

GNSO Registries Stakeholder Group Statement

Issue: CCWG Accountability 3rd Draft Proposal on WS1 recommendations

Date: 19 December 2015

Ref: <https://www.icann.org/public-comments/draft-ccwg-accountability-proposal-2015-11-30-en>

1. Statement of Qualified Support:

The Registries Stakeholder Group (RySG) generally supports the third draft proposal released by the CCWG Accountability on November 30th and thanks the CCWG for this opportunity to comment. Nonetheless, we note below a number of concerns and/or comments with respect to the proposal. Our final support at the GNSO will be conditioned on how our concerns are addressed.

2. Specific Comment Regarding Stress Test 18 and GAC Issues:

Requiring that the Board reject GAC Advice with a 2/3 majority is a significant change. The ICANN community overwhelmingly opposed the bylaws amendment proposed in 2014 that sought to implement this same hurdle. The proposed increased threshold makes it far more likely and far easier for the GAC to use its advisory role to overturn policies developed through the bottom up, multistakeholder policy development process and implementation of those policies. If, however, the community decides to raise the threshold to two-thirds, certain steps should be taken to ensure the quality and clarity of GAC advice considered at this higher threshold:

- First, GAC advice must be accompanied and supported by a rationale. The CCWG's suggestion that "the Advisory Committee will make every effort to ensure that the advice provided is clear and supported by a rationale" is insufficient.
- Second, any GAC Advice accepted by the Board or any mutually agreeable solution agreed by the Board and GAC must be consistent with ICANN's bylaws and must be solely within the GAC's appropriate scope (i.e. public policy matters) and not open-ended or within the scope of other SOs/ACs.
- Third, GAC advice must be approved by general agreement in the absence of formal objection as this term is understood under the GAC Operating Procedures in effect as at 21 December 2015.

The RySG would be unlikely to support a proposal wherein consideration of GAC advice would require a 2/3 threshold for rejection where these conditions were not met.

3. Specific Concerns/Comments:

- Thresholds of Support -- We agree with the ICANN Board's recent intervention that the issue of thresholds of support related to community powers warrant more discussion and amendment. Specifically, we feel so strongly about three prior suggestions that we repeat them here as a matter of urgency:
 - First, fees from gTLD registrants, registrars, and registries fund over 95% of ICANN's revenue and certain gTLD fee levels are set in the ICANN budget. These facts must be taken into consideration when defining voting rights within the Empowered Community relating specifically to budgets and strategic plans. We suggested in the last round that this could be addressed by requiring GNSO concurrence on such matters – we continue to hold to that view.
 - Second, we similarly believe that some form of appropriately weighted voting within the Empowered Community should be accorded to SOs/ACs on bylaws-amendments affecting their particular area of interest – specifically, ASO concurrence on amendments to Bylaw Article VIII, ccNSO concurrence on amendments to Bylaw Article IX, GNSO concurrence on amendments to Bylaw Article X, and, ACs concurrence on amendments to Bylaw Article XI.
 - Third, if the community is considering the filing of a community IRP that relates specifically to one of the ICANN communities (e.g. GNSO, ccNSO, ASO, etc.) and/or if the filing of the IRP would have a negative impact on the implementation of an initiative from that community (i.e. implementation delay), then there should be some additional weighting for that community that would be most impacted by the decision to move forward with an IRP.
- The RySG particularly notes that its support for this proposal is premised and conditioned on the understanding that the proposal is specifically designed for, and limited by its terms to, providing for ICANN accountability following the NTIA-directed IANA transition. The new proportionality of representation within the Empowered Community, i.e. equivalence of SOs and ACS, is proportionality derived for the sole purpose of making the community mechanism function – and is specifically not intended to set precedent for the design or shape of any other ICANN entity including the Board.
- The community escalation timelines (first mentioned in the main draft starting on page 16, paragraphs 72 through 80) are extraordinarily tight and fail to take any account of the almost inevitable delays that affect any human endeavor such as these. Recall that SOs and ACs have their own multistakeholder processes to follow. These timelines could impede the reasonable ability to exercise community power. And the consequence of failure to meet the timelines is not specified – is it forfeiture of that particular exercise? We suggest some remediation here --

either a reasonable “slippage” factor to be inserted following each stated deadline, or perhaps a “notice and opportunity to comply” process. At the same time, we are concerned about a timeline that extends too long, thereby paralyzing the Board and the community from implementing important initiatives. The right balance must be struck.

- Draft interim bylaw respecting Human Rights work in Work Stream Two: An interim bylaw is proposed in main draft, paragraph 224, first bullet, second sub-bullet. It envisions that the WS2 work will be done by the CCWG itself “or another cross-community working group chartered for such purpose by *one or more*” (emphasis added) SOs or ACs. If a separate CCWG takes up this work we believe it should undergo the same chartering process that this CCWG itself did.

4. Reservation of Right for Further Comment:

There are a number of topics where additional information is yet to be provided by the CCWG, for example IRP details (Annex 07), caretaker budgets for ICANN (main draft, paragraph 147) and IANA Functions (main draft, paragraph 153), and, not least, actual bylaws language for both new and amended bylaws. The RySG reserves the right to offer comments on these and other newly provided information.

5. Final comment:

The RySG commends the co-chairs, rapporteurs, members, participants, staff, independent legal counsel, and advisors for the tremendous, time-consuming effort and dedication to produce this third draft proposal. We stand ready to provide further comments as requested, including on draft bylaws as and when they are finalized.