

Report of Public Comments

Title:	Expert Recommended Improvement to ICANN's Accountability Structures	
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Section I: General Overview and Next Steps		
<p>Arising out of Recommendations 23 and 25 of the Accountability and Review Team's Final Report, ICANN convened a panel of three experts to review ICANN's Accountability Mechanisms and to provide recommendations for improvements. The Accountability Structures Expert Panel (ASEP) is comprised of three international experts in the fields of corporate governance, accountability, judicial review and international dispute resolution. After significant review and evaluation, the ASEP provided a report on recommended enhancements. Proposed Bylaws changes to give effect to the ASEP's recommendations were also posted for public comment.</p> <p>The two comments (one to the report and one reply) received, to the extent they called for changes to the ASEP's recommendations, were provided to the ASEP for consideration. After review of the comments, no changes to the ASEP recommendations are recommended, and the report will be forwarded to the Board for consideration and action, along with the proposed Bylaws amendments.</p>		
Section II: Contributors		
<p><i>At the time this report was prepared, a total of two community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>		
Organizations and Groups:		
Name	Submitted by	Initials
gTLD Registries Stakeholders Group	Paul Diaz	RySG
Individuals:		
Name	Affiliation (if provided)	Initials
Alejandro Pisanty		AP

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

The RySG provided lengthy comment, primary of which is the application of the standard of review proposed for the Independent Review process (IRP), noting that it may be possible for the Board to violate its Articles of Incorporation or Bylaws while acting without a conflict of interest or acting in a manner it believes to be in the best interest of ICANN. The RySG noted its belief that this will “frustrate[] the overall purpose of the IRP.” The RySG also questioned the recommendation of implementing a standing panel for the IRP, and the eligibility for any tribunal should remain open. Three areas of clarification were also identified for the Reconsideration process. First, is a request that “participation” include participation through a constituency or stakeholder group, which is how many are involved in the ICANN Community. Second, the RySG questioned the introduction of terms and conditions as part of the submission of a Reconsideration Request, noting that it is important that nothing in those terms and conditions waives a right to proceed with alternative relief. Finally, the RySG emphasized the import of the Board following crisp timelines when considering Reconsideration Requests. In closing, the RySG commented on the time constraints placed on the ASEP’s work, and called for further time for consideration of the recommendations.

AP noted that the ASEP recommendations “go a long way into establishing clear processes, placing the burden of proof in complaints at the right place, and creating a commitment by all parties to the results of the processes they engage in.” AP commented in favor of the establishment of a standing panel, in contrast to the RySG, noting that “previous experience in the panels will become an asset” in terms of expediency and predictability of decisions. AP noted that there are items to be kept in mind, as the panel could focus more on legal and process knowledge and less on subject matter expertise, which may not be the right path. In addition, the creation of more formalized process gives the risk of entering more bureaucracy, so care has to be given to implementing the recommendations in a positive way.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

After review of the comments in coordination with the ASEP, in response to the RySG, it is important to note that the imposition of a standard of review into the Independent Review process assures that the process will be used for review, and not for a rehearing. There is a need for Board decisions to be able to be relied upon and implemented, unless there is the type of failure identified by the ASEP (decision taken in violation of the Articles of Incorporation or Bylaws, or with a conflict of interest, or not believed to be in the best interests of the organization). As suggested by AP, the inclusion of a standing panel will allow for more efficient decision making and a greater degree of consistency in

those decisions. The fact that there is a standing panel is not expected to infringe on the independence of that panel. AP's caution of not allowing the panel to add delay and bureaucracy is well taken, and should be considered in the final implementation of the revised IRP.

To address the RySG concern about the potential abrogation of rights to proceed to court, the recommendations do not include any suggestion that a party would have to waive rights to proceed to court, and that will not be a term and condition of a submission form.

Prior to submitting their report, the Board Governance Committee offered to the ASEP that more time could be allotted to finish their work. The ASEP declined this offer, as they did not believe that additional time would result in added value to their recommendations.