Comments on the CCWG-Accountability-WS2 Staff Accountability Draft Recommendations October 2017

Valideus provides new gTLD consultancy and registry management services to prospective and existing new gTLD registry operators. We co-ordinated over 120 applications for new gTLDs on behalf of a number of applicants all of whom are owners of global brands.

We appreciate the thoughtful work of the subgroup in seeking to identify issues and concerns relating to ICANN staff accountability and welcome the opportunity to comment on the resulting draft recommendations contained in the *CCWG-Accountability-WS2 Staff Accountability Draft Recommendations*. We would like to comment on the following specific recommendations:

Recommendation 2ai
The proposed "regular information acquisition mechanism" may be helpful. There is a natural tendency to recollect and report on a bad experience far more readily than a good one. Consideration should be given as to how an information acquisition mechanism can be developed in a way to encourage the capture of the positive and not just the negative. This would ensure that ICANN Organization is aware of what is working effectively, and what is not working and may require change.

Recommendation 2c
We have concerns about this recommendation, which would encourage "people managers of community-facing staff [to] seek input from the appropriate community members during the organization's twice-annual performance reviews". Absent great care in the development of such an input process, and in the treatment and weight given to such community input, this has the risk of serious unintended consequences.

We note that this recommendation to seek input into individual staff performance reviews does not align with the focus of the subgroup, as set out in paragraph 3 of the Introduction, as being to "assess "staff accountability" and performance at the service delivery, departmental, or organizational level, and **not** at the individual, personnel level" (emphasis added). Given that individual performance reviews are frequently conducted to coincide with assessments on pay increases and bonuses, and that they can be expected to also be taken into account in relation to promotion prospects and disciplinary proceedings, this gives rise to a number of considerations, concerns and risks, including the following:

(i)   ICANN staff are not employed by the community, but rather by ICANN Organization. It is the ICANN Organization, therefore, which sets individual priorities, team staffing levels, and allocates resources. Whilst there should be organizational accountability for this, members of the community, sitting outside of that structure, may not be in a position to know if a perceived failure by a staff member is a personal failure of theirs, or whether it is due to the systems and processes that they are obliged to work with. This was presumably the reasoning behind the subgroup's stated focus as **not** being at the individual, personnel level. Nevertheless, the feedback would form part of an individual's personnel record and impact on them personally.

(ii)   Any system of community input would need to build in robust mechanisms for investigating the veracity and fairness of the feedback. If claims from the community are not investigated, then there is the risk that employees will not have a fair hearing. Feedback provided by

community members could arise out of an individual personal issue, difference of opinion, or, at worst, malice. In the worst case, this could leave a community input process open to abuse by community members, including the potential for bullying of staff, and could have the effect of deterring staff from acting in a neutral manner because they are concerned about the feedback that they will receive.

(iii) Given the importance of all parties being able to present their version of events to ensure fairness, this may not be a process which is best suited to the timing of a formal biannual, or even annual, performance review. Performance reviews tend to be conducted at set times of year, and usually under fairly inflexible timelines. This may not be the best opportunity to properly investigate an issue of concern.

(iv) It is also noted that other mechanisms already exist for the community to raise concerns within ICANN, including speaking to a staff member's manager, either informally or formally, or raising the matter with the Complaints Office and Ombudsman. While Issue B identifies the need for "less formal or alarmist" reporting mechanisms and a desire for a "safe forum for expressing concerns", it is unclear how having the community input into the formal performance review of a staff member would satisfy this.

Thank you for considering these points.

Yours sincerely,

Susan Payne
Head of Legal Policy
Valideus Ltd

28-30 Little Russell Street
London WC1A 2HN
T: +44 7421 8299   W: www.valideus.com