

Dear Fadi and Theresa,

As noted in our previous public comments on “Enhancing ICANN Accountability” the undersigned groups continue to support ICANN’s decision to bring the question of its accountability forward for community development. However, ICANN’s proposed mechanism to create a two-tiered process in the form of a “Community Assembly” and “Community Coordination Group” (Staff’s Proposal) deviates from ICANN’s long-established policy development process and, instead, creates a new process in which the community has a minority role in the final development of policy.

We write to express our views and concerns with the process in its current form, and call instead for ICANN to support a Cross Community Working Group (CCWG) and to prevent additional delays in moving forward on this important issue. ICANN staff must align its suggested approach with the community on this critical issue.

At the outset, we note that the full community has not yet had the opportunity to properly review, discuss, and comment on Staff’s Proposal. Given ICANN’s determination to call for support from community leaders on Staff’s Proposal, with little notice and a short deadline, we believe we must make clear our concerns.

Our paramount concern is that a bottom-up consensus process to design independent accountability mechanisms for ICANN staff and board should be controlled by the community—not by ICANN staff and board.

Rather than proceeding with a community driven initiative, traditionally accomplished through a CCWG, ICANN Staff have instead created a new proposed bifurcated process without involving the community until a late stage.<sup>1</sup> The Staff Proposal creates a process which provides the community limited opportunity to identify issues for discussion (the “Community Assembly”) and extremely limited and controlled participation in the group that actually determines the issues from which it will build recommendations (the “Community Coordination Group”).

Indeed, Staff’s Proposal for enhancing accountability proposes that ICANN steer the accountability process through appointment of the majority of members of the “Community Coordination Group”, which has the primary role of (1) determining which community identified issues it will respond to, (2) building solution requirements for issues, and (3) creating and issuing the final report and recommendations. The actual ICANN community is limited to one participant from each SO/AC on the Community Coordination Group and has no say or oversight in the selection of up to seven external advisors, ICANN Staff representatives, Board liaison, or others.

The concession to the community is that it may participate as an “observer” to the Community Coordination Group. While such observation status may give some transparency to the process

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<sup>1</sup> Indeed, we note the document outlining this new proposed process was first provided to the community for input only after ICANN was on version 13 of the document.

(as is required), it does not allow for true community participation and actual ownership of the process. Observation is not bottom-up participation in the process; it is observation of a process.

Staff's Proposal does not respond to the community's near unanimous call for a genuine bottom-up multi-stakeholder process. Indeed, the proposal appears to ignore community comments and allows the ICANN staff and Board to ultimately control the outcome of the accountability discussions.

We believe it is important to re-submit the GNSO community's London joint statement here, to ensure ICANN's Staff and CEO have the opportunity to refresh their understanding of the statement and that it does not get lost in the mix of comments. We highlight particular sections that relate directly to Staff's Proposal:

*The entire GNSO join together today calling for the Board to **support community creation of an independent accountability mechanism** that provides meaningful review and adequate redress for those harmed by ICANN action or inaction in contravention of an agreed upon compact with the community. This deserves the Board's serious consideration - not only does it reflect an unprecedented level of consensus across the entire ICANN community, it is a necessary and integral element of the IANA transition.*

*True accountability does not mean ICANN is only accountable to itself, or to some vague definition of "the world," nor does it mean that governments should have the ultimate say over community policy subject to the rule of law. Rather, the Board's decisions must be open to challenge and the Board cannot be in a position of reviewing and certifying its own decisions. We need an independent accountability structure that holds the ICANN Board, Staff, and various stakeholder groups accountable under ICANN's governing documents, serves as an ultimate review of Board/Staff decisions, and through the creation of precedent, creates prospective guidance for the board, the staff, and the entire community.*

*As part of the IANA transition, the multi-stakeholder community has the opportunity and responsibility to propose meaningful accountability structures that go beyond just the IANA-specific accountability issues. **We are committed to coming together and developing recommendations for creation of these mechanisms. We ask the ICANN Board and Staff to fulfill their obligations and support this community driven, multi-stakeholder initiative.***

In addition to the cross-community statement made in London, we took the opportunity to review all the public comments submitted to ICANN in connection with "Enhancing ICANN Accountability" to see if ICANN took these comments into account in developing the Staff Proposal.

- Only 3 comments specifically made statements in support of the originally posted staff approach.
- 23 out of 47 substantial submissions did not comment on the originally posted staff approach, but rather provided specific ideas for how to improve ICANN accountability.

- 20 key comments out of these 47 substantial submissions were ignored by staff in developing their proposed approach:
  - 12 submissions stated that ICANN staff or Board should not manage or control the discussion;
  - 7 submissions said specifically that the community or some combination of community members and staff/board should select the experts;
  - 4 submissions pointed out that ICANN is conflicted in this process;
  - 4 submissions said a CCWG should be used;

Given our findings, we call on ICANN to provide a summary and analysis of its consideration of public comments and how the public comments support the Staff Proposal. We do not find such support in the comments and, as a result, do not believe the Staff Proposal reflects a workable process to advance the creation of a true independent accountability mechanism called for by the community in London.

The community must be in control of the bottom-up, consensus process that will create independent accountability mechanisms to act as oversight on ICANN Staff and the Board – not the staff and Board. The Staff Proposal is, in reality, a brand new construct sitting on top of, and potentially stifling, the legitimate bottom-up community input process. Such a mechanism will not only create delays in implementation, but will limit community dialogue and participation as a result. The groups signing on to this letter are not aligned with Staff’s Proposal.

We believe the community is, however, aligned, in implementing a CCWG to address these important issues. We agree that, as part of this process, independent experts have a key role in providing advice to the community. We do not agree that the experts should be selected exclusively by ICANN staff and Board. We commit to participation in a process of identifying and engaging with such experts, and call on ICANN’s support in this endeavor.

We call on ICANN to prevent further delay and allow this process to move forward so the community can begin prioritizing the accountability reforms that are necessary to enable a timely and successful IANA transition.

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