**COMMENTS AND SUGGESTED EDITS ON CCWG DRAFT THIRD DRAFT**

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General comment: the proposal is falling together better with each iteration. Feedback below is mainly critical, but this is motivated by a hope and intention to help the logics and writing become as airtight as possible, so that no significant objections are encountered in later approval stages.

Suggestions relating to written expression are presented below in black. Suggestions relating to points of substance which can be addressed with relatively small changes in formulations are presented below in red. Larger issues which would require more substantial rethinking and group discussion are presented below in blue. My urging would be to address as many of the black and red points as possible before going public with the third draft. Obviously disregard points which are off the mark!

3 The last clause in the second sentence of the summary wants a better formulation.

3 Insert ‘to’ before ‘alter’.

3 Insert ‘that’ after ‘ensure’.

3 Delete ‘that’ before ‘sets out’.

3 Delete ‘revised’ after ‘within its’, as it could imply a change in the mission, which was denied in the preceding sentence.

3 Insert comma after ‘consensus’.

3 Insert ‘and/or’ after ‘Operating Plans’.

3 The line that starts ‘All of these community powers …’ wants to be a separated paragraph rather than another bullet point?

4 The timeline ‘in 2016’ does not specify an endpoint by which decisions should be reached on WS2 matters? Delete the clause ‘following implementation …’ as redundant? Indeed, could discussion of WS2 items not begin before end September 2016, or whenever the transition of IANA functions is formally completed? These points are later addressed on pp. 53-4, but the formulations on p. 4 could be adjusted to clarify matters at the outset.

4 Replace ‘test their strength’ with ‘assess their strength’.

4 Not sure that the point ‘made the minimum requirements …’ is necessary or follows logically from the opening line ‘to develop …’; or if it is required to make the point, could it be expressed more clearly?

4 The acronyms CCWG and CWG are introduced towards the bottom of the page without clarification of what they stand for; also perhaps use semi-colons to break up the sequence of clauses in this long sentence.

5 Change ‘provides’ to ‘has provided’.

5 Insert ‘was’ in front of ‘convened’ .

5 Use the word ‘issues’ rather than ‘topics’.

5 The sentence ‘Any other items …’ can be deleted as redundant.

5 The sentence ‘Workable consensus …’ seems out of the stream of logic here and might be deleted.

5 Delete ‘‘s remit’, so that it just says ‘Work Stream 2’.

6 Insert comma after ‘proposal’.

6 Place ‘refer’ in lower case; delete ‘the’ in front of ‘details’; replace ‘of’ with ‘on’.

6 The acronym ‘ICG’ is introduced without indication of what it stands for.

8 Recommendation 4 is more about ‘oversight over’ than ‘involvement in’, so perhaps adjust the language to be more precise; there are many other existing ways to ‘ensure involvement’.

8 The note at the bottom of the page relates to recommendation 3 rather than the whole list, so perhaps make the connection with a footnote number?

9 Insert ‘its’ after ‘publication of’.

9 Insert ‘that’ after ‘ensuring’.

9 insert colon after ‘law’, delete ‘and those are the powers to’, and instead insert ‘namely,’

10 Place the footnote outside the quotation mark.

10 The diagram shows (and subsequent text ‘anticipates’) that the GAC will be a participant in the empowered community; so has the GAC agreed to this status and role? If not, perhaps be careful not to seem to push the GAC and provoke objections that could be avoided by simply noting that the GAC has yet to decide?

10 There is an ambiguity when the text first says that the Sole Designator has only two powers and then says later that it can also go to court in respect of Bylaw changes, which sounds like a third power under law?

10 The right to inspect certain records sounds like an additional community power – does the list need to be increased from 5 powers to 6? And which ‘member’ has this right of inspection? And why use the language of ‘member’ rather than ‘designator’ here?

10 Specify ‘included in its Empowered Community’ after ‘Supporting Organizations and Advisory Committees’. The changes would not be necessary if newly created SOs or ACs decide not to join the Empowered Community mechanism.

10 Delete ‘model’ in point 1 at the bottom; the ‘entity’ is the Sole Designator, not the model.

10 Specify in point 2 that it entails only the SOs and ACs who decide to join the mechanism; otherwise this sentence could be read to implicate RSSAC and SSAC.

11 Perhaps specify ‘ICANN community’ in the first sentence of Recommendation 2. The reference here is to the specific *ICANN* community, not to some generic community. The point here refers to the community as manifested in ICANN proceedings, not to the community in the world at large.

11 Insert ‘that’ after ‘recommending’.

11 It is unclear what would constitute adequate ‘engagement’. It could in principle range anywhere from a phone call with SO/AC leads to extended public comment periods. The text elaborates on escalation processes in admirable precise detail; yet in contrast no specifics are given in respect of engagement processes.

12 In the fifth bullet point it should be ‘and’ rather than ‘or’, as the first SO/AC would contact all other SOs/ACs at this point?

13 The first line should specify ‘and/or’ to allow for the possibility of one SO and one AC?

13 Same point about ‘and/or’ applies to Note 2.

13 Who is on the ‘specified email list’; and who decides who is on this list?

13 Who is the ‘ICANN’ which hosts the conference call: ICANN staff, ICANN board, ICANN community?

14 Fifteen days would be very short notice (indeed logistically unrealistic) to organise a F2F Community Forum?

14 In case the Community Forum is F2F, important issues arise regarding travel support for prospective participants, especially as last-minute travel costs could be quite high. Significant stakeholders with limited independent resources (such as NGOs and SMEs in developing countries) might be prevented from attending, biasing the participation towards the well-resourced parties (such as big companies and law firms) who are able to fund their own participation. Unless certain guarantees are in place, the Community Forum would not in practice be ‘open to all interested participants’ and could on the contrary be controlled by a small insider group. Remote participation is far less effective relative to being onsite. These resource issues become still more pronounced if it is decided to hold additional sessions of the Community Forum. Perhaps one should either have a longer planning period or only an online forum?

14 Only SOs and ACs may circulate their views? What about people in the wider public?

14 Could beg the question how ‘fairness’ and ‘neutrality’ are to be ensured? For example, how would the chairs of such an event be selected?

14 Should the published explanation also be required to include any dissenting opinions, in situations where one SO/AC objects?

15 No need for ‘enforcement process’ to be in quotation marks.

15 What ‘formal mediation process’ would apply: as specified under State of California law?

15 Delete ‘Else’ as well as (at two places) ‘community’ in front of ‘Independent Review Process’. The IRP belongs to all of ICANN, not just the community, no?

16 At the second bullet point under Option 2 specify ‘the Empowered Community’ for ‘it’, as the pronoun’s referent is otherwise ambiguous.

16 Is ‘extensive engagement’ wanted for every Annual Operating Plan and Budget? Is this not an invitation to emulate the US Congress grinding government to a halt?!

16 Is the IANA functions budget so large and contentious that it requires an extensive engagement with the Community?

16 Replace ‘if’ with ‘in’ before ‘the Fundamental Bylaws’.

18 Change ‘Sole Member’ to ‘Sole Designator’?!

18 What is ‘Section 7 of this report’? Specify a page reference or some other way to remove ambiguity?

18 The bullet list at the bottom of the page seems largely (and unnecessarily?) repetitive of the list at the top of the page.

19 Specify ‘the ICANN community’ before ‘as outlined’.

19 Again (as at p. 8), the thrust of Recommendation 4 suggests it is a question of ‘oversight’ rather than ‘involvement’

19 Again (as at p. 10), the right to obtain certain records sounds like a sixth community power?

20 Again, the power to reject the annual operating plan and budget would seem to open possibilities of gridlock which could undermine the stable working of the Internet (thus running counter to a key NTIA requirement). Perhaps elements of the Community wish hereby to avoid a repetition of a scenario like the NETmundial expenditure; however, might the proposed cure prove much worse than the (comparatively rare) disease? And does one not at some point have to allow a CEO/Board a certain amount of discretion and then do not renew their contract/appointment if there is unhappiness about their performance? How does one attract a dynamic person to be ICANN CEO if they are given so little autonomy; and what would the consequences be for keeping ICANN institutionally adaptive?

20 Again (as at p. 16), not sure what rationale justifies/necessitates the power to block the IANA Functions budget.

20 The phrase ‘could only be challenged if there are significant issue(s) brought up in the Engagement Phase that were not addressed prior to approval’ incorporates large ambiguities: what counts as ‘significant’; what is the threshold for ‘bringing up’; at what point is a matter judged to have been ‘not addressed’? These ambiguities reinforce the concern that debating and potentially rejecting the annual operating plan and budget could open the door to disabling gridlock.

21 Not sure what kind of scenario would prompt the Community to want to block the specific IANA Functions budget? Perhaps preempt this question by making explicit the kinds of concerns that have led the CCWG to recommend this provision?

21 Insert ‘respect of’ between ‘reinforced in’ and ‘Fundamental Bylaws’.

21 One of various occasions where it would be more precise to specify that reference to ‘the ICANN community’ means ‘of SOs and ACs’.

22 Same issues about the Community Forum raised above (p. 14), particularly if (as is not specified on p. 22) the meeting would be F2F.

23 Community removal of individual directors could be akin to Congress removing individual ministers from a government? The current practice of the Board deciding to remove individual members is more akin to the usual practice of governments, whereby only cabinets/presidents (and not legislatures) decide to remove individual ministers. Is the actual or threatened use of this power not inviting potentially unruly parts of the community to become obstructive of the day-to-day workings of the board and thereby destabilizing the operation of the Internet? Does one really need this power to meet NTIA requirements?

23 Insert ‘that’ after ‘Given’ – otherwise the sentence can be read two ways.

23 The first (long) bullet point regarding removal of NomCom directors seems to repeat much of the preceding paragraph.

27 Separating ‘its stakeholders’ and ‘the global Internet community’ suggests that the latter is not a stakeholder?

28 Rephrase as ‘applicable national and international law’.

28 Specify ‘market’ competition (to distinguish from competition between countries, cultures, etc.).

28 Perhaps rephrase as ‘Employ open, transparent and accountable multistakeholder processes’. Not sure that ‘bottom up’ has a clear meaning, and the addition of ‘accountable’ seems important to signal that multistakeholder engagements are not reckless.

28 Perhaps delete ‘objectively’ and ‘neutrally’. Not sure that any action is ‘objective’ (unaffected by values) or ‘neutral’ (in the sense of having no cost-benefit effects). In any case the essential thrust of this line would seem to be adequately covered by ‘consistently’ and ‘fairly’.

28 Perhaps specify to avoid capture ‘by any actor or sector, whether commercial, governmental, civil society, or other’.

29 ‘Bottom up’ could be deleted; ‘multistakeholder’ suffices. In any case the multistakeholder process involves large business, government and NGO players that are hardly a ‘bottom’ as that word might normally be construed.

29 Insert ‘has’ before ‘attempted’.

30 Again, reference to ‘bottom up’ seems ritualistic and adds no (and if anything detracts from) clarity in the sentence.

31 Need to clarify the acronyms ASO and RIRs.

34 Perhaps refer to ‘domestic legislation’ rather than ‘local law’? ‘Local’ could be read to mean municipal and provincial, when it is here meant to refer primarily to national statute? ‘Domestic’ would cover both national and local laws.

35 Not sure that ‘neutral and judgement free’ is attainable in practice.

35 As at p. 28, perhaps rephrase as ‘open, transparent and accountable’. In particular, reference to ‘bottom up’ seems empty. Which ‘bottom’ is actually meant? Most inputs to ICANN multistakeholder deliberations tend to come from people in powerful countries and/or management and professional circles. Such groups seem sooner a ‘top’ in geopolitical and social terms?

35-6 Sentence at 5 is rather long and convoluted.

36 Point 6 (as at page 28 above) raises problematic methodological questions regarding ‘neutrality’ and ‘objectivity’ that can be avoided by simply removing the terms.

37 Point 2 is phrased very ambiguously and probably not comprehensible to someone who is not well-versed in the context?

38 Again, ‘bottom up’ could be deleted from points 3 and 5 without any loss of meaning.

38 At point 4 ‘depending on market mechanisms … in the DNS market’ is circular: perhaps replace the second ‘market’ with ‘industry’ or some such word.

41 Again, ‘bottom up’ could be deleted.

41 Not clear why, in the fourth sub-bullet point, ‘Core Values’ is placed between quotation marks and ‘Commitments’ is not: either both or neither, but not one without the other?

42-4 If CCWG proposes to give human rights the kind of serious attention that is proposed here, then it could be helpful to enlist further expert advice on this subject in Work Stream 2: perhaps on the one hand from someone specialized in international law of human rights and on the other hand someone specialized in the politics of global human rights.

43 The reference to ‘internationally recognized human rights’ is ambiguous without a specification of the source of the definition: e.g. the Universal Declaration of Human Rights (1948); the International Covenants of Human Rights (ratified 1976); the range of more specific United Nations human rights instruments related to children (e.g. for child protection online), disability (e.g. for accessibility, as often discussed in ICANN meetings), etc. Perhaps add a qualifying phrase like ‘(the precise benchmark formulations to be determined)’.

43-4 There seems to be a tension between affirming a requirement that ICANN respect human rights as relevant, but then denying that interested parties can have any way to test that this respect is being honoured in ICANN’s practices.

44 The following sentence could be simplified: *This group must be established promptly and develop an appropriate framework of interpretation no event later than one year after Bylaw xx is adopted*

45 The bottom paragraph on this page seems only to concern forms of expertise and does not address how the panel would be composed. Adjust the heading of the paragraph accordingly?

45 Is another paragraph needed which summarises issues of composition: how many members, with what regional distribution, etc.?

45-6 Don’t follow the sentence that straddles these pages.

46 The phrase ‘exceeds the scope of ICANN’s Mission and/or’ could be deleted as redundant, since the Mission is part of the Bylaws. Also, the same sentence could for the sake of clarity specify Articles ‘of Incorporation’.

46 The standard ‘materially affected’ could open questions about determining the type and threshold of effect that would constitute being ‘materially’ affected? Could the term ‘materially’ be omitted so as to avoid unnecessary arguments on this point? Could it not be left to the IRP to determine whether or not the adverse effect was ‘material’ rather than making this a precondition for lodging a complaint in the first place?

46 What is meant by the phrase ‘giving the Empowered Community the right to have standing with the IRP’? Perhaps this is legal language that needs to be clarified for the non-lawyers?

46 Do potential conflicts of interest not arise if ICANN were directly to fund the proceedings of the IRP and/or the costs of certain complainants? Might one need to rethink the funding mechanism so that the resources remain at arm’s length from ICANN? For example, ICANN could pay into an external Trust Fund?

47 Perhaps reformulate the sentence at the top of the page to read: ‘It is important to note that the ccNSO and the ASO have requested that issues related to ccTLD (re)delegations and number resources, respectively, be excluded from the IRP’s remit.’

47 Another superfluous invocation of ‘bottom up’ which adds nothing to the meaning of the sentence in question.

47 The third sub-bullet under ‘detailed recommendations’ needs a verb (in line with the other sub-bullets).

49-52 The discussion of transferring the Articles of Commitments makes no explicit mention of the jurisdiction issue. Can this key matter (from Article 8 of the AoC) be swept under the carpet? Should not at least a brief indication be given of what is proposed with regard to the jurisdiction issue, namely, that ICANN should remain incorporated in the State of California?

52 Insert ‘provisions’ after ‘current’ (a word has been left out); later in the same sentence replace ‘responsibilities’ with ‘community powers’.

52 Replace ‘performed on a regular basis’ (repetitive of ‘periodical’) with ‘of SOs and ACs’.

53 In the top line replace ‘on’ with ‘of’ after ‘consideration’.

53 Insert comma between ‘and’ and ‘if’; and delete the second ‘and’ in the sentence.

53 In the last Work Stream 2 bullet point capitalize ‘process’ and delete ‘as well’ for being repetitious (of ‘also’ earlier in the sentence).

53-5 Diversity has been a major discussion point in CCWG-Accountability meetings and was one of the headline agenda items for Working Group 3; yet questions of diversity are barely mentioned in Recommendation 11 or indeed the third draft proposal generally. It could be suitable to add a paragraph which elaborates on the diversity issues that want consideration in Work Stream 2.

53 Edit as follows: ‘The CCWG-Accountability Work Stream 2 focuses on those accountability topics for which the timeline of developing solutions extends beyond that of the IANA Stewardship Transition.’

53 Delete ‘taking place’ from the last line.

54 Insert ‘the’ before ‘end’.

54 Replace ‘bridge this gap’ with ‘prevent this scenario’.

54 Replace ‘implementing’ with ‘implement’.

55 Does it invite objections to narrow in advance the scope of jurisdiction issues so as to exclude questions of the site of incorporation? True, one does not want to provoke NTIA and Senate objections by actively encouraging a discussion about place of incorporation. However, it can also provoke objections from the other side of the argument by silencing their views in advance. Somehow one wants a phrasing here that navigates effectively between Scylla and Charybdis!

56 If I read the word ‘bottom-up’ one more time … ☺

56 Insert ‘that’ after ‘ensuring’; and replace ‘another’ with ‘any other’.

56 Insert ‘that’ after ‘ensuring’; and replace ‘model’ with ‘process’.