**Enhancing ICANN Accountability Process – excerpts of** **comments**

To provide context to our October 2 conference call, I have compiled the following excerpts from comments received in response to ICANN’s “Enhancing ICANN Accountability Process” request for comment. The excerpts address the Public Expert Group and the Advisors that we are charged to appoint. I have read the comments in full and they provide important community input and context concerning the entire process. Please note that I was unable to open the ITI comments and if there are relevant comments therein they are not reflected here.

**Comments of Robin Gross**

Only Stakeholders Should be Included in Consensus Calls.

Decisions on the coordination group should be made by the stake-holders whom

ICANN was established to serve, not appointed "experts", ICANN staff, or board. Experts should serve in an advisory role, providing expertise to the

stakeholders as requested, but should not comprise the decision making body nor consensus calls. ICANN Board and Staff should serve in liaison and

informational roles in coordination group and not comprise the decision making body nor consensus calls. Stakeholder representatives should be provided "alternates" to assist with work on the coordination group. ICANN often claims to be legitimate because its governance decisions are made via bottom-up processes. "Bottom-up" decision making requires that those people who are impacted by the decisions should be making them. It is the democratic principle of self-governance which ICANN should be incorporating into its structures including the organization's critical accountability efforts. The community should drive this process, not staff nor board of ICANN, and not appointed experts.

**Comments of Center for Democracy and Technology**

It remains unclear what the role of the Expert Advisers is in terms of “decision-making” in the development of proposals in the CG. In CDT's view they should remain advisers and not have a role in determining whether a particular proposal is agreed or not. An explicit clarification of the

scope of the Expert Advisers’ duties would minimize the possibility of their important advisory role being compromised.

**Comments of the ICANN Business Constituency**

Composition  of  the  Working  Group.

While ICANN’s proposal allows open participation in the

‘Cross Community Group, decisions about recommendations would be

made in a ‘Coordination Group’ with strictly limited participation.  Morever, ICANN proposes to place 7 outside experts into the Coordination Group, and their views could directly affect consensus recommendations for new accountability mechanisms. ICANN should clarify the proposed role

of these experts in developing, reviewing, and revising accountability

proposals. ICANN should also describe the qualifications of experts chosen

and how their expertise would materially  improve  upon  expertise  available within the ICANN community.

**Comments of the Joint SO-AC-SG-C Leaders**

Limit the role of Expert Advisors, the ICANN Board Liaison, and the ICANN Staff Member with respect to consensus calls.

Limit the role of Expert Advisors, liaisons, and the ICANN Staff Member

with respect to consensus calls. We welcome the use of expert Advisors to inform the work on Enhancing ICANN Accountability. If community recommendations and expressions in response to the Call for Candidates: Seeking Advisors to the ICANN Accountability & Governance CG are given weight we believe that the expert Advisors to the CG may contribute positively to the process. We believe that the process could be further improved

by encouraging members of the Public Experts Group to consult with the community in its selection of experts. We believe that the SO-AC-SG-C Leadership structure could be leveraged to these ends.

Notwithstanding the valuable contributions we believe expert Advisors may bring to the Accountability Process, we believe that the process of taking consensus calls should be limited to the community-appointed members of the

CG and should not include such Advisors. Likewise, we believe that the ICANN Board Liaison and the appointed member from ICANN Staff should not participate in consensus calls. We believe that these participants may bring valuable knowledge to the accountability process and improve coordination and communication in the work of the CG. However, as previously discussed, within the Accountability Process, the interests ICANN Staff and the ICANN Board may not align with those of the community. We would be concerned if this tension

resulted in an inability to reach consensus on accountability recommendations that had the full support of the CG members that were organically chosen by the multi-stakeholder community. If the roles of the seven Advisors, the

ICANN Board Liaison, and the ICANN staff appointee are truly advisory we believe that the role of the SOs, ACs, and SGs may retain an appropriate degree of influence in developing the ultimate accountability enhancements; otherwise, we fear that the influence of Advisors and the ICANN Board Liaison

may be used to dilute the community’s role within the CG.

**Comments of the Internet Service Providers and Connectivity Providers Constituency**

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.

**Comments of the United States Council for International Business**

CG Expert Advisor Qualifications – We seek further clarification regarding

the role and selection of the outside experts who will be brought in to advise the CG and “help us all to reframe the dialogue in meaningful and constructive ways.”

The September 18 letter says that the Public Experts Group charged with appointing the experts will determine whether candidates meet the “required qualifications for service.” ICANN should provide greater clarity about the

Qualifications and the value they will add to the process. US Council for International Business Comments on Enhancing ICANN Accountability

• Role of CG Expert Advisors – We appreciated the point made by Assistant Secretary of Commerce Lawrence Strickling at the Internet Governance Forum (IGF) earlier this month, when he suggested that outside experts can offer fresh points of view concerning accountability best practices and stress testing, among other issues with which that both the CCG and CG will be grappling. We also appreciated ICANN’s clarification in the September 18 letter that the expert advisors will be expected to perform their work in an

open and transparent manner and to interact with both the CCG and the CG.

In addition, we feel it would be helpful to clarify that the role of the expert advisors will be advisory. They should not have a decisional role in shaping the CG consensus or otherwise overshadowing the participation of the SO-AC-SG representatives in crafting the eventual accountability recommendations.

**Comments of the Coalition for Online Accountability (COA)**

In the process proposed by ICANN, external subject matter expert advisors

play a significant role, constituting as many as a third of the members of

the proposed Coordination Group. As this group will, under ICANN’s proposal, categorize and prioritize the issues, build solution requirements, and issue

the final report and recommendations, it is critical that the group have access to expertise on all the crucial legal, policy

and technical issues where ICANN’s acts or omissions manifestly can have a significant impact, positively or negatively. As noted in our June 6 comments on “Enhancing ICANN Accountability,” two additional areas of expertise should be added to the existing list of thirteen topics: (1) intellectual property rights, and (2) the rule of law on the Internet. While we believe the identified area of expertise relating to “Internet Consumer Protection (including privacy, human rights and property rights)” properly encompasses both intellectual property rights and the rule of law, these particular areas are sufficiently unique, specialized and important that they ought to be

separately identified to ensure participation by someone with actual expertise in these areas. We understand and support that these expert advisors will now be chosen by the Public Experts Group, rather than by the

ICANN staff; but regardless of how they are selected, the omission of a separate entry for these crucial issues from the list of topics which advisors should address ought to be remedied.

We also appreciate and support the clarification, provided in ICANN’s September 18 responses to questions posed by a broad leadership group on

September 4, that these advisors will not include anyone

“under contract with ICANN,” currently or “within a reasonable time frame prior to the initiation of this work.”

**Comments of the International Trademark Association (INTA)**

1. Coordination Group Selection -- Experts identified by ICANN should not be placed on the Coordination Group by ICANN as this could constitute a conflict of interest in violation of the neutral facilitator role that the NTIA has requested ICANN to assume. We would recommend that ICANN make supportive resources, including impartial experts, available to the Coordination Group at its initiative and request. However, and contrary to our position in our

June comment, ICANN has proposed to establish and select the members of a Public Expert Group (PEG) that is tasked with selecting up to seven advisors to participate in the Accountability & Governance Coordination Group. This is troubling because the stakeholders participating in the Cross Community Group will have no say in the selection of these advisors.