Comments on CCWG draft proposal by the RIR community

The ASO representatives would like to thank the CCWG for the opportunity to deliver the RIR community input on the CCWG Initial Draft Proposal. The following replies are based on feedback received from discussions on the CCWG report at recent RIR meetings, comments on the RIR community mailing lists, and observations of the NRO EC.

In General

Do you have any general feedback or suggestion on the interim Work Stream 1 proposals?

The RIR community appreciates the CCWG efforts to take into account the timelines of the IANA stewardship transition project.

At the same time the ASO representatives would like to echo concerns expressed by members of the numbers community with regards to the implementation of the proposed amendments. Specifically, that the implementation of all accountability mechanisms identified in Work Stream 1 could be a delaying factor to the IANA stewardship transition.

The RIR community understands that the intention of Work Stream 1 is to identify measures that should be taken before the IANA transition can occur, and urges a review of all measures against the proposed transition timeline such that the transition is not unreasonably delayed.

The proposed plan does not clearly describe why the proposed multiplicity of community powers (e.g. review process enhancements, recall of entire Board) is necessary beyond the powers of bylaw change ratification and individual director removal, that when taken together provide a concerned supermajority of the community sufficient authority to replace a controlling portion of the Board and secure any necessary redress. It is particularly important to have this elaborated in the plan since the additional powers increase implementation complexity, time, and risk.

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

A clear definition of the scope of ICANN's Mission, Commitments and Core Values could contribute positively to the enhancement of ICANN's accountability.

In particular the RIR community fully supports the description of ICANN's mission with regard to the coordination of policy development for Internet number resources (page 20, paragraph 57):

"In this role, with respect to IP addresses and AS numbers, ICANN's Mission is described in the ASO MoU between ICANN and RIRs."

With regards to ICANN's core values in the Bylaws and in particular page 25, paragraph 89, the RIR community notes that the term "private sector led multistakeholder" (and similar terms) have been used by the NTIA in describing ICANN, but the RIRs describe their policy development processes using terms such as "inclusive, open, transparent and bottom-up". These different descriptions are compatible, provided it is understood that "private sector led" does not exclude government participation.

Fundamental Bylaws

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

There is general support the introduction of Fundamental Bylaws. Regarding the list of Bylaws that should become Fundamental Bylaws, most of them indeed contain fundamental principles. However, the RIR community does not believe that the requirement for ICANN to remain in the United States of America is fundamental, but rather is an administrative issue.

Independent Review Panel Enhancement & Reconsideration Process 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 to amend these requirements.
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 to amend 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?

In principle there is no objections to the proposed amendments to the Independent Review Panel and the Reconsideration Process. However, the RIR community expresses their concern regarding the time needed to implement all proposed requirements and whether the time required for implementation of some of the requirements would be a delaying factor for the IANA stewardship transition. It is suggested that while implementation of these measures should start as soon as possible, the IANA transition should be allowed to proceed while that implementation is underway. A more detailed timeline of tasks within the implementation process, relative to the IANA transition timeline, would be

helpful to clarify which are expected to precede the IANA transition, and which to follow.

Furthermore the RIR community stresses that there are separate, well-established appeal mechanisms for disputes relating to Internet number resources. In particular there is:

1. An arbitration process described in the ASO MoU for disputes relevant to the global policy development process
2. An arbitration process described in the draft Service Level Agreement between the five RIRs and IANA Numbering Services Operator for disputes relevant to the IANA numbering services.
3. A bottom-up process for any concerns that a third party may have relating to Internet number resources issues.

Imposing different appeal procedures than the ones agreed upon and used by the numbers community would be contradictory to the bottom-up principle. Therefore, it is strongly suggested that disputes relating to Internet number resources be excluded from the scope of the proposed appeal mechanisms.

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.

The creation of a community mechanism to empower the community with regard to certain Board decisions makes sense and would enhance ICANN's accountability. Such a community mechanism should indeed be based on the already existing structure of the chartering organisations (SOs and ACs), either as a formalized designator-based model or via a membership model There are no objections to the suggested reference composition of this mechanism being the membership-based model, but observe that significant details regarding the proposed implementation of powers under the membership model have been deferred (and may not prove in the end.) It is suggested that sufficient detail on the proposed implementation model by provided in a future plan, so that community assessment of related risks may be performed.

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.

While the RIR community has expressed interest in fully understanding the costs related to the IANA registry services, there has been no expressing of interest in the RIR community regarding the need to have approval over ICANN's annual budget. The potential of having the annual budget to be delayed as a result of the

proposed could prevent necessary and required spending (e.g. additional personal, security measures beyond those in the previous year) and thus lead to unforeseen impacts to ICANN's stability.

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 to amend these requirements.

This power would enhance ICANN's accountability, and there is support for the requirements for this recommendation.

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 to amend these requirements.

There are no objections to the introduction of this power, nor to the requirements of this recommendation.

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 to amend these requirements.

There are no objections to the formalization of this power (which may already exist for organizations which designate directors to the Board), nor to the requirements of this recommendation.

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 to amend these requirements.

In principle there are no objections to the introduction of this power, assuming that this power can only be exercised with the proposed threshold (75%).

However, concerns were expressed as to whether such a threshold can be readily achieved by a membership-based organization under Californian law. It was appreciated that under Californian law the entire board could be dismissed, if requested by a simple majority of the members. If this understanding is

correct, the introduction of this power would put at risk ICANN's stability and have a negative impact on the organization's accountability. Therefore, it is recommended that the CCWG ensure that a higher threshold than simple majority can be required for the exercise of this power under Californian law, and that the proposed structure for accomplished this be detailed in the proposal

Incorporating the Affirmation of Commitments into the ICANN Bylaws

13. Do you agree that the incorporation into ICANN's Bylaws of these Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend to amend these requirements.

There are no objections to the incorporation of the Affirmation of Commitments into the ICANN Bylaws, nor to the requirements of this recommendation.

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 to amend these requirements.

No position is taken with respect to incorporation into ICANN's Bylaws of the changes suggested by stress tests, nor to the requirements of this recommendation.

Items for Consideration in Work Stream 2

16. The CCWG-Accountability seeks input from the community regarding its proposed work plan for the CCWG-Accountability Accountability Work Stream 2? If need be, please clarify what amendments would be needed.

There are no objections to the list of items to be considered in Work Stream 2.