Internet Services Provider and Connectivity Provider Constituency (ISPCP) comments on the 2nd Draft Proposal of the Cross Community Working Group (CCWG) on Accountability

The Internet Services Provider and Connectivity Provider Constituency (ISPCP) respectfully submit the following comments on the CCWG Accountability 2nd Draft Proposal.

We acknowledge the important work made by the CCWG members and participants. We welcome this new draft and, specifically, the efforts of the group to take into account the remarks expressed by the community on the first draft.

In particular, we welcome the efforts to enforce accountability by empowering the multistakeholder community.

The CCWG is now proposing the Community Mechanism as a Sole Member Model. It relies on direct participation by SOs and ACs in this sole member for exercising the community powers but will not require any of them to have legal personhood. This model addresses the jurisdictional and legal issues that ISPCP raised in its comments to the first draft.

We make no comment on whether the Sole Member Model is the only or best way to achieve enforceability. Whether another approach could achieve legal enforceability is a matter for legal experts. We simply state that for the ISPCP, it is crucial that the reforms proposed by the CCWG remain simple and are enforceable: the Board must not be the final arbiter of whether they take effect. In particular, materially affected parties, including ISPs and other non-contracted parties, must have the right to complain to the IRP for binding arbitration if they believe ICANN has acted inconsistently with its own Bylaws and Mission. This right must be enforceable, including, if necessary, in court.

We remain silent on the question of whether to choose the Single Member Model, provided that the criteria for any successful model are met. Nonetheless, we have some concerns with proposed details of the implementation of the Single Member Model, as proposed.   We are suggesting the proposal requires further improvement in the following areas:

- the important question of the weights of the various parts of the community in the community mechanisms,
- the process proposed for removing an individual Director.

1. The weights of the various parts of the community in the community mechanisms.

This very important question is key to the accountability mechanisms proposed by the report.

This issue was raised during the first comment period by a significant part of the community, but remained unchanged in this second draft with the argument that "the proposed voting weight attracted the most support from the WG participants during the last meeting". ISPCP believes this is not the best way to address the feed-back given by the community in response to a public call for comments.

The unchanged proposal is made without analysis of the rationale behind the approaches presented.

The weight proposed for the GNSO does not take into account the specifics of this supporting organization. All policies related to the gTLDs are made within ICANN, whereas policies related to the number part are developed at regional level and most of them are regional policies. In a similar way policies related to the ccTLDs are only related to delegation/re-delegation at top level.

As an example, the IRP proposal described in the CCWG proposal aims at overhauling and reforming ICANN's existing IRP, calling for it to be held to a substantive standard of behavior and a process that would be binding, accessible, transparent and efficient.

ISPCP supports those principles. We notice however that because policy authority for ccTLDs and for numbering policy remains with their respective communities, not with ICANN, it should not be possible to invoke the IRP to challenge those policies.

The GNSO is a large and complex organization comprising a large diversity of players (Registrars, Registries, Business, IPC, NPOC, NCUC, ISPCP) each of them needing to be directly represented. ISPCP suggests that 7 seats be allocated to GNSO (1 Registries, 1 Registrars, 1 BC, 1 IPC, 1 ISPCP, 1 NCUC, 1 NPOC) in the community mechanisms decision body described in the document.

By virtue of perennial experience we question whether the role of the GAC will allow them to act by voting. In particular, it cannot be excluded that GAC voting on operational issues like IANA functions may impact public policy matters. Therefore we recommend the GAC remaining in its incumbent advisory role – with influential participation but no voting.

2. Removal of individual Directors.

In its introduction, the 2nd draft report states that: "The Community organization that appointed a given Director could end their term and trigger another reappointment process. The general approach is that the appointing body is the removing body, but the process includes community wide discussion before such as a step is taken".

ISCPC is sympathetic to concerns that putting both the selection and removal (outside of normal term expiration) of specific Directors in the hands of a single SO/AC could cause the Board to function as a Parliament or Senate where individual members represent only their appointing constituency. We believe that in order for the Board to perform in the best interest of the community as a whole, the

Directors, once selected, should represent, and be answerable to, the whole community and not solely to the smaller communities that selected them.

In practice, the proposed approaches are different for SO/AC appointees and for NomCom appointees. Those directors appointed by an SO or the At-Large community could be removed by that community only. For directors appointed by NomCom, any SO or AC would be able to petition for removal and SOs and ACs participating in the Community Mechanism as Sole Member would vote on that removal.

ISPCP suggests a more collective approach where directors appointed by an SO or At-Large community could be removed through a petition process by any SO or AC and a vote by SOs and ACs participating in the Community Mechanism as sole member.

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