DRAFT 12 December 2014

SubGroup 1

Establishing an inventory of existing accountability mechanisms / ATRT recommendations

1. 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).
2. ICANN Bylaws provide four avenues for review of perceived failures of accountability:
   1. Request for Reconsideration (Art. IV, Sec. 2) of
      1. one or more staff actions or inactions that contradict established
      2. one or more actions or inactions of the
      3. one or more actions or inactions of the
   2. 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]](#footnote-1)
   3. “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
   4. Office of an Ombudsman (Art. V) “to provide an independent internal evaluation of complaints by members of the
3. Affirmation of Commitments (AoC)
4. Jurisdiction of California and United States, enforced by:
   1. Secretary of State of California
   2. Courts (California and U.S. federal)
5. Jurisdiction of laws of other nations where ICANN has a presence
6. Security and Stability Advisory Committee (SSAC) recommendations
7. ATRT 1 and 2 recommendations

1. Until 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:

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

   [↑](#footnote-ref-1)