

CCWG-Accountability WS2 – Final Report

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Executive Summary

The CCWG-Accountability WS2 Final Report is a compilation of eight reports generated through individual sub-groups of the CCWG-Accountability, each of which has already been the subject of Public Comment. These eight reports are on the topics identified at Section 27.1. of the ICANN Bylaws, which defined WS2.

The CCWG-Accountability organized WS2 into nine¹ independent topics, which continued to require significant effort by the community over close to two years from WS2 beginning in June 2016:

- ⦿ Diversity
- ⦿ Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors (Guidelines for Good Faith)
- ⦿ Human Rights Framework of Interpretation (HR-FOI)
- ⦿ Jurisdiction
- ⦿ Ombuds (or Office of the Ombuds, or IOO)
- ⦿ Reviewing the Cooperative Engagement Process (CEP) – (Merged into the Independent Review Process – Implementation Oversight Team (IRP-IOT) in June 2017)
- ⦿ SO/AC Accountability
- ⦿ Staff Accountability
- ⦿ Transparency

It should be noted that WS1 Recommendation 7 (IRP) also included requirements for additional work, which was not included in the implementation of Recommendation 12 (through which the CCWG-Accountability defined the scope of WS2). The IRP update requirements led, for reasons of administrative simplicity, to the creation of the IRP-IOT, which although covered by the same budget and general operating requirements of WS2, is otherwise independent of WS2 and its completion dates.

The expectation was that the WS2 sub-groups would self-organize over the summer of 2016 and deliver their final recommendations, after completing at least one public consultation, to the plenary in time to conclude WS2 by June 2017. This expectation was in large part based on the experience of WS1 and did not factor in the complexity of some of the remaining work nor the community fatigue experienced after the grueling pace of WS1.

¹ Section 27.1 of the Bylaws defines nine topics for inclusion within WS2. However, the Cooperative Engagement Process was identified as better suited for coordination with the work on updating ICANN's Independent Review Process (the IRP-IOT), as opposed to handling with WS2. By agreement with the CCWG-Accountability and the community group supporting the updates to the Independent Review Process, the CEP was removed from WS2.

By ICANN 58 (Copenhagen, Denmark, March 2017) it was clear that few if any of the sub-groups would be ready to deliver their work so that WS2 could be completed by June 2017. As such, the CCWG-Accountability proposed to extend WS2 to June 2018 while keeping to its original budget. This was accepted by the CCWG-Accountability Chartering Organizations and confirmed by the ICANN Board at ICANN 59 (Johannesburg, South Africa, June 2017).

By ICANN61 (San Juan, Puerto Rico, March 2018) all eight WS2 sub-groups had completed a public consultation on their draft recommendations and submitted their final reports and recommendations to the CCWG-Accountability plenary, which approved each of these reports.

During the ICANN61 Puerto Rico meeting there was also a face-to-face meeting between the Board and CCWG Co-chairs and Rapporteurs to discuss potential areas within the final WS2 recommendations where the Board had concerns. Following this meeting the ICANN Board and org agreed to send a response to the CCWG Co-Chairs regarding these areas of contention so the CCWG-Accountability could look at addressing these via Implementation Guidance which would not require changing its recommendations.

On May 14 2018 the CCWG-Accountability received the response from the Board listing four areas of concern. The CCWG-Accountability then proceeded to develop Implementation Guidance which addressed all of the Board concerns. The Implementation Guidance was approved at the CCWG-Accountability face-to-face meeting on June 24 2018 (Annex 9 of this report).

The final reports from the eight sub-groups comprise nearly 100 recommendations, most of which are not anticipated to require Bylaws modifications for implementation. Many of these recommendations are either suggestions of Good Practices or simply optional while many others offer flexibility in how they can be implemented.

In considering the final WS2 report the CCWG-Accountability WS2 agreed at its 9 March 2018 face to face meeting that:

“Prioritization and funding for implementation of recommendations is beyond the scope and capacity of WS2 and rests with ICANN (Board and Organization) and the community. The CCWG-Accountability WS2 proposes to establish a small implementation team to assist ICANN (the Organization) and the community to ensure the implementation plan preserves the spirit of the recommendations and provide any interpretation advice as required.”

The CCWG-Accountability understands that the implementation of its WS2 recommendations cannot proceed in a similar fashion as the implementation of its WS1 recommendations. If all recommendations are endorsed by the Chartering Organizations and then approved by the ICANN Board, implementation of the nearly 100 recommendations contained in the WS2 report will be a multi-year project based on a detailed implementation plan agreed to by the ICANN organization and the broader ICANN community, after public consultation on the implementation plan.

Overall, the CCWG-Accountability’s WS2 represents a significant effort by the community of 272 meetings, more than 5,000 emails, and 10,000 hours of volunteer meeting time, which does not include individual time for reading and writing, over a period of two years while remaining well within its original one-year cost estimates.

As such, the CCWG-Accountability WS2 believes it has met all of the expectations and requirements of section 27.1 of the ICANN Bylaws on WS2 and delivers these recommendations to the ICANN Board and its Chartering Organizations in accordance with its Charter and the Bylaws.

Background

Beginning in December 2014, a working group of ICANN community members developed a set of proposed enhancements to ICANN's accountability to the global Internet community. The first phase of this work culminated with the CCWG-Accountability handing in its Work Stream 1 (WS1) recommendations in February 2016 for approval by the Chartering Organizations and by the ICANN Board. These recommendations were approved by the ICANN Board in March 2016 and incorporated into the ICANN Bylaws effective 1 October 2016.

The Background section of the CCWG-Accountability's WS1 Final Report also defined the requirement for WS2 as follows:

“Work Stream 2: Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

Any other consensus items that are not required to be in place within the IANA Stewardship Transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN Management or others.”

The CCWG-Accountability specified topics for consideration in WS2, and ICANN's commitment to WS2, in recommendation 12 of the WS1 Final Report and this was incorporated into the ICANN Bylaws at Section 27.1:

“Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN Accountability (“CCWG-Accountability”) was established pursuant to a charter dated 3 November 2014 (“CCWG-Accountability Charter”). The CCWG-Accountability Charter was subsequently adopted by the GNSO, ALAC, ccNSO, GAC, ASO and SSAC (“CCWG Chartering Organizations”). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 (“CCWG-Accountability Final Report”) that the below matters be reviewed and developed following the adoption date of these Bylaws (“Work Stream 2 Matters”), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(i) Improvements to ICANN's standards for diversity at all levels;

(ii) ICANN staff accountability;

(iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN's transparency, focusing on enhancements to ICANN's existing DIDP, transparency of ICANN's interactions with governments, improvements to ICANN's whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3)."

The CCWG-Accountability WS2 initiative was officially launched at ICANN 56 (Helsinki, Finland, June 2016) and work started in earnest in the fall of that year.

Given the diversity of the work to be undertaken, the CCWG-Accountability plenary agreed that it should be organized into nine² sub-groups, each undertaking a specific task outlined in WS2 ICANN Bylaws at Section 27., and each with at least one rapporteur to lead the work. The nine sub-groups were:

- ⊙ Diversity
- ⊙ Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors (Guidelines for Good Faith)
- ⊙ Human Rights Framework of Interpretation (HR-FOI)
- ⊙ Jurisdiction
- ⊙ Ombuds (or Office of the Ombuds, or IOO)
- ⊙ Reviewing the CEP (Merged into IRP-IOT in June 2017)
- ⊙ SO/AC Accountability
- ⊙ Staff Accountability

² Section 27.1 of the Bylaws defines nine topics for inclusion within WS2. However, the Cooperative Engagement Process was identified as better suited for coordination with the work on updating ICANN's Independent Review Process, as opposed to handling with WS2. By agreement with the CCWG-Accountability and the community group supporting the updates to the Independent Review Process, the CEP was removed from WS2.

⦿ Transparency

It should be noted that WS1 Recommendation 7 (IRP) also included requirements for additional work, which was not included in the implementation of Recommendation 12:

Implementation: The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.

This requirement led, for reasons of administrative simplicity, to the creation of the IRP-IOT, which although covered by the same budget and general operating requirements of WS2, was otherwise independent of WS2 and its completion dates.

The expectation was that the WS2 sub-groups would self-organize over the summer of 2016 and deliver their final recommendations, after completing at least one public consultation, to the plenary in time to conclude WS2 by June 2017. This expectation was in large part based on the experience of WS1 and did not factor in the complexity of some of the remaining work nor the community fatigue experienced after the grueling pace of WS1.

By ICANN 58 (Copenhagen, Denmark, March 2017) it was clear that few if any of the sub-groups would be ready to deliver their work so that WS2 could be completed by June 2017. As such, the CCWG-Accountability proposed to extend WS2 to June 2018 while keeping to its original budget. This was accepted by the CCWG-Accountability Chartering Organizations and confirmed by the ICANN Board at ICANN 59 (Johannesburg, South Africa, June 2017).

By ICANN 61 (San Juan, Puerto Rico, March 2018) all eight WS2 sub-groups had completed a public consultation on their draft recommendations and submitted their final reports and recommendations to the CCWG-Accountability plenary, which approved each of these reports.

During the ICANN61 Puerto Rico meeting there was also a face-to-face meeting between the Board and CCWG Co-chairs and Rapporteurs to discuss potential areas within the final WS2 recommendations where the Board had concerns. Following this meeting the ICANN Board and org agreed to send a response to the CCWG Co-Chairs regarding these areas of contention so the CCWG-Accountability could look at addressing these via Implementation Guidance which would not require changing its recommendations.

On May 14 2018 the CCWG-Accountability received the response from the Board listing four areas of concern. The CCWG-Accountability then proceeded to develop Implementation Guidance which addressed all of the Board concerns. The Implementation Guidance was approved at the CCWG-Accountability face-to-face meeting on June 24 2018 (Annex 9 of this report).

Final Report

With this report and its recommendations, the CCWG-Accountability has completed its work as outlined in Section 27.1. of the ICANN Bylaws on Work Stream 2 (WS2) based on recommendation 12 of the CCWG-Accountability WS1 Final Report.

Work Stream 2 (WS2) was organized into eight³ independent topics which continued to require significant effort by the community over almost two years from its beginning in June 2016:



Diversity

The final diversity report presents a discussion of diversity at ICANN and identifies a number of diversity elements by which diversity may be characterized, measured, and reported. It provides a summary of diversity provisions in the ICANN Bylaws, and was informed by feedback from ICANN SO/AC/Groups through a Diversity Questionnaire. Finally, it proposes a number of recommendations by which ICANN may define, measure, report, support, and promote diversity.

The Diversity Sub-Group⁴ of WS2 met 34 times between August 2016 and February 2018 for a total of 638 volunteer meeting hours. It held a public consultation⁵ on its draft recommendations from 26 October 2017 to 14 January 2018 and received 16 responses from the ICANN Board, SO/ACs, governments, organizations, and individuals. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas (detailed responses to all comments and a list of changes to the report can be found in the ICANN Public Comment Forum website⁶). The final report presents eight recommendations in the three categories of Defining Diversity, Measuring Diversity, and Supporting Diversity (the individual recommendations are listed in the section Recommendations by Topic in this report and the complete Diversity Report can be found as Annex 1). The final report and recommendations was delivered to the WS2 Plenary for its 28 February 2018 meeting⁷ where it was approved for a first reading with no amendments. It was presented for a second reading at the WS2 face-to-face plenary meeting⁸ on 9 March 2018 where it was approved for a second reading with no amendments.

³ Section 27.1 of the Bylaws presents 9 topics for consideration however the CCWG-Accountability and the IRP-IOT agreed in June 2017 that the Cooperative Engagement Process (CEP) topic would be best handled by the IRP-IOT and as such was merged with the IRP-IOT leaving only 8 topics for WS2 to address.

⁴ <https://community.icann.org/display/WEIA/Diversity>

⁵ <https://www.icann.org/public-comments/accountability-diversity-2017-10-26-en>

⁶ <https://www.icann.org/en/system/files/files/responses-comments-accountability-diversity-21mar18-en.pdf>

⁷ <https://community.icann.org/pages/viewpage.action?pageId=77529370>

⁸ <https://community.icann.org/pages/viewpage.action?pageId=74580727>



Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors (Guidelines for Good Faith)

The Empowered Community (EC), through the Decisional Participants, has the right to appoint and remove individual Directors. In the event that a Decisional Participant endeavors to remove an individual Board Member, those individuals participating in the process may be indemnified by ICANN provided individuals acted in “good faith” during the removal process. The purpose of this sub-group was to draft guidelines for conduct that would be considered good faith actions on the part of the individuals participating on behalf of the Decisional Participants in order for the indemnification to apply.

The Good Faith Sub-Group⁹ met 12 times between September 2016 and May 2017 for a total of 129 volunteer meeting hours. It held a public consultation¹⁰ on its draft recommendations from 7 March to 24 April 2017 and received four responses from SO/ACs and individuals. Following the public consultation, the responses were analyzed, and the main concern identified was from the ASO. Minor amendments were brought to the recommendations, which were accepted by the ASO late in 2017. The final report presents two recommendations directly related to its topic and also provides two additional recommendations, which should be considered as general Good Practices for SO/ACs (the individual recommendations are listed in the section [Recommendations by Topic](#) in this report and the complete Good Faith Report can be found as Annex 2). The Good Faith Final Report and Recommendations were approved by email on the WS2 list and confirmed in an email to the list on 14 November 2017¹¹.



Human Rights Framework of Interpretation (HR-FOI)

With ICANN’s October 2016 Bylaws change, a Human Rights Core Value was added to ICANN’s Bylaws. In order for this Core Value to come into effect, a Framework of Interpretation was required as part of WS2.

The Human Rights Sub-Group¹² of WS2 met 32 times between August 2016 and August 2017 for a total of 737 volunteer meeting hours. It held a public consultation¹³ on its draft HR FOI from 5 May 2017 to 16 June 2017 and received 11 responses from SO/ACs, governments, and individuals. The main issue from the public consultation centered around a number of governments requesting that the UN Guiding Principles on Businesses and Human Rights (also known as the Ruggie Principles), as well as other instruments, be included or have a more

⁹ <https://community.icann.org/display/WEIA/Guidelines+for+Good+Faith+Conduct>

¹⁰ <https://www.icann.org/public-comments/enhancing-accountability-guidelines-good-faith-2017-03-07-en>

¹¹ <https://mm.icann.org/pipermail/accountability-cross-community/2017-November/014352.html>

¹² <https://community.icann.org/display/WEIA/Human+Rights>

¹³ <https://www.icann.org/public-comments/foi-hr-2017-05-05-en>

prominent place in the report. Eventually, a compromise was achieved, and the report was amended accordingly.

The first part of the final report is the proposed Framework of Interpretation for the Core Value on Human Rights. The second part addresses the “considerations” listed in paragraph 24 of Annex 12 of the CCWG-Accountability Final Report (the complete HR-FOI Final Report can be found as Annex 3). The final report was delivered to the WS2 Plenary for its 11 October 2017 meeting¹⁴ where it was approved for a first reading with bracketed compromise language. It was presented for a second reading, with the compromise text, at the WS2 Plenary meeting¹⁵ on 18 October 2017 where it was approved for a second reading with no amendments.



Jurisdiction

Developing the work plan for the Jurisdiction Sub-Group based on Recommendation 12 of the WS1 report proved somewhat challenging, as there were ambiguities in this text that led to some lack of clarity regarding both the scope and goals of the sub-group.

The sub-group proceeded to:

- ⦿ Discuss the topics of “confirming and assessing the gap analysis” and of changing ICANN’s headquarters or jurisdiction of incorporation.
- ⦿ Work on refining the Multiple Layers of jurisdiction.
- ⦿ Prepare several working documents. These included one exploring the question: “What is the influence of ICANN’s existing jurisdiction(s) relating to resolution of disputes (i.e., governing law and venue) on the actual operation of ICANN’s policies and accountability mechanisms?”
- ⦿ Publish a questionnaire to allow the community to submit jurisdiction related issues for consideration by the subgroup.
- ⦿ Develop a series of jurisdiction-related questions for ICANN Legal, which were formally answered.
- ⦿ Undertake a comprehensive review of the litigations in which ICANN has been a party.

Based on this work, the sub-group developed a master list of “proposed issues.” From this list, the sub-group prioritized, in the time remaining, the issues relating to the Office of Foreign Assets Control (OFAC) Sanctions and to the Choice of Governing Law and Venue Clauses in certain ICANN contracts. After careful consideration of these issues, the sub-group reached consensus on recommendations for each of these.

¹⁴ <https://community.icann.org/pages/viewpage.action?pageId=71598556>

¹⁵ <https://community.icann.org/pages/viewpage.action?pageId=69281223>

The Jurisdiction Sub-Group¹⁶ of WS2 met 57 times between August 2016 and February 2018 for a total of 1,377 volunteer meeting hours, and more than 2,000 emails on its list. It held a public consultation¹⁷ on its draft recommendations from 14 November 2017 to 14 January 2018 and received 14 responses from the ICANN Board, SO/ACs, governments, organizations and individuals. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas (detailed responses to all comments and a list of changes to the report can be found in the ICANN Public Comment Forum website¹⁸). The final report presents four recommendations as well as a number of suggestions (the individual recommendations and suggestions are listed in the section Recommendations by Topic in this report and the complete Jurisdiction Report can be found as Annex 4.1). The final report was delivered to the WS2 Plenary for its face-to-face plenary meeting¹⁹ on 9 March 2018 where it was approved for a first and second reading with no amendments.

The final report includes a Minority Statement by the Government of Brazil, which was supported by several governments (see Annex 4.2), as well as the transcript of the discussion of issues associated with ICANN's jurisdiction not covered by the Jurisdiction Report, which was held at the WS2 face-to-face meeting at ICANN 60 Abu Dhabi (see Annex 4.3).



Ombuds (IOO)

In organizing the work of the Ombuds Sub-Group, it came to light that there was significant overlap with the upcoming implementation of an earlier recommendation from the second Accountability and Transparency Review Team (ATRT 2) requiring an external review of the office of the Ombuds. After discussion of the issue by the concerned parties, it was agreed that the WS2 Ombuds Sub-Group would take on the responsibility for the external review of the Office of the Ombuds as part of its work.

Once the external review was completed, the Ombuds Sub-Group agreed that given the breadth and the depth of the review, that it would base its work on the results of that review and would accept all the recommendations from that report with minor amendments relative to implementation (the complete report from the external evaluator can be found in Annex 5.2).

The Ombuds Sub-Group²⁰ of WS2 met 34 times between August 2016 and February 2018 for a total of 249 volunteer meeting hours. It held a public consultation²¹ on its draft recommendations from 10 November 2017 to 14 January 2018 and received seven responses from the ICANN Board, SO/ACs, and organizations. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas (detailed responses to all comments and a list of changes to the report can be found in the ICANN Public Comment

¹⁶ <https://community.icann.org/display/WEIA/Jurisdiction>

¹⁷ <https://www.icann.org/public-comments/recommendations-on-icann-jurisdiction-2017-11-14-en>

¹⁸ <https://www.icann.org/en/system/files/files/responses-comments-recommendations-on-icann-jurisdiction-20mar18-en.pdf>

¹⁹ <https://community.icann.org/pages/viewpage.action?pagelD=74580727>

²⁰ <https://community.icann.org/display/WEIA/Ombudsman>

²¹ <https://www.icann.org/public-comments/loo-recs-2017-11-10-en>

Forum website²²). The final report presents 11 recommendations²³ (the individual recommendations are listed in the section Recommendations by Topic in this report and the final Ombuds Report and Recommendations can be found as Annex 5.1). The final report and recommendations was delivered to the WS2 Plenary for its 28 February 2018 meeting²⁴ where it was approved for a first reading with no amendments. It was presented for a second reading at the WS2 face-to-face plenary meeting²⁵ on 9 March 2018 where it was approved for a second reading with no amendments.



SO/AC Accountability

The SO/AC Accountability Sub-Group undertook three tasks based on the requirements of section 27.1 of the ICANN Bylaws:

1. Review and develop recommendations to improve SO and AC processes for accountability, transparency, and participation that are helpful to prevent capture. (Note that the sub-group looked only at SO/AC accountability within the scope of ICANN activities)
2. Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.
3. Assess whether the Independent Review Process (IRP) should be applied to SO/AC activities. The recommendations for each track are described next.

The SO/AC Accountability Sub-Group²⁶ met 33 times between August 2016 and September 2017 for a total of 239 volunteer meeting hours. It undertook a review of all SO/AC accountability mechanisms and held a public consultation²⁷ on its draft recommendations from 14 April to 26 May 2017. It received 10 responses from the ICANN Board, SO/ACs, organizations, governments, and individuals. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas. The final report presents 29 recommendations or Good Practices SO/ACs should implement in the areas of accountability, transparency, participation, outreach, and updates to policies and procedures. It also includes recommendations on the Mutual Accountability Roundtable and the applicability of the IRP to SO/AC activities (the individual recommendations are listed in the section Recommendations by Topic in this report and the complete SO/AC Accountability report can be found as Annex 6). The SO/AC Accountability Final Report and Recommendations was delivered to the WS2 Plenary for its 27 September 2017 meeting²⁸ where it was approved for a first reading with no amendments. It was presented for a second reading at the WS2 Plenary at its 11 October 2017 meeting²⁹ where it was approved for a second reading with no amendments.

²² <https://www.icann.org/en/system/files/files/responses-comments-iao-recs-20mar18-en.pdf>

²³ "This recommendation is the subject of additional considerations provided in Implementation Guidance in Annex 9"

²⁴ <https://community.icann.org/pages/viewpage.action?pageId=77529370>

²⁵ <https://community.icann.org/pages/viewpage.action?pageId=74580727>

²⁶ <https://community.icann.org/pages/viewpage.action?pageId=59643284>

²⁷ <https://www.icann.org/public-comments/soac-accountability-2017-04-14-en>

²⁸ <https://community.icann.org/pages/viewpage.action?pageId=69273069>

²⁹ <https://community.icann.org/pages/viewpage.action?pageId=71598556>



Staff Accountability

The focus of this group was to assess “staff accountability” and performance at the service delivery, departmental, or organizational level, and not at the individual, personnel level.

The group’s work was a combination of problem-centered analysis as well as solution-focused exploration, with the goal of identifying any gaps to address as part of an effort to create a comprehensive system of checks and balances, based on the assessment of tools and systems currently or newly in place. The group considered the roles and responsibilities of ICANN’s Board, staff, and community members and the links between them, sought input on issues or challenges relating to staff accountability matters, and assessed existing staff accountability processes in ICANN.

The Staff Accountability Sub-Group³⁰ of WS2 met 29 times between August 2016 and January 2018 for a total of 310 volunteer meeting hours. It held a public consultation³¹ on its draft recommendations from 13 November 2017 to 14 January 2018 and received eight responses from the ICANN Board, SO/ACs, organizations, and individuals. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas (detailed responses to all comments and a list of changes to the report can be found in the ICANN Public Comment Forum website³²). The final report presents three recommendations (the individual recommendations are listed in the section Recommendations by Topic in this report and the Staff Accountability Final Report and Recommendations can be found as Annex 7). The final report and recommendations was delivered to the WS2 Plenary for its 28 February 2018 meeting³³ where it was approved for a first reading with no amendments. It was presented for a second reading at the WS2 face-to-face plenary meeting³⁴ on 9 March 2018 where it was approved for a second reading with no amendments.



Transparency

The Transparency Sub-Group makes recommendations³⁵ in four areas:

1. Improving ICANN’s Documentary Information Disclosure Policy (DIDP)
2. Documenting and Reporting on ICANN’s Interactions with Governments
3. Improving Transparency of Board Deliberations

³⁰ <https://community.icann.org/display/WEIA/Staff+Accountability>

³¹ <https://www.icann.org/public-comments/accountability-recs-2017-11-13-en>

³² <https://www.icann.org/en/system/files/files/responses-comments-accountability-recs-21mar18-en.pdf>

³³ <https://community.icann.org/pages/viewpage.action?pageId=77529370>

³⁴ <https://community.icann.org/pages/viewpage.action?pageId=74580727>

³⁵ This recommendation is the subject of additional considerations provided in Implementation Guidance in Annex 9"

4. Improving ICANN's Anonymous Hotline (Whistleblower Protection)

The Transparency Sub-Group³⁶ met 13 times between August 2016 and October 2017 for a total of 158 volunteer meeting hours. It held a public consultation³⁷ on its draft recommendations from 21 February to 10 April 2017 and received 10 responses from the ICANN organization, SO/ACs, and organizations. Following the public consultation, the responses were analyzed, and the recommendations were amended in a number of areas. The final report presents 21 recommendations for improving ICANN's Documentary Information Disclosure Policy (DIDP), one recommendation on documenting and reporting on ICANN's interactions with governments, three recommendations on improving the transparency of Board deliberations and eight recommendations on improving ICANN's Anonymous Hotline (the individual recommendations are listed in the section Recommendations by Topic in this report and the complete Transparency Report can be found as Annex 8.1). The Transparency Final Report and Recommendations was delivered to the WS2 Plenary for its 18 October 2017 meeting³⁸ where it was approved for a first reading with no amendments. It was presented for a second reading at the WS2 face-to-face plenary meeting³⁹ on 27 October 2017 where it was approved for a second reading with no objections, but certain edits were required to the recommendations on DIDP with respect to Open Contracting.

The final report also includes a Minority Statement (see Annex 8.2).

In considering the complete report the CCWG-Accountability WS2 agreed at its 9 March 2018 face-to-face meeting that:

“Prioritization and funding for implementation of recommendations is beyond the scope and capacity of WS2 and rests with ICANN (Board and Organization) and the community. The CCWG-Accountability WS2 proposes to establish a small implementation team to assist ICANN (the Organization) and the community to ensure the implementation plan preserves the spirit of the recommendations and provide any interpretation advice as required.”

The CCWG-Accountability understands that the implementation of its WS2 recommendations cannot proceed in a similar fashion as the implementation of its WS1 recommendations. If all recommendations are endorsed by the Chartering Organizations and then approved by the ICANN Board, implementation of the nearly 100 recommendations contained in the WS2 Report will be a multi-year project based on a detailed implementation plan agreed to by the ICANN organization and the broader ICANN Community, after public consultation on the implementation plan.

Overall, the CCWG-Accountability's WS2 represents a significant effort by the Community of 272 meetings, more than 5,000 emails, and 10,000 hours of volunteer meeting time, which does not include individual time for reading and writing, over a period of two years while remaining well within its original its original one-year cost estimates.

As such the CCWG-Accountability WS2 believes it has met all of the expectations and

³⁶ <https://community.icann.org/display/WEIA/Transparency>

³⁷ <https://www.icann.org/public-comments/ccwg-acct-draft-recs-2017-02-21-en>

³⁸ <https://community.icann.org/pages/viewpage.action?pageId=69281223>

³⁹ <https://community.icann.org/display/WEIA/CCWG+ACCT+WS2+F2F+Meeting+%2325+at+ICANN60++Abu+Dhabi++27+October+2017>

requirements of section 27.1 of the ICANN Bylaws on WS2 and delivers these recommendations to the ICANN Board and its Chartering Organizations in accordance with its Charter and the Bylaws.

Implementation of Recommendations

The WS2 Final Report presents nearly 100 recommendations applicable to ICANN the organization and SO/AC/groups. Few, if any, of these require Bylaws modifications, and many of these are either suggestions of Good Practices or simply optional while many others offer flexibility in how they can be implemented.

The CCWG-Accountability understands that the implementation of the nearly 100 recommendations contained in the WS2 Final Report is a significant undertaking that will require a detailed implementation plan and will take a number of years to complete.

When considering the diversity of the types of recommendations, the breadth of subjects covered, and the significant undertaking implementation will involve, the CCWG-Accountability concluded it would be useful to offer the ICANN organization, Board, as well as the SO/ACs formal support in developing an implementation plan.

As noted in the previous section, the CCWG-Accountability confirmed this by approving the following recommendation:

“Prioritization and funding for implementation of recommendations is beyond the scope and capacity of WS2 and rests with ICANN (Board and Organization) and the community. The CCWG-Accountability-WS2 proposes to establish a small implementation team to assist ICANN (the Organization) and the community to ensure the implementation plan preserves the spirit of the recommendations and provide any interpretation advice as required.”

The CCWG-Accountability also confirmed that the members of the WS2 Implementation Team would only be composed of the Co-Chairs and the rapporteurs from the WS2 sub-groups. The mandate of this team would be to act as described in the recommendation above. It is expected that the WS2 Implementation Team would only meet online or as needed during regularly scheduled ICANN public meetings to minimize the use of community time and resources.

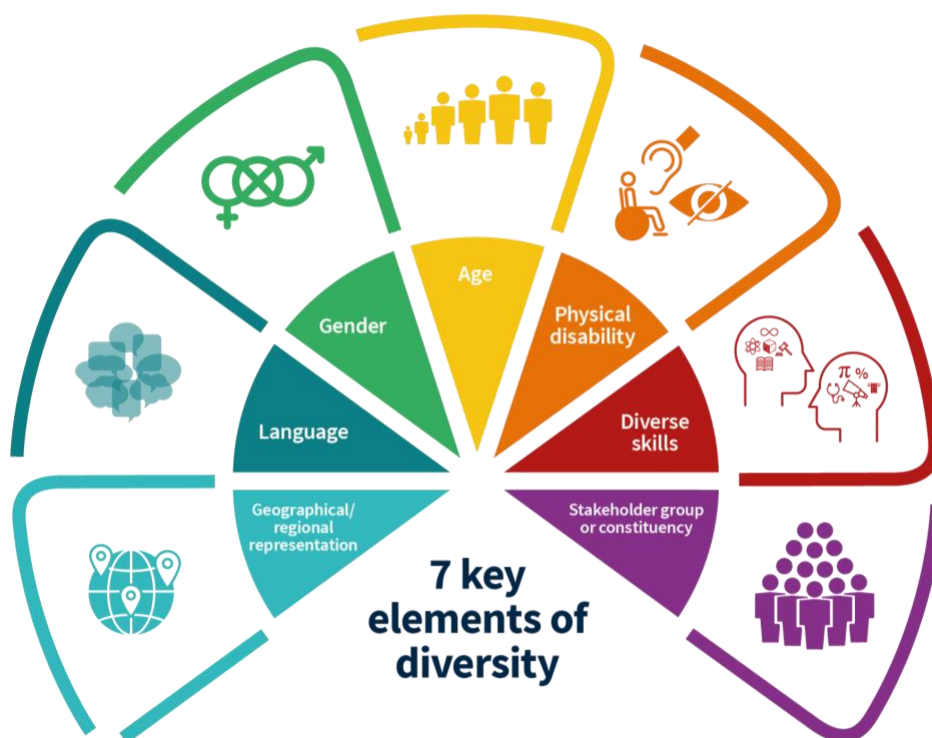
Recommendations by Sub-Group

1 Recommendations to Improve Diversity



Defining Diversity

- 1.1. Recommendation 1: SO/AC/Groups should agree that the following seven key elements of diversity should be used as a common starting point for all diversity considerations within ICANN:



- 1.2. Recommendation 2: Each SO/AC/Group should identify which elements of diversity are mandated in their charters or ICANN Bylaws and any other elements that are relevant and applicable to each of its levels including leadership (Diversity Criteria) and publish the results of the exercise on their official websites.

Measuring and Promoting Diversity

- 1.3. Recommendation 3: Each SO/AC/Group, supported by ICANN staff, should undertake an initial assessment of their diversity for all of their structures including leadership

based on their Diversity Criteria and publish the results on their official website.

- 1.4. Recommendation 4: Each SO/AC/Group should use the information from their initial assessment to define and publish on their official website their Diversity Criteria objectives and strategies for achieving these, as well as a timeline for doing so.
- 1.5. Recommendation 5: Each SO/AC/Group, supported by ICANN staff, should undertake a regular update of their diversity assessment against their Diversity Criteria and objectives at all levels including leadership. Ideally this update should be carried out annually but not less than every three years. They should publish the results on their official website and use this information to review and update their objectives, strategies, and timelines.

Supporting Diversity

- 1.6. Recommendation 6: ICANN staff should provide support and tools for the SO/AC/Groups to assist them in assessing their diversity in an appropriate manner. ICANN should also identify staff or community resources that can assist SO/ACs or other components of the community with diversity-related activities and strategies.
- 1.7. Recommendation 7: ICANN staff should support SO/AC/Groups in developing and publishing a process for dealing with diversity-related complaints and issues.
- 1.8. Recommendation 8: ICANN staff should support the capture, analysis, and communication of diversity information, seeking external expertise if needed, in the following ways:
 - 1.8.1. Create a Diversity section on the ICANN website.
 - 1.8.2. Gather and maintain all relevant diversity information in one place.
 - 1.8.3. Produce an Annual Diversity Report for ICANN based on all the annual information and provide a global analysis of trends and summarize SO/AC/Groups recommendations for improvement, where appropriate. This should also include some form of reporting on diversity complaints.
 - 1.8.4. Include diversity information derived from the Annual Diversity Report in ICANN's Annual Report.

Note: In the context of the Diversity Questionnaire and throughout this report, the term SO/AC/Groups refers to:

- ⦿ SO – ccNSO, GNSO, ASO
- ⦿ AC – ALAC, GAC, RSSAC, SSAC

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- ⦿ Groups – ICANN Board, ICANN staff, NomCom, Stakeholder Group, Constituency, RALO

When recommendations in this report refer to ICANN, it means all of those entities included in SO/AC/Groups.

2 Recommendations for Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors



The proposed guidelines apply to all Board seats whether the Director is appointed by the SO/AC or the ICANN Nominating Committee (NomCom) and are as follows:

- 2.1 Recommendations for guidelines with respect to Petitions for removal:
 - 2.1.1 May for any reason; and
 - 2.1.2 Must:
 - 2.1.2.1 Be believed by the Indemnified Party to be true.
 - 2.1.2.2 Be in writing.
 - 2.1.2.3 Contain sufficient detail to verify facts; if verifiable facts are asserted.
 - 2.1.2.4 Supply supporting evidence if available/applicable.
 - 2.1.2.5 Include references to applicable by-laws and/or procedures if the assertion is that a specific by-law or procedure has been breached.
 - 2.1.2.6 Be respectful and professional in tone.
- 2.2 Recommendations for guidelines with respect to procedures for consideration of board removal notices by SO/ACs to include:
 - 2.2.1 Reasonable time frames for investigation by SO/AC councils or the equivalent decision-making structures if the SO/AC deems that an investigation is required.
 - 2.2.2 Period of review by the entire membership of the SO/AC provided the SO/AC organizational structure customarily provides review for individual members; otherwise, period of review by those empowered to represent the SO/AC in decisions of this nature.

2.2.3 Consistent and transparent 40 voting method for accepting or rejecting a petition; such voting maybe be by the entire membership or those empowered to represent the SO/AC in decisions of this nature.

2.2.4 Documentation of the community process and how decisions are reached.

2.3 Standalone Recommendations

In addition to the proposed guidelines which are intended to trigger the indemnity under ICANN Bylaws Article 20, Section 20.2, two other recommendations were developed that may be helpful to the community as standalone items

2.3.1 A standard framework be developed and used to raise the issue of Board removal to the respective body – either the specific SO/AC who appointed the member or the Decisional Participant in the case of a NomCom appointee. The framework would be in the context of developing a broader framework for implementing community powers and entering into the discussions contemplated by WS1. This framework could be developed by a new group specifically formed for that purpose.

2.3.2 Implement the guidelines as a community best practice to apply to all discussions even if not covered by the indemnities contemplated under Article 20. There may be discussions around rejecting a budget or rejecting a proposed standard Bylaw that would benefit from a good faith process. The guidelines for engaging discussions around Board removal could be adopted as a universal standard given that they are broad enough to encompass any discussion.

3 Recommendation for a Framework of Interpretation for Human Rights



The CCWG-Accountability WS2 recommends the adoption of the Framework of Interpretation it developed for the ICANN Bylaws dealing with Human Rights, which can be found in Annex 3.

4 Recommendations on Jurisdiction



4.1 Recommendations Relating to OFAC Sanctions and Related Sanctions Issues

The Subgroup considered issues relating to government sanctions, particularly⁴¹ U.S. government sanctions administered by the Office of Foreign Asset Control (OFAC). OFAC is an office of the U.S. Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals.

4.1.1 ICANN Terms and Conditions for Registrar Accreditation Application Relating to OFAC Licenses

For ICANN to enter into a Registration Accreditation Agreement (RAA) with an applicant from a sanctioned country, it will need an OFAC license. Currently, “ICANN is under no obligation to seek such licenses and, in any given case, OFAC could decide not to issue a requested license.”⁴² This uncertainty could discourage residents of sanctioned countries from applying for accreditation.

The sub-group recommends that the above sentence should be amended to require ICANN to apply for and use best efforts to secure an OFAC license if the other party is otherwise qualified to be a registrar (and is not individually subject to sanctions). During the licensing process, ICANN should be helpful and transparent with regard to the licensing process and ICANN’s efforts, including ongoing communication with the potential registrar.

4.1.2 Approval of gTLD Registries

In the 2012 round of the New gTLD program, it was difficult for residents from sanctioned countries to file and make their way through the application process. The Applicant Guidebook (AGB) states: “In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs (specially designated nationals) but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.”

The sub-group recommends that ICANN should commit to applying for and using best efforts to secure an OFAC license for all such applicants if the applicant would otherwise be approved (and is not on the SDN list). ICANN should also be helpful and transparent with regard to the licensing process, including ongoing communication with the applicant.

⁴¹ In the future, if ICANN’s activities are affected by other similar sanctions (e.g., similar in scope, type, and effect and with similar methods of relief for entities not specifically sanctioned), the spirit of these recommendations should guide ICANN’s approach. Terms and Conditions for Registrar Accreditation Application, Section 4. <https://www.icann.org/resources/pages/application-2012-02-25-en>

⁴² The term “best efforts,” as used throughout this report, should be understood to be limited by “reasonableness,” meaning that an entity (here, ICANN) must use its best efforts, except for any efforts that would be unreasonable. For example, the entity can take into account its fiscal health and its fiduciary duties, and any other relevant facts and circumstances. In some jurisdictions, this limitation is inherent in the use and meaning of the term. However, in other jurisdictions, this may not be the case, and thus it is necessary to explicitly state the limitation for the benefit of those in such jurisdictions.

4.1.3 Application of OFAC Limitations by Non-U.S. Registrars

It appears that some non-U.S.-based registrars might be applying OFAC sanctions with registrants and potential registrants, based on a mistaken assumption that they must do so simply because they have a contract with ICANN. Non-U.S. registrars may also appear to apply OFAC sanctions, if they “cut and paste” registrant agreements from U.S.-based registrars. While ICANN cannot provide legal advice to registrars, it can bring awareness of these issues to registrars.

The sub-group recommends that ICANN clarify to registrars that the mere existence of their RAA with ICANN does not cause them to be required to comply with OFAC sanctions. ICANN should also explore various tools to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships.

4.1.4 General Licenses

OFAC “general licenses” cover particular classes of persons and types of transactions. ICANN could pursue general licenses to cover transactions integral to ICANN’s role in managing the DNS and contracts for Internet resources, such as registries and registrars entering into Registry Agreements (RAs) and Registrar Accreditation Agreements (RAAs), Privacy/Proxy Accreditation, support for ICANN-funded travelers, etc. This would enable individual transactions to proceed without the need for specific licenses.

A general license would need to be developed in conjunction with the U.S. Department of the Treasury, which must amend OFAC regulations to include the new license. This regulatory process may be a significant undertaking.

The sub-group recommends that ICANN take steps to pursue one or more OFAC “general licenses.” ICANN should first prioritize a study of the costs, benefits, timeline and details of the process. ICANN should then pursue general licenses as soon as possible, unless it discovers significant obstacles. If so, ICANN should report this to the community and seek its advice on how to proceed. If unsuccessful, ICANN needs to find other ways to remove “friction” from transactions between ICANN and residents of sanctioned countries. ICANN should communicate regularly about its progress, to raise awareness in the ICANN community and with affected parties.

4.2 Recommendations relating to Choice of Law and Choice of Venue Provisions in ICANN Agreements

This sub-group considered how the absence of a choice of law provision in the base RA, the absence of a choice of law provision in the standard RAA, and the contents of the choice of venue provision in RAs could impact ICANN’s accountability. These are standard-form contracts that are not typically negotiated; changes are now determined through an amendment procedure (e.g. Art. 7.6 of the RA).

The sub-group understands that it cannot require ICANN to make amendments to the RA or the RAA. Rather, this recommendation suggests possible changes to the RA and

RAA for study and consideration by ICANN the organization, the GNSO, and the contracted parties.

The RA and RAA do not contain choice of law provisions. The governing law is thus undetermined, until determined by a judge or arbitrator or by agreement of the parties.

4.2.1 Choice of Law and Venue Provisions in the Registry Agreement

The sub-group identified several alternative approaches for the RA, which could also apply to the RAA. The body of the report discusses the advantages and disadvantages of each approach.

4.2.1.1 Menu Approach. The sub-group supports a “Menu” approach, where the governing law would be chosen before the contract is executed from a “menu” of possible governing laws. The menu needs to be defined; this could best left to ICANN and the registries. The sub-group discussed a number of possible menus, which could include one country, or a small number of countries, from each ICANN geographic region, plus the status quo (no choice of law) and/or the registry’s jurisdiction of incorporation and/or the countries in which ICANN has physical locations.

The sub-group has not determined what the menu items should be, but believes there should be a balance between the advantages and disadvantages of having different governing laws apply to the same base RA, which likely suggests having a relatively limited number of choices on the menu. The sub-group recommends that the Registry choose from among the options on the menu (i.e., the choice would not be negotiated with ICANN).

4.2.1.2 “California” (or “fixed law”) Approach. A second possible option is for all RAs to include a choice of law clause naming California and U.S. law as the governing law.

4.2.1.3 Carve-Out Approach. A third possible option would be a “Carve-Out” approach, whereby parts of the contract that would benefit from uniform treatment are governed by a uniform predetermined law (e.g., California) and other parts are governed either by the law of the registry’s jurisdiction or by a jurisdiction chosen using the “Menu” approach.

4.2.1.4 Bespoke Approach. In the “Bespoke” approach, the governing law of the entire agreement is the governing law of the Registry Operator.

4.2.1.5 Status Quo Approach. A fifth possible approach is to retain the status quo, (i.e., have no “governing law” clause in the RAA).

4.2.2 Choice of Law Provisions in Registrar Accreditation Agreements

The options for the RAA are essentially the same as for the RA.

4.2.3 Choice of Venue Provisions in Registry Agreements

Under the RA, disputes are resolved by “binding arbitration,” pursuant to ICC rules. The RA contains a choice of venue provision stating that the venue is Los Angeles, California as both the physical place and the seat of the arbitration.

When entering into contracts with registries, ICANN could offer a list of possible venues for arbitration rather than imposing Los Angeles, California. The registry that enters into a registry agreement with ICANN could then choose which venue it prefers at or before the execution of the contract.

4.3 Further Discussions of Jurisdiction-Related Concerns (Suggestion)

There were a number of concerns raised in the sub-group where the sub-group had substantive discussions but did not get to a point of conclusion. As an example, there were discussions of limited, partial, relative, or tailored immunity for ICANN that did not come to conclusion.

These concerns were put on the table by different stakeholders, and for these stakeholders, these are legitimate concerns. As these concerns were not discussed to the end, there should be a path forward for these concerns beyond the CCWG-Accountability, which was tasked to look into a limited number of issues within a limited period of time and with a limited budget.

Therefore, the sub-group suggests that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of these concerns. We believe that this report, with its annexes, can be a very useful tool for further debates which will surely take place – whether in another cross-constituency effort or in a future ATRT Review, or in some other ICANN context. The appropriate forum for such discussions is beyond the mandate of the CCWG-Accountability; however, we encourage the community to build on the work of the sub-group and prior work in this area.

5 Recommendations for Improving the ICANN Office of the Ombuds (IOO)



Note: All recommendations are closely based on the recommendations included in the external evaluation of the IOO, which was commissioned as part of WS2.

5.1 The Ombuds Office should have a more strategic focus.

5.2 The Ombuds office should include procedures that:

5.2.1 Distinguish between different categories of complaints and explains how each will be handled.

5.2.2 Set out the kinds of matters where the Ombuds will usually not intervene – and where these matters are likely to be referred to another channel (with the

complainant's permission)

- 5.2.3 Provides illustrative examples to deepen understanding of the Ombuds' approach.
- 5.3 Once ICANN has agreed to a revised configuration for the Office of the Ombuds, a plan should be developed for a soft relaunch of the function, which should incorporate action to emphasize the importance of the Ombuds function by all relevant parts of ICANN, including:
- ⦿ Board
 - ⦿ CEO
 - ⦿ Community Groups
 - ⦿ Complaints Officer
- 5.4 All relevant parts of ICANN should be required (should include the corporation, the Board and committees, and anybody or group with democratic or delegated authority) to respond within 90 days (or 120 days with reason) to a formal request or report from the Office of the Ombudsman. The response should indicate the substantive response along with reasons. Should the responding party not be able to meet the 120-day limit due to exceptional circumstances, that party can apply to the IOO to seek an additional extension prior to the expiration of the original 90-day delay. The application should be in writing, stating the nature of the exception and the expected time required to respond. The IOO will respond to such requests within a week.
- 5.5 The ICANN Office of the Ombuds should establish timelines for its own handling of complaints and report against these on a quarterly and annual basis.
- 5.6 The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities.
- 5.7 Ideally, the Office of the Ombuds should be configured so that it has gender and, if possible, other forms of diversity within its staff resources. (The primary objective of this recommendation is to ensure that the Community has choices as to whom in the IOO they can bring their complaints to and feel more comfortable doing so.)
- 5.8 ICANN should establish an Ombuds Advisory Panel⁴³:
- 5.8.1 Made up of five members to act as advisers, supporters, and wise counsel for the Ombuds and should be made up of a minimum of at least two members with Ombudsman experience and the remainder with extensive ICANN experience.
- 5.8.2 The Panel should be responsible for:
- 5.8.2.1 Contributing to the selection process for new Ombuds, which would meet the various requirements of the Board and Community, including diversity.

⁴³ This recommendation is the subject of Implementation Guidance from Annex 9

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- 5.8.2.2 Recommending candidates for the position of Ombuds to the Board.
 - 5.8.2.3 Recommending terms of probation to the Board for new Ombuds.
 - 5.8.2.4 Recommend to the Board firing an Ombuds for cause.
 - 5.8.2.5 Contribute to an external evaluation of the IOO every five years.
 - 5.8.2.6 Making recommendations regarding any potential involvement of the IOO in non-complaint work based on the criteria listed in Recommendation 11.
 - 5.8.3 The Panel cannot be considered as being part of the Ombuds Office and cannot be considered additional Ombuds, but rather external advisors to the office.
 - 5.8.4 Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the Bylaws.
 - 5.9 The Ombuds employment contracts should be revised to strengthen independence by allowing for a:
 - 5.9.1 Five-year fixed term (including a 12-month probationary period) and permitting only one extension of up to three years (the extension should be subject to a community-based feedback mechanism to the Advisory Panel covering Ombuds performance over the previous years).
 - 5.9.2 The Ombuds should only be able to be terminated with cause.
 - 5.10 The Ombuds should have as part of their annual business plan, a communications plan – including the formal annual report – publishing reports on activity, collecting and publishing statistics and complaint trend information, collecting user satisfaction information, and publicizing systemic improvements arising from the Ombuds’ work.
 - 5.11 The following points should be considered and clarified publicly when looking at the Ombuds’ involvement in any non-complaints work:
 - ⊙ Whether there is unique value that the Ombuds can add through the proposed role or function?
 - ⊙ Whether the proposed reporting/accountability arrangements may compromise perceived independence?
 - ⊙ Whether the workload of the proposed role/function would limit the Ombuds ability to prioritize their complaints-related work?
 - ⊙ Whether any Ombuds’ involvement with the design of new or revised policy or process, meets the requirement of not, in any way, creating a “stamp of approval”?
 - ⊙ Whether the proposed Ombuds input may be seen as a “short-cut” or substituting for full stakeholder consultation?

The additional recommendations by the Transparency Sub-Group with respect to involving the Ombuds in the DIDP process should be considered using the criteria in Recommendation 11.

6 Recommendations to Increase SO/AC Accountability



Each SO/AC/Group should implement these Good Practices, to the extent these practices are applicable and an improvement over present practices. It is not recommended that implementation of these practices be required. Nor is it recommended that any changes be made to the ICANN Bylaws. It should be noted that the Operational Standards for periodic Organizational Reviews conducted by ICANN could include an assessment of Good Practices implementation in the AC/SO subject to the review.

6.1 Accountability

- 6.1.1 SO/AC/Groups should document their decision-making methods, indicating any presiding officers, decision-making bodies, and whether decisions are binding or nonbinding.
- 6.1.2 SO/AC/Groups should document their procedures for members to challenge the process used for an election or formal decision.
- 6.1.3 SO/AC/Groups should document their procedures for non-members to challenge decisions regarding their eligibility to become a member.
- 6.1.4 SO/AC/Groups should document unwritten procedures and customs that have been developed in the course of practice, and make them part of their procedural operation documents, charters, and/or bylaws.
- 6.1.5 Each year, SO/AC/Groups should publish a brief report on what they have done during the prior year to improve accountability, transparency, and participation, describe where they might have fallen short, and any plans for future improvements.
- 6.1.6 Each Empowered Community (EC) Decisional Participant should publicly disclose any decision it submits to the EC. Publication should include description of processes followed to reach the decision.
- 6.1.7 Links to SO/AC transparency and accountability (policies, procedures, and documented practices) should be available from ICANN’s main website, under “accountability.” ICANN staff would have the responsibility to maintain those links on the ICANN website.

6.2 Transparency

- 6.2.1 Charter and operating guidelines should be published on a public webpage and updated whenever changes are made.
- 6.2.2 Members of the SO/AC/Group should be listed on a public webpage.
- 6.2.3 Officers of the SO/AC/Group should be listed on a public webpage.
- 6.2.4 Meetings and calls of SO/AC/Groups should normally be open to public observation. When a meeting is determined to be members-only, that should be explained publicly, giving specific reasons for holding a closed meeting. Examples of appropriate reasons include discussion of confidential topics such as:
 - 6.2.4.1 Trade secrets or sensitive commercial information whose disclosure would cause harm to a person or organization's legitimate commercial or financial interests or competitive position.
 - 6.2.4.2 Internal strategic planning whose disclosure would likely compromise the efficacy of the chosen course.
 - 6.2.4.3 Information whose disclosure would constitute an invasion of personal privacy, such as medical records.
 - 6.2.4.4 Information whose disclosure has the potential to harm the security and stability of the Internet.
 - 6.2.4.5 Information that, if disclosed, would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.
- 6.2.5 Records of open meetings should be made publicly available. Records include notes, minutes, recordings, transcripts, and chat, as applicable.
- 6.2.6 Records of closed meetings should be made available to members, and may be made publicly available at the discretion of the AC/SO/Group. Records include notes, minutes, recordings, transcripts, and chat, as applicable.
- 6.2.7 Filed comments and correspondence with ICANN should be published and publicly available.

6.3 Participation

- 6.3.1 Rules of eligibility and criteria for membership should be clearly outlined in the bylaws or in operational procedures.
- 6.3.2 Where membership must be applied for, the process of application and eligibility criteria should be publicly available.

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- 6.3.3 Where membership must be applied for, there should be a process of appeal when application for membership is rejected.
 - 6.3.4 An SO/AC/Group that elects its officers should consider term limits.
 - 6.3.5 A publicly visible mailing list should be in place.
 - 6.3.6 if ICANN were to expand the list of languages that it supports, this support should also be made available to SO/AC/Groups.
 - 6.3.7 A glossary for explaining acronyms used by SO/AC/Groups is recommended.
- 6.4 Outreach
- 6.4.1 Each SO/AC/Group should publish newsletters or other communications that can help eligible non-members to understand the benefits and process of becoming a member.
 - 6.4.2 Each SO/AC/Group should maintain a publicly accessible website/wiki page to advertise their outreach events and opportunities.
 - 6.4.3 Each SO/AC/Group should create a committee (of appropriate size) to manage outreach programs to attract additional eligible members, particularly from parts of their targeted community that may not be adequately participating.
 - 6.4.4 Outreach objectives and potential activities should be mentioned in SO/AC/Group bylaws, charter, or procedures.
 - 6.4.5 Each SO/AC/Group should have a strategy for outreach to parts of their targeted community that may not be significantly participating at the time, while also seeking diversity within membership.
- 6.5 Updates to Policies and Procedures
- 6.5.1 Each SO/AC/Group should review its policies and procedures at regular intervals and make changes to operational procedures and charter as indicated by the review.
 - 6.5.2 Members of SO/AC/Groups should be involved in reviews of policies and procedures, and should approve any revisions.
 - 6.5.3 Internal reviews of SO/AC/Group policies and procedures should not be prolonged for more than one year, and temporary measures should be considered if the review extends longer.
- 6.6 Mutual Accountability Roundtable
- 6.6.1 It is recommended that the Mutual Accountability Roundtable not be implemented.

6.7 Should Independent Review Process (IRP) be applied to SO/AC activities?

6.7.1 The IRP should not be made applicable to activities of SO/AC/Groups. The appropriate mechanism for individuals to challenge an SO/AC action or inaction is through ICANN's Ombuds Office, whose bylaws and charter are adequate to handle such complaints.

7 Recommendations to Improve Staff Accountability



7.1 To address the lack of understanding of the existence and/or nature of existing staff accountability mechanisms, the following actions should be taken:

7.1.1 The ICANN organization should improve visibility and transparency of the organization's existing accountability mechanisms, by posting on icann.org in one dedicated area the following:

7.1.1.1 Description of the organization's performance management system and process.

7.1.1.2 Description of how departmental goals map to ICANN's strategic goals and objectives.

7.1.1.3 Description of the Complaints Office and how it relates to the Ombuds Office.

7.1.1.4 Organization policies shared with the CCWG-Accountability during the course of the WS2 work.

7.1.1.5 ICANN Organization Delegations document.

7.1.1.6 The roles descriptions included in this overall report.

7.1.1.7 Expectations and guidelines regarding the development of staff reports for Public Comments, or staff response to Community correspondence.

7.1.2 The ICANN organization should also evaluate what other communication mechanisms should be utilized to further increase awareness and understanding of these existing and new accountability mechanisms.

7.2 To address the lack of clearly defined, or broadly understood, mechanisms to address accountability concerns between community members and staff members regarding accountability or behavior:

7.2.1 The ICANN organization should enhance existing accountability mechanisms to include:

7.2.1.1 A regular information acquisition mechanism (which might include surveys, focus groups, reports from the Complaints Office) to allow the ICANN organization to better ascertain its overall performance and accountability to relevant stakeholders.

7.2.1.1.1 The group notes that several new mechanisms are now established, but have not yet been exercised enough to determine effectiveness or potential adjustments. The evaluation mechanism proposed here would be helpful in determining effectiveness of these recent mechanisms before creating yet more mechanisms that may turn out to be duplicative or confusing for the organization and community.

7.2.1.2 Results of these evaluations should be made available to the Community.

7.2.2 Consistent with common best practices in services organizations, standardize and publish guidelines for appropriate timeframes for acknowledging requests made by the community, and for responding with a resolution or updated timeframe for when a full response can be delivered. The ICANN organization should include language in the performance management guidelines for managers that recommends people managers of community-facing staff seek input from the appropriate community members during the organization's performance reviews. Identification of appropriate community members, frequency of outreach to solicit input, and how to incorporate positive and constructive feedback into the overall performance review should be at the discretion and judgement of the personnel manager, with appropriate guidance from HR as necessary. Such a feedback mechanism should be supplemental to the existing mechanisms available to the community to provide input on ICANN staff performance, including direct communication to specific staff member, their personnel managers, senior executive staff, Board Directors, and the Complaints Officer.

7.3 The ICANN Organization should work with the community to develop and publish service level targets and guidelines (similar to the Service Level Agreement for the IANA Numbering Services) that clearly define the services provided by ICANN to the community as well as the service level target for each service. In this context:

7.3.1 ICANN should work with the community to identify and prioritize the classes of services for which service level targets and guidelines will be implemented, and to define how service level targets and guidelines will be defined.

7.3.2 Develop clear and reasonable guidelines for expected behavior between the ICANN organization and the community for those newly identified activities.

7.3.3 Develop and publish the resulting service levels, targets, and guidelines in a single area on icann.org. These targets and guidelines should also inform any regular information acquisition mechanism described in Recommendation 2 of this report.

The structure and specific timing of this effort should be determined by the ICANN organization (but be substantially under way before the end of 2018). We suggest that representatives of ICANN's executive team, the ICANN Board, and SO/AC Leadership participate in this effort to ensure a constructive dialogue across all parts of the ICANN community. This work should be, and be seen as, a genuine chance for collaboration and improved relationships between the Board, organization and community.

8 Recommendations to Improve ICANN Transparency



8.1 Improving ICANN's Documentary Information Disclosure Policy (DIDP)

- 8.1.1 The caveat that the DIDP applies only to “operational activities” should be deleted.
- 8.1.2 The DIDP should include a documentation rule whereby, if significant elements of a decision-making process take place orally, or otherwise without a lasting paper-trail, the participants in that decision-making process should be required to document the substance of the conversation, and include it alongside other documentation related to this decision-making process.
- 8.1.3 The DIDP should be expanded to include clearly defined procedures for lodging requests for information, including requirements that requesters should only have to provide the details necessary to identify and deliver the information.
- 8.1.4 The DIDP should impose clear guidelines on ICANN for how to process requests, including delegating a specific employee or employees with the responsibility of responding to DIDP requests, including a commitment to provide reasonable assistance to requesters who need it, particularly where they are disabled or unable to identify adequately the information they are seeking.
- 8.1.5 The DIDP should commit to complying with requesters' reasonable preferences regarding the form in which they wish to receive information under request (for example, if it is available as either a pdf or as a doc), if ICANN either already has that information available in the requested format, or can convert it to the requested format relatively easily.
- 8.1.6 The DIDP should specify that requests should receive a response “as soon as reasonably possible” and should cap timeline extensions to an additional 30 days.
- 8.1.7 The phrase “to the extent feasible, to reasonable requests” should be deleted from the provision on Responding to Information Requests.
- 8.1.8 In cases where information subject to request is already publicly available, ICANN staff should direct requesters, with as much specificity as possible, to where the information may be found. In other words, if the processing of a DIDP request reveals that the information has already been published, staff should

include information about where this information may be found in their response to the requester.

- 8.1.9 The exception for information “that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone” should be amended so that it only applies to information whose disclosure would be harmful to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.
- 8.1.10 The exception for “drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication” should be amended to clarify that this information should be disclosed unless it would be harmful to an ongoing deliberative or decision-making process.
- 8.1.11 The exceptions for “trade secrets and commercial and financial information not publicly disclosed by ICANN” and for “confidential business information and/or internal policies and procedures” should be replaced with an exception for “material whose disclosure would materially harm ICANN’s financial or business interests or the commercial interests of its stake-holders who have those interests.”
- 8.1.12 Where an exception is applied to protect a third party, the DIDP should include a mechanism for ICANN staff to contact this third party to assess whether they would consent to the disclosure.
- 8.1.13 The exception for information requests which are “not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual” should be amended so that either the Ombudsman or the Complaints Officer automatically reviews any decision to use this exception.
- 8.1.14 The following sentence should be deleted: “Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.”
- 8.1.15 ICANN should consider future processes to expand transparency at ICANN Legal, including through clarification of how attorney-client privilege is invoked.
- 8.1.16 Wherever possible, ICANN's contracts should either be proactively disclosed or available for request under the DIDP. The DIDP should allow ICANN to withhold information subject to a non-disclosure agreement; however, such agreements should only be entered into where the contracting party satisfies ICANN that it has a legitimate commercial reason for requesting the NDA, or where information contained therein would be subject to other exceptions within the DIDP (such as, for example, where the contract contains information whose disclosure would be harmful to the security and stability of the Internet).⁴⁴

⁴⁴ This recommendation is the subject of Implementation Guidance from Annex 9

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- 8.1.17 The DIDP should include a severability clause, whereby in cases where information under request includes material subject to an exception to disclosure, rather than refusing the request outright, the information should still be disclosed with the sensitive aspects severed, or redacted, if this is possible.
 - 8.1.18 Where an information request is refused, or the information is provided in a redacted or severed form, the DIDP should require that ICANN's response include the rationale underlying the decision, by reference to the specific exception(s) invoked, as well as information about appeal processes that are available.
 - 8.1.19 The Ombudsman's mandate regarding transparency should be boosted to grant the office a stronger promotional role, including by integrating understanding of transparency and the DIDP into ICANN's broader outreach efforts, by publishing a list of the categories of information ICANN holds.
 - 8.1.20 Either the Ombudsman or the Complaints Officer should be tasked with carrying out reasonable monitoring and evaluation procedures, such as publishing the number of requests received, the proportion which were denied, in whole or in part, the average time taken to respond, and so on.
 - 8.1.21 ICANN should commit to reviewing the DIDP every five years.
- 8.2 Documenting and Reporting on ICANN's Interactions with Governments⁴⁵
- 8.2.1 In the interest of providing the community greater clarity with regard to how ICANN engages government stakeholders and to ensure that the ICANN Community and, if necessary, the Empowered Community is fully aware of ICANN's interactions with governments, the CCWG-Accountability recommends that ICANN begin disclosing publicly the following (notwithstanding any contractual confidentiality provisions) on at least a yearly (but no more than quarterly) basis with regard to expenditures over \$20,000 per year devoted to "political activities," both in the U.S. and abroad:
 - 8.2.1.1 All expenditures on an itemized basis by ICANN both for outside contractors and internal personnel.
 - 8.2.1.2 All identities of those engaging in such activities, both internal and external, on behalf of ICANN.
 - 8.2.1.3 The type(s) of engagement used for such activities.
 - 8.2.1.4 To whom the engagement and supporting materials are targeted.
 - 8.2.1.5 The topic(s) discussed (with relative specificity).

⁴⁵ This recommendation is the subject of Implementation Guidance from Annex 9

8.3 Transparency of Board Deliberations⁴⁶

- 8.3.1 The DIDP exception for deliberative processes should not apply to any factual information, technical reports, or reports on the performance or effectiveness of a particular body or strategy, as well as any guideline or reasons for a decision which has already been taken or where the material has already been disclosed to a third party.
- 8.3.2 The Bylaws should be revised so that material may only be removed from the minutes of Board meetings where it would be subject to a DIDP exception. Decisions to remove material from the minutes of Board meetings should be subject to IRP appeal.
- 8.3.3 Where material is removed from the minutes of Board meetings, the default should be to allow for its release after a particular period of time, once the potential for harm has dissipated.

8.4 Improving ICANN's Anonymous Hotline (Whistleblower Protection)

- 8.4.1 The policy should be clearly posted as "Employee Hotline Policy and Procedures" on the ICANN public website under the "Who we Are" or "Accountability and Transparency" portions as soon as possible.
- 8.4.2 Related to the above, the term "whistleblower" should be included in introductory text explaining the policy so that an ICANN community member – who may not know that the policy is called a "Hotline Policy" – may easily locate it using "whistleblower" as the search term. For example: "The following outlines elements of ICANN's Hotline Policy and Procedures. Some organizations refer to this as "whistleblower protections."
- 8.4.3 The definition of incidents reported should be broadened from "serious issues" to encourage the report of all issues and concerns related to behavior that may violate local laws and conflict with organizational standards of behavior. Furthermore, the policy should provide specific examples of such violations to guide a potential reporter.
- 8.4.4 ICANN need to improve internal administration of the Hotline process by employing case management software to better enable tracking, documenting, reporting, and anticipating potential problem areas.
- 8.4.5 ICANN should regularly provide employees with data about use of the Hotline, that details not only the frequency of use but also the types of incidents reported.
- 8.4.6 ICANN should not prioritize receipt of reports as "urgent" and "non-urgent," but treat every report as a priority warranting formal acknowledgment of receipt of a report within 48 hours at the latest.
- 8.4.7 ICANN needs to more effectively address potential fear of retaliation against the reporter by stating unequivocally that alleged retaliation will be investigated with

⁴⁶ This recommendation is the subject of Implementation Guidance from Annex 9

the same level of rigor as alleged wrongdoing. ICANN should also guarantee remedy for reporters who suffer from retaliation as well as clarify that good-faith reporting of suspected wrong-doing will be protected from liability.

- 8.4.8 ICANN's Hotline Policy and Procedures should undergo a third-party audit least every two years to help identify gaps and enable timely corrections. The audit, in turn, should be posted on the public website.

Annexes

Note: Due to size considerations, all annexes are presented as separate documents.

- ⦿ Annex 1 – Diversity – Final Report and Recommendations
- ⦿ Annex 2 – Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors (Guidelines for Good Faith) – Final Report and Recommendations
- ⦿ Annex 3 - Human Rights Framework of Interpretation (HR-FOI) – Final Report and Recommendations
- ⦿ Annex 4.1 – Jurisdiction – Final Report and Recommendations
- ⦿ Annex 4.2 – Jurisdiction – Minority Statement
- ⦿ Annex 4.3 – Jurisdiction – ICANN 60 Transcript of Jurisdiction Discussion at WS2 Face-to-Face meeting
- ⦿ Annex 5.1 – Ombuds – Final Report and Recommendations
- ⦿ Annex 5.2 – Ombuds – Report by the external evaluator
- ⦿ Annex 6 – SO/AC Accountability – Final Report and Recommendations
- ⦿ Annex 7 – Staff Accountability – Final Report and Recommendations
- ⦿ Annex 8.1 – Transparency – Final Report and Recommendations
- ⦿ Annex 8 .2 – Transparency – Minority Statement
- ⦿ Annex 9 – Implementation Guidance



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