

## Enhancing ICANN Accountability

### Opportunity for public dialogue and community feedback

Posted 6 May 2014

#### Introduction

On March 14, 2014, the US National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship over key Internet domain name functions to the global multistakeholder community. NTIA asked ICANN, as the IANA functions contractor and the global coordinator for the DNS, to convene a multistakeholder process to develop a proposal for the transition.

During discussions around the IANA stewardship transition, the community has also raised the broader topic of the impact of the transition on ICANN accountability. While the community develops a proposal for the transition of NTIA's stewardship role, it is important that the community also address the separate – but interdependent and interrelated – issue of ICANN's accountability. As a result, ICANN is launching a separate process, the scope of which is to look at ICANN remaining accountable in the absence of its historical contractual relationship to the U.S. Government and the perceived backstop with regard to ICANN's organization-wide accountability provided by that role, such as the renewal process of the IANA Functions Contract. This second process will examine from an organizational perspective how ICANN's broader accountability mechanisms should be strengthened to address the absence of its historical contractual relationship to the U.S. Government. This includes looking at strengthening existing accountability mechanisms like the [Affirmation of Commitments](#). This process is additive, not a duplication of any of the reviews called for under the Affirmation of Commitments.

While separate from the IANA stewardship transition process, this process on enhancing ICANN's accountability is a key component to the success of the IANA stewardship transition and the output noted below is expected to be completed at the same time. These processes, running in parallel, will inform each other. It is important that ICANN is, and be perceived as, accountable even beyond its role as the administrator of the IANA functions. The output of this process should: 1. identify the key elements for strengthening ICANN's accountability to address the absence of its historical contractual relationship to the U.S. Government; 2. prioritize those elements for development and/or refinement; and 3. set forth a timeline and mechanisms for the implementation of the improvements identified. It is important to initiate this accountability dialogue as the IANA stewardship transition process for the construction of a proposal is running, recognizing that the operationalizing of some of the further accountability opportunities for ICANN will likely require additional time for proper

implementation. Additionally, this accountability process will incorporate recommendations arising from the second Accountability and Transparency Review Team as necessary.

This consultation process on ICANN's accountability is open to any stakeholder. Unlike the IANA stewardship discussion, which is taking place across multiple fora, this discussion will take place entirely within the ICANN community. Building on [discussions](#) held in March 2014 at ICANN's public meeting in Singapore, this document outlines the proposed scope of this complementary consultation and next steps to build on the community dialogue.

## **Discussions to Date**

At ICANN's 49<sup>th</sup> public meeting in Singapore, held in March 2014, ICANN held a public session on ICANN Accountability and the reviews identified in the Affirmation of Commitments (AoC). At that session, ICANN posed three questions for community discussion:

- What are the means by which the Community is assured that ICANN is meeting its accountability commitments?
- As ICANN grows and improves its overall accountability, what should be the guiding principles to ensure that the notion of accountability is understood and accepted globally?
- How does the Affirmation of Commitments need to evolve to support global acceptance of ICANN's accountability, and who should take part in this AoC?

In response to these questions, community discussion called for defining broader accountability mechanisms including external and independent processes. Such strengthened mechanisms would be more transparent and inclusive globally of all stakeholders. Finally, community discussion noted that ICANN's accountability was an evolutionary process, and that, for example, the reviews identified in the AoC are an existing multistakeholder and decentralized oversight mechanism, and that ICANN's multiple accountability mechanisms will continue to evolve as more and more awareness is built around ICANN. Community discussion strongly supported the development of a focused process that would include a review of evolving the AoC as a strengthened accountability mechanism, as well as the potential for strengthening existing redress mechanisms. Community discussion also suggested the establishment of a working group to explore whether and how ICANN's broader accountability mechanisms should be strengthened.

## **Inventory of ICANN's Accountability Efforts**

To help inform the community dialogue, the following is an inventory of all of the work within ICANN that is directed towards its accountability efforts. ICANN has many mechanisms through which it remains accountable. In addition, a fundamental part of accountability is transparency and providing the community with information on how ICANN is meeting its

accountability goals. To that end, below is an inventory of some of ICANN's accountability and transparency efforts.

- **The Affirmation of Commitments** – An affirmation of how ICANN will perform its DNS coordination role, including commitments to the multi-stakeholder model, to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular reviews relating to accountability and transparency and three other fundamental organizational objectives (outlined below).
- **AoC Reviews** – Pursuant to the AoC, ICANN undertakes periodic assessment by community review teams of ICANN's progress toward: 1) ensuring accountability, transparency and the interests of global Internet users; 2) preserving security, stability and resiliency of the DNS; 3) promoting competition, consumer trust and consumer choice; and 4) WHOIS policy. To date, two community review teams have assessed ICANN's commitment "to maintain and improve robust mechanisms for public input, accountability, and transparency" since the AoC was instituted in 2009.

The [first Accountability & Transparency review](#) completed under the AoC contained 27 recommendations to enhance activities throughout ICANN, including the governance and performance of the Board, the role and effectiveness of the Governmental Advisory Committee, public Input and public policy processes, and review mechanisms for Board decisions. All recommendations were accepted by the ICANN Board and implemented, and the subsequent improvements inspired additional work, supporting a continuous improvement cycle. The [second Accountability & Transparency review](#) (ATRT2) report was received by the ICANN Board, posted for public comment in January 2014, and is being considered by ICANN's Board.

The ATRT2 reviewed: 1) ICANN's execution of its accountability and transparency commitments; 2) ICANN's implementation of recommendations issued by the first Accountability & Transparency Review Team, the former WHOIS Policy Review Team (WHOIS) and the former Security, Stability and Resiliency of the DNS Review Team (SSR); and 3) the GNSO's policy development process. The ATRT2 proposed twelve recommendations with detailed subparts to improve operations in various areas of ICANN. These include: Board performance and work practices; policy/implementation/executive function distinction; decision making transparency and appeals processes; GAC operations and interactions; multilingualism; cross-community deliberations; AoC review process effectiveness; and financial accountability and transparency. In March 2014, in consideration of the ATRT2 report, the ICANN Board [requested](#) that it be provided with materials to support further action, including proposed work plans and budgets for the implementing the recommendations. The Board committed to acting on the recommendations by 30 June 2014, in compliance with the AoC requirements.

The community [review team](#) charged with reviewing WHOIS policy and implementation provided its [report and recommendations](#) in 2012. The ICANN Board took [action](#) on the recommendations six months later, providing ICANN's President and CEO with detailed guidance on how to proceed with implementation of the sixteen recommendations and their subparts. Implementation is ongoing and tracked through periodic [status reports](#).

The community Security, Stability and Resiliency of the DNS [review team](#) also completed its work in 2012. The ICANN Board accepted its the [report and recommendations](#) six months later and instructed ICANN's President and CEO to proceed with implementation of the 28 recommendations. Implementation is ongoing and tracked through periodic [status reports](#).

The fourth community review to which ICANN committed under the AoC will address "Competition, Consumer Trust and Consumer Choice" after new gTLDs have been in operation for one year. This review, which has not yet commenced, will assess the extent to which "the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of the application and evaluation process, and safeguards put in place to mitigate issues involved in the introduction or expansion."

- **Bylaws-mandated Redress Mechanisms** – ICANN offers three formal mechanisms for addressing complaints. The [Office of the Ombudsman](#) reviews claims of unfairness by ICANN or its constituent entities. The Reconsideration Process is a mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information. The Independent Review Process allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals. More information on these mechanisms is available [here](#) and a chart describing the mechanisms is available [here](#). Following from the first accountability and transparency review, ICANN convened the [Accountability Structures Expert Panel](#) (ASEP) to review the Reconsideration Process and the Independent Review Process, and the ICANN Board approved the resulting revisions in April 2013. The ATRT2 has recommended a community review of these mechanisms.
- **Organizational Reviews** – As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine 1) whether that organization has a continuing purpose in the ICANN structure, and 2) if so, whether any change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities. Detailed information on each organizational review and its subsequent improvement efforts is available [online](#). The ICANN Board's Structural Improvements Committee, which is

responsible for overseeing Bylaws-mandated reviews, is assessing these and related review mechanisms to identify potential improvements.

- **Bylaws and Documented Relationships** – ICANN’s Bylaws set out its commitment transparency and ICANN’s mission and core values. In addition, the Bylaws define ICANN’s relationships to its component entities, including its Supporting Organizations and Advisory Committees. The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization, or ICANN’s Accountability Framework program through which it has formal, documented relationships with a number of country-code top level domain operators.
- **Board of Directors Documentation** –ICANN makes available a significant amount of documents relating to the [Board of Directors](#), including briefing material, resolutions and minutes. Since 2010, the ICANN Board has provided detailed rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a [searchable tool](#), with information on how the mandate within each resolution was achieved. The Board is also starting to make public how it addresses the advice it receives from the Advisory Committees, with both the GAC Register of Advice as well as the new [Advice tracking tool](#) on myicann.org. The Board also makes public a wealth of information relating to its governance, including the publication of Board Members’ [Statements of Interest](#), and adherence to the publicly available Board Code of Conduct, Conflicts of Interest Policy and Governance Guidelines.
- **General ICANN Operational Information** – ICANN makes available a wealth of [information relating to finances](#), including an annual budgeting process developed with community input, the posting of quarterly financial reports, as well as the annual posting of ICANN’s Audited Financial Statements (after the completion of an independent, third party audit) and the annual Form 990 tax filing. ICANN also posts information on the remuneration of staff and Board compensation. For tracking of ICANN’s operational activities, ICANN posts information about [current projects](#) across the organization on myicann.org. For an overall view of performance, ICANN publishes an [annual report](#) each year. ICANN also maintains the [Documentary Information Disclosure Policy](#) (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.
- **ICANN Board Selection process** – The [ICANN Board selection](#) process is also an important accountability tool. The selection of voting Board Directors occurs through different community processes. The [Nominating Committee](#) appoints eight Directors, ICANN’s Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (CCNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors),

and the At-Large Community appoints one Director. With the selection of Directors driven by the community, each of these groups has the opportunity to make their selections based on an assessment of who will act in the best interests of ICANN.

- **External Laws** – ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. For example, all of the ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community. ICANN is also subject to both California’s and the U.S.’s laws and regulations regarding ICANN’s tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes.

### **Proposed Next Steps for the Process**

#### **Establishing the ICANN Accountability Working Group:**

At the ICANN meeting in Singapore, members of the community suggested establishing a working group to address topics raised around ICANN Accountability. To respond to both the community dialogues and suggestions, an ICANN Accountability Working Group is proposed.

The leaders of ICANN’s Supporting Organizations and Advisory Committees will be responsible for appointment of community members to the Working Group. Community members with skills in the subject matter areas listed below are encouraged to have their names put forward by the leadership of ICANN’s Supporting Organizations and Advisory Committees for participation in the Working Group before the end of the comment and reply period. The Board may appoint liaisons to the Working Group. ICANN staff will identify external experts in these subject matter areas to join the Working Group and bring in new ideas. The subject matter areas are:

- Internet Technical Operations
- International Organizational Reviews
- Global Accountability Tools and Metrics
- Jurisprudence / Accountability Mechanism
- Internet Consumer Protection
- Economics (Marketplace and Competition)
- Global Ethics Frameworks
- Operational, Finance and Process
- Board Governance
- Transparency
- Risk Management

After the public comment and reply period, the Working Group will commence in time for the ICANN 50 Meeting. It's expected that sub-working groups on specialized subject areas will be useful and open to all including experts.

The ICANN Accountability Working Group would coordinate community dialogue, including discussion on draft materials on the discussions and proposed themes outlined above with regards to strengthening ICANN's accountability to address the absence of its historical contractual relationship to the U.S. Government and other identified issues. One of the first tasks of the Working Group will be to identify the issues that need to be solved. The ICANN Accountability Working Group would prepare a draft report on issues identified including whether measures are needed to strengthen ICANN's accountability, and if so, the recommended time frames for development of new or improved mechanisms, if any. The draft report would be provided for public comment. The ICANN Accountability Working Group would submit its final report to the ICANN Board. The Board would immediately and publicly post the final report, consider whether to adopt all or parts of it, and direct the CEO to implement those parts it has accepted once that decision is made.

It is expected that the ICANN Accountability Working Group would operate in an open, transparent and inclusive process, primarily through remote participation opportunities, that would include:

- A website that would include a timeline of activities and events, as well as all materials and communications from the working group, and a full archive of all content provided and evaluated throughout the process;
- A mailing list to ensure anyone can remain involved in the activities and progress of the group; and,
- All meetings and phone conference would be open for stakeholders to observe and transcripts and recordings would be posted.

### **Questions for Community Discussion:**

As the next steps are being outlined and process finalized, ICANN is collecting community input to help provide feedback to further the work of the ICANN Accountability Working Group once it is comprised. ICANN is now seeking community discussion on both the questions first posed in March 2014 as well as some additional questions:

- What issues does the community identify as being core to strengthening ICANN's overall accountability in the absence of its historical contractual relationship to the U.S. Government?
- What should be the guiding principles to ensure that the notion of accountability is understood and accepted globally? What are the consequences if the ICANN Board is not being accountable to the community? Is there anything that should be added to the Working Group's mandate?

- Do the Affirmation of Commitments and the values expressed therein need to evolve to support global acceptance of ICANN's accountability and so, how?
- What are the means by which the Community is assured that ICANN is meeting its accountability commitments?
- Are there other mechanisms that would better ensure that ICANN lives up to its commitments?
- What additional comments would you like to share that could be of use to the ICANN Accountability Working Group?

**Please provide your input on the questions above at [comments-enhancing-accountability-06may14@icann.org](mailto:comments-enhancing-accountability-06may14@icann.org).**