Fadi Chehadé, CEO, ICANN
Dr. Stephen Crocker, Chair, ICANN Board of Directors
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536 USA

Dear Fadi and Steve,

As referenced in our joint letter of August 26, 2014, the leaders of the undersigned ICANN Supporting Organizations, Advisory Committees, Stakeholder Groups and Constituencies respectfully submit the following consolidated questions and comments for consideration, incorporation, or further discussion. We believe this submission and ICANN's response to each point below will help clarify existing areas of confusion raised within our communities and will ideally improve the proposed process and help to secure the broader community's consensus support.

As a critical first step in advancing this process, ICANN must initiate a public comment period to seek and accept input from the community. We unanimously recommend a 21-day public comment period, which should provide adequate time to assess and comment while still allowing the substantive work to begin before and during ICANN Los Angeles. It will allow the community to better understand the proposal, to submit questions and suggestions for improvement. We welcome your commitment to initiate such a comment period following receipt of this joint submission, which should help to frame the ongoing dialogue.

1) The staff proposal appears to allow the Board to reject the outcome put forward by the community. However, the Board's institutional interest in the outcome of such process may be at odds with the community's interests and consensus recommendations.

   a) Under what standards do the ICANN leadership and Board believe it would be appropriate to reject an output developed by the community through the proposed process?

   b) What process will be made available for the community to appeal a determination by the Board to reject any element of the community-developed output? What redress will be available to the Coordinating Group and/or community if the Board rejects consensus recommendations?

   c) What voting threshold will be used by the Board if it rejects any community recommendation delivered by the Coordinating Group? If the Board will be able to reject the community recommendation on a less than unanimous vote, what is the rationale for such a standard?

d) The proposed plan requires further procedural clarification regarding the final stage of ICANN Board acceptance, referral or rejection of consensus recommendations delivered by community via Coordinating Group (CG). This raises a number of issues that require clarification.

    i) Will there be regular checkpoints between the CG and the ICANN Board, Staff and General Counsel to identify any procedural or legal concerns prior to delivery of recommendation?

    ii) Should the Board find some aspects of the proposal unacceptable, what level of Board support will be required to reject a proposal and will the Board then seek clarifications or changes from the community?

    iii) Will the Board be fully open e.g. including exchanges between the CG, the Board and Staff liaisons and other staff regarding its deliberations on this overall issue?

2) The Report of Public Comments says "ICANN itself is a stakeholder in this process – it has a responsibility to have an active voice in the resources consumed in this effort, and in helping to assess not just the feasibility but also the organizational and public benefit impacts of the potential recommendations."

a) How does ICANN as an organization conceive of its role as a stakeholder in the process?

b) How does ICANN as an organization intend to participate in the process?

c) How does ICANN intend to handle the inherent conflict of interest with developing its own accountability plan?

d) How does ICANN intend to handle the conflict of interest that board members, lawyers, senior staff, and other decision makers have to rigorously pursue reform given their legal obligations to protect the organization?

3) Like the proposed Cross Community Group, Cross Community Working Groups (CCWGs) operate on the basis of consensus. CCWGs almost always permit anyone to participate in all activities except consensus calls and associated polling. Because CCWGs work on consensus, there are no real limits on participation. Designated participation serves only to ensure that the CCWG has a workable number of members, for scheduling and other reasons, and includes participants from all interested SO/ACs. A CCWG creates its own charter, which must be approved by each of the participating SO/ACs. Nothing in the CCWG process would prevent ICANN or the ICANN Board from raising questions for discussion.

a) Why did ICANN propose the "Cross Community Group" rather than a standard CCWG?

4) Typically, the recommendations/report of any CCWG goes back to each participating SO/AC for endorsement. This step promotes transparency and communication and permits each of the SO/ACs to follow their own procedures for review and approval.

   a) Will the final report/recommendations of the Coordination Group be submitted to the SO/ACs for approval before being finalized? If not, why not?

5) The process provides for a participant from a past ATRT Team, as well as a liaison each from the IANA Stewardship Transition Coordination Group and the ICANN Board.

   a) How will the ATRT participant and the IANA Transition Liaison be selected for the Coordination Group?

   b) What is the role of the Board and Staff Liaisons to the Coordination Group?

6) The process establishes that the role of the Cross Community Group is to identify issues for the Coordination Group.

   a) Why is the Cross Community Group not also encouraged to recommend solutions to the Coordination Group?

7) The creation of an "other" category suggests that there are ICANN stakeholder groups that are not reflected in the SO/AC/SG/C structure.

   a) What stakeholders are ICANN seeking to include that cannot be accounted for within the existing SO/AC/SG/C structure

   b) The creation of undefined stakeholder categories creates opportunities for capture. How does the Board intend to address this issue and prevent capture?

8) Referring to the staff-developed plan, the fourth paragraph of the section about the Cross Community Group ends with: "The Cross Community Group will have wide latitude in its discussions, so long as the scope of the process as set forth above is maintained."

   a) What discussions related to Enhancing ICANN Accountability would be considered outside of scope? Who determines that scope?

9) The plan provides for a Public Experts Group that will appoint 7 Advisors to the process.

   a) Will the Public Experts Group issue a call for Expressions of Interest from prospective "expert advisors"? If not, why not?

   b) Why was the "Call for Candidates: Seeking Advisors to ICANN Accountability & Governance Coordination Group posted on 29 August 2014, some days prior to an agreed deadline for receiving community input to the staff plan?"

10) FAQ 2 provides that the role of the 7 Advisors appointed by the Public Experts Group will be to engage with the broader network of public accountability and governance experts as needed; and support the Coordination Group with expert advice and research.

    a) How will the Advisors selected by the Public Experts Group "engage with the broader network of public accountability and governance experts" and for what purpose?

    b) How will ICANN ensure that engagement, advice, and research by these Advisors are provided in a manner that is fully open and transparent?

    c) Will the Advisors also engage with the Cross Community Group and, if so, how will such engagement take place? If not, why not?

11) FAQ 3 says that the Advisors should come from 'outside the ICANN community' and are not limited to engaging with the Coordination Group.

    a) What does it mean to come from 'outside the ICANN community'?

    b) Would this exclude experts who are associated with one of ICANN's SOs, ACs, SGs, or Cs?

    c) Who determines whether an Advisor comes from outside the ICANN community?

    d) Although the Advisors are not limited to engaging with the Coordination Group, are there other limits on the Advisors' engagement and, if so, what are they?

12) FAQs 6, 7 & 8 specify requirements for the Cross Community Group.

    a) Are these requirements absolute requirements even if the Cross Community Group, in developing its charter, believes that there are better ways to handle the applicable issues?

13) FAQ 9 states that "the first task of the Cross Community Group will be to confirm the appointment of the stakeholder expert members of the Coordination Group as identified by the SO/AC/SGs."

    a) Why is this confirmation necessary or desirable?

    b) What standard will the Cross Community Group apply in confirming SO/AC members of the Coordination Group?

    c) Is there any basis on which the Cross Community Group may refuse to confirm SO/AC members of the Coordination Group and, if so, what is it?

    d) Will any role exist for the Public Experts Group beyond the appointment of the 7 Advisors?

    e) Will the Public Experts Group engage with the Advisors that it appoints and, if so, to what ends?

14) FAQ 12 established several criteria that should be considered by the SOs, ACs, and SGs in appointing stakeholder expert members to the Coordination Group.

a) Are SO/AC participants expected to represent their respective SO/AC or independently?

b) What is the proposed process if the Cross Community Group challenges any such appointments?

15) FAQ 17 provides that the Cross Community Group and the Coordination Group may develop their charters that will be reviewed by the Board for scope and that if there is a concern regarding scope there will be a dialogue between the board and the respective group.

a) What topics related to enhancing ICANN accountability do ICANN leadership or the ICANN Board consider to be out of scope?

b) What process will be undertaken if, through discussion, the ICANN Board and the respective group do not come to an agreement regarding scope? Will the view of the Board be deemed to prevail?

c) Under what conditions does the ICANN Board believe it would be appropriate for it to reject a charter developed by one of the respective groups?

16) Given that the Coordination Group consists of 21 people, are we correct in understanding that the seven advisors are advisory only and will not be included in any vote or consensus call?

17) Initially the proposal was made that the Board was going to draft and approve the charters of the two working groups. The FAQ appears to now have been amended to say that the two working groups will be able to draft their own Charters, but that those charters will be vetted by the Board. Please explain any rationale and clarify this point.

18) Why didn't ICANN invite proposals from the community and why wasn't the community involved in the drafting of the staff plan?

19) What is the rationale for so many non-stakeholder decision makers on the Coordination Group, given democratic principles of self-governance?

20) What is the organization's response to the **ICANN #50 Statement of all 4 GNSO Stakeholder Groups** calling for an *independent* accountability mechanism?

Thank you for your careful consideration of these questions and comments, which includes input from our respective community structures. We look forward to participating in the agreed-to 21-day public comment period and engaging in further dialogue on these critical issues.

Signed,

Elisa Cooper, Commercial Business Users, Commercial Stakeholder Group
Olivier Crépin-LeBlond, At-Large Advisory Committee
Rafik Dammak, Non-Commercial Stakeholder Group
William Drake, Non-Commercial Users
Keith Drazek, Registry Stakeholder Group

Heather Dryden, Governmental Advisory Committee

Patrik Fältström, Security and Stability Advisory Committee

Byron Holland, Country Code Names Supporting Organization

Tony Holmes, Internet Service Providers, Commercial Stakeholder Group

Michele Neylon, Registrar Stakeholder Group

Jonathan Robinson, Generic Names Supporting Organization Council

Kristina Rosette, Intellectual Property, Commercial Stakeholder Group