

Staff Report of Public Comment Proceeding

Enhancing Accountability Guidelines for Good Faith

Publication Date: 7 July 2017

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Public Comment Proceeding

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Section I: General Overview and Next Steps

Recommendation 4 of the final report of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) includes a process by which the Empowered Community or the nominating SO or AC can remove a voting director of the ICANN Board. It further stipulates that if those parties who undertake to remove a director using this process are sued by that director, that ICANN will indemnify those parties subject to a set of conditions which include acting in good faith.

It is in this context that Recommendation 4 required that:

Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2.

These Guidelines, as developed by the CCWG-Accountability Work Stream 2 (WS2) and reviewed by ICANN's Legal Department, are meant to provide a frame of reference for SO's or AC's in developing their individual detailed processes for removing individual voting directors of the ICANN Board which would allow them to meet the good faith requirements for indemnity in such cases.

The CCWG-Accountability WS2 has received feedback through the first public comment period which was generally favourable however some concerns were expressed vs the applicability of these recommendations to the Address Supporting Organization (ASO). The CCWG-Accountability WS2 will continue to work with the ASO to see how it can ensure its recommendations meet the needs of all participants in the Empowered Community.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
AFNIC	Marianne Georgelin	AFNIC
GNSO – Business Constituency	Steve Delbianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
Jason Schiller	ASO	JS
Sam Lanfranco	NCSG/NPOC	SL

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

AFNIC and BC endorsed the recommendations as presented.

SL endorsed the recommendations but suggested that for the process to be fair and manageable as good faith conduct it is essential that “A standard framework be developed” and that “that the guidelines as...apply to all discussions even if not covered by...Article 20”.

JS “My concerns generally are around specific phrases that have been used and likely connotations that may be problematic, and potentially complicated for the ASO. This can be generally summed up as 1. "representing the communities", 2. "membership of the SO", what a 3. "community process" connotes, a 4. "recommended standard framework", and 5. the requirement that the process be initiated by the So chair.”

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

Analysis of the comments will be undertaken by the CCWG-Accountability WS2.