

ICANN call for public comments on Enhancing ICANN's Accountability

Response from the Number Resource Organization (NRO)

6 June 2014

The NRO thanks ICANN for the opportunity to comment on means for improving its accountability, and we provide the following responses to the questions contained in the call for comments:

<https://www.icann.org/public-comments/enhancing-accountability-2014-05-06-en>

1. What issues does the community identify as being core to strengthening ICANN's overall accountability in the absence of its historical contractual relationship to the US government?

Regarding ICANN's accountability with respect to IP addressing functions, we believe that the ASO structure provides a necessary and sufficient separation between policy formation and policy implementation. Global IP addressing policy is developed by the RIR communities and passed via the ASO to ICANN, in accordance with the ASO MoU; while policy is implemented by the IANA in the form of services delivered to the RIRs under specific service agreements.

While these existing mechanisms have proven successful over the past 10 years, we believe that a review is appropriate at this time, prior to the expected NTIA transition, along with reviews by each of the RIRs of their own accountability mechanisms.

Notwithstanding any improvements needed, these agreements must clearly define appropriate dispute resolution, escalation and arbitration procedures. We note that there is no agreement or expectation of any role for the USG NTIA in these processes; therefore we do not view the historical contractual relationship between ICANN and the US government as an accountability mechanism, and neither do we consider the NTIA's role as a source of ICANN's accountability with respect to Internet number resources. In the hypothetical case that IANA had ever failed to provide number allocation services to any RIR in accordance to existing policies and agreements, we would have not relied upon the US government to solve this issue. Rather we would have worked transparently with ICANN, in accordance to the terms of existing agreements, to address the issue.

The NRO is committed to continue to work with ICANN to strengthen escalation and dispute resolution mechanisms to allow the parties to work better in any hypothetical case of failed expectations.

2. What should be the guiding principles to ensure that the notion of accountability is understood and accepted globally? What are the consequences if the ICANN Board is not being accountable to the community? Is there anything that should be added to the Working Group's mandate?

The NRO does not believe that the contract with the US government should be replaced with a similar mechanism at a global level, therefore a guiding principle is specifically not to create any "superior" structure or organisation; rather ICANN's accountability should be defined in terms of transparent agreements with ICANN stakeholders, in which roles and responsibilities, and dispute resolution and arbitration mechanisms are fully defined.

We believe that a failure by ICANN to abide clearly by established accountability mechanisms, and in particular by defined dispute resolution and arbitration mechanisms should have clear consequences, and therefore that arbitration mechanisms should be binding. Furthermore, they must be implementable and effective upon ICANN, regardless of its final structure or locale.

The guiding principles for defining or strengthening these accountability mechanisms should be: that they are transparent, implementable and open to improvement; and that they operate in the interests of the open, stable and secure operation of the Internet.

3. Do the Affirmation of Commitments and the values expressed therein need to evolve to support global acceptance of ICANN's accountability and so, how?

The NRO believes that the Affirmation of Commitments is a good umbrella covering higher-level issues that may not be specifically included in existing contracts, MoUs, accountability frameworks and documents that govern ICANN's relationships with its different stakeholder groups. While the most important accountability of ICANN is with its respective stakeholders and community, the Affirmation of Commitments and its evolution could support wider trust in ICANN's ongoing operations at the international level.

We believe that this evolution could take the form of a new affirmation into which many more stakeholder communities, including Governments, would enter.

4. What are the means by which the Community is assured that ICANN is meeting its accountability commitments?

The current contracts, MoUs, accountability frameworks and documents that ICANN currently has with different parts of its community provide certain levels of accountability. These documents can evolve and improve however this should be an ongoing process which continues beyond the end of NTIA's role, and throughout the entire lifetime of ICANN.

5. Are there other mechanisms that would better ensure that ICANN lives up to its commitments?

If ICANN can in time be incorporated as an international organization under international law, this may provide the ICANN community with additional mechanisms to solve disputes through mediation, arbitration or judicial avenues; and added confidence in the ability to serve stakeholders uniformly across the globe. While we would like this possibility to be actively explored by ICANN, we do not believe it is a necessary prerequisite to any of the other measures described in this response, but welcome continued engagement with the global stakeholder community on this topic.

6. What additional comments would you like to share that could be of use to the ICANN Accountability Working Group?

The NRO notes the present clarity of responsibility that exists with respect ICANN's roles in administration of Internet protocol identifiers for the IETF and Internet number resources for the Internet address community, and suggests that it might helpful for the ICANN Accountability Working Group to examine these successes in its efforts. The NRO expects to contribute and work together with the ICANN Accountability Working Group, and other stakeholders in the ICANN community, to improve mechanisms for enhancing accountability in the years to come.