

Specific WS-2 Accountability Recommendations For SO-ACs from CCWG – Accountability WS 2 Final Report

GAC Support staff has closely reviewed the CCWG – Accountability WS2 Final Report (24 June 2018)(hereinafter WS Final Report) (see <https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf>) and identified a total of forty-two (42) WS2 Final Report recommendations that impact the GAC in some way or form.

Those individual recommendations have all been identified in this document (see **bold blue font text**) to help further GAC information sharing, discussion and deliberations at the ICANN67 Cancun public meeting.

The purpose of this documentation is to simply identify the scope of the recommendations calling for GAC implementation. Implementation plans and priorities for addressing these recommendations will be developed by GAC members and memorialized in separate documentation.

1 - Recommendations to Improve Diversity (5 recommendations)

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:

- **Geographic or Regional Representation**
- **Language**
- **Gender**
- **Age**
- **Physical Disability**
- **Diverse Skills**
- **Stakeholder Group or Constituency**

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.

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

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 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.

2.1 Recommendations for guidelines with respect to Petitions for removal:

2.1.1 May be 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

3 - Recommendation for a Framework of Interpretation for Human Rights -- Human Rights Core Value (Annex 3)(2 recommendations)

This section contains language from Annex 3 of the WS 2 Final Report that provides guidance to ICANN org and the community regarding consideration/application/implementation of the CCWG Report language.

CONSIDERATIONS BY THE HUMAN RIGHTS SUB-GROUP – An assessment of the
“CONSIDERATIONS LANGUAGE (FROM ANNEX 12 CCWG REPORT, PARAGRAPH 24)

In order to put the Human Rights Core Value into practice, ICANN, the community as well as the organization, will need to consider how to reflect this Core Value in their policy and operational processes.

Recommendation –

Each SO and AC should take the Core Value into consideration in its policy development or advisory role. It is up to each SO and AC, and ICANN the organization, to develop their own policies and frameworks to fulfill this Core Value. In doing so, the SOs and ACs, as well as ICANN the organization, should also take into account the requirement to balance the Core Values.

Recommendation –

Supporting Organizations could consider defining and incorporating Human Rights Impact Assessments (HRIAs) in their respective policy development processes. HRIAs should not consider particular human rights in isolation since they are universal, indivisible, interdependent, and interrelated. Given the interrelated nature of Core Values, the Supporting Organizations could also consider other Core Values, as part of the balancing required by the Bylaws.

Advisory Committees could also consider similar measures defining and incorporating HRIAs in their respective processes. When examining its operations, ICANN the organization could consider instruments such as HRIAs to assess its impact on human rights. However, this is up to ICANN the organization to develop and implement. The results of such HRIAs should be reflected in ICANN’s annual reporting.

Recommendation – *(mentions GAC advice, but not necessarily GAC action)*

“Consider what effect, if any, this Bylaw will have on ICANN’s consideration of advice given by the Governmental Advisory Committee (GAC)” (from Annex 12 - Paragraph 24)

ICANN’s Mission, Commitments, and Core Values, including the Human Rights Core Value, should be taken into account by the SOs and ACs, and ICANN the organization when considering policy matters. The Board will need to take into account ICANN’s Mission, Commitments, and Core Values, including the Human Rights Core Value, in considering all matters before the Board, which also includes advice given by the GAC.

4 - Recommendations on Jurisdiction (Potentially 1 Action/Recommendation)

The introductory portions of Recommendations 4.1, 4.2 are reproduced here for informational purposes, but do not require any GAC action.

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.

4.2 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.

(Due to the importance of Recommendation 4.3 to a number of GAC Members, this section from the WS 2 Final report is reproduced in its entirety.)

“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 Ombudsman (IOO) (0 recommendations)

These recommendations did not appear to include any obligations for implementation by SOs and ACs.

6 - Recommendations to Increase SO/AC Accountability (32 Recommendations)

The WS2 Final Report created an extensive list of Good Practices. The Final report stated that, “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.

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.

7 - Recommendations to Improve Staff Accountability (3 Recommendations)

These recommendations largely call upon the ICANN organization to put new processes in place, but there are a few instances where community collaboration is expected – as listed below.

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.

8 - Recommendations to Improve ICANN Transparency (0 recommendations)

These recommendations did not appear to include any obligations for implementation by SOs and ACs.

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This February 2020 version of this document will initially be posted on the GAC website in the “Documentation” section of the GAC Operating Principles Evolution Working Group (GOPE WG) webpage - <https://gac.icann.org/working-group/gac-operating-principles-evolution-working-group-gope-wg - wg-doc-head>. It may be published elsewhere after further GAC discussions of this topic area.

