Cross Community Working Group(CCWG)

Background

What is accountability?

I do not think that there is a need to describe that issue due to the fact that there are sufficient information, definition, description on the matter in the literature and it may be outside the patience and timing of CCWG to go that far and review the scope of accountability in a general form,

Introduction

During ICANN 50 London, it was announced that pursuant to the announcement of NTIA in regard with the transition of the Stewardship of IANA function from the USG to Global Multistakeholder Community, two Entities/ Groups need to be established:

1.   IIANA Transition Coordination Group (ICG) and
2.   ICANN Accountability Working Group
The first Group was established and held its first f2f meeting in July 2014
However, the establishment of the second Group was postponed due to the fact that, according to ICANN public announcement the required procedure to deal with accountability required review and some adjustment.
During ICANN 52 in LA, it was publicly announced the procedure has been modified due to the impact of the change on ICANN's accountability given its historical contractual relationship with the United States and NTIA.

The composition of the process was modified to include two groups:

1. **ICANN Accountability & Governance Cross Community Group (CCWG); and**
2. **ICANN Accountability & Governance Coordination Group (CWG).**

The originally proposed structure was thus turned into establishing a Cross Community Working Group (CCWG) that incorporates some key elements that have arisen in the dialogues. Additionally, given the input over the course of the dialogue on this process, it's suggested that the CCWG has two work steams, one focused on accountability in view of ICANN's changing

historical relationship with the USG, and the second, on the broader accountability issues the community would like to bring to the forefront.

The proposed process and next steps are outlined below.

ICANN Accountability and Governance Cross Community Working Group (CCWG)

Scope of the accountability process – two work streams: The topic of accountability is important, and in the discussions around this process, areas and topics have been identified that are important to enhancing ICANN's accountability but not directly related to accountability in the context of the changing historical relationship with the USG.

To ensure that over time there's a mechanism to ensure coverage of all areas, including topics outside of the immediate scope of the process, a suggestion is that the CCWG establish two work streams or subgroups: one focused on the scope of the work on enhancing ICANN accountability in light of the changing relationship with the USG within the time frame of the transition (Work Stream 1); and a second focused on addressing topics on accountability outside the scope of Work Stream 1, which are longer term (Work Stream 2

In the announcement the role and scope of involvement of:

a)   ICANN Staff, b) ICANN Board Liaison c) Advisors, ATRT Expert, d)Liaison with ICG and e) Role of the Board were described

Under the Role of the Board, in particular regarding the acceptance of recommendations from the process, it was mentioned that that was a matter for the Board to address, and the Board in assuring all stakeholders that it will seriously consider and respect the recommendations arising out of the review.

The CCWG is expected to prepare initial reports on Work Streams 1 and 2, including recommended timeframes for development of new or improved mechanisms, if any. Initial reports will be put out for public comment. This should occur for Work Streams 1 and 2, though given the deliverables, the timing of each report will be fazed differently. The work of the CCWG should not reopen recommendations adopted for implementation by the ATRT processes but rather complement those and other initiatives underway. The CCWG work on Work Stream 2 could, for example, provide advice on the implementation of some of the ATRT2 recommendations.

The above-mentioned two Groups, CWG and CCWG were thus established and commenced their works/activities

CWG has held so far one f2f and several virtual meetings

1.   Specific comments

1.1   In the CWG Charter, under the headings of "Reporting" and "Working Relationship with ICG" it is indicated that" the CWG Co-Chair will brief the chartering organization and, in particular, their representatives on the ICG and will discuss with them the most appropriate methods of sharing information and communicating progress and outcomes of CWG".

Since the CCWG will rely on the output of CWG in its overall activities, it is essential to ensure that such exchange of information and briefing have been regularly happening

1.2   In the scope of works of CCWG, it is mentioned that the output received from CWG will be sent for the Board's approval. As I mentioned in one of my message to my CCWG such course of action implies that the Board is given the authority of veto and/ or rejection or amending the output

In ICG process such veto is totally excluded due to the fact that the Board has had a permanent Liaison in ICG and could had timely provided its views and comments for consideration by ICG .Nevertheless ICG is finalizing its view to permit the Board while forwarding the ICG report without any modification to NTIA provide, if it so wishes, comments in a separate communication /message to NTIA.

Similar course of action could be taken by CCWG

1.3   ICG expects to receive all required input from various sources by 15 January 2015, The way that the issues is a) progressing in CWG and b) expected to be fed to and processed by working area 1 of CCWG does not seem to meat the above-mentioned deadline. This is an important issue to be immediately addressed and redressed

2.   General Comments

According to the approved arrangements, four Working Groups have been established

2.1   Working Group 1 collects and compile all existing information mostly from ATRT past works

The past works done ATRT were based on the initial AoC and the amendments thereto. Moreover, that works were resulted from consultancy agreement between ATRT and some private sources .Consequently,that output must be adjusted to post transition environment in which the duty of the NTIA is expected to be performed by another entity. This requires a thorough review of the terms, conditions and scope of works as contained in AoC and its required adjustment to post transition environment

2.2   Working Group 2

This working collects and complies information as contained in public comments relating to accountability.

It is important to verify and collect all information and not selective comments irrespective from whether comments in question submitted by a community or by an individual

2.3   Working Group 3

The activities of this working group relate to the review of issues identified by CWG

Apart from those specific comments ,no additional comments at this stage except that this Group needs to wait until the results of works of CWG are available

2.4   Working Group 4

This scope of work of this Group is to identify contingencies (especially in relation with WS1)

The above-mentioned scope is quite vague and ambiguous

2.5   An important area on which there would sufficient usef

Information should be reminded to all colleagues and that is **NetMundial**

More than 180 contributions were submitted to that event. There are certainly considerable amount of useful and relevant materials in those 180 contributions .Moreover, about 1320 comments were received on those contributions. Undoubtedly there are relevant information in those input

contributions dealing with accountability. It is therefore suggested that this issue be addressed at out next virtual meeting on 16 December 2014.

3.   Core issues related to accountability

3.1   Current Accountability

Under the terms and conditions and scope of works, currently ICANN is accountable to NTIA. If and only if the transition of the stewardship of IANA functions take place the Global Multistakeholder Community would replace NTIA and thus ICANN in its current or revised structure would be accountable to that Global Multistakeholder Community. The question arises is how that function would be performed since there is no mechanism by which the above-mentioned Global Multistakeholder Community could be represented.

As an example the executive power in each democratic country is accountable to the public in that country. However, to actualize such function, the legislative power in that country as the formal representation of the public performs such accountability.

Another example is te way in which all enterprises and institution function. All, without exception have an accountability mechanism to ensure that the accountability in question is properly performed. E.G most of these enterprises and institution (national or international) have a mechanism such as "Administrative Council" or "Council" or the like

3.1.1   How the matter would be implemented after the transition?

3.1.2   What mechanism is required to be put in place to perform that accountability action?

3.1.3   Which entity represents the multistakeholder in that mechanism?

3.1.4   What procedure are needed to designate7 elect such representation

The above-mentioned issue was raised at three ICANN meeting and the answer was ICANN will represent the Global Multistakeholder Community.

This is unconstitutional since ICANN could not be accountable to itself.

3.2   What are the options?

There is a need to seriously embark on this issue. And deeply study the matter .There is some solutions:

3.2.1   The mechanism used in NetMundial could be taken and further explored .In that example the four categories of Multistakeholders were identified as follows:
Governments

Civil Society

Private Sector

Technical Community and Academic

At NetMundial a committee of 24 members (12 from governments, 3 from Civil Society, 3 from Private Sector and 6 from Technical Community and Academic) was established and formed Global Multistakeholder Executive Committee. This is an example. The composition of the above-mentioned Committee could be further studied and explored There might be other examples

3.2.2   The important issue is that there must be a mechanism to which the existing or revised ICANN should be accountable

3.3   New Accountability Framework

3.3.1   Legal

Currently, the only legal framework applicable to the accountabilty is the Californium law. Once the transition of stewardship is happended ,which legal framework could govern the process. If the concept of Multistakeholder is followed, one possible option would be to establish an international legal framework to act in a specific country independent manner

3.3.2   Separation of entities and their sphere of activities

It is important that activities performed by **"policy making entity "**and **"policy implementing entity"** as well as **"the policy itself"** be totally separated from each other Currently some of these issues are mixed up

Currently NTIA is performing the accountability function thus should something done incorrectly, there is an entity to verify and redress that After the transition that function will be done by nobody unless it is

entrusted to ICANN which seems unconstitutional and incompatible with the basic principle of accountability.

3.4   CCWG is thus required to seriously study the above and proposed a long term solution for the matter