CCWG Staff Accountability: Document A

Current Working Draft - 1.5[1]

This Version: https://docs.google.com/document/d/1wGRrJZ-i7WA0uYBIHaB5Q3ssqfRmbAcgHJwIQ6scHZY/edit

<mark>Please use this document for any suggestions or additions</mark>.

Authors to date: Klaus Stoll, Jordan Carter, Avri Doria, Mathieu Weill, Greg Shatan

The creation of this document was requested as a proposed next steps for Staff Accountability WS2.

The CCWG-Accountability work with ICANN to develop a document that clearly describes the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.

1. The roles of ICANN's Board, Staff, Community
2. Specifies relationships between ICANN's Board, Staff, Community
3. Proposed Changes / Clarifications
4. Recommendations: Activities that should be started / continued / stopped

Introduction

This document is one of two work outputs from the Staff Accountability track of Work Stream 2, and is part of the project being managed by the Cross Community Working Group on Enhancing ICANN's Accountability.

The document sets out the respective roles and responsibilities of ICANN's Staff, Board and Community in the effective operation of what we might call the "ICANN system". It looks at some areas that need to change in a cultural sense (and details relationships between the components of the system in Annex 1). It finishes by setting out recommendations that focus on activities that should be started, continued or stopped.

The ICANN system is a complicated one, where a wide array of stakeholders work to carry out the purpose and mission written down in ICANN's bylaws. The legal and governance structure that is the ICANN organisation exists only to help the system do what it needs to do. Since that is to serve the whole system, most of which is not organised within the

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[1] Note: This is a draft document that does not yet have subgroup consensus

confines of the organisation itself, this presents complexities and challenges for the organisation itself and for stakeholders.

This document was built on research and advice about the status quo, and tries to be clear about what is current practice versus what is recommended to be clarified and changed. The first two sections are therefore more an effort to document today's reality (including arguing for more evidence to be obtained on some points), and the second two sections are more future-focused.

In any document that is part of a discussion of staff accountability, it is important to be clear that the goal is a successful organisation where relationships are functional and working well, and where the community is satisfied and indeed impressed by how the organisation is working. Success should be recognised and celebrated, and issues that come up sorted out and resolved.

It is also important to acknowledge that the scope of this document is of necessity broad: while it is being done as part of staff accountability, this particular piece of work covers aspects of the whole ICANN system. Our mandate from WS1's report is quite broad, and an important part of the feedback we are seeking from the community is about whether the recommendations we propose are in scope or are seen as too broad for this sub-topic of the WS2 work.

We look forward to the feedback we know that this document will generate. It is a first effort to document this and given the scale of ICANN and the community, we are sure there will be insights and information that reshapes and leads to significant changes to this draft. We welcome that process and input.

NOTE: in this paper, when we mean the whole ICANN system, we use that phrase "ICANN system", including the organisation's staff, board, and the stakeholders who participate in its work. Where we say "ICANN", we mean the organisation as a legal entity.

Seun Ojedeji 28/2/17 12:38 PM
Comment [1]: This could be a useful comment to the small group setup by the ccwg plenary to look at the definition of the various terms. Though ICANN system is a new one that I am just hearing... doesn't sound funky ;-)

1. The roles of ICANN's Board, Staff, Community

There are three core parts of the ICANN system: its Board, its Staff and its Community. They have complementary roles in carrying out ICANN's work. In essence:

- ICANN's **Board** governs the organisation, and assures that it conducts itself consistent with its purpose and mission.

Seun Ojedeji 28/2/17 12:42 PM
Comment [2]: I think replacing this with "Bylaws" may be more encompassing. Or we can say "Bylaws and article of incorporation"

- ICANN's **Staff** executes the organisation's work, and supports the Board and Community in their roles. Note the CEO has a particularly important role as set out in more detail below.

- ICANN's **Community** works to develop and advise on policy that advances the purpose and mission.

The following subsections detail this, including noting what are not parts of the roles of these three components of the ICANN system.

1.1 Role of the ICANN Board

The Board's function in the ICANN system is a complex and delicate one. It is a large and diverse board, composed of a mix of direct stakeholder appointed members and NomCom appointed members.

The primary external role of the ICANN Board is to assure the Internet community that policies applied to the DNS are consistent with ICANN's mission and purpose, and developed through the bottom up consensus community processes set out in ICANN's bylaws.

In its primary internal role the Board is like the board of any other non-profit. That is, consistent with the law, it acts in accordance with documented policies and procedures collectively by voting at meetings to authorize and direct management to take action on behalf of the ICANN organization.

The Board's main functions are:
- Development and approval of ICANN's strategic direction, and oversight to ensure the organisation is working consistent with the strategy (development happens in collaboration with the community).
- Review enterprise risks and ensure that appropriate risk management frameworks are in place within the organization.
- Select the CEO and appoint other officers.
- Setting and overseeing enforcement of conflicts of interest policy.
- Set the fiscal year, adopt annual budget, operation and strategic plans, appoint independent auditors and cause the annual financial report to be published.
- Overseeing the development of, and approval of, key financial direction.
- Review and decide on Supporting Organization recommendations
- Review Advisory Committee advice
- Appoint and oversee the performance of the Ombudsman.
- Consider recommendations from structural organizational reviews.
- Selecting PTI Board membership.

What the ICANN Board doesn't do
The ICANN Board does not, or should not, have the following roles:

- **To determine policy where community processes have not exhausted the possibility of reaching consensus** – in such cases the Board's role is to push the

As of 27 Feb 2017

George Sadowsky 1/3/17 12:05 AM
Comment [3]: This document might provide some background. It is more granular than you want or need, but may be of use. https://www.icann.org/en/system/files/files/delegation-of-authority-guidelines-08nov16-en.pdf

Seun Ojedeji 28/2/17 12:44 PM
Comment [4]: It is a "relatively" large...

Seun Ojedeji 28/2/17 12:47 PM
Comment [5]: ICANN Board has more commitment beyond the DNS alone; Because they approve numbers global policy as per the gPDP they are exp ... [1]

George Sadowsky 1/3/17 12:05 AM
Comment [6]: I understand what is written here, and above, but it's not ... [2]

Jordan Carter 25/2/17 7:28 AM
Deleted: Strategic oversight

Jordan Carter 25/2/17 7:28 AM
Formatted ... [3]

Jordan Carter 25/2/17 7:28 AM
Deleted: Oversight of enterprise risk work within the organization.

Seun Ojedeji 28/2/17 12:52 PM
Comment [7]: Review "and decide on" advisory....

Jordan Carter 27/2/17 10:23 AM
Comment [8]: This is George's suggestion

Greg Shatan 25/2/17 7:26 AM
Comment [9]: This doesn't seem quite right. Which processes are being re ... [4]

Jordan Carter 12/2/17 11:18 AM
Comment [10]: Greg, that might mean that what needs to be added is a ne ... [5]

Greg Shatan 12/2/17 11:51 AM
Comment [11]: in the IGO/INGO matter, the community process for developi ... [6]

Greg Shatan 12/2/17 11:55 AM
Comment [12]: Is the import of the broad statement that the Board can ... [7]

Greg Shatan 12/2/17 12:02 PM
Comment [13]: I have two broad problems with this. First, it's so vag ... [8]

Jordan Carter 22/2/17 12:52 PM
Comment [14]: Hoping we can discuss this on the call 22 Feb.

Greg Shatan 22/2/17 11:53 PM
Comment [15]: Jordan et al., we didn't really get to discuss this in depth on ... [9]

Jordan Carter 25/2/17 7:26 AM
Comment [16]: Hi +gregshatanipc@gmail.com - yes please!

Jordan Carter 27/2/17 10:23 AM
Deleted: reached

issue(s) back to the relevant processes so that differences can be resolved by and among the broader community.

- **To do the work of the organisation** – the Board and its members are the governors and can best do their job with appropriate detachment and in line with their fiduciary duties by not becoming too involved in the day-to-day work of ICANN *as governors*. Where they (as they should) participate in the work of ICANN, they must do so on an equal footing with other participants. The Board collectively as well as each of its members should take care that they do not breach or blur the governance / management barrier or the roles of governors and of community participants in ways that undermine the roles of the Staff or the Community.

1.2 Role of the ICANN Staff

1.2.1 CEO Roles

The CEO (in a formal description the President and CEO) is the senior officer of the ICANN organisation. They are an employee, appointed by the Board. The CEO:

- speaks for ICANN organization and serves as the external face of the organization.
- leads staff input in the the ongoing development and evolution of the organisation's strategy and direction
- leads and oversees in accordance with documented policies and procedures ICANN's day-to-day operations, within budget, plans and priorities.
- reports to the Board.
- is responsible for ensuring that the organization delivers on its support responsibilities to the ICANN Community, including those determined by the bottom up multistakeholder policy development process.
- supports all internal accountability and transparency mechanisms and ensures that ICANN remains in compliance with all applicable legal/regulatory requirements.
- proactively protects the organization from third-party claims and monitors and mitigates risks to the organization.

1.2.2 Staff Roles

In general, ICANN's Staff do the work of the organisation day-to-day. They conduct operations in a way consistent with the Articles and Bylaws, internal policies and procedures and the law, to:

- advance ICANN's work
- support the ICANN Board and Community in their roles

As of 27 Feb 2017

Seun Ojedeji 28/2/17 12:56 PM
Comment [17]: To "not" do the "operational" work.....

Seun Ojedeji 28/2/17 12:57 PM
Comment [18]: the "most" senior....

Seun Ojedeji 28/2/17 12:58 PM
Comment [19]: Replace "they are" with The CEO is

Seun Ojedeji 28/2/17 1:01 PM
Comment [20]: The Board (Especially the Chair) has a role in this as well though not as much as the CEO but I think it's significant enough to note that within the roles of Board

(see also the detail in Annex 1)

What ICANN Staff doesn't do

The staff of ICANN does **not** have the following roles:

- deciding the long term strategy and direction of ICANN (though they are key participants in helping develop it)
- setting policy
- interpreting and acting on the boundary between the *development* and *implementation* of policy in a way that usurps the proper role/s of the Board and community.

1.3 Role of the ICANN Community

1.3.1 The ICANN Community's Roles

ICANN community members act through ICANN's SOs to develop policies, and through ACs to provide advice, applicable to the domain name system. As such they bring their expertise, interests, opinions and judgement to bear in collectively evolving policy that ICANN in turn implements.

In other words, community participation is about developing the policies that guide the essential work of ICANN as set out in the Mission and Purpose sections of the Bylaws. ICANN as an organisation exists to support that community-led policy making process and to implement its outcomes.

1.3.2 ICANN's Empowered Community

ICANN's community holds ICANN as an organisation to account on behalf of the global Internet community. It does so through a construct called the Empowered Community. In this role, the community has a range of powers, including the right to approve or block changes to ICANN's bylaws and articles, to appoint and remove directors, and to have input into operational planning and budget processes.

The Empowered Community is a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO, the GNSO, the ALAC and the GAC.

What the ICANN Community doesn't do

The ICANN Community does not have the following roles:

- **Governance** – the Board's role is to fulfil the governance responsibilities required of it by law to allow the organisation to conduct its role in supporting the work of the

George Sadowsky 1/3/17 12:04 AM
Comment [21]: You're right in that the DNS is the principal object of attention. However, the ICAN community includes the ASO, the SSAC and the RSSAC, and their concerns include IP addresses and some of the work that the IETF does.

ICANN system. When the Board acts to set the long-term direction for the organisation, it must take care to do so through processes and ways of working that are open and responsive to the needs of the community.

- **Implement policy** – ICANN as an organisation implements consensus policy as applicable. The community determines what the policy is and may oversee implementation, but does not usually carry out the day to day implementation. Tensions between policy *development* and *implementation* are inevitable given that there often is no sharp distinction, and where such tensions arise these need to be dealt with sensitively and in keeping with the defined development processes and the bottom up model. It will not serve ICANN if the community feels that policy is being made under the guise of "implementation".

2.   Relationships between ICANN's Board, Staff, and Community

The roles set out in the previous section require relationships between the three parts of the ICANN system (the Board, staff and community). In a general sense, the relationships work best when each part of the system is conducting its role effectively, and adopts and friendly and supportive approach to helping other parts of the system to do their role.

In **Annex 1** we discuss these relationships in some depth, covering what "good" would look like, and identifying some issues. We do not seek to draw conclusions about the current state of these relationships.

There is limited evidence about the current state of the relationships within these various roles. Participants have subjective information based on their own experience, and so far as we know, there is no structured effort to monitor and analyse these relationships and trends in them over time.

We therefore recommend in this paper that there be a project to design and collect such evidence. This would be a new core organisational function, perhaps looking at culture and relationships in the various parts of the ICANN system. Done well, this could help the system work more effectively by providing new information about areas which are working well, and where attention or change is needed.

3.   Proposed Changes / Clarifications

The relationships between companies/organizations and their board, staff and the various stakeholders (customers, members, investors, governments and regulators, to name some), are well defined in law and in the various formal documents. Yet the way various stakeholders choose to behave and relate to each other – the culture and style of the organisation – have a very big impact on how well it can achieve its goals.

An analysis of the relevant ICANN organizational and governance documents shows that in the case of ICANN the situation is similar in that:

- ICANN the organization is governed by its Board.
- Key stakeholders have the power to remove/replace the Board.
- The CEO reports directly to the Board.
- Staff has its internal regulations and is accountable to the Board through the CEO and various direct/indirect interactions with the Board.

But the main similarities with a "typical" organisation end here. Key differences are:

- The stakeholders directly inform the decision making of the Board.
- ICANN staff report directly to ICANN managers and are evaluated following ICANN KPI's, but at the same time the role of ICANN staff as community support is emphasized.
- Some stakeholders (Registries/Registrars) have direct contractual arrangements with ICANN that are of vital interest to the contracted parties. This constitutes a clear conflict of interests for all parties involved. Existing processes and regulations to mitigate this conflict are in place but can never remove them, only aim to deal with them transparently and openly.
- ICANN depends on a very small number of Registries for a vital part of its core technical operation - the distribution of the root zone.
- ICANN depends on Registrants, Registries and Registrars for its financial sustainability, and at the same time the business models and financial sustainability of Registries and Registrars are directly dependent on their contractual arrangements with ICANN.
- Parts of the stakeholder community (registrants and users) are in their operational sustainability dependent on logistical, operational and financial support from ICANN through and based on ICANN staff decisions.

ICANN staff and to a large extent the ICANN Board are in a position where they are:

- directed by…
- accountable to…
- support …
- operationally and financially sustained by…

…in part or in total to the stakeholder community, whilst at the same time the ICANN staff is:

- affecting stakeholder groups decision making and actions.
- are only indirectly accountable, and only to a limited extent (mainly excluding human resources related issues).
- are bound to support the operations and interests of ICANN and support the interests of the stakeholders only to the extent to which doing so is compatible with wider

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George Sadowsky 1/3/17 12:10 AM
Comment [22]: I understand that this refers to ICANN support of travel for meeting attendance. But if your'e going to include registrants and users as parts of stakeholder communities -- users and registrants are stakeholders and there are billions of them -- then the reference to financial support, and perhaps other support, makes no sense. What is getting in the way here, as well as in many other places in many ICANN discussions, is imprecise terminology. What do you mean by stakeholder group? It's undefined.

Greg Shatan 20/1/17 11:54 AM
Comment [23]: I would include CSG as well.

Avri Doria 2/2/17 6:58 AM
Deleted: NCSG/ALAC

ICANN institutional interests (though of course this is more complicated than **the black letter law reality might suggest, as it is in most organisations)**

In essence, ICANN is a multistakeholder organization that is not subject to the customary corporate hierarchical methods. The effective work of the ICANN system relies on quite a different approach, with the organisation (Board and staff) primarily being a support and implementation entity, and the community being the main source of direction and policy development and guidance work. The community is not external to the organization as it is in most corporations, but is in partnership with the other parts of ICANN.

The critical changes or clarifications we recommend arising from this section are in the recommendations below (Rec D and E). Together, these changes will help build a common set of expectations and norms and help the whole ICANN system work more effectively and harmoniously.

George Sadowsky 1/3/17 12:16 AM
Comment [24]: The comment is really on the bullet below, but I can't make that work. While it's true that the goals you refer to are not subject to community review, they are subject to community input, as interpreted by the CEO and promulgated down through the organization. Do you really want input on every staff member's goals throughout the organization - that's micromanagement in the extreme. Further, it would be useful to have a better understanding of the at-risk compensation scheme that is currently used to identify and mumerically reward performance.

George Sadowsky 1/3/17 12:20 AM
Comment [25]: As you define ICANN, it is NOT a multistakeholder organization. The ICANN system is. ICANN IS subject to those corporate methods. It serves a multistakeholder body, or system. The free use of terms such as system, organization, group, etc. causes difficulties. You may say, "but we know hat we mean," but the problem is that different people put different nuances on it, and then communication frays and sometimes breaks.

4.   Recommendations, and activities that should be started / continued / stopped

Original Content for s4 has transferred to ANNEX X, with a view to leaving it out of the 28 Feb draft. If not left out, it will need to be changed to become consensus text.

In its consideration and review of the relationships between ICANN's community, board and staff, the Group recommends the following changes, additions or continuations of some selected activities:

THINGS TO START OR DO

A. Seek agreement through this WS2 process to agree and champion a culture of support and respect between all components of the ICANN system, and lead this from Board and CEO and SO/AC leaders on through the whole system.

B. Start a work programme, managed by ICANN staff, to gather evidence about the state of relationships between Staff, Community and Board, and monitor trends in this over time as a new core organisational function.

George Sadowsky 1/3/17 12:22 AM
Comment [26]: Comibine B and C into something succinct. they are very similar/

C. Start a work programme, managed by ICANN staff, to solicit views of the community on how well the organisation is serving community needs, through an annual community satisfaction survey.

D. Seek agreement through this WS2 process about a clear restatement of the roles of the three core components of the ICANN system (Board, staff, community), as described in this paper.

George Sadowsky 1/3/17 12:25 AM
Comment [27]: Comment refers to D, but it's already been claimed, can't comment on top of text that has already been highlighted. Not clear, do you want agreement with what you've written in this document, or do you want another group to take this as input and restate it?

E. Seek agreement through this WS2 process to change the culture of the ICANN system, particularly within the Organisation (staff and Board) to orient them towards

the agreed roles of each part of the system.

F. Seek agreement through this WS2 process to create a standing forum in which ICANN staff and stakeholders can discuss issues in a free and open manner that is free from fears of retribution.

G. Ask the Chief Executive to build a more transparent and responsive approach to feedback - both positive and negative - between and among the various parts of the ICANN system, with a particular focus on staff accountability (issues/problems, suggestions for change, and successes).

THINGS TO CONTINUE

H. Ongoing development of the role of the Ombudsman (separate work looking at this).

THINGS TO CHANGE

I. Instigate changes to training and induction across the ICANN system to assure Improved education of staff and all parties about the multistakeholder model.

J. Ask the Chief Executive to change the performance management system for ICANN staff so that Base some part of staff performance management becomes based on how well they support the community.

THINGS TO STOP

K.

Orphan/Contentious Recommendations - for discussion on 28 February

1. Move the emphasis of ICANN as an organisation (its Board and staff) from policy outcomes to supporting and strengthening policy making processes and stakeholder structures, and the broadest possible participation of stakeholders in policy making.

2. Emphasis in policy making needs to be on the quality of decision-making. If policy in the end does not reflect a true and lasting compromise and balance, it will show through in difficulties in implementing it. Staff and Board overstepping their competences and roles are sometimes a sign of bad policies that resulted from bad policy making processes in the first place.

Jordan Carter 25/2/17 7:23 AM
Comment [28]: These were in Section 3 above.

George Sadowsky 1/3/17 12:30 AM
Comment [29]: This is a comment on point E. It's somewhat inflammatory, unimplementable, says nothing about an culture change on the part of the 'innocent' community. If you really need to say something like this, there are better ways to say it. And make it implementable, not like this.

George Sadowsky 1/3/17 12:27 AM
Comment [30]: Isn't this really a key point of what you want to recommend and have happen? You should build on this, making the forum free of retribution, etc.

George Sadowsky 1/3/17 12:34 AM
Comment [31]: This is really a motherhood wish that shouldn't be necessary if F. above is specified well and implemented.

George Sadowsky 1/3/17 12:34 AM
Comment [32]: Why not just "of all parties." You're saying that staff is a special case. I don't believe it, but even if correct, your wording does not contribute to a solution.

George Sadowsky 1/3/17 12:37 AM
Comment [33]: This is your other key recommendation. What you want is for feedback to be listened to, and you really want it listened to on an event by event basis to clarify roles and behaviors. that's recommendation F above. Here.you're saying that performance should be ... [10]

George Sadowsky 1/3/17 12:46 AM
Comment [34]: Comments: First, I'd eliminate most of these. However, on the assumption that you want them: O ... [11]

Jordan Carter 22/2/17 1:38 PM
Comment [35]: CEO spokesperson - for what?

Jordan Carter 22/2/17 1:37 PM
Comment [36]: Be clear about the labels

Greg Shatan 12/2/17 12:48 PM
Comment [37]: What does this mean? Is this referring to implementation? Does the second half of the recommenda ... [12]

Jordan Carter 22/2/17 1:44 PM
Comment [38]: Greg - suggests out of scope

Jordan Carter 22/2/17 5:56 PM
Comment [39]: Greg - suggests out of scope

Mathieu Weill 22/2/17 5:56 PM
Comment [40]: I agree with Jordan but I think Greg's point is still relevant: it implies that one of key roles of staff (which ... [13]

3. Redefine and clarify ICANN staff roles and be clear and transparent about what is in the interest of ICANN.

4. Remove structural, operational and ideological conflicts of interest that staff is subject to.

5. Encourage open and constructive reflection on the various interests and perspectives of the Board, Staff and Community in the ICANN system, and the conflicts this occasionally gives rise to - so that there is greater understanding, and so that conflicts can easily be identified and managed when they do arise.

6. Base staff accountability and evaluation on how staff has managed to strengthen and serve ICANN through strengthening and serving the ICANN stakeholder community. Staff accountability is not only a question of sets of rules and standards of behaviors. KPIs, codes of conduct and the role of the Ombudsman need to reflect this. It goes beyond ticking boxes but needs to look first at how staff behavior impacts policymaking at the root of the process which is the stakeholder groups.

7. In order to support the above item, consider how the community could channel *positive* feedbacks (acknowledgements, expressions of gratitude) or suggestions for improvements (specific skillsets, improvements to the underlying processes) into ICANN evaluation of staff.

8. Conduct yearly community satisfaction surveys to assess how the community perceives the quality of service of ICANN in supporting the community.

9. Develop measures and evidence on the culture and relationships within ICANN's three core components (Board, Staff, Community) and report on these over time, to help the organisation perform better.

10. Include the community in the review of staff bonus structures.

11. Removal over time of financial dependencies of some stakeholder groups and ICANN. (in the short and medium term enable constituencies to establish their own plans of sustainability that are not based on ICANN support.) This will mitigate any perceived concerns about ICANN "purchasing support" or legitimacy through self-interested creation or recruitment of stakeholder groups.

12. Removal of existing financial dependencies between contracted parties and Board and staff. (Outsourcing of contractual functions from ICANN?)

13. Strengthen and redefine the Ombudsman office. The Ombudsman office is not mainly that of conflict resolution and judgement but as a facilitator of real balanced policy making process of stakeholders. Human resources related issues have to become again within the remit of the Ombudsman office.

Jordan Carter 25/2/17 7:18 AM
Comment [41]: This seems to be boilerplate / business as usual?

Jordan Carter 22/2/17 5:57 PM
Comment [42]: I think this needs to be more specific.

Jordan Carter 22/2/17 1:45 PM
Comment [43]: Suggest deletion

Jordan Carter 22/2/17 1:46 PM
Comment [44]: Or be more specific about conflicts of interest for part time and consultants

Mathieu Weill 22/2/17 5:57 PM
Comment [45]: +1

Jordan Carter 25/2/17 7:18 AM
Comment [46]: I think this is beyond the scope of Staff Accountability.

Jordan Carter 12/2/17 11:51 AM
Comment [47]: Might this belong more closely in the B paper? As for I below it?

Jordan Carter 25/2/17 7:15 AM
Comment [48]: Now incorporated above

Jordan Carter 25/2/17 7:16 AM
Comment [49]: Now incorporated above.

Jordan Carter 25/2/17 7:16 AM
Comment [50]: Now incorporated above

Jordan Carter 25/2/17 7:17 AM
Comment [51]: I do not support this recommendation at least in part because I do not understand how it could work.

Jordan Carter 12/2/17 12:43 PM
Comment [52]: I do not support this recommendation. It upends the ICANN model entirely. I think registrants should pay for the work ICANN does, as they do today. Registries and registrars as intermediaries are the only way to do that without ICANN billing every registrant.

Greg Shatan 12/2/17 12:43 PM
Comment [53]: Agree with Jordan, but it does beg the question of how to deal with the role that the money plays in the relationship between contracted parties and the Board.   ... [14]

Greg Shatan 25/2/17 7:17 AM
Comment [54]: This seems to be ... [15]

Greg Shatan 12/2/17 12:45 PM
Comment [55]: I would delete thi ... [16]

Greg Shatan 12/2/17 12:46 PM
Comment [56]: And I reiterate th ... [17]

Mathieu Weill 22/2/17 5:58 PM
Comment [57]: At the very least, ... [18]

Jordan Carter 25/2/17 7:17 AM
Comment [58]: I do not support t ... [19]

Jordan Carter 22/2/17 1:49 PM
Comment [59]: Out of scope?   ... [20]

Annex 1: Relationships between Board, Staff and Community in the ICANN System

(DRAFTING NOTE: content was most of section 2)

ICANN's Board and staff actively engage with the community in what we have called the "ICANN system" to do the work ICANN exists to do. The Board and staff have a special responsibility to ensure that ICANN serves the global public interest in line with, and within the scope of, ICANN's purpose and mission.

Interdependencies are highlighted in a wide range of ways, including through ICANN accountability mechanisms such as:

- Empowered Community rights
- Reconsideration of Board or staff actions
- Independent review of Board or staff actions
- Recommendations of the Ombudsman
- Transparency and disclosure requirements
    - Legal appeal to an appropriate court

A1-1 Staff-Board Relationships

Across the roles and obligations that the Board, CEO and senior management share, there are numerous interdependencies in these relationships. These include:

- The CEO (or designee/s) is the spokesperson for ICANN.
- The Board Chair is the spokesperson for the ICANN Board, unless delegated to other board members.
- The Board and Staff are key drivers in the development of ICANN's strategic direction and in the organisation's relationships with the ICANN community. They have significant influence on the degree of community confidence and trust in the organisation.
- Working together on Board meetings, with the staff responsible for timely delivery of materials to the Board.
- ICANN Board relies significantly on staff for information upon which the Board will base its decisions (along with the other sources of information available to them).
- The Board relies on staff to some degree to support the Board's interactions with the ICANN community.

George Sadowsky 1/3/17 12:58 AM
Comment [60]: To the extent that you feel that you have to include some of this to satisfy your mandate, extract only those parts that are explicitly required, pare them down, make them concise, and move them into the main text above, perhaps replacing some of what is already there. Discard the rest. You don't need a structural assessment of the entire ICANN system for staff accountability. This section has so much in it, and so much opinion, that by itself it could generate weeks if not months of discussion, almost all useless for the group's purposes. It appears to be the view of one or a ver few people, and it's accuracy will be questioned. I not one point below. IMHO a critical reading will yield more disputable points, the resolution of which are irrelevant to the group's work.

- The staff implements Board resolutions and acts within the scope of delegated authority reflected within those resolutions.

A1-1.1 CEO-Board Relationship

The CEO oversees day-to-day operations, while the Board exercises oversight over the CEO, and is responsible for the formalising ICANN's strategic direction. This relationship is crucial to the organisation's success, and any problems or concerns in the relationship should be resolved at the first opportunity.

Collegial setting of key goals and directions, effective performance management, succession planning and testing of the management's policy and analysis frameworks are essential to the Board helping maintain this relationship in a healthy state.

Openness, honesty and excellent and accessible provision of Board-appropriate information and analysis are essential to the Chief Executive helping maintain this relationship in a healthy state.

A1-1.2 Staff-Board Relationship

Generally speaking the *formal* accountability interface between the staff and the Board is through the CEO. Informally and in reality, day to day a wide range of staff will work with the Board collectively and with its committees, as well as with individual Board members.

Ensuring this relationship remains healthy requires the Board and Board members always to keep their role as governors in mind. They are not entitled to manage staff members, or to seek to influence staff decisions or behaviour in ways not relevant to their particular roles and responsibilities (e.g., as members of particular Board committees). They must always bear in mind when a request might breach this approach, in which case it must be raised with the Chief Executive. Board members should undergo regular governance training that reminds them of how to work effectively with the organisation's staff.

Ensuring this relationship remains healthy requires staff members to be aware of Board members' roles and how these interact with theirs. They will need to be confident in drawing the appropriate boundaries if Board members do not do so, and management must be clear in supporting staff in this. Staff will also help ensure a healthy relationship with the Board by delivering promised work, and/or being clear when Board requests cannot be met (and why).

A1-2 Staff-Community Relationship

ICANN's staff, or the ICANN organisation's executive and implementation roles, are there to support the ICANN community in its role of developing policies for the DNS and in its role of holding ICANN accountable to the global Internet community. Without effective support of this sort, the community cannot perform the role assigned to it.

In turn the community's expectations of the staff must be reasonable: there should be a commitment by those who participate in ICANN's work to treat staff with respect and to understand their roles and responsibilities. It is a fact that there are limited numbers of staff and like all people, ICANN staff will perform best when they maintain a balance between their work and personal lives.

Staff also have an obligation to acknowledge that many community participants are volunteers with busy lives. They cannot and should not be expected to meet short deadlines, and the reality of a voluntary contribution should be understood and respected by staff.

The relationship will be healthy when staff and the community understand and respect their respective roles and responsibilities, and proactively work together in a spirit of partnership, collaboration, openness, honesty and respect.

The relationship will also work best when there are clear processes in place to commend staff for great performance, and to deal with performance problems. Given that staff can't be managed by the community directly, the approach management takes in developing good systems and holding staff to account, with community input, are very important.

A1-2.1 CEO-Community Relationship

The CEO is a key leader in ICANN, and the way they model and set the culture for the relationship between staff and community will have a very significant influence on how well the relationship works. In particular, the CEO:

- interacts with governments and organizations within the scope of ICANN's Mission and Board's directives.
- interacts with the broader Internet community and other interested parties within the scope of ICANN's Mission and Board's directives.

A1-2.2 Staff-Community Relationship

ICANN employees are hired to serve the organisation, which in turn exists to support the work of the whole ICANN system.

Individual staff members are accountable to their managers according to the internal processes of ICANN as an organisation. The CEO is the ultimate point of accountability for how ICANN provides service to the community. No ICANN employee reports to any person outside of the organization.

ICANN cannot perform its role in the ICANN system by relying on a limited, top-down accountability model for staff performance. There has to be a culture and systems in place that assess staff performance and the extent to which ICANN meets the needs of the community. Good performance needs to be rewarded and commended, and poor performance addressed and resolved.

Doing this requires an approach that takes community feedback into account: The ICANN community – as with any other issues – can raise with ICANN management any concerns or

observations as they relate to staff accountability. But the system must also proactively seek people's views and perspectives to achieve this outcome - feedback, positive or negative, isn't enough on its own.

In general, ICANN expects that "staff accountability to the community" means that those within ICANN are performing the work that they are hired and expected to complete, and are doing it in a way that helps the whole ICANN system perform as well as possible.

The companion work output from the Staff Accountability team goes into the processes in place, along with recommended adjustments, to give effect to this.

The role of the Ombudsman regarding staff accountability:

The community can raise issues with the Ombudsman with regards to staff accountability if it relates to issues of fairness or other items appropriately within the Ombudsman's jurisdiction[2]. If the issue, however, becomes a human resources-related issue, the resolution of the concern is not within the Ombudsman's jurisdiction. See mandate of the Ombudsman at https://www.icann.org/ombudsman.

A1-3 Board-Community Relationship

ICANN's Board is composed of community members. It has a vital role in ensuring the organisation's strategy and approach meets the community's expectations. It also takes a lead in setting ICANN's culture as an organisation designed to support the Internet community - the ICANN system - in the important work of setting policies in the areas defined by the Mission and Purpose parts of the bylaws. It sets the tone for how the organisation relates to its community and is therefore a key player in building trust and confidence.

The community working through ICANN relates to the Board in a range of ways. It has tools by which to hold the Board to account; it has to acknowledge the Board's roles and rights as manager of the CEO, formal decision-maker and governing body of the organisation. Community members should respect and aim to understand the responsibilities of the Board and its particular roles, to avoid misunderstandings and help build trust and confidence.

The relationship is likely to work best when ICANN's Board, as a Board, does not engage directly in the policy development process. The Board's role is to assure that process is followed and that the outcome is consistent with the bylaws before being implemented. To the extent the Board acts to shape or change the outcome of policy processes, it is likely to strain the relationship with the community. Board members can (and should) participate in the policy development work of the ICANN community's SOs, but on an equal footing with all other participants.

George Sadowsky 1/3/17 12:50 AM
Comment [62]: Absolutely false. In fact the role of the NomCom is to look for and appoint Directors who are independent of the community, however defined.

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[2] The Ombudsman roles and responsibilities are the subject of discussion in another WS2 subteam.

The relationship can be strengthened through open and honest dialogue, especially on controversial and difficult issues; through an acknowledgement and celebration of mutual accountability between the community and the Board; through a mutual commitment to openness and transparency in the work of the community; and through together developing a culture that celebrates and respects difference and disagreement as integral to the consensus-building process at the heart of ICANN's work.

Annex X

Text flagged for leaving, or for substantial rewrite (on call on 22 Feb, view was to leave this out of the next version).

In theory and in an ideal world scenario, the interests of Board, the Staff and the Community should be aligned, through balancing out different interests in the course of the various ICANN policy making processes. That conflicts with the reality that each party has its own specific interests which it tries to implement over the interests of other parties.

Even if each party tries to take the interests of other parties fully into account this is not always possible, as each stakeholder group has its own characteristics and development dynamic. There exists often just a simple lack of knowledge and understanding of stakeholder groups and their interests, by staff and community. The policy making process exists in part to allow for a well defined formal development process so that the competing interests can be reconciled, and policy decisions made and implemented.

The all-encompassing expectation is that the Board, Staff and Community have an overarching joint interest in working together to resolve conflicts and arrive at decisions, as opposed to leaving decisions unmade - or for the Board to resolve.

Board and Staff see themselves as the main enablers and instruments to fulfil the will of the community, which has been reached through consensus based policy making. They also have perspectives, expertise and interests of their own which can assist the policy development process, as long as this input is incorporated in the right way.

"The right way" is important because, at the same time, the perceived interest of ICANN as a company and staff might stand or be seen to stand in direct conflict with the perceived interests of all or parts of the community. The list of issues where the interests of ICANN and its staff conflict or could conflict with the interests of the community is very long and only some examples can be mentioned here:

- Staff must negotiate contractual arrangements with stakeholders whose will they are bound to execute, putting Board and Staff into a situation where they sometimes have to serve two masters at the same time.

- ICANN is interested in a quick and controlled process of policy making. The reality of multistakeholder policy making has shown that it will ultimately deliver the required results but that the process is often long, messy and uncontrollable. ICANN staff in an attempt to bring the policy making process into order is tempted to offer the community "help", either internal or external through the engagement of consultancies, to policymaking processes and sometimes thereby undermining the very essence of multistakeholder policy making. ICANN is driven by its institutional interests to build necessary capacities either in house or through buy-in, but not

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Comments:

Greg Shatan 12/2/17 11:39 AM
Comment [63]: Who does "party" refer to here? The 3 parts of the ICANN system, or also to subparts?

Jordan Carter 12/2/17 11:39 AM
Comment [64]: From reading it, I'd say it refers to the three parts of the system.

Greg Shatan 12/2/17 11:40 AM
Comment [65]: Who does "stakeholder group" refer to here? The 3 parts of the ICANN system, only subparts, only community subparts?

Jordan Carter 12/2/17 11:40 AM
Comment [66]: Again I think it's intended to refer to the same three parts. Klaus will know as he drafted this.

Greg Shatan 12/2/17 12:38 PM
Comment [67]: This is not right. The Board Staff and Community do not make joint policy decisions and do not participate in a joint consensus process.

Avri Doria 2/2/17 7:33 AM
Comment [68]: agree

Jordan Carter 12/2/17 11:42 AM
Comment [69]: In reality, they do.

If they don't, how would you describe it?

Certainly I think it's reasonable to state an assumption or expectation at least that decisions will be arrived at and that everyone will live with them....

or am I missing something?

Greg Shatan 12/2/17 12:38 PM
Comment [70]: I disagree that this is what happens in reality. I would also say that GNSO Working Groups do not function in quite the same way as CCWG Working Groups, so I wouldn't extrapolate from the CWG/CCWG process.

I would describe it as a workflow or stepwise process and not as a joint process. Certainly, the Board as such and the Community as such do not have a process that can be called a consensus process. While generally speaking decisions are arrived at and people live with them, that does not equate to consensus in any way that preserves the meaning of the term in the multistakeholder process.

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incentivised to develop this capacity where it by the very nature of ICANN should be placed: the ICANN multistakeholder community!

● There will also be a conflict between the long- and short-term interests of ICANN as instrument of the community's will and the interest of ICANN as an organisation in the Internet community. For example, ICANN as an organisation might have long-term development interests, based on some particular stakeholder needs, such as promotion of general Internet governance literacy and awareness-building, before the self-promoting interests of ICANN as an organization.

● ICANN staff will be evaluated against KPIs that measure the promotion of ICANN, but we have no information to suggest that KPI indicators exist to measure the extent to which the work of staff has benefited the core interests of the multistakeholder community. One could say ICANN is supporting the community to produce the results that are needed for ICANN to function, but is not yet adequately supporting the underlying health and strength of the multistakeholder community on which good policy making is based. Our second document covers this in more depth. (Resolving this may be a broader strategic issue for the community to consider.)

● The work of the various organised components of the ICANN community, and in particular those that are directly supported by ICANN, is observed and in part evaluated by staff. The criteria for the evaluation is based on participation and input into policy making processes and does not always consider the particular situation, interests, functions and dynamic of a stakeholder group. Decisions by ICANN staff about who and how to support are based on these flawed evaluation criteria with the result that the overall policymaking process risks becoming distorted.

The distortions and conflicts of interests could be resolved by a change of self-understanding by all parties involved. The relationships between stakeholder groups, ICANN staff and ICANN as an organisation are dominated by promoting particular interests and outcomes in the policy making process. Real policy making is not a process in which one group of interests tries to impress its will on another stakeholder group, but is instead a process of constant dialogue, seeking understanding and compromise and a true balance of interest between all stakeholder groups. Such balanced policy making processes can only happen when all those involved move away from emphasizing the policy outcomes they want at the end of a process and instead put their energy into the process that results in a policy.

In the case of ICANN, this would mean emphasizing and strengthening the stakeholder groups themselves and the dialogue and interaction between stakeholder groups, and ICANN staff and Board. Many attempts have been made to do just this, and there are mechanisms in place to achieve this, but it is clear that the current instruments in place are not working as required, and that the policy making process is still too often dominated by pre-conceived or predetermined outcomes and not by the results of the ideal open process itself.

There seems to be also a large potential for conflict when it comes to the implementation of policies by ICANN's Board and staff.

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Greg Shatan 20/1/17 12:11 PM
Comment [71]: What evaluations are being referred to here?

Greg Shatan 12/2/17 12:39 PM
Comment [72]: This whole paragraph obliterates the roles that different stakeholder units, staff and Board play (and more importantly, don't play) in the policy making process.

Greg Shatan 20/1/17 12:18 PM
Comment [73]: Echoes of this issue play out below.

Jordan Carter 12/2/17 11:44 AM
Comment [74]: For discussion on the call?

Greg Shatan 12/2/17 12:39 PM
Comment [75]: If we want to write a book....

It seems that the key to a successful relationship between Board, staff, community in the implementation of policies is the quality and clarity of the policies that result from the policy making processes within the community.

Effectiveness and value of staff is in direct proportion to how far proposed policies represent a true balance of all stakeholder interests and how far they take ICANN corporate and staff interests into account. Policies that are unbalanced sometimes motivate staff and Board to take actions that overstep their competences, rights, responsibilities - such policies will be damaging to all.

Unbalanced policies may motivate staff to assume stakeholders' policy making role. Staff and Board may start acting as a policymaker and as stakeholders themselves. As policy determined by the community will not always be balanced, staff may be motivated to make policy decisions. In order to reflect this possibility, it might be good to recognize staff as one of the stakeholder groups, or to otherwise find ways through the policy making process to include their perspectives, expertise and interests in a way that does not put the integrity of the process at risk. Given the role of staff, however, any recognition of holding a stake in the outcome must be tempered by recognition of their special circumstance.

The Ombudsman office is seen a important tool and instrument to maintain balance of interests and to resolve conflicts. Conflict situations between the stakeholder community and ICANN staff are mediated by the Ombudsman, whilst with "human resources-related issues", the resolution of the concern is not within the Ombudsman's jurisdiction, but through the new ICANN Complaints Officer. The Ombudsman as instrument to maintain balance of interests and to resolve conflicts is therefore critically weakened, as a major part of the staff accountability issues, the "human resources related issues", have been removed from an independent accountability mechanism to an ICANN internal mechanism. (Note that this change was made without full stakeholder community consultation and input.)

There seems to be an awareness about the issues mentioned above among ICANN staff. The reply of staff to the questions of the WG questionnaire contains a number of questions from staff to the community, which seem to cover the same or similar issues. It would be worthwhile to seek a dialogue between the WG and the wider stakeholder community with staff on these issues.

[We might want to add a paragraph on communication of staff on their decision making to the community and add an recommendation based on this. We are often in the situation that staff informs us that they have made a decision, but we were not involved in the process of decision making or are getting told that the community has been "consulted".]

Greg Shatan 12/2/17 12:40 PM
Comment [76]: This assumes that the Ombudsman used to have jurisdiction over "human resources-related issues". Is it clear that this was the case?

Avri Doria 2/2/17 7:40 AM
Comment [77]: i do not think it ever did. certainly not in the last decade.

Jordan Carter 12/2/17 11:45 AM
Comment [78]: Can we validate that and if so delete it?

Greg Shatan 12/2/17 12:40 PM
Comment [79]: I suggest an email to Herb Waye, the Ombudsman.

Jordan Carter 25/2/17 6:57 AM
Comment [80]: _Accepted suggestion_

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Page 3: [1] Comment [5]	Seun Ojedeji	28/02/17 12:47 PM

ICANN Board has more commitment beyond the DNS alone; Because they approve numbers global policy as per the gPDP they are expected to see to consistent implementation of such policies as well

Page 3: [2] Comment [6]	George Sadowsky	1/03/17 12:05 AM

I understand what is written here, and above, but it's not what I think of when I regard my own role. The ICANN mission os to preserve the security, stability and resiliency of the Internet with respect to its primary identifier systems, and that includes (and I know that this is a sore point) acting in concert with the global public interest. You might want to look at the bylaws for some language that complements or partially replaces what you have here - also see the web site that I provide in the previous comment.

Page 3: [3] Formatted	Jordan Carter	25/02/17 7:28 AM

Font:10 pt, Font color: Gray-80%, Pattern: Clear (Custom Color(RGB(245,245,245)))

Page 3: [4] Comment [9]	Greg Shatan	25/02/17 7:26 AM

This doesn't seem quite right. Which processes are being referred to here? If this is referring to the current IGO/INGO issue involving GAC and GNSO, there is no consensus community process that would resolve this. If a GNSO WG doesn't come to consensus, its recommendations don't go to the GNSO Council, so they wouldn't get to the Board. The GNSO Council itself doesn't operate by consensus, it operates by vote.

Page 3: [5] Comment [10]	Jordan Carter	12/02/17 11:18 AM

Greg, that might mean that what needs to be added is a new process (the IGO/INGO issue).

What about the broad statement, that the Board shouldn't act where the community hasn't reached a position?

Page 3: [6] Comment [11]	Greg Shatan	12/02/17 11:51 AM

in the IGO/INGO matter, the community process for developing gTLD policy recommendations reached consensus (i.e., the GNSO PDP Working Group), which was then approved by a vote of the GNSO Council and passed to the Board. The GAC then gave advice inconsistent in part with the GNSO recommendation. Per the Bylaws, the Board can accept the GAC advice and reject (by supermajority) the inconsistent GNSO Recommendation, or the Board can reject the GAC advice, and then enter into good faith attempts with the GAC to find a mutually acceptable resolution. That's not what actually happened, but that's the process. A Staff Accountability subgroup is probably not the place to deal with this, but the idea of a . process for the GNSO Council and the GAC to reach consensus is inconsistent with the respective roles of the GNSO and the GAC.

Page 3: [7] Comment [12]	Greg Shatan	12/02/17 11:55 AM

Is the import of the broad statement that the Board cannot act on anything that was not developed by community consensus processes? I think that's radically different from reality, and it doesn't really take into account the full scope of things the Board deals with. Is public comment sufficient for community input? What "community" is being referred to?

Or is the broad statement dealing with community processes that have taken place but have failed to reach consensus? In that case, it doesn't get to the Board, as noted

earlier.

| Page 3: [8] Comment [13] | Greg Shatan | 12/02/17 12:02 PM |

I have two broad problems with this. First, it's so vague and abstract that it could mean anything or nothing.

Second, why are we making sweeping statements about what the Board does or does not do (or rather should not do, since the Board does a lot of things that arguably fall into the doesn't do category)? This is a Staff Accountability subgroup. We just spent 2 years dealing with Board accountability. Annex 12 only asks us to describe the role of the Staff in relation to the Board, but not vice versa. I'm growing quite uncomfortable with this.

| Page 3: [9] Comment [15] | Greg Shatan | 22/02/17 11:53 PM |

Jordan et al., we didn't really get to discuss this in depth on the call. How should we handle/? Shall I edit (in suggest mode) consistent with my comments?

| Page 9: [10] Comment [33] | George Sadowsky | 1/03/17 12:37 AM |

This is your other key recommendation. What you want is for feedback to be listened to, and you really want it listened to on an event by event basis to clarify roles and behaviors. that's recommendation F above. Here.you're saying that performance should be based upon responsiveness to hange, and that ICANN needs community input also. Sharpen this up, associate it with F and a concise narrative and I think that you have what you want.

| Page 9: [11] Comment [34] | George Sadowsky | 1/03/17 12:46 AM |

Comments: First, I'd eliminate most of these. However, on the assumption that you want them: On (3) you do not mean what is written. Rather, end with   ... the ICANN system. right? On (4) this is both unclear and unimplementable without specifics. On (6) and (7) they should be included with J. above and condensed. (8) should be combined with a combined B and C if you must. (9) is repetitive. (10) is a clear overreach into management prerogatives and will be received badly. (11) and (12) is a suggestion to change the structure of the organization to avoid dealing with the problem, and should be deleted. (13) continues the avoidance strategy and threatens to pollute the role of the ombudsman.

| Page 9: [12] Comment [37] | Greg Shatan | 12/02/17 12:48 PM |

What does this mean? Is this referring to implementation? Does the second half of the recommendation require the first?

And what does this have to do with Staff Accountability?

| Page 9: [13] Comment [40] | Mathieu Weill | 22/02/17 5:56 PM |

I agree with Jordan but I think Greg's point is still relevant: it implies that one of key roles of staff (which staff should be at least partially accountable for) is to ensure quality of the policy making process. And this would require a (separate) discussion about how we measure the quality of this process.
I would support a recommendation that ICANN initiates a discussion around this. (which could lead to strategic initiatives, KPIs, etc.)

| Page 10: [14] Comment [53] | Greg Shatan | 12/02/17 12:43 PM |

Agree with Jordan, but it does beg the question of how to deal with the role that the money plays in the relationship between contracted parties and the Board.

And by the way, why on earth is any of this within the remit of a Staff Accountability Group?????!!!!

Page 10: [15] Comment [54]	Greg Shatan	25/02/17 7:17 AM

This seems to be a novel interpretation of the Ombudsman's role. The Ombudsman's website states that its job is to make sure that community members are treated fairly, and to mediate disputes involving Board, staff or stakeholder organizations. The Ombudsman does not have a role in the policy making process.

Page 10: [16] Comment [55]	Greg Shatan	12/02/17 12:45 PM

I would delete this entire recommendation. Why should HR issues go to the Ombudsman?

Page 10: [17] Comment [56]	Greg Shatan	12/02/17 12:46 PM

And I reiterate the mischaracterization of the Ombudsman as a facilitator of the policy process!

Page 10: [18] Comment [57]	Mathieu Weill	22/02/17 5:58 PM

At the very least, I suggest liaising with the Ombud Group.

Page 10: [19] Comment [58]	Jordan Carter	25/02/17 7:17 AM

I do not support this as a role for the Ombuds office and think it should be deleted.

Page 10: [20] Comment [59]	Jordan Carter	22/02/17 1:49 PM

Out of scope? Ombudsman group except for HR issue?