Accountability Structures Expert Panel (ASEP) – Project Plan
September 2012

The Accountability Structures Expert Panel (ASEP) was comprised to complete the work identified in Recommendations 23 and 25 of the Accountability and Transparency Review Team (ATRT). The text of those recommendations is attached to this Project Plan.

To fulfill this work, the ASEP will conduct the following tasks:

- Perform historical review of ICANN Accountability Structures and the formation of those Structures
- Gain understanding of the Recommendations arising from the Improving Institutional Confidence Report and community reaction to proposed modifications
- Perform review of community's use of Reconsideration and Independent Review processes to date
- Identify areas where the current accountability structures can be improved, with particular focus on process improvements, keeping in mind the goals of ICANN's service to the public interest, ease of understanding process, predictability of process, cost for complainants, cost to the ICANN community, timeliness and scope.
- In identifying potential improvements, the ASEP must consider any legal requirements that ICANN is obligated to follow in it operations.
- Consider the establishment of metrics, if possible, by which ICANN can measure the efficacy of its accountability structures.
- Monitor and consider community input provided to the ASEP.
- Provide recommendations based on the work above, in the form of a presentation or report, identifying suggested changes to the accountability structures.

The ASEP will achieve this work in three phases:

- **Phase 1 – Planning**
- **Phase 2 – Data Gathering**
- **Phase 3 – Recommendations**

Phase 1 – Planning
Target Date for completion of Phase 1 - 1 October 2012
Tasks:
1. Perform initial review of existing accountability structures and formation thereof.
2. Perform initial review of recommendations arising from the Improving Institutional Confidence Report and community reaction.

3. Perform initial review of legal requirements that ICANN is obligated to follow.
4. Identify targets for outreach for additional input on community experience with the Reconsideration and Independent Review processes.
5. Monitor and consider community input provided to the ASEP.

Phase 2 – Data Gathering
Target date for completion of Phase 2 - 19 October 2012
Tasks:
1. Perform outreach to parties who have used the Reconsideration and Independent Review processes to identify what they believe to be the positive and negative aspects of the processes.
2. Perform outreach to Board Governance Committee members for input regarding BGC experience with Reconsideration process and evaluation of effectiveness of process from Board member perspective.
3. Consider metrics for measuring the success of the accountability structures.
4. Perform more intensive review of records of prior Reconsideration and Independent Review proceedings.
5. Attend ASEP session at ICANN meeting in Toronto for further community input.
6. Monitor and consider community input provided to ASEP

Phase 3 – Recommendations
1. Deliver recommendations for posting for public comment – **Target Date for posting – 1 November 2012**
2. Coordinate with ICANN to draft proposed Bylaws revisions to give effect to the recommendations - **Target Date for posting – 1 November 2012**
3. Review public comment to determine if refinements to recommendations may be warranted**, ongoing, through close of comment period**

Initial Considerations

Resulting from its review and research to date, the ASEP has identified some items for initial consideration. The ASEP looks forward to hearing from the community on these topics, both through the ASEP page referenced below and during the meeting in Toronto:

- Do the existing accountability structures help ICANN be accountable to the community?
- Is the Board Governance Committee (or any other part of the Board), the appropriate body to hear Reconsideration Requests?
- Should a process for consultation with the filing parties be included into either structure, similar to mediation or pre-trial conferences used in court cases?

- How should the costs of the proceeding figure into the availability of the accountability structures? For example, though claimants are not required to pay any fees for reconsideration, there are costs to the proceeding. Can cost consideration be used to mitigate against the improper use of the structures?
- Would it be feasible to allow for "class" type filings, to allow for review of multiple, similar claims brought by different parties?
- How should "materially harmed" and "adversely impacted" be defined to allow for more predictability in who can bring a claim?
- What should the standard be for requesting a stay of Board action? Does allowing a stay further or hinder ICANN's accountability to the multi-stakeholder model?
- Should there be an initial review of the sufficiency of a request, to allow for summary dismissal because the request is vexatious, frivolous, or clearly without substance, or otherwise does not meet the filing requirements?
- How can the processes be better defined to allow for predictability? For example, page limitations on filings or certainty regarding the inability to seek in-person hearings?
- Are changes needed to the timing of hearing a Reconsideration Request to make the process scalable?
- Would accountability be enhanced if there was a time limit imposed for the filing of a request for independent review?
- Should third parties have the ability to participate in the accountability structures? How should their participation be defined?
- Do the forms in existence guide claimants in filing sufficient claims? How can they be improved?
- Would it ever be appropriate to convene a standing panel for the hearing of the independent review? Are there cost considerations that make this more or less feasible?

The community is encouraged to provide the ASEP with comments about the Reconsideration or Independent Review processes prior to the Toronto meeting or the formal public comment forum is opened. To do so, please see the available link found on the ASEP posting page at: http://www.icann.org/en/news/in-focus/accountability/asep

Text of ATRT Recommendations 23 and 25

REC. 23. As soon as possible, but no later than June 2011, the ICANN Board should implement Recommendation 2.7 of the 2009 Draft Implementation Plan for Improving Institutional Confidence which calls on ICANN to seek input from a committee of independent experts on the restructuring of the three review mechanisms - the Independent Review Panel (IRP), the Reconsideration Process and the Office of the Ombudsman. This should be a broad, comprehensive assessment of the accountability and transparency of the three existing mechanisms and of their inter-relation, if any (i.e., whether the three processes provide for a graduated review process), determining whether reducing costs, issuing timelier decisions, and covering a wider spectrum of issues would improve Board accountability. The committee of independent experts should also look at the mechanisms in Recommendation 2.8 and Recommendation 2.9 of the Draft Implementation Plan. Upon receipt of the final report of the independent experts, the Board should take actions on the recommendations as soon as practicable.

REC. 25. As soon as possible, but no later than October 2011, the standard for Reconsideration requests should be clarified with respect to how it is applied and whether the standard covers all appropriate grounds for using the Reconsideration mechanism.