

NPOC Response to and Comments on the Twelve Recommendations contained in the “CCWG-Accountability Draft Proposal on Work Stream 1 Recommendations. 30 November 2015”

Summary of Response and Comments (This part needs to be worked over AFTER all comments are in. I think we have comments on most Recommendations)

Recommendations Supported without Comment:

- Recommendation #1
- Recommendation #2
- Recommendation #3
- Recommendation #4
- Recommendation #8
- Recommendation #10
- Recommendation #11
- Recommendation #12

Recommendations Supported with Comment:

- NPOC supports Recommendation #5 and the efforts for proposed Bylaw revisions. NPOC requests that the community be explicitly reminded of the formal process whereby the Bylaw changes are to be approved.
 - NPOC supports Recommendation #6 and the proposed implementation processes.
 - NPOC supports Recommendation #7 and requests more detail with regard to giving the Empowered Community the right to have standing with the Independent Review Process
 - NPOC supports Recommendation #9, and seeks clarification with regard to how actions around the WHOIS and competition, consumer trust and consumer choice would be handled within the context of ICANN's Bylaws.
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Detailed Response to, and Comments on, Recommendations:

Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers

Paragraph 48: NPOC supports the implementation of a "Sole Designator" model

Paragraph 49: NPOC strongly supports the recommendation that the "right to inspect" is granted to the Sole Designator in the Fundamental Bylaws. NPOC suggests making the implementation of the Sole Designator dependent on its being granted the right to inspect.

Paragraph 52: NPOC supports the implementation of the "Empowered Community".

Paragraph 55: NPOC explicitly supports this detailed inclusion of the statutory powers of the Empowered Community.

Paragraph 58: NPOC supports the proposed structural composition of the Empowered Community.

Conclusion: NPOC supports Recommendation #1

Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

Paragraph 72: NPOC supports the recommendation that the proposed engagement process be constituted in the Fundamental Bylaws.

Paragraph 74: NPOC supports the general escalation process whereby the community and the ICANN Board completely and thoroughly discuss any disagreements. NPOC notes that it will be necessary to communicate the process in easily understandable ways in order to fully engage all community stakeholders.

Paragraph 88-90: NPOC supports a Fundamental Bylaw requiring the Board to undertake an extensive 'engagement process' before taking action on the listed items [paragraph 88]; the inclusion of the 'engagement process' and the 'enforcement process' in the Fundamental Bylaws; and the required thresholds for the various escalation and enforcement processes.

NPOC notes that it would be desirable if it was better defined what constitutes a "extensive engagement process".

NPOC further notes that the proposed time frames are very short and in some cases might even undermine the effectiveness and spirit of the process. The time frames should be further discussed and if necessary revised.

Conclusion: NPOC supports Recommendation # 2 and requests that the above notes and comments are considered.

Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

Paragraph 130: NPOC supports redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

Paragraph 132: NPOC supports making the listed aspects Fundamental Bylaws as a part of Work Stream 1

Conclusion: NPOC supports Recommendation #3

Recommendation #4: Ensuring community involvement in ICANN decision-making: seven new Community Powers

Paragraph 140: NPOC supports the proposed set of seven Community Powers designed to empower the community to hold ICANN accountable for its Principles (the Mission, Commitments, and Core Values). *[NPOC notes a typo in Para 140 where it mistakenly says "five Community Powers"]*

Conclusion: NPOC supports Recommendation #4

Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values

Paragraph 201: NPOC shares the concern and need for greater clarity with respect to ICANN's obligation to act only within the scope of its limited Mission and conduct ICANN activities in accordance with certain fundamental principles.

Paragraph 203: NPOC recognizes that the proposed language for Bylaw revisions is conceptual at this stage and will require the legal team to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.

NPOC recommends that the drafting team's work should be guided by the aim not to broaden or narrow ICANN's Mission, Commitment and Core Values, but by the desire to clarify how ICANN implements them within its limited remit.

NPOC recommends that the "Notes to drafters", and the various materials provided in the context of Recommendation #5 are the foundation of the Drafting Team's work.

NPOC requests that the community be explicitly reminded of the formal process whereby the Bylaw changes are to be approved.

Conclusion: NPOC supports Recommendation #5 and the efforts for proposed Bylaw revisions, and requests that the above notes and comments are considered.

Recommendation #6: Reaffirming ICANN's Commitment to respect internationally recognized Human Rights as it carries out its mission

Paragraph 219: NPOC supports a Bylaw on Human Rights that would reaffirm ICANN's existing obligations and guard against "Mission creep".

Paragraph 222: NPOC endorses the strategy of developing a Framework of Interpretation within Work Stream 2.

Paragraph 223: NPOC endorses the creation of an interim Bylaw that will exist until a Framework of Interpretation for the actual Human Rights Bylaw is published.

NPOC notes the importance of Work Stream 2 to clarify the framework and practical implementation of ICANN's Human Rights commitment.

Conclusion: NPOC supports Recommendation #6 and the proposed implementation processes.

Recommendation #7: Strengthening ICANN's Independent Review Process

Paragraph 229: NPOC supports the recommendation that the existing Independent Review Process be modified as per the suggestions in Para 230.

Paragraph 234: NPOC request more detail with regard to giving the Empowered Community the right to have standing with the Independent Review Process.

NPOC notes that all aspects of an IRP must be completely transparent and fully communicated to all ICANN stakeholders. This requires the joint design and implementation of the necessary reporting mechanisms by all ICANN stakeholders.

NPOC recommends that for reasons of fairness, inclusiveness and an unbiased legal approach, English should not be the sole working IRP language.

In order to ensure an unbiased process NPOC requests that the community is directly involved in the design and implementation of Panelists training.

NPOC recommends that the Panel has to give a very early indication if they perceive a claim as “frivolous or abusive” in order to limit costs and to prevent claims from being brought forward for reasons of financial risk.

NPOC recommends to consider an exemption for Not for Profit claimants from the “Loser pays” principle.

Conclusion: NPOC supports Recommendation #7 and requests more detail with regard to giving the Empowered Community the right to have standing with the Independent Review Process. NPOC requests that the above notes and comments are considered.

Recommendation #8: Fortifying ICANN's Request for Reconsideration Process

Paragraph 243: NPOC supports the proposed number of key reforms to ICANN's Request for Reconsideration process.

NPOC recommends strongly that an independent party, such as the Ombudsman, reviews and advises the full ICANN Board on an RR.

NPOC notes that all aspects of an RR must be completely transparent and fully communicated to all ICANN stakeholders. This requires the joint design and implementation of the necessary reporting mechanisms by all ICANN stakeholders.

Conclusion: NPOC supports Recommendation #8 and requests that the above notes and comments are considered.

Recommendation #9: Incorporation of the Affirmation of Commitments

Paragraph 250: NPOC supports the recommendation to incorporate into the ICANN Bylaws the reviews specified in the 2009 Affirmation of Commitments bilateral agreement between ICANN and the NTIA.

Paragraph 251: NPOC notes that the review processes involving the WHOIS and promoting competition, consumer trust, and consumer choice are under ongoing discussion and subject to possible actions in the near future, and seeks clarity with regard to how this would be handled within the context of ICANN's Bylaws.

Conclusion: NPOC supports Recommendation #9, and seeks clarification with regard to how actions around the WHOIS and competition, consumer trust and consumer choice would be handled within the context of ICANN's Bylaws. NPOC requests that the above notes and comments are considered.

Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

Paragraph 262: NPOC supports the recommendation that a review of Supporting Organizations' and Advisory Committees' accountability mechanisms be included as part of these entities' existing periodic Structural Reviews

NPOC strongly recommends that the GAC is also required to adhere to the exact same accountability standards as all other SO/AC's. GAC should not be permitted to create and implement its own standards.

NPOC strongly recommends that the any changes in the bylaws should be deferred until they have been fully discussed and considered in Workstream 2

Conclusion: NPOC supports Recommendation #10 and NPOC requests that the above notes and comments are considered.

Recommendation #11: Board obligations with regards to Governmental Advisory Committee Advice (Stress Test 18)

Paragraph 275: NPOC supports the recommended changes to the ICANN Bylaws Article XI, Section 2,. NPOC notes that the language proposed is conceptual in nature, final language to be drafted by the ICANN legal team.

NPOC recommends measures that ensure timely GAC advice at a high standard.

NPOC recommends that every GAC advice needs to be accompanied with a clear Rationale on which the advice is based and that informs the Board about GACs thinking.

NPOC recommends that every GAC advice must be subject to an evaluation if this advice is within ICANN's scope and vision.

Conclusion: NPOC supports Recommendation #11and requests that the above notes and comments are considered.

Recommendation #12: Committing to further accountability work in Work Stream 2

Paragraph 283: NPOC supports the recommendation that the Board adopt an interim Bylaw that would commit ICANN to implementing the CCWG -Accountability recommendations, and task the group with creating further enhancements to ICANN's accountability including, but not limited to, the Work Stream 2 list of issues detailed in Para 283.

Conclusion: NPOC supports Recommendation #12
