

GNSO Registries Stakeholder Group Statement

Issue: CCWG Accountability 2nd Draft Proposal on WS1 recommendations

Date: 12 September 2015

Ref: <https://www.icann.org/public-comments/ccwg-accountability-2015-08-03-en>

1. Statements of Support:

- First, the Registries Stakeholder Group (RySG) supports the second draft proposal released by the CCWG Accountability on August 3rd and thanks the CCWG for this opportunity to comment.
- While the RySG supports this proposal in general, more time is warranted to a) consider the ICANN Board's recent interventions (and comments) regarding the draft proposal and b) stress test proposed IRP changes.
- The RySG specifically concurs with and strongly supports retaining Stress Test 18 in the draft proposal (see Section 10.3 starting page 84, paragraphs 609 – 626).
ICANN Board's obligation (together with the GAC) to seek a mutually acceptable solution to un-accepted GAC advice will continue exactly as it has up to the present, namely only when the GAC advice in question is supported by consensus among governments as defined in GAC Operating Principle 47. Thus GAC consensus advice continues to be given deference than advice from any other Advisory Committee On public policy matters. (ST18 is not addressed to the GAC but to the Board – it clarifies how the Board should treat the different types of GAC advice.) Stress Test 18 seeks to formally adopt present practice while recognizing that GAC remains free to determine how it renders advice on public policy matters. The RySG believes that the amendment prompted by Stress Test 18 is necessary for the transition and will work to reinforce the functioning of the multi-stakeholder ICANN community.

2. Requests for Change:

- The RySG believes that the GAC's ability to take up an allotment of community votes in the future as part of the CCWG proposal accountability process (see paragraph 337 under Section 6.2) should invoke a choice with regard to the particular issue at stake– that is, if the GAC chooses to take up voting on any specific issue it should then no longer be entitled to special Board deference for finding solutions to GAC advice on any such issue that the Board does not follow (bylaws art. XI, Section 2.1.j.). This should be made explicit in the CCWG proposal.
 - The RySG considers an enhanced Documentary Information Disclosure Policy as an essential component of the rules relating to the conduct of the enhanced Independent Review Process. The enhancement articulated in paragraph 268, subparagraph 21 (“Transparency”) under Section 5.1 should not simply be recommended but instead should be made mandatory for IRP and other appeals processes.

- Fees from gTLD registrants fund over 95% of ICANN's revenue and this fact should be taken into consideration when defining voting rights relating to budgets and strategic plans. A possible example: GNSO concurrence required on such matters.

3. Request for Clarification:

- The enhanced IRP will not be up and running until well into, or following the completion of, WS2. How will there be an assurance that ICANN will follow through with its commitments pending the enhanced IRP (short of having to remove board members or recall the entire board)? The RySG suggests one possible idea would be to create a contract between ICANN and any SO or AC that elects to be a party that would allow for specific performance remedies to follow through with the transition plan arrangements.

4. Answer to Question on Human Rights:

- As between the two alternative statements of a commitment to Human Rights in paragraph 151, the RySG prefers the second, i.e.:
 - *Within its mission and in its operations, ICANN will be committed to respect internationally recognized fundamental human rights.*

Whatever "commitment" language is adopted, contracted parties should not be called upon to be HR police. Further, the RySG calls for more specificity in the human rights committed to in ICANN's limited, technical mandate.

5. Items for Further Discussion:

- With respect to bringing the Affirmation of Commitments language regarding WHOIS into the bylaws (paragraphs 580 – 587), the RySG supports this effort but suggests that it allow for the WHOIS concept to evolve while taking into account the reasons for the WHOIS policy in the first place and current thinking on access and data protections.
- The CCWG should consider special weighted voting to apply when a proposed change affects SOs or ACs differently (e.g. changes to bylaws articles VIII, IX, X, or XI).

6. Observation:

- The RySG examined the possibility of recommending an avenue for the community to appeal an IRP decision that the community largely agrees misinterpreted a fundamental principle such as a bylaw or article of incorporation. We have been unable to complete that discussion at this time as there are strong views both in favor of and against that possibility.

7. Final comment:

- The RySG commends the co-chairs, rapporteurs, members, participants, staff, independent legal counsel, and advisors for their dedicated work and thoughtfulness to produce this report. We stand ready to provide further comments as requested, including on draft bylaws as and when they are finalized.