

The ICANN GNSO “Business Constituency”



Comment on Recommendations to Improve ICANN's Transparency

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Business Constituency Submission
GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment

The Commercial and Business User Constituency (BC) appreciates the opportunity to comment on the *CCWG-Accountability Work Stream 2 - Draft Recommendations to improve ICANN's Transparency*.¹ The BC has been a strong supporter of, and active participant in, the CCWG's efforts, including the important efforts of Work Stream 2. We believe that not only is transparency a hallmark of any mature institution, it is also critical for the proper functioning of the multistakeholder approach. We therefore applaud the CCWG for prioritizing this review and look forward to working with the community in pursuit of an increasingly transparent ICANN.

The BC believes the Transparency WG has made important steps in developing recommendations regarding the four distinct areas of ICANN's transparency it reviewed. We also believe, however, that this should be just the start of a more comprehensive reimaging of ICANN's approach toward transparency.

The WG makes an important recommendation: ICANN should default toward disclosure, only making exceptions where disclosure would cause actual harm. Applied broadly, this standard can help ensure that the community has access to important information, including regarding the availability of data sets or associated with policy implementation.

By following the actual harm standard, ICANN can also ensure that sensitive information, such as relates to personal employment matters or commercial data, are not unnecessarily revealed. We note with agreement the WG's assertion that "conspiracy theories thrive in an environment of secrecy." Withholding, shielding, or otherwise obstructing access to information can only hinder ICANN's mission, so we urge the WG and broader community to continue to strive toward an environment of true transparency.

Below, we have provided additional comments on the WG's specific recommendations.

Improving ICANN's Documentary Information Disclosure Policy (DIDP)

ICANN's DIDP is the lynchpin of ICANN's transparency and community access to information. As such, we are supportive of the WG's recommendations and believe these changes should be prioritized. Generally, we endorse timely access to information; any exceptions should be clear and specific (e.g.,

¹ See comment page at <https://www.icann.org/public-comments/ccwg-acct-draft-recs-2017-02-21-en>

commercial/competitive data), and there should be a course to redress unmet requests and the availability of information should be both self-guided and by request.

We agree with the working group that its scope should be broadened beyond simply covering ICANN's "operational activities" (recommendation 1). We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4) and that any response extension be capped at 30 days (recommendation 6). Finally, we agree that the public interest override should apply only to withholding exceptions, rather than providing ICANN an additional tool to facilitate withholding (recommendation 15).

The WG does suggest that exceptions for "trade secrets and commercial and financial information not publicly disclosed by ICANN" and for "confidential business information and/or internal policies and procedures" should be replaced with an exception for "material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stake-holders who have those interests" (recommendation 11). While we agree with the broad application of an actual harm standard, we do not believe the WG has made the proper case for removing the clauses in question. When businesses are required to share trade secrets or other confidential commercial information, they should have the certainty that that information will be protected from arbitrary release. We believe these existing clauses do that and should remain in place.

Documenting and Reporting on ICANN's Interactions with Governments

Now that ICANN's contract with the US Government has expired, it is essential that interactions with all governments are sufficiently transparent. The default for information about ICANN contact with any government or governmental agency should be that it is published publicly. Again, exceptions should be clear and specific, but because of the public nature of government, they ought to be few.

The BC has long been on the record regarding our interest in increased transparency regarding ICANN's interactions with governments. In our 2015 comments the CCWG's 2nd proposal, we called for bylaw changes requiring ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their contacts with any government official, as well as activities, receipts, and disbursements in support of those activities.² We, therefore, are supportive of the WGs recommendations, favoring increased reporting on political activities that produce increased transparency beyond what might be required by the letter of the law.

Transparency of Board Deliberations

ICANN's Board of Directors are entrusted by the community to make decisions in the public interest, often addressing sensitive information when weighing difficult decisions. We take those responsibilities seriously, but also believe there must be a better balance between confidential, internal decision making and the community's right to know about those decisions. Most importantly, we believe the WGs suggestion for a bylaw revision explicitly stating the terms for withholding minutes would help standardize ICANN's transparency approach and provide the community proper redress through the IRP

² <http://www.bizconst.org/assets/docs/positions-statements/bc-comment-on-ccwg-accountability-2nd-proposal.pdf>

(recommendation 2). We also support the WG's call for specific time limits on withholding of information related to Board decisions (recommendation 3).

Improving ICANN's Anonymous Hotline (Whistleblower Protection)

The Anonymous Hotline provides ICANN employees to report problematic behavior. We strongly agree with the WG that the program must be broadened to include "all issues and concerns related to behavior that may violate local laws and conflict with organizational standards of behavior" (recommendation 3). In order to be effective, the program should be adequately resourced and well administered (recommendation 4). This is also necessary to ensure that justice is not misplaced based on false accusations. Further, it is essential that any ICANN whistleblower be protected from retaliation, and we support the WGs associated recommendation (recommendation 7).

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This comment was drafted by Andrew Harris, John Berard, and Jay Sudowski.

It was approved in accord with our Charter.