI) were identified as helpful frameworks.
- **Definitions & Scoping Document – Strawman Proposal**
  - A revised revision of the definitions and scoping document was circulated for discussion, emphasizing that definitions contained should be used as a reference.

- Suggestion that further work be conducted on *checks and balances*, i.e. definition of *certain key impacts*, what does *incumbent* and *future parties* mean.
  - Further to Frankfurt discussions, a proposed [restructuring](#) was sent to the list along with elements to address the concept of accountability.
  - Suggested that language script communities, i.e. groups using internationalized domain name IDNs, should be included as a distinct group in the stakeholder definition.
- **CWG-Stewardship**
    - The [dependencies](#) on ICANN accountabilities identified by the CWG-Stewardship to date was relayed to the CCWG-Accountability with a note that dependency concerns may be more applicable to one model or the other.
- **International Law**
    - [Provisions](#) relating to international law in ICANN's Articles of Incorporation were highlighted as a follow up to discussions in Frankfurt.
- **Membership Organizations**
    - Discussion about revising ICANN's corporate structure by becoming a membership-based organization. The arrangements/implications of this should be one topic for independent legal and other advice.
    - A structure composed of SO/AC representatives with various degrees of oversight/control over the Board and its decisions was discussed.
    - Introducing a "membership" would require the creation of classes of membership, structure scale for any future membership, power and its use, and voting majorities. Some suggested having SO/AC Chairs as effective members of ICANN with equal voting power, others commented this would increase the political attention on these positions, raised concerns about capture.
    - ICANN bylaws have provisions to ensure Board diversity, noted that a new SO/AC Chairs structure might lack such diversity requirements.
    - A membership organization should be based on clear and objective rules that make it fair and sustainable. The multi-stakeholder model should be protected .
    - There are differences of opinions on how structures would be positioned in the governance of ICANN and the powers any new arrangement should be given. Some suggested the group should have substantial but narrow powers, including annual budget approval/disapproval, spilling the Board, review of Board decisions, referral of Board decisions to an independent review mechanism, approval of changes to Bylaws and Articles of Incorporation.
    - Further suggestion that this potential new stakeholder group should have the ability to propose changes to Bylaws and Articles of Incorporation.
    - Noted that, under the gTLD agreement, consensus policies need to be approved by both the GNSO Council and Board.

- The question of fees and membership rules were raised: should each constituency have its own membership rules? Based on funding, are all equally equal in representation and voting? Consequences if SO/ACs were created? Can a government entity join a California membership corporation? If membership fees, will civil society be left behind? Would this let a sector or region predominate? How would membership be maintained (permanent or renewal process)?
- **Delegation of management activities**
  - The alternative model of a Board that delegates some management activities to the “Community” was also suggested. These powers would be limited to a number of key issues and would be carried out via an ombudsman-mediated process. The Board would be required to adopt a Decision of the Community unless a unanimous or super-majority vote rejected the decision. The Board would retain ultimate decision-making authority as required by California Corporate Law.
  - This process would be combined with a recall mechanism of some or all Board members.
  - The proposal triggered questions of how it could be exercised in a non-member organization.
- **Review, Redress, Binding & Independence**
  - It was suggested that mechanisms could be classified as review and redress, independent or not, and binding or not.
  - Clarity is needed in any independent mechanism on the standard that is being applied and what redress mechanisms are available for specific actions of the Board or staff.
  - A reference was made to [Nolan principles](#), which were described as a useful roadmap when thinking about the composition of independent review panels (IRP).
  - The current Bylaws [requirements](#) for independent panels were circulated to the list.
  - Suggested that one reason to invalidate a Board decision was that in making the decision the Board had not complied with the Bylaws.
- **Approval of Key Decisions, the “Community” Avenue of Work**
  - The mind map from the Frankfurt meeting established a new work area to develop proposals on the enhanced roll of the community in key decisions, [initial scope](#) of this work was presented on the list.
- **IANA Transition in the Bylaws**
  - It was suggested that it text regarding the process and steps to transition the IANA function outside of the organization, could be added to the Bylaws.
  - The current NTIA contract contains obligations on ICANN to facilitate the transfer of the IANA function to another party at the expiration and non-renewal of the contract; this language might be useful when considering drafting such Bylaw amendments.

- Flagged as a potential issue for independent legal advice.
- **SO/ACs' Accountability**
  - A suggestion was made that the SO/AC should be subject to the same accountability mechanisms.

### **Work Area 1: Existing Accountability Mechanisms (including ATRT 1 & ATRT 2 Recommendations) ([archives](#))**

- Suggestions that redress may be sought if the review does not resolve an issue, however there were other comments that the former is a pre-requisite of the latter.
- The UDRP referred to as an example of an ICANN process that includes review and redress.
- The Ombudsman mechanism flagged as a mediation service that does not follow a conventional review and redress process.
- It was stressed that a clear delineation between “review” and “redress” mechanisms is needed, the proposed delineation being the ability of the outcome to be binding.

### **Work Area 2: Review Input from Public Comment and Categorize Items into Work Streams 1 & 2 (WS1 WS2) ([archives](#))**

- The WA2 rapporteur encouraged the CCWG to review the [revised inventory](#) and indicated that prioritization would be opportune.
- [Proposed requirements](#) were extracted from the Work Area 2 to advance the inventory for requirements discussion in Frankfurt.

### **Work Area 3: Review Issues Identified by CWG-Stewardship ([archives](#))**

- The [dependencies](#) on ICANN accountabilities identified by the CWG-Stewardship to date were flagged with a note that dependency concerns may be more applicable to one model or the other. (Note. The link is to a living document being updated by CWG membership).

### **Work Area 4: Identify Contingencies ([archives](#))**

- The contingencies list was [crosschecked](#) against the WA2 inventory to ensure they are reflected in WA4.