Internet Services Providers and Connectivity Providers Constituency (ISPCP)

Comments on the Enhancing ICANN Accountability Process

The Internet Services Provider and Connectivity Provider Constituency (ISPCP) respectfully submits the following comments on the Enhancing ICANN Accountability Process.

The constituency through its members is actively participating in the IANA Stewardship Transition Coordination Group (ICG), the Cross Community Working Group (CWG) and the Cross Community Group.

Our major concerns with respect to the process suggested are

- Transparency
- manageability
- scope

1. Transparency

It is hard even for those being familiar with ICANN and usually following the developments to understand what is the purpose of the different groups already working or being established to work in this context: IANA Stewardship Transition Coordination Group (ICG), Cross Community Working Group (CWG), ICANN Accountability & Governance Cross Community Group and Coordination Group. Not to forget the interrelation between the various groups! It is therefore almost impossible for those new to ICANN to understand the process and to find the right way to engage resulting in a loss of impetus and increased frustration.

Facilitating appropriate engagement of the ICANN community at the initial stage would have assisted in both enhancing and advancing this process by channeling energy towards the issues that need to be addressed, as opposed to the process. Lack of transparency leads to lack of trust.

2. Manageability

The process suggested seems to be highly complex. A lot of community personnel resources are required to cover the various groups – resources which in many cases are already used for other ICANN related tasks.

The potential for simplification should therefore be considered. Merging the ICANN Accountability & Governance Cross Community Group and the Coordination Group could facilitate a better management. It would be close to the existing CCWG model which has gained already community wide acceptance. External expert advisors could be integrated and recommendations should be elaborated by this group.

We also suggest that participation in the Coordination Group from the community be broadened to one representative per *constituency*, rather
than one per GNSO *stakeholder* group. The three constituencies of the CSG have various perspectives and should each have a seat on the Coordination Group.

3. Scope

Regarding the scope of the proposed process, we think it should be inclusive enough to address the issues related to the legal status of ICANN.

There also needs to be a recognition that resolving the accountability issues directly related to the IANA transition does not address all of the accountability issues. ICANN must commit to tackling the broader issues.

At the London meeting, the GNSO leaders called for an independent accountability mechanism: "The Board's decisions must be open to challenge and the Board cannot be in a position of reviewing and certifying its own decisions".

Such a mechanism may not be compatible with the legal restrictions associated with ICANN's current legal status as a nonprofit corporation in the State of California, where the Board bears ultimate responsibility over the actions of the corporation. One may therefore doubt whether the proposed accountability mechanism would hold up under California corporate law.

Similar issues were discussed during ATRT1, and ICANN staff published then a memorandum addressing this question:
http://www.icann.org/en/system/files/files/third-party-review-of-board-actions-31aug10-en.pdf

The ISPCP recognize those issues are difficult to address and will need time and deep analysis to find the best solution, but, as we consider that the community accountability mechanism is essential, they should clearly be included in the scope of the process and addressed with the appropriate timeframe.

The ISPCP constituency will continue to comment in the subsequent dialogue phases.

On behalf of the ISPCP constituency:

Wolf-Ulrich Knoben, Vice Chair   27 Sep 2014