

Registries Stakeholder Group Statement

Issue: **Recommendations to improve ICANN's Transparency.**

Date statement submitted: **April 8, 2017**

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

Background

- The CCWG-Accountability Work Stream 2 formulated draft recommendations to improve ICANN's Transparency.
- The CCWG-WS2 recommendations cover issue that were not essential for the transition and could not be completed in CCWG-WS1 due to time constraints.
- The recommendations cover four areas for improving ICANN's Transparency:

Documentary Information Disclosure Policy (DIDP)

21 recommendations

Documenting ICANN's interactions with governments

1 recommendation

Transparency of Board Deliberations

3 recommendations

Improving ICANN's Anonymous Hotline (Whistleblower Protection)

8 recommendations

The Registries Stakeholder Groups (RySG) welcomes the opportunity to comment on the CCWG-Accountability Work Stream 2 Draft Recommendations to improve ICANN's Transparency.

The RySG wishes to applaud the work by the members of the CCWG-WS2 and the WS2 Subgroup on ICANN Transparency. Transparency is instrumental for ICANN's accountability and contributes ultimately to increasing community and stakeholder trust in the ICANN organization. The presented draft recommendations offer many improvements to ICANN's transparency and the RySG expects them to be implemented within the shortest possible delay.

The RySG opposes however any disclosure policy that would require ICANN to disclose any information in any form that it holds under a contractual duty of non-disclosure unless, and to the extent, that such information must clearly be disclosed under applicable law and unless, and to the extent, expressly permitted by the party(ies) to whom ICANN owes such a duty of non-disclosure.

The Draft Transparency Report acknowledges that “*non-disclosure clauses which are already in place should be respected, so that, going forward, contractors can decide for themselves whether they wish to engage with this open and transparent way of doing business*” (page 9). However, this is not reflected in recommendations 11 and 16 :

Recommendation 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”.*”

Recommendation 16: *“ICANN should consider adopting open contracting, whereby all contracts above \$5,000 are automatically disclosed, and non-disclosure clauses are limited in their application to the legitimate exceptions found in the DIDP.”*

The recommendations should include text to guarantee that any existing contract must be honored in accordance with its terms irrespective of the new DIDP to cover among other information disclosed to ICANN under a non-disclosure agreement. Further, any new contract containing a non-disclosure agreement should have ICANN boilerplate text (in prominent font) informing the contracting party that information disclosed to ICANN is subject to public-interest disclosure. If that text did not appear then the DIDP should not apply.

The RySG is further concerned that some of the recommendations may impose a burden on DIDP staff or may have significant budgetary implications that might not be in proportion with the intended goal of the policy. ICANN is in a better position to assess possible cost drivers and to suggest fine-tuning (subject to community comment) that manages operational impact while maintaining a robust DIDP policy. **Nonetheless, the RySG believes that some additional work is required on the DIDP to ensure that the operational impact to ICANN is maintained at a reasonable level consistent with such a robust policy.** This might include steps to prevent unreasonable fishing expeditions, the imposition of costs on requests demanding ICANN-staff effort beyond a certain level, or other such approaches. At bottom, however, the RySG believes that the draft DIDP policy is not yet ready for final approval.