Draft Compilation of Major Trends in the Third CCWG-Accountability Public Consultation

21 December 2015
Comments by Region

North America: 28
Asia Pacific & Oceania: 14
Europe: 20
Africa: 6
Latin America & Caribbean: 3
International: 19

Includes ICANN SO/AC, constituencies, etc.
Comments by Type of Entity (Total 90 comments received)

- Civil Society: 20%
- Governments: 17%
- Technical Community: 6%
- Business (Associations and Companies): 10%
- ccTLDs (Affiliated with): 9%
- SO/AC: 10%
- GNSO Constituencies (Affiliated with): 12%
- Chartering Organizations: 4%
- ICANN Other: 3%
- Individuals: 9%

Explanation
- The categories used are based on those identified during the CCWG-Accountability 2nd Public Comment Period to ensure consistency of data reporting over time.

Methodology
- Commenters were asked to identify their affiliation or whom they were responding on behalf of during submission.
- In cases where the comments were not submitted through the Survey Monkey platform, the commenter either identified themselves and group they were affiliated with or provided no information and a determination was made as to what category the commenter appeared to be best suited for the report.
- “Affiliated with” was added to GNSO and ccTLD sections to minimize confusion about community designated representation.
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Participation of Advisory Committees in the Empowered Community
- Participation by participants who are not represented in ICANN in the Empowered Community
- Inspection rights
Recommendation #2: Empowering the Community through Consensus: Engage, Escalate, Enforce

A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Timelines for the escalation process are too short
- Thresholds for using Community Powers, especially for removing the Board
- Need to explicitly define future thresholds if, at any time, there is a change in the number of participants in the Empowered Community
- Clearly define the concepts of an extensive engagement process by the Board and the notion of resolution in the escalation process
Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’

A majority of the respondents who provided comments on this recommendation supported its adoption.

No significant issues were raised.
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised have been categorized by Community Power on the next slides.
The Power to Reject ICANN’s Budget or Strategic/Operating Plans

- Rejection of the IANA/PTI budget should only be allowed if the three operational communities agreed
- Budget rejections should be a Standard Bylaw, not Fundamental Bylaw

The Power to Remove Individual ICANN Board Directors

- Concerns that representatives of the Empowered Community could incur liability for removing a Director
- Request for an expanded escalation process as well as the need for a clear rationale for removing a Director
The Power to Recall the Entire ICANN Board

- Concerns that representatives of the Empowered Community could incur liability for recalling the entire Board

- A clear rationale should be provided for removing the Board and add independence of replacement Directors as a part of the selection requirements

The Power to initiate a binding Independent Review Process

- The oversight of not excluding the Protocols and Parameters in the IRP should be corrected

- Concerns about the community bringing challenges against other parts of the community
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Consumer trust and choice language is not included
- The language on regulation is still unclear and the drafting instructions given to the lawyers would not allow them to produce the desired results
- The recommended text is leaving out key components of ICANN’s mission and is overly vague, especially with respect to contract enforcement
- The proposed modifications could have important unintended consequences
- How will ICANN define “Global Public Interest”
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Inclusion of human rights language into the Bylaws should be delayed until the proposed Framework of Interpretation is completed, or even only be considered in Work Stream 2
- Human rights statements do not belong in the ICANN Bylaws
Recommendation #7: Strengthening ICANN’s Independent Review Process

A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- The oversight of not excluding the Protocols and Parameters in the IRP should be corrected
- Do not add specific grounds for DIDP requests in the IRP
- Do not add specific grounds for expert panel decisions in the IRP
- Define how conflicting IRP decisions would be resolved
- The need to include IANA/PTI (CWG Stewardship condition)
- Recommendations including adding a pro bono program, all costs for requests by SO/ACs be borne by ICANN, ensure multi-lingual support, collaborative training of panelists and transparency in all aspects of IRP
Recommendation #8: Improving ICANN’s Request for Reconsideration Process

A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Include PTI and completely remove ICANN legal from the Reconsideration Process
- Request for clarification on exclusions of disputes related to Internet number resources
Recommendation #9: Incorporating the Affirmation of Commitments in ICANN’s Bylaws

A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Reviews, with the exception of the ATRT, should be defined by the community instead of the AoC provisions
- Transparency is considered essential and efforts to implement ATRT conclusions are strongly encouraged
- WHOIS reviews, as per the current initiatives within ICANN, that are designed to update, correct and amend existing WHOIS policy and practice should not be enshrined in the Bylaws
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- The GAC should be subject to the same accountability standards as other SO/ACs
- Independent reviews should be done at the request of a majority of the SO/ACs and any recommended changes should only occur with the approval of the SO/ACs acting through the Empowered Community
A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- GAC advice must be approved by general agreement in the absence of formal objection and the definition of objection/consensus cannot be changed
- Rejection of the recommendation that at least 2/3 of the Board is required to reject GAC consensus advice to the Board
- All GAC advice to the ICANN Board should be clear and supported by a rationale
- No need to change how the GAC currently operates
- Clarification of the recommendation regarding the status of GAC advice if the ICANN Board does not vote on the advice
Recommendation #12: Committing to Further Accountability Work in Work Stream 2

A majority of the respondents who provided comments on this recommendation supported its adoption.

The issues raised included:

- Requests for improvements to transparency
- Improved definition of requirements and commitments
- The ICANN Board should not be allowed to impede Work Stream 2
- Improvements to diversity
- Continued use of external counsel for Work Stream 2 discussions
- The jurisdiction of incorporation of ICANN be considered in Work Stream 2
- The jurisdiction of incorporation of ICANN not be considered in Work Stream 2
- Various considerations with respect to human rights