

ICANN Cross Community Working Group Accountability (CCWG-Accountability)

Dear CWG-Accountability members, participants and co-chairs,

This submission is in response to your group's recent [publication](#) of proposed accountability enhancements which are open to public comment. We submit these comments in our capacities as co-chairs of the cross community working group on IANA Stewardship (CWG-Stewardship).

First, we would like to confirm the quality of the ongoing coordination between co-chairs of our respective groups that has been taking place since the launch of your group. Each of our groups has been updated regularly on progress made as well as issues faced, including the interdependency and interrelation between our works and this has led to key correspondence being exchanged on a regular basis to develop and formalize the linkage. As CWG-Stewardship co-chairs, we have been provided with the opportunity to speak directly with the CCWG-Accountability group in addition to the regular discussion of key aspects of the work of both groups amongst the co-chairs.

As we outlined in our public comment announcement, the CWG-Stewardship's proposal has dependencies on and is expressly conditioned upon, the work of the CCWG-Accountability and the outcomes we anticipate. Therefore, we are encouraged by your comments as recently submitted to the public comment forum of the CWG-Stewardship 2nd draft proposal. In particular and from an overall perspective, that it is your understanding that the CCWG Accountability initial proposals meet the CWG Stewardship expectations and moreover, that within your group's deliberations, the ability to meet these requirements has been rather uncontroversial.

Dealing with the specific requirements that we have previously outlined and that you have been thorough in responding to via the CWG-Stewardship public comments forum:

- * Ability for the community to have more rights regarding the development and consideration of the ICANN budget;

You confirmed that the CCWG Accountability initial proposals address this requirement directly in Section 5.2, which introduces a new power for the community to "consider strategic & operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them based on perceived inconsistency with the purpose, mission and role set out in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community."

Due to the proposed creation of the Post Transition IANA organization (PTI), the CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review. We are currently working with ICANN to better understand the provisional implications of the PTI construct on IANA funding as part of our own implications analysis and look forward to further coordination between the two groups on the budget review and related issues.

- * Empowering the multi-stakeholder community to have certain rights with respect to the ICANN Board, including the ICANN Board's oversight of the IANA operations, specifically, the ability to appoint and remove members of the ICANN Board, and to recall the entire Board;

We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.

- * The IANA Function Review, created to conduct periodic and special reviews of the IANA Functions, should be incorporated into the ICANN bylaws;

We understand that the CCWG Accountability proposes to incorporate the review system defined in the Affirmation of Commitments into ICANN's Bylaws, including the ability to start new reviews (section 6.2, page 60). Moreover, that based on the CWG-Stewardship proposal, the CCWG introduced a recommendation to create a new review, based on the requirements we had provided to you.

Work on the CWG Separation Process (previously Separation Review) has been further developed within the CWG and we expect that this will be more fully described in the forthcoming proposal from the CWG-Stewardship. We are not yet in a position to provide full details ahead of the closure of the this public comment period on June 3rd, but do expect to work with you in future to effectively communicate any additional requirement, including the possible use of a fundamental bylaw to deal with this.

* The CSC, created to monitor the performance of the IANA Functions and escalate non-remediated issues to the ccNSO and GNSO, should be incorporated into the ICANN bylaws.

We understand that in Section 1.4, on page 12 of the CCWG Accountability interim proposals, you do acknowledge the intention of the CWG Stewardship to create a Customer Standing Committee. Moreover that you have not yet considered specific bylaw changes related to the CSC. However, we are encouraged by your view that such an addition would not, in your view, contradict any of the CCWG Accountability proposals. We will look further into this and may indeed, as suggested by your chairs' submission to the CWG-Stewardship public comment, draft and specify this directly as one of the CWG Stewardship recommendations.

* Any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes.

We are pleased to see your confirmation that, when addressing enhancements to review and appeal mechanisms (both in sections 4.1 - IRP and 4.2 Reconsideration process), the CCWG Accountability initial proposals state that "as requested by the CWG-Stewardship, decisions regarding ccTLD delegations or revocations would be excluded from standing, until relevant appeal mechanisms have been developed by the ccTLD community, in coordination with other interested parties."

* All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws" requiring community ascent in order for amendment.

The CCWG Accountability initial proposals describe the scope of the "fundamental bylaws" in section 3.2.4. It is proposed that the "Reviews that are part of the CWG-Stewardship's work – the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee" would be considered Fundamental Bylaws. As such, any change of such Bylaws would require prior approval by the community.

Looking forward, we remain committed to retaining both the focus of the CWG Stewardship and the link between the works of the two groups. To this end, the assistance and professional advice from the independent legal advisors has been critical and will remain so as we seek to comprehensively formalise the links and dependence. Confidence in the effectiveness of this linking is vital as we prepare to put our final CWG-Stewardship proposal forward to the various chartering organisations in advance of the revised and final proposal from your group.

In conclusion, we would like to thank you for taking the lead in responding with care and diligence to the CWG-Stewardship public comment period and indeed for all of the related work prior to this. As we have made clear to you in many of our discussions, we are dependent on your work and our trust in the work of your group is vital in permitting us to focus on the essential aspects of our work on the stewardship transition.

Best regards,

Lise Fuhr and Jonathan Robinson
Co-chairs, CWG-Stewardship