THE "EMPOWERED SO/AC MODEL"

Reflecting and Respecting Multi-Stakeholder Input on ICANN Accountability

Goal of the Empowered SO/AC Model

A simple, fast, low/no risk path to enhanced accountability that:

- Permits timely implementation of accountability enhancements;

- Relies on the SO/AC structure that we know and trust;

- Requires no change in the structure and operating procedures of SOs and ACs;

- Respects and addresses the variety of community perspectives/concerns with both the "avatar" membership model and the voluntary/cooperative model; and

- Provides flexibility for the future.

The Empowered SO/AC Model

- Does not touch the existing legal nature the SOs/ACs

- SOs/ACs can exercise the proposed community powers as soon as they are adopted in the bylaws, no formalization requirement.

- SOs/ACs can choose at some future point in time to formalize or evidence their intent to exercise authority and acquire legal personality, e.g., through a resolution.

- Whether or not an SO or AC formalizes, the number of votes / power / influence it has in exercising the new community accountability powers should not change.

- While both the membership model and the designator model could be the basis for such hybrid model, the designator approach does not deliver full authority on budget and therefore jeopardize meeting CWG conditions.

What do SOs and ACs need to do?

- Nothing

- Individual SOs and ACs *have the choice* to declare their intention to come together (associate) to exercise the rights granted in the Bylaws.

  - A simple statement of intent to do so confers the legal status (personhood) needed to enforce recommended powers and authorities

  - No legal filings are required

  - No need to do this by a date certain – declaration of intent may be issued now, two years from now, or never

- SOs and ACs that decide not to declare this intent:

  - Enjoy all the rights and authorities granted to SOs and ACs in the Bylaws;

  - Enforcement through the voluntary/cooperative approach;

  - Bylaws provisions safeguard against capture by an SO or AC acting unilaterally, and;

  - Have the option to issue the declaration of intent in the future.

What does ICANN need to do?

- Take the steps necessary to admit members under applicable law in the event any SO or AC elects to declare its intent to work collectively to exercise or enforce authority granted in the Bylaws

- Adopt recommended Bylaws provisions regarding role and authority of SOs and ACs

  - Direct empowerment of SOs and ACs – no avatar or new "who's watching the watchers" problem

- Adopt recommended Bylaws provisions to prevent capture by individual SO or AC, provide for dispute resolution, and implement other consensus supported enhancements

    - E.g., requirement to use IRP, safeguards to prevent unilateral action by an SO or AC acting without multistakeholder support

- Secure advance letters of resignation from members of the Board

Other Notes and Issues

- It appears that this hybrid (springing membership) model would also work in the designator context

- ICANN indemnification is likely needed for SOs and ACs

- Work Stream 1 and 2 tasks still need to be completed

- This approach needs to be considered in the context of stress testing and impact assessment