Independent Review of ICANN's Accountability and Transparency – Structures and Practices

Commissioned by the Internet Corporation of Assigned Names and Numbers
(ICANN)

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One World Trust

The **One World Trust** promotes education, training and research into the changes required within global organisations in order to make them answerable to the people they affect and ensure that international laws are strengthened and applied equally to all.

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1.   Executive Summary

1.1 Introduction

The mission of ICANN is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.   As such, ICANN plays a key role in the emerging network of structures that govern the functioning of the Internet.

Reflecting this unique position, ICANN has developed a unique governance structure. It is a not-for-profit corporation that through a multi-stakeholder, bottom-up process engages the diverse stakeholder groups that make up the Internet community in the development of policy on Internet domain names and IP addresses.

Key to ICANN's legitimacy and effectiveness is its accountability and transparency. In order to facilitate meaningful stakeholder engagement, and to prevent the capture of the organisation by any single set of interests, ICANN needs to be giving an accurate and timely account of what it is doing, taking into account the diverse views of its stakeholders and allowing itself to be held to account for the commitments it makes.

As part of its efforts to strengthening accountability and transparency, ICANN engaged the One World Trust to benchmark its standards of accountability and transparency against other international organisations with a view to identifying areas for improvement.

The review we have undertaken covered both the structures and principles that have been put in place through ICANN's By-Laws to facilitate accountability and transparency and the actual practice.

While comprehensive, this does not represent a definitive review of ICANN's accountability and transparency. Accountability is a normative concept and the framework used for the review represents just one way of approaching the issue.

1.2 Analytical Framework

The analytical framework used to conduct the review was drawn from the One World Trust Global Accountability Framework. A four-part framework[1], developed over four years of multi-stakeholder dialogue that identifies the core dimensions of accountability that organisations need to have in place in relation to internal and external stakeholders:

- Transparency refers to the provision of accessible and timely information to stakeholders.

- Participation is the active involvement of internal and external stakeholders in organizational decision making. Participation must allow for change; it has to be more than acquiring approval for, or acceptance of, a decision or activity.

- Evaluation makes it possible for organisations to assess activities, outputs,

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[1] Blagescu, M, de Las Casas, L. & Lloyd, R (2005) *Pathways to Accountability: The GAP Framework*, One World Trust, London (UK)

outcomes and impacts, with contribution from relevant stakeholders.

- Complaint and response mechanisms provide the means for raising questions about an organisation's performance and for sanctioning failures to deliver on commitments.

These four elements enable an organisation to give an account to, take account of, and when necessary be held to account by, stakeholders. All four must be integrated into organisational policies, procedures and practice, at appropriate levels and stages of decision making and implementation, in relation to both internal and external stakeholders.

1.3 Summary of findings

The review of ICANN identified a number of areas where ICANN practices observe principles of accountability, and a number of areas where there is room for improvement.   Below is a summary of the main findings:

Overall, ICANN is a very transparent organisation. It shares a large quantity of information through its website, probably more than any other global organisation. What ICANN should consider addressing however is the accessibility of this information and consistency with which it is made available. The ongoing efforts to redesign the ICANN website will go a long way to making information more accessible, but to address the issue of the consistency ICANN should consider providing clearer guidelines to its constituent bodies on what, when and how information should be made available.

When benchmarked against other global organisations, the overall level of transparency of the ICANN Board is also high; where ICANN should improve their practice is in explaining more clearly how stakeholder input is used when making decisions.

As a multi-stakeholder organisation, ICANN engages in participatory decision making.   The participation of stakeholders in the development of policy for example, is mandated by the By-Laws; few other global organisations make a commitment such as this in their governing documents. To strengthen its approach to participation however, ICANN should focus their efforts across a number of areas. Given the importance of public engagement to the legitimacy and relevance of ICANN decisions and policy, ICANN should ensure the public are being engaged consistently across the different constituent bodies according to principles of good practice. If basic good practice principles such as explaining to stakeholders how their inputs made an impact on the final decision are not met, levels of engagement will fall.

Another area where ICANN should focus its efforts is in providing additional administrative support to the Board, so as to facilitate better engagement of Directors in the governance of the organisation. As with much of ICANN, the Board is made up of volunteers who need to balance their ICANN responsibilities with full time jobs. To ensure Directors are able to participate effectively and efficiently in the decision making they need to be provided with additional support by ICANN staff.

ICANN have numerous formal procedures in place for monitoring and evaluating activities.   For example they have a system for tracking performance in relation to their operational plan. They also conduct regular Independent reviews of the ICANN Supporting Organisations and Advisory Committees. Both are important for helping

the organisation meet stated goals and commitments. Where ICANN should focus their efforts is on encouraging more self-evaluation and learning within the organisation.

While some Supporting Organisations and Advisory Committees already self-evaluate it is done on an ad hoc basis. And while ICANN is developing ways of disseminating lessons across different parts of the organisation (staff, volunteers, Supporting Organisations and Advisory Committees) these are not institutionalised to the same extent as in other global organisations. ICANN should therefore take steps towards creating structures and processes that foster greater learning within the organisation.

In relation to complaint and response procedures, ICANN has developed three separate but interrelated mechanisms: the Ombudsman, Reconsideration Committee, and Independent Review Panel of Board actions. Together they offer a robust approach to complaints handling; providing internal oversight of Board decisions and staff actions, and thus reducing the likelihood of litigation. While each of these mechanisms need further strengthening, their existence is in compliance with good practice. Where ICANN should focus their efforts is in creating greater coherence across the complaints functions, and better communicating their integrated nature externally. They also need to consider the accessibility of the different functions and ensure language and cost are not a barrier to their use by stakeholders. Specifically, in relation to the Independent Review Panel, ICANN should also consider developing this into a more institutionalised and stable oversight mechanism.

2   Introduction

2.1 Background

1. The mission of ICANN is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.   As such, ICANN plays a key role in the emerging network of structures that govern the functioning of the Internet.

2. The Internet has become a central part of our lives.   It is a defining feature and a foundational pillar of globalisation. Given its responsibility for coordinating a crucial element of the Internet, ICANN provides a critical global public resource.

3. Reflecting this unique position, ICANN has developed a unique governance structure. It is a not-for-profit corporation that through a multi-stakeholder, bottom-up process engages the diverse stakeholder groups that make up the Internet community in the development of policy on Internet domain names and IP addresses.

4. The multi-stakeholder nature of ICANN is the cornerstone of the organisation's legitimacy. The involvement of a wide range of stakeholders in ICANN activities ensures policy making and operational functions are conducted in the interests of the Internet community and not captured by the interest of one specific group.

5. In this respect, accountability and transparency are central to ICANN. To facilitate the multi-stakeholder process, ICANN needs to be giving an accurate and timely account of what it is doing, taking into account the diverse views and need of its different stakeholders and allowing itself to be held to account for the commitments it has made.

6. Accountability and transparency featured prominently in the 2006 Joint Project Agreement that ICANN signed with the US Department of Commerce. This agreement provides the mechanisms and procedures that will affect the transition of the Internet domain name and addressing system to the private sector.

7. In response to this ICANN has already undertaken a number of initiatives:

- ICANN has engaged members of its community about what accountability and transparency mean in the ICANN context, and what standards might be appropriate.

- The ICANN website has been redesigned to make core processes more accessible and transparent.

- The ICANN Board has made efforts to improve its reporting by providing more detailed minutes and voting transcripts

8. As part of these efforts, ICANN also engaged the One World Trust to benchmark its standards of accountability and transparency against similar international organisations with a view to identifying areas for improvement.

9. ICANN is intending to bring all of this work together into a set of Management Operating Principles that will be discussed and agreed by the ICANN community.

2.2 Purpose

10.   The review covered both the structures and principles that have been put in place through ICANN's By-Laws and other documents to facilitate accountability and transparency and the actual practice. As such, the review looked at

- o The decision-making and selection processes of the Board

- o Reporting processes / Access to information

- o Policy development processes

- o Evaluation processes

- o Complaint handling processes

11.   The review encompassed the Board, Supporting Organisations, Advisory Committees and staff. Given the independent reviews that are being undertaken over the next year for many of these bodies, this evaluation does not delve into the detail of how each individual body functions, but focuses on the connections between these bodies and the accountability and transparency issues that cut across them.

12.   This does not represent an exhaustive or a definitive review of ICANN's accountability and transparency. Accountability is a normative concept and the framework we have used represents just one way of approaching the issue.

13.   The focus of this review has specifically been on organisational and procedural accountability. We acknowledge that there is also the issue of political accountability. There have been historical arguments about oversight of ICANN and the role that national governments should play in this. These are important issues, but fall outside the scope of this study.

2.3 Methodology

14.   The review was undertaken by the One World Trust. The team was composed of Monica Blagescu, Robert Lloyd and Jeff Oatham, with independent review from two peers. The team is grateful for the support and assistance it received from staff and volunteers of ICANN and the wider ICANN community, as well as for contributions from external stakeholders.

15.   The review used several parallel methods and activities to gather information and triangulate findings. These included:

- •   *Semi-structured interviews* with ICANN Board members, members of Supporting Organizations and Advisory Committees, senior management and other staff, volunteers and external stakeholders. In total, over 26 people were interviewed (see Appendix 6).

- •   A *review of ICANN by-laws, policies and other documents*, as well as other relevant official statements.

- *Review of comments* made by the ICANN community during the recent consultation on accountability and transparency, and other external reviews. In total, over 60 documents were consulted (see Appendix 7).

- Review of good practice in accountability at other global / transnational organisations.

2.4 Outline

16.   The Report is divided into 6 main sections. Section 3 presents the analytical framework that was used to undertaken the review. Sections 4 through to 7 contain the body of the review and looks at what process and procedures ICANN has in place to bring about accountability and transparency, how these works in practice and what our recommendations are for improvement.

17.   Section 8 brings together the key conclusions, identifies a number of high level recommendations, and also highlights a number of high level issues that were not covered in our review, but which ICANN should consider when moving forward with their accountability. Section 9 lists all of the recommendations and groups them according to if they are technical or strategic reforms.

18.   The Main report is followed by a number of appendices which ground the recommendations in concrete example of practice from other global organisations.

3.   Analytical Framework

19.   One World Trust undertook research on what constitutes good practice of accountability and engaged with transnational organisations from the corporate, non-governmental and intergovernmental sectors and their stakeholder groups to identify contemporary principles of accountability. After nearly five years of empirical research, our work resulted in a four-part framework[2] on the inter-active elements of accountability that organisations need to have in place in relation to internal and external stakeholders:

- Transparency refers to the provision of accessible and timely information to stakeholders. Reporting and disclosure systems and processes that enable information sharing are central to an accountable organisation. Examples include an information disclosure policy, audited accounts and annual reports. Transparency mechanisms need to be based on the principle of *presumption of disclosure*, i.e. all information will be made available in the absence of a narrowly defined set of conditions for non-disclosure.

- Participation is the active involvement of internal and external stakeholders in organizational decision making. Participation mechanisms include regular consultations with stakeholders or including stakeholder representatives on Boards of Directors. Participation must allow for change; it has to be more than acquiring approval for, or acceptance of, a decision or activity. Underpinning this is the principle that stakeholders have the right to contribute to decisions that affect them.

- Evaluation makes it possible for organisation to assess activities, outputs, outcomes and impacts, with contribution from relevant stakeholders. Monitoring and assessing results generate judgments about the success of organizational efforts in meeting its performance promises. Examples include organizational monitoring and evaluations systems, independent program evaluations, and social audits. The overarching principle is to integrate learning from evaluation into future planning and to report on the results of the process.

- Complaint and response provide vehicles for raising questions about an organisation's performance and for sanctioning failures to deliver on performance promises. Review panels, juries and ombudsmen are examples of ways to create such opportunities. Principles of independence, confidentiality and non-retaliation need to underpin complaints mechanisms; valid complaints will always receive a response.

20.   These four elements enable an organisation to give an account to, take account of, and when necessary be held to account by, stakeholders. All four must be integrated into organisational policies, procedures and practice, at appropriate levels and stages of decision making and implementation, in relation to both internal and external stakeholders. While each of these four elements is necessary for and contributes to accountability, alone none is sufficient.

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[2] Blagescu, M, de Las Casas, L. & Lloyd, R (2005) Pathways to Accountability: The GAP framework, One World Trust, London, UK

4.   Transparency and access to information

21.   There are two key elements to transparency: the provision of timely and accessible information to stakeholders and the opening up of organisational decision-making procedures and policy-making processes to stakeholder scrutiny. As an organisation dependent on the active engagement of stakeholders for ensuring its legitimacy, ICANN needs to continue being open about how decisions are made and disclosing relevant information in a timely manner.

22.   ICANN is in many ways a very transparent organisation. It shares a large quantity of information through its website, probably more than any other global organisation. Their practice of transparency is supported by provisions in the By-Laws, which state that, "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." The example of the policy development process is indicative: throughout each of the stages of the process Supporting Organisations disclose the different versions of the policy, input from stakeholders and the minutes of the Council meetings where the policy is discussed and formal recommendations to the Board are developed.

23.   However, while openness is undoubtedly common practice within the organisation, there remain a number of areas where ICANN's transparency could benefit. Cutting across the different constituent bodies of ICANN are issues of information accessibility, consistency in what information is disclosed, and consistent compliance with stated commitments in the disclosure of information.

4.1   Organisation-wide transparency

24.   Key to being a transparent organisation is not only that information is made available, but that there is consistency in the way that different constituent bodies disclose information. While ICANN is committed to transparency, it suffers from a lack of consistency in relation to the type and detail of information that is made publicly available by its different bodies. For example, although all Supporting Organisations make the minutes of their meetings available (this is mandated in the By-Laws) only the RSAC and the ALAC advisory committees do so. Likewise, while the Board makes its minutes publicly available, only one of its eight subcommittees posts their minutes on the website.

25.   The same holds for meeting agendas; as a basic good practice principle for transparent decisions making, meeting agendas need to be made available to relevant parties in advance of the meeting. In ICANN this principle is currently only applied by the Board and the GNSO Council.

26.   Other basic information such as members, the rules of procedures and work plans should also be available at all levels within ICANN. This is basic information that irrespective of the specific purpose of the body should be disclosed to enable stakeholders to understand how the body functions and to be able to follow its activities (see Table 1).

Table 1. Information Disclosure basic information across a selection of ICANN bodies						
Selection of ICANN Bodies	**Minutes**	**pre-meeting Agenda**	**Work plan**	**Meeting schedule**	**list of members**	**Rules of Procedure**
Board	Y	Y	N	Y	Y	Y
Nominating Committee	N	N	Y	Y	Y	Y
Conflict of Interest Committee	Y	N	N	N	Y	N
Executive Committee	Y	N	N	N	Y	N
Governance Committee	N	N	N	N	Y	N
President's Strategy Committee	N	N	N	N	N	N
GNSO Council	Y	N[3]	N	Y	Y	Y
ccNSO Council	Y	N	N	N	N	N[4]
ASO Council	Y	N	Y	Y	Y	Y
ALAC	Y	N[5]	N	N[6]	Y	In development
GAC	N	N	Y[7]	N	Y	Y
SSAC	N	N	Y	N	Y	In development
RSAC	Y	N	N	N[8]	N	In development

27.   Ensuring consistency in information disclosure is a challenge faced by all global organisations. The *bottom up* tradition of ICANN makes it even more challenging. While ICANN needs to respect the independent nature of each of its supporting bodies and advisory committees, the organisation could benefit from taking a more active role in defining what information needs to be made publicly available by its different bodies. Other global organisations have addressed this issue through developing an Information Disclosure Policy. In the case of ICANN, such policy would provide guidance to staff and volunteers on what, when and how information will be made public; but this will also allow external stakeholders to know what type of information they can expect to have access to. This way, expectations will be better managed on all sides.

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[3] GNSO provide an agenda after the meeting
[4] ccNSO have Rules of Procedure but do not post them online
[5] ALAC provide an agenda after the meeting
[6] ALAC have a Calendar of Events but it has not been updated since 2005
[7] GAC have a work programme but it is buried in another document with delivery timetable
[8] RSAC admit their meetings usually follow IETF but do not provide the schedule of IETF meetings or a link to the IETF meetings

Recommendation 1.1[9]: So as to foster the consistent disclosure of information throughout the organisation, ICANN should consider developing a formal Information Disclosure Policy that clearly states what, when and how information will be made available at different levels of the organisation (see Appendix 1 for key elements of an Information Disclosure Policy).

28.   While ICANN strives for high levels of openness and transparency both at the Board level and among its supporting organisations and advisory committees, there are instances in each of these bodies where due to legal, contractual or security issues, certain discussions and information needs to remain confidential. This is entirely acceptable, as full transparency can at times be detrimental to an organisation's decision-making processes or activities. For example, if the disclosure of information could potentially undermine the ability of the organisation to pursue its mission (in the case of ICANN the security and stability of the Internet's system of unique identifiers), such information should not be made publicly available. But to ensure consistency, there needs to be clarity around when these instances apply. Moreover, to match the existing commitment to information disclosure, these instances need to be narrowly defined.

29.   Currently the By-Laws state that the Board can keep confidential information "relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN) [and] matters that ICANN is prohibited by law or contract from disclosing publicly". While these conditions are somewhat narrow, the qualification that any "other matters that the Board determines, by a three-quarters vote of Directors present at the meeting and voting" can also be redacted from the preliminary report or minutes represents a significant loophole. The fact that this can only be enacted through a ¾ vote of Directors provides a safeguard to its abuse; however, its existence brings uncertainty in disclosure. The need for such a loophole would be significantly reduced if the Board developed a more specific and comprehensive set of conditions for non-disclosure, as organisations such as the Asian Development Bank and the United Nations Environmental Programme have done.

30.   Furthermore, the provisions in the By-Laws around confidentiality are currently focused on the Board, while our review suggests that questions of what should be made public and what should be kept confidential exits in other parts of the organisation as well. Greater guidance at these levels would be beneficial not the least to staff. For example, confidentiality issues are pertinent for much of what the SSAC does, while issues of confidentiality emerge especially in relation to issues of re-delegation. A newly developed set of conditions for non-disclosure should therefore be applicable not only to the Board, but across the entire organisation.

Recommendation 1.2: ICANN should develop an Information Disclosure Policy that identifies a set of clear and narrowly defined conditions for non-disclosure that apply

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[9] The numbering used for the recommendations mirrors the numbering in the Summary of Recommendations at the end of the report

throughout the organisation (see Appendix 1 for examples of narrowly defined conditions for non-disclosure).

31.   To ensure compliance with any organisational policy, it is important that there is high level oversight and leadership. Without this, implementation will only ever be piecemeal. To ensure implementation of the information disclosure within ICANN therefore, responsibility for overseeing the policy should be assigned to a senior manager.

32.   Supporting this, a set of indicators should be developed to monitor the implementation of the policy, and an annual review should be undertaken which identifies how ICANN is complying with the policy, where there are problems, and the steps that are to going be taken to address these (see recommendation 5.1 in section 8.)

Recommendation 1.3: ICANN should consider assigning responsibility for overseeing organisation-wide compliance with the Information Disclosure Policy to a publicly named senior manager; and making publicly available an annual review that documents compliance with the policy.

33.   ICANN discloses large amounts of information that, while reflecting the organisation's openness, makes locating information difficult. Redesigning the website will make information more accessible; yet ICANN should also consider putting in place a function to support stakeholders in finding information. This could be similar to a 'contact us' function by enabling an individual to contact an ICANN staff member whose responsibility includes assisting stakeholders to locate information. The support function could include fields where an individual could specify the type of document they are trying to find to help narrow the search parameters. For example, the function could include fields for the supporting organisation; whether the document is policy related or other.

Recommendation 1.4: ICANN should consider assisting stakeholders in locating online information through a function that enables them to contact a staff member with a specific document query.

34.   As mentioned above, accessibility of information is key to transparency. Given the wide range of stakeholders that are affected by the decisions and activities of global organisations, many have adopted multiple working languages. Publicly disclosing information in more than just one language is now common practice.

35.   Currently, on its website ICANN has translated basic information about the organisation and its operations, and has done this in 10 languages (including English). Across other documents, however, there is less consistency. Naturally, the organisation cannot translate everything; it must identify the key documents that need to be accessible to a wide range of stakeholders to foster informed engagement

in the policy development process, but also to enable stakeholders to exercise scrutiny of ICANN.

36.   To approach this issue in a structured and consistent way, ICANN should develop a translation policy. This might identify what documents and publications should be translated, into what languages and how they would be disseminated. It could be broken up into the following categories for example: documents and publications that address ICANNs overall business strategy (e.g. annual reports; operational policies, procedures, and guidelines; and strategy papers); documents that are provided to an audience for public consultation; and Web content.

Recommendation 1.5: To foster accessibility of documentation and processes throughout all ICANN constituent bodies, ICANN should consider developing a translation policy that identifies which documents are translated and includes provisions on management and infrastructure issues for translation (see Appendix 2 for key elements of a translation policy).

4.2 Transparency of high level governance and decision making

37.   Transparency is also about the degree to which stakeholders are able to follow the course of a decision and understand the rationale behind how it was made. Openness about decision making at Board level becomes a key indication of an organisation's transparency.

38.   Compared with other global organisations, the ICANN Board meets standards of good practice. It is committed to disclosing a preliminary report five working days after every Board meeting, and this identifies any actions taken. It discloses minutes that provide a detailed summary of official business conducted (including identifying speakers by name) and voting transcripts. The background documentation disseminated to the Board is also provided. While there have been issues in the past with the preliminary report of the Board being disclosed within the five-day period (with requests for reconsideration being filed on the issue), the overall level of transparency of the ICANN Board is high when benchmarked against other global organisations. Of the ones listed below, ICANN's is the only Board that discloses voting records.

Table 2: Benchmarking of ICANN Board Reporting against other global organisations[10]							
Information provided in Board Reporting	ICANN	ILO	GEF	FAO	WHO	GAVI	Global Fund
Minutes*	Y	Y	Y	Y	Y	Y	Y
Lists participants	Y	Y	Y	Y	Y	Y	Y
List of documents	Y	Y	Y	Y	Y	Y	Y
voting record	Y	N	N	N	N	N	N
Includes name of those speaking	Y	Y	N	N	Y	N	N
Available in various languages	N	Y	Y	Y	Y	N	Y

*A record of official business conducted and formal decisions taken

39.   Despite this general openness, there remains a lack of clarity among many in the ICANN community as to how and why the Board reaches certain decisions; specifically, how it weighs up the input of different stakeholders (Supporting organisations, advisory committees and the public) and how it incorporates these into the decision-making process.

40.   As is the case with most global institutions, given the vast array of stakeholders that engage with ICANN, it is not possible for the Board to adapt decisions that address each and every concern. This would lead to paralysis within the organisation. However, ICANN needs to be more open and communicate more clearly how and why stakeholder concerns are or are not taken into account.

41.   Ambiguity around how input and feedback are used can create distrust among stakeholders, frustration with the process of engagement and can ultimately lead to declining levels of participation. Stakeholders need to know they have been heard. The Board needs to more explicitly acknowledge how various pieces of input have had an impact on the final decision.

42.   The By-Laws already state that, after taking action on policies that substantially affect the operation of the Internet or third parties (including the imposition of any fees and charges) the Board needs to "publish in the meeting minutes the reasons for any action taken, the vote of each director and the statements of directors requiring publication of such statement." While ICANN needs to ensure this provision is implemented consistently, the Board should take further steps in its reporting. While providing a reason as to why a decision was made, it is important that the Board also provides an explanation as to why stakeholder input was considered or not as relevant to the decision-making process.

43.   For the most important decisions, specifically those that relate to policy considerations, the ICANN Board should produce a report (separate from the

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[10] International Labour Organisation (ILO); Global Environment Facility (GEF); Food and Agriculture Organisation (FAO); World Health Organisation (WHO); Global Alliance for Vaccines and Immunisation (GAVI); Global Fund To Fight AIDS Tuberculosis and Malaria (Global Fund)

minutes) that summarizes the main comments and input received from stakeholders – in instances where an issue provokes significant public comment, it may be necessary to group these responses into broad themes – and clearly identifies how the final decision was / was not affected by these. This will inevitably place an extra burden on the Board, thus the detail deserves thorough consideration. Yet as a multi-stakeholder organisation dependent on the engagement of stakeholders for its continued success, ICANN needs to consider undertaking this step.

Recommendation 1.6: For the most important decisions, specifically those that relate to policy considerations, the Board should consider producing a report (separate to the minutes) that explains how all stakeholder input was used in coming to a final decision.

44.   Currently the main way through which the Board communicates future decisions is through the Board agendas; these are disclosed seven days in advance of the meeting (as stated in the By-Laws).   While it is not practical to expect the Board to disclose the final agenda earlier than this, stakeholders need to have adequate warning of what issues are under consideration so as to prepare and provide meaningful input into Board decisions; for this to happen, the current period of agenda disclosure does not suffice.

45.   Institutions such as the World Bank, International Monetary Fund and African Development Bank have overcome this problem by developing a publicly available schedule of Board discussions planned over a twelve-week period. In this, the agenda for each meeting is updated on a day-to-day basis as items are added or taken off. Such a schedule could be integrated into the Meeting schedule that ICANN already has on the website for their Board meetings.

Recommendation 1.7: To provide stakeholders with advance warning of issues for consideration by the Board, ICANN should consider developing a web-based schedule of Board discussions that are planned over a twelve-week period where the agendas are updated in real time.

46.   While the ICANN Board is mandated by the By-Laws to disclose the minutes of its meetings, its eight subcommittees are not. The Executive Subcommittee is the exception: although not mandated by the By-Laws, this body discloses minutes of its meetings.

47.   The subcommittees play an important role in the governance of ICANN, having all the legal authority of the Board except for the authority to change the By-Laws, approve the budget and repeal a decision of the board. It is imperative that they conform to the same standards of transparency as the rest of the organisation.

Recommendation 1.8: The subcommittees of the ICANN Board should consider disclosing minutes of their meetings on the website. This should be guided by the

Information Disclosure Policy.

4.3 Transparency within Supporting Organisations and Advisory Committees

48.   It is currently difficult to follow the course of the policy development process (PDP) across each of the Supporting Organisations, because of how the information and documentation is structured on the website. The ccNSO, for example, places all the information related to a PDP under announcements ('What's New' section of the website). Over time, this information gets lost within the other news items

49.   To enable stakeholders to follow the different stages of a consultation process and how different input shaped and informed the policy document, Supporting Organisations should organise the information and documentation provided online that relates to a PDP in a more accessible and consistent manner.

Recommendation 1.9: Across Supporting Organisations, all documentation and information provided online that relates to policy development processes should be organised in a more accessible and consistent manner.

50.   As a result of the ICANN *bottom up* process, each supporting organisation and advisory committee works according to its own procedures. While this is encouraging, it results in a lack of consistency in how information is presented across each of the respective websites. To increase the accessibility of information from supporting organisations and advisory committees, ICANN should develop a common template for their websites that locates information in similar formats / places.

51.   For example, each website could categorize information according to a number of common headers such as About Us, Governance, Policy, etc. A set of common subsections could be used within each of these. For example, a Supporting Organisation might list under Governance: Council Members, Council Meetings and the rules of procedure. Under the Meetings subsection there might be a meeting schedule and minutes and agendas of meetings.

52.   Providing information within a shared framework offers visitors an easier way to access information across the different constituent bodies. A common template would increase the user friendliness across the different bodies of ICANN.

Recommendation 1.10: ICANN should consider developing a shared framework of presenting online information across its Supporting Organisations and Advisory Committees (e.g. rules of procedure, charter, minutes, agendas etc) to ensure user friendliness of web pages (see Appendix 3).

5.   Participation

53.   An accountable organisation understands and responds to the needs and interests of its key stakeholders.   This is best achieved through stakeholder engagement and participatory approaches to decision making.   Accountable global organisations establish mechanisms that enable stakeholders to input into decisions that affect them.   This may require engagement at the policy level or the strategic level as well as at operational level.

54.   External stakeholder engagement must go beyond acquiring approval for, or acceptance of, a decision or activity (or including stakeholders in operational activities). Participation is about organisations taking into account what stakeholders are saying and providing them with the opportunity to influence how and what decision are made. A key principle of effective participation is that the organisation is open to change.

55.   As a multi-stakeholder organisation, ICANN draws its legitimacy from the way it engages and balances the views and interests of different stakeholders in its decision-making processes. This relates to high level decision making, as well as to stakeholder engagement in policy and operations.

56.   ICANN's approach to stakeholder engagement is in many ways already quite developed. Take the policy development process for example; through its By-Laws ICANN describes in detail the different stages at which stakeholders need to be engaged in the development of policy. Few other global organisations make a commitment of this type in their governing documents. The engagement of stakeholders is further strengthened with stakeholder groups such as individual Internet users also having formal representation in the ICANN structures through bodies such as ALAC. The recent recruitment of a General Manager of Public Participation is also good practice.

57.   While ICANN is starting from a good position, there are a number of areas where participation could be strengthened.

5.1   Organisation-wide public engagement

58.   Public engagement is key to the legitimacy and relevance of ICANN decisions and policy. Supporting Organisations and Advisory Committees undertake consultations on policy, as does the Board. To foster consistency across the different supporting organisations in how consultations are conducted and to ensure their potential is maximised, ICANN should develop a set of guidelines on how to conduct online public consultations (given that online consultation is one of the preferred methods of external stakeholder engagement).

59.   Other organisations that have taken this approach use the guidelines to identify key considerations and principles that inform the different stages of the online consultation process. Such guidelines increase awareness amongst staff of the key principles of public consultations, enabling them to increase their effectiveness in administering stakeholder engagement processes, and thereby improving the quality of public participation. They provide stakeholders with a guide as to what they should expect from any engagement, and enable them to hold the organisation to account for this.

60.   Organisations such as the OECD have developed such document, which they have found very useful. To encourage implementation of such guidelines across the organisation, a senior member of staff is usually assigned responsibility for overseeing dissemination and compliance.

Recommendation 2.1: To foster consistent engagement with the public across ICANN constituent bodies, ICANN should consider developing a set of guidelines on how to conduct an effective and meaningful online public consultation and assign responsibility for oversight to a senior member of staff (see Appendix 4 for key elements of guidelines on public engagement).

5.2   Participation of Board members in high-level governance and decision making

61.   To provide the Board of any organisation with the support they need to undertake their responsibilities and make informed decisions, it is good practice to have a secretariat. While a number of staff members within ICANN are assigned support role to the Board, additional administrative support is required to facilitate more effective participation of Directors in the decision making of ICANN.

62.   For example, our review highlighted that timely and concise briefings for Directors prior to Board meetings were sometimes lacking and that this lead to some Directors feeling that they did not have adequate time to prepare for important policy discussions. A secretariat would go some way towards mitigating this problem; it would be responsible for channelling communications from staff to Board members and ensuring information is disseminated to Directors in a timely manner.

63.   Similar Board support is provided in other global organisations. In the case of the United Nations Development Programme, for example, the secretariat to the Executive Board reviews and edits all documentation for submission to the Board, makes logistical arrangements for Board meetings each year and provides information and other support services to Board members. It is staffed by four people, a director, senior editor, documents officer and an administrative associate.

Recommendation 2.2: ICANN should consider establishing a small secretariat function to support the Board. This would facilitate communication from Staff to the Board, ensure documentation was disseminated in a timely manner and provide general administrative support to individual Board members.

64.   It is the role of the Board to understand and reflect the changing needs of the organisation it governs. As the organisation grows and evolves and in parallel to ensuring fair representation of membership, the Board also needs to take into account the qualifications of its members to ensure that they have the skills and the vision to respond to these evolving needs.

65.   This is true for ICANN as it is of any other type of organisations. Given the role of the Nominating Committee in the selection of Board members, it is therefore

important that this body is aware of the skill needs of the Board when it nominates the eight of the 21 Directors.

66.   Greater communication between these two bodies on the skills needed on the Board might in turn inform the development of new selection criteria. This could be linked into an annual self-assessment of the Board[11].

Recommendation 2.3: The ICANN Board should consider communicating its skill needs to the Nominating Committee. This process should be linked into an annual Board self-assessment (see Recommendation 3.3).

67.   As well as selecting Board Directors, the Nominating Committee is also responsible for selecting members to the GNSO and ccNSO Councils and ALAC. Similar to the Board, these too need to ensure that they have the necessary skills on their governing bodies. In this respect, it is also important that the Nominating Committee is aware of the skill needs of the GNSO, ccNSO and ALAC when it selects members to these bodies.

Recommendation 2.4: The GNSO Council, ccNSO Council and ALAC should consider communicating their skill needs to the Nominating Committee.

68.   The Nominating Committee forms for eight months of every year to select a total of 19 positions throughout the ICANN structure. The workload that comes with participation on this committee is considerable. A substantial amount of this work falls on the Chair. For example, in the 2005-2006 Report on Nominating Committee activities it is noted that "… [t]he work load of each of these Committees has been very substantial, and represents a major workload assumed by each member and especially by the Chair." As a consequence of this workload the Chair was unable to produce the 2005 and 2006 Annual Reports on Nominating Committee activities (a document mandated by the By-Laws) on time undermining provision in the By-Laws.

69.   In light of this, ICANN should consider providing additional administrative support to the Nominating Committee. Similar to the Board, this could be in the form of a small secretariat that would provide basic support in the processing of applications and the selection process.

Recommendation 2.5: ICANN should consider providing additional administrative support to the Nominating Committee in the form of a small secretariat function.

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[11] This self-assessment would be separate from the independent review of the Board. It would be less formal, undertaken on a more regular basis and focused on learning.

70.   The role of the Nominating Committee Chair is complex as is the process of selecting a new one each year. Given the importance of this body, ICANN should consider extending the time that the Chair stays in their post from 1 year to 2 years to allow time for them to acclimatise to the position and gain experience before moving on.

Recommendation 2.6: ICANN should consider extending the time that the Nominating Committee Chair stays in their post from 1 year to 2 years.

71.   There is currently a lack of clarity around the roles and responsibility of Directors on the ICANN Board. This is manifesting itself at two levels. Firstly at the level of general duties that individual Directors need to fulfil as part of the wider Board membership; and secondly, the roles that Directors play in relation to the Supporting Organisations that elect them.

72.   Directors elected by Supporting Organisations should bring the needs and views of these constituencies to the attention of the Board without necessarily endorsing or voting in favour of that view. Currently the By-Laws state that "Directors shall serve as individuals that have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organisations and constituencies."

73.   Although Directors are part of a collective governing body, they also have individual duties. They are expected to attend meeting regularly, contribute actively to deliberations and put the interests of ICANN above any other interests. A detailed set of written expectations or a position description for Directors can help individual Board members to better understand their role.

Recommendation 2.7: ICANN should consider ensuring more clarity around Board Directors' duties, roles and responsibilities. One option would be to introduce a position description for Board members.

74.   It is good practice to enable those formally a part of an organisation to hold Directors to account for gross negligence, misconduct, or dereliction of duty. Providing conditions under which Directors can be removed from the Board is common among global companies. Shareholders have the authority to remove a Director (usually with a super-super majority), but the initiation of the process to dismiss a Director can start with a single shareholder placing the item on an annual meeting's agenda.

75.   ICANN's By-Laws provide the Board of Directors with the authority to remove other Directors by a ¾ majority of all Directors. However, ICANN policies do not expand on how the process to remove a Director is initiated and who can initiate the process. To strengthen accountability to its constituent organisations, ICANN should put in place procedures that enable them to initiate a process that may result in the removal of a Director. Such a process can be as simple as contacting the Chair of the Board or Ombudsman to highlight reasons for dismissal.

Recommendations 2.8: ICANN should consider introducing a procedure to enable members of Supporting Organisations and Advisory Committees to initiate a process to dismiss Directors for negligence, misconduct, or dereliction of duty.

5.3   <u>Participation in Supporting Organisations</u>

76.   The GNSO develops policies that have a significant impact on Internet users. For this reason, it needs to engage more with this group. A non-voting liaison from ALAC that currently sits on the GNSO Council does provide a communication link between the two bodies, but this does not enable sufficient participation of individual users. To facilitate this process, more effective channels of communication need to be opened between the GNSO and ALAC. A more meaningful channel for ALAC to input into the policy process of the GNSO needs to be developed.

Recommendation 2.9: The GNSO should consider ways of better integrating the views and perspectives of individual Internet users, through ALAC, into its policy activities.

6   Monitoring, evaluation and learning

77.   Evaluation is an essential component of accountability. It can show if and how an organisation is accountable for its performance, how it is achieving its goals and objectives and meeting agreed standards. Evaluation allows an organisation to give an account to stakeholders of what it has achieved, and it also allows stakeholders to compare an organisation's performance to the promises it made.

78.   Evaluation also enables an organisation to learn. The evaluation process and findings should inform ongoing activities and decision-making processes, thus allowing the organisation to address emerging issues and improve performance.

79.   Evaluation within ICANN currently takes place at a number of different levels. A monitoring system is in place to track the implementation of the ICANN operational plan. An independent review is mandated of each of the ICANN supporting Organisations and Advisory Committees. Self-evaluation takes place among a number of the supporting organisations, advisory committees and governance functions, but not all.

80.   While acknowledging the work that ICANN is already undertaking in this area, a number of improvements could be made, as follows:

6.1   Organisation-wide evaluation and learning

81.   An organisation's Annual Report is a main document for communicating to stakeholders the activities and achievements undertaken over the past year. Increasingly among corporations and non-governmental organisations, this is also used as a channel through which organisations can communicate how they are performing in relation to key objectives, and how they are learning from both successes and failures.

82.   The first ICANN Annual Report was published in 2006. This provided a comprehensive summary of the activities of ICANN according to its divisions, supporting organisations and advisory committees. An effort was also made to communicate performance in relation to the responsibilities identified under the Joint Project Agreement. While this represents an excellent first step and provides a level of detail that surpasses that provided by many international non-governmental organisations, there are a number of ways in which it could be further improved.

83.   Notably, the Annual Report needs to focus more on communicating ICANN's performance in relation to its key objectives rather than listing activities. The information presented at the back of the report (p32-37) is relevant, but it currently lacks detail and does not enable the reader to track progress year on year. Moreover, it only identifies what activities ICANN has undertaken to achieve its goals; it makes no reference to where some of the more critical areas / problems emerge and how the organisation proposes to address them in the year ahead.

84.   Being open about the problems and proposing solutions is essential as this provides an indication to stakeholders that the organisation is open and learning.

Anglo American provides an example of good practice in relation to this[12]. In their 2005 Sustainable Development Report they highlight 39 key targets into a table and indicate if they were achieved, not achieved, if an interim target was achieved, or if more work is required. In addition, they identify what changes will be made to address problems and what next year's targets are. Reporting along these lines allows stakeholders to see an accurate picture of progress and also to track performance year on year against a set of core targets.

85.   ICANN already makes public their Operating Plan Status report. However, this is not accessible to the average Internet user – it lists too much information (and does not identify any of the challenges). In consultation with stakeholders, ICANN needs to identify those objectives that are most important to the majority of the ICANN community and report performance in relation to these in their Annual Report.

Recommendation 3.1: ICANN should consider engaging with the ICANN community to identify organisational goals and objectives that are perceived to be most important and report on performance (including successes, setbacks and solutions) in relation to these in the Annual Report.

86.   To facilitate organisational learning, it is important that processes are in place to ensure lessons learnt within different departments or divisions, Supporting Organisations and Advisory Committees are disseminated widely within the organisation.

87.   While as a small organisation ICANN could rely on more informal channels for disseminating lessons, as the organisation grows, it will become necessary for more formal mechanisms to be put in place. Mechanisms for disseminating lessons can take a variety of forms such as practice notes, virtual knowledge networks, internal newsletters, learning workshops. A number of examples of good practice exist within other global organisations from across the public, private and non-states sectors. The OECD for example, has an internal learning network called the Civil Society Coordinators Network. This is a group of individuals working in OECD that are involved in engaging with civil society; they have occasional meetings on engagement issues, organise internal meetings with civil society members and have regular exchanges through a distribution list. In other organisations such ActionAid International, a specific person is responsible for summarising evaluation reports and disseminating them across the entire organisation. Pfizer Inc has also created both regional and function networks to share best practices and discuss learning. For example, each geographic region (Asia, Europe, Latin America and Africa/Middle East) has a regional infrastructure that supports meetings and communication.

Recommendation 3.2: ICANN should consider developing mechanisms to facilitate the dissemination of lessons learnt across Supporting Organisations, Advisory Committees, staff and volunteers.

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[12] Anglo American plc (2005) Report to Society: A Climate of Change, see http://www.angloamerican.co.uk/static/uploads/Anglo%20American%202005.pdf p. 6-7.

6.2 Self-evaluation of the Board

88.   Annual reviews of Board effectiveness are emerging as a key indicator of organisational performance across the public, private and non-profit sectors. It is considered good practice that the Board annually defines its duties, identifies performance in relation to the goals it set for itself, and suggests actions for better fulfilling them.

89.   Although the ICANN By-Laws already state that an independent review of the Board should take place, if feasible, at least once every 3 years (the next is to take place in October) a Board self-assessment would be separate from this. Independent reviews provide an objective perspective on performance, while self-evaluations are more focused on internal learning. An annual self-assessment by the Board would provide an opportunity for the Board to check their performance as a group, and to see if there are opportunities for change that could deliver better results. This would be less formal then an independent review.

90.   Some of the questions the ICANN Board may want to address in the course of a self-evaluation:

- Are Board discussions well-informed and well-run? Are they focused on the most relevant issues?
- Are the subcommittees working as they should and do they have the right relationship with the rest of the board?
- Do directors feel their skills are used and their contribution is valued?
- How is the chair performing in his/her role?
- What is the quality of the relationship between the board and management?
- What is the state of relationships with owners, beneficiaries and other stakeholders?
- How well is the strategic plan linked to the work within the organisation?
- How well the key indicators and reporting processes have helped the board in its monitoring role?[13]

Recommendation 3.3: The ICANN Board should consider undertaking an annual self-assessment, similar to that of the Nominating Committee. This should focus on decision-making processes, skill needs on the Board, etc.

6.3 Evaluation of the policy development process

91.   Creating the space at the end of a process to reflect on what worked well and what did not work so well can foster a culture of learning and strengthen organisational effectiveness. ICANN needs to be continually improving the policy development processes, as a key component of ICANN activities.   To facilitate this, a system needs to be put in place whereby at the end of a policy development process those involved can openly assess the process in a constructive manner.

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[13] http://governance.tpk.govt.nz/how/selfevaluation.aspx)

Recommendation 3.4: Supporting Organisations should consider undertaking post-action reviews at the end of the policy development process.

6.4 Self-evaluation of Supporting Organisations and Advisory Committees

92. Currently a number of Supporting Organisations and Advisory Committees, including ALAC, GNSO and GAC undertake self-evaluation of their activities (SSAC is in the process of conducting a self-evaluation for the first time). In all cases, this has been noted as a useful process that has led to learning and changes to operating practices. In the case of GAC for example, self-assessments led to changes in their working methods and a decision to strengthen the advisory committee's transparency.

93. Because of the capacity and time restraints that voluntary members of Supporting Organisation Councils and Advisory Committees, self-evaluations have not always been undertaken on a regular basis; when they have been undertaken, they have not been publicly shared (ALAC is the exception to this). Given the role that self-assessments play in fostering learning and enabling increased effectiveness, such processes should become more formalised in ICANN.

94. All ICANN bodies should undertake annual reviews of their work and make these available. Such reviews would not result in detailed reports, but rather focus on learning and steps forward. In this respect, the document that is made public does not have to be resource intensive.

Recommendation 3.5: All ICANN Supporting Organisations and Advisory Committees should consider undertaking an annual self-assessment of their work and share key learning and ways forward.

95. To assist Supporting Organisations and Advisory Committees in undertaking self-evaluations, to foster a degree of consistency in how the evaluations are undertaken and ensure that they meet accepted good practice principles, ICANN should produce a guiding document for staff and volunteers on how to undertake such exercises. The policy support officers for each of the supporting organisation could be trained in how to implement such guidelines.

Recommendation 3.6: To help foster consistency in how self-assessments are undertaken and to provide staff and volunteers with guidance on good practice principles for evaluations, ICANN should consider developing evaluation guidelines and provide training to the policy support officers.

7 Complaint and Response Mechanisms

96.   Enabling stakeholders to raise valid complaints about a decision or action and ensuring they receive an adequate response is a critical aspect of an organisation's accountability. A complaint handling mechanism is the means through which stakeholders can actually hold an organisation to account.

97.   ICANN has developed three separate but interrelated mechanisms for dealing with complaints: the Ombudsman, Reconsideration Committee, and Independent Review Panel of Board actions. Together they offer a robust approach to complaints handling; providing internal oversight of Board decisions and staff actions, and thus reducing the likelihood of litigation.

While the various parts of the complaints systems are well developed, there are areas where improvements could be made.

7.1   Organisation wide complaints and response

98.   The Ombudsman, Reconsideration Committee and the Independent Review Panel of Board actions, although independent of each other, function together to create a complaints system within ICANN. Each mechanism represents a step in a process of handling a complaint or grievance. As it stands, ICANN does not clearly describe the integrated nature of these mechanisms.

99.   Effort needs to be put into drawing the links between the three functions and communicating how they collectively make up the organisation's complaints system. Currently each of the mechanisms are identified and described under the "Accountability and Review" section of the ICANN website. This page should be redesigned to highlight the complaints function as a three-step process made up of the three separate mechanisms and how complaints work their way through the system. Information should be provided not only on the functions of each mechanism, but the overall process of issuing a complaint with ICANN, which mechanism would suit a specific complaint, what appeals mechanisms are in place should ICANN's response not be satisfactory, and whom to contact for assistance in filing a complaint.

Recommendation 4.1: ICANN should clearly describe the integrated nature of the Ombudsman, Reconsideration Committee and Independent Review Panel of Board actions. The links between the three functions and their integrated nature need to be properly communicated.

100.   While ICANN has three mechanisms for investigating complaints from members of the ICANN community, the organisation does not have a policy or system in place that provides staff with channels through which they can raise complaints in confidentiality and without fear of retaliation. Having such a policy (often referred to as a whistleblower policy) is good practice among global organisations. A whistleblower policy that provides such protections serves as an important means of ensuring accountability to staff as well as preventing fraudulent behaviour, misconduct and corruption within an organisation.

101.   The United Nation's whistleblower policy is an example of good practice. It includes a definition of whistleblowing consistent with good practice and provides multiple channels for reporting violations thus offering safeguards against

institutionalized conflict of interest, protection for outside parties, and mandatory discipline for those who retaliated against complainants. To embed the whistleblower policy in the organisation's culture, the UN also trains staff and senior management on the implementation of the policy.

102.   While whistleblower protections already exist under both Californian state law through the California Labour Code and Federal law through the Sarbanes-Oxley Act, ICANN should comply with good practice and develop an organisation-wide whistleblower policy. This would clearly state the protections afforded to staff, provide multiple channels through which a complaint can be made and clearly identify the steps of the complaints process.

Recommendation 4.2: ICANN should consider implementing processes that act as deterrents to abuses of power and misconduct which would protect staff who might want to raise such instances. Specifically, ICANN should consider developing a whistleblower policy that enables staff to raise concerns in a confidential manner and without fear of retaliation; and developing appropriate systems to foster compliance (see Appendix 5 for examples of good practice).

7.2 Ombudsman

103.   The Ombudsman plays an important role within ICANN as an informal alternative dispute resolution mechanism. Since its formation, it has reduced the number of complaints handled through the formal complaint channels of the Reconsideration Committee.   As the Ombudsman's office continues to reach out to the community and raises awareness of the function within the ICANN community, there is the distinct possibility that the number of complaints it has to handle will increase.   The office's user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover. To ensure the continued effectiveness of the office, ICANN should continue to support the Ombudsman through the adjunct Ombudsman and also consider recruiting an additional full time member staff to provide administrative support to the office.

Recommendation 4.3: ICANN should consider strengthening the capacity of the Ombudsman's office by recruiting full time administrative support for the Ombudsman.

7.3 Reconsideration Committee

104.   To be effective as a mechanism that stakeholders can use to query Board decisions, it is important that the Reconsideration Committee is accessible to its users. Key to this is that stakeholders are aware of the mechanism and how to use it; and that they are not prevented from accessing it because of procedural barriers.

105.   As it currently stands, there is no statement in the By-Laws or otherwise, stating that a request for reconsideration can be made in multiple languages. Although ICANN would undoubtedly address a request not made in English, it is important that accessibility is built into the mechanism rather than addressing it on an ad hoc basis. This points to the need for a commitment to be made and the systems

put in place to support the handling of requests for reconsideration in multiple languages.

106.   Likewise, the Reconsideration Committee needs to take more active steps in disseminating information on how this mechanism can be used. While the Ombudsman has made considerable efforts to reach out to the community and raise awareness of what the Ombudsman office does and how to use the mechanism, the Reconsideration Committee has yet to do this. Given that both are part of ICANN's overall complaints system, it is important that both are equally accessible to stakeholders.

Recommendation 4.4: ICANN should consider making the Reconsideration Committee more accessible to all stakeholders; this can be done by developing systems to support the handling of requests for reconsideration in multiple languages and actively raising awareness of the mechanism and its use among the Internet community.

107.   The ICANN By-laws state that "[t]he final decision of the Board [in relation to the recommendations of the Reconsideration Committee] shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken." While this is good practice, the actions should also be reported online next to the documents on the Reconsideration Committee website that relate to the specific request for reconsideration. This would make it easier for the reader to follow the reconsideration process from start to finish (the initial request, the committee response, the recommendations and the board actions). This was something that ICANN seemed to do up until February 2000. Practice now however, is to state the date on which the Board took action, but not to provide a link to the appropriate minutes. Board actions could also be incorporated into the Annual Report provided by the Reconsideration Committee to the Board.

Recommendation 4.5: The Reconsideration Committee should consider publicly disseminating the actions taken by the Board alongside the documentation relating to the specific request for reconsideration so that stakeholders are able to follow the process from start to finish.

108.   In the Ombudsman framework there is a specific commitment made by the Board to respond to Ombudsman recommendations within 60 days of the next Board meeting. There is no similar commitment made in relation to responding to Reconsideration Committee recommendations. A commitment to a provide timely response is important because it prevents protracted processes and also ensures the complainant is not forced to wait for a response an unnecessarily long period of time.

Recommendation 4.6: The Board should consider making a commitment to responding to the recommendations of the Reconsideration Committee within a specific period of time.

109.   The By-Laws state that the committee, upon deciding to take forward a reconsideration request will deliver its recommendations within 90 days. Of the eight requests for reconsideration (that have been made since the reconsideration policy was revised in Oct 2000 and the commitment to the 90 days was made), three have

not been handled in the stated time. Based on the response rate of the Reconsideration Committee from 1999 onwards, of the 29 requests made only 13 recommendations were delivered within a 90 day period. This evidence suggests that the Reconsideration Committee has historically struggled to deliver their recommendations in the time period that it now commits to. ICANN will need to review the capacity of the committee to respond to requests within this time period.

Recommendation 4.7: ICANN should consider reviewing the capacity of the Reconsideration Committee to supply recommendations within 90 days of receiving a request for reconsideration with the purpose of either increasing the capacity of the Committee or increasing the stated response time.

110.   When Board members who participated in the original decision are the only people reconsidering that decision possible issues arise related to the objectivity of the process. While having current Board members present for reconsideration does provide insight on the issue, there is a need for at least one non-executive individual to provide independent, objective thought. This role would essentially be one of facilitation where member would inject some impartiality into the Committee's reconsiderations. Such an individual could be an ex-Board member to ensure familiarity with the organisation. Another Reconsideration Committee member could also alleviate capacity issues and assist the committee in achieving response targets.

Recommendation 4.8: ICANN should consider introducing an independent member onto the Reconsideration Committee to act as a facilitator. The individual would provide impartial and objective assessment to Committee members on reconsiderations.

7.4   Independent Review of board actions

111.   The Independent Review of Board actions mechanism plays an important role in the accountability of ICANN. Although it has never been used to date, as the organisation evolves, ICANN needs to make sure it is well developed and meets the same high standards of the other parts of its complaints system.

112.   The mechanism's lack of use might be related to the limited amount of information available on ICANN's website on how it works. Other than what is in the By-Laws, there is no information on the ICANN website on how to initiate a complaint through this process and no information on how the complaint will be dealt with. This is despite Section 3.13 of the By-Laws stating that "the IRP operating procedures…shall be posted on the Website when they become available."

113.   For any additional information on the independent review of board actions you have to go to the International Center for Dispute Resolution (ICDR) which handles the independent review process. Here the ICDR identifies the rules and procedures; however there is lack of clarity around if the rules and procedures apply to ICANN related complaints or not (a Google search for "ICANN" in the ICDR site turned up zero hits).

114.   To increase the initial accessibility of the Independent Review of Board actions mechanism, ICANN should develop a separate page on their website with an explanation of the basic process and how complaints can be initiated.

Recommendation 4.9: ICANN should develop a separate page on their website that provides the rules of procedure for the Independent Review of Board actions, as mandated by the By-Laws, and which also provides an explanation of how to make a complaint through the Independent Review of Board actions function, and the steps that are involved in the review process.

115.   The By-Laws state that the party that loses is liable to cover the costs of the Independent Review Panel, unless exceptional circumstances apply (this decision is based on consideration of the reasonableness of the parties' positions and their contribution to the public interest), then the winning party might be asked to cover half the costs. Understanding that this has been put in place to prevent frivolous complaints, there is the potential that the cost could pose a barrier to certain stakeholders using the mechanism. Similar complaints mechanisms in other global organisations do not require the losing party to cover the costs. The World Bank Inspection Panel which allows communities affected by a World Bank project to file a formal complaint is free, as is Oxfam Australian mining Ombudsman which investigates complaints from communities in relation to mining companies conduct.

116.   Given this is an important means through which a formal independent review of Board decisions can be made, it should not exclude any stakeholder groups from the immediate ICANN community. ICANN should consider removing the burden of payment from the complainant in line with current good practice.

Recommendation 4.10: ICANN should consider strengthening the accessibility of the Independent Review Panel mechanism to the ICANN community by removing the burden of making the losing party cover the costs of the independent review as a means of increasing the accessibility of the mechanism.

117.   ICANN first developed an independent review procedure in March 2000, when it put in place an Independent Review Policy. This policy called for the creation of a 6 member Independent Review Panel (IRP) Nominating Committee composed of two appointments from each of the Supporting Organisations. The Nominating Committee was then to select 9 persons to the panel based on criteria such as: judicial experience, independence from the ICANN process, knowledge and interest in Internet matters, and willing to under take the role without compensation.   These candidates were then either accepted or rejected by the Board by a two-thirds vote.

118.   In 2002, two years after the IRP Nominating Committees' formation however, the ICANN General Counsel submitted a Report on the "Status of the Independent Review Nominating Committee" to the ICANN Board which highlighted that due to the lack of participation by a quorum of the IRP Nominating Committee, the committee had been unable to complete its task. The report also highlighted the challenges of finding candidates given the criteria identified in the Independent Review Policy. As a result of these problems, the report proposed a review of this policy, with a view toward amending it. In light of this, the IRP was changed to its

current form.

119.   While implementing recommendations 4.9 and 4.10 will strengthen the IRP's procedural fairness and accessibility, given the mechanism has never been used, it is difficult to tell how these reforms will play out in practice and the effect they will have on the overall functioning of the mechanisms.

120.   The major problem with the IRP as it currently stands is that it is not institutionalised; the Panel only comes into being when a complaint is filed with the international arbitration provider. As a mechanism that plays an important role in overseeing the actions of the Board, it should have a more stable character and have a more prominent role within ICANN.   The World Bank's inspection panel for example, which is often held up as case of good practice for external oversight, is a permanent function; it has 3 people sitting on the panel, one full time and the other two part time for five year non-renewable terms and they are supported by 7 support staff.

121.   Having a core group of individuals that serve for a set period of time allows for a degree of institutional knowledge to build up and for greater consistency across decisions.

122.   While, we appreciate that ICANN have attempted to craft a more institutionalised and stable independent review panel before and might be reluctant to go down this route again, looking at good practice among other global organisation, we suggest that they look at this option again. If they chose to do so, there are a number of issues which, based on good practice, they might want to do differently. Notably, the criteria they used to identify candidates were too stringent; similar mechanism use less detailed criteria. The Asian Development Bank for example use the following criteria for the selection of candidates: (i) the ability to deal thoroughly and fairly with the request brought to them; (ii) integrity and independence from Management; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of and experience with the operations of the Asian Development Bank or comparable institutions, and/or private sector experience. These are far less stringent. Also, it is good practice to compensate panel members; ICANN were not offering this when they last sort to recruit Panel members

Recommendation 4.11: ICANN should consider creating a more institutionalised and stable Independent Review Panel.

8 Conclusions and Recommendations

123.   The review of ICANN has identified a number of areas where ICANN practices observe principles of accountability, and a number of areas where there is room for improvement.

124.   Overall, ICANN is a very transparent organisation. It shares a large quantity of information through its website, probably more than any other global organisation. What ICANN should consider addressing however is the accessibility of this information and consistency with which it is made available. The ongoing efforts to redesign the ICANN website will go along way to making information more accessible, but to address the issue of the consistency ICANN should consider providing clearer guidelines to its constituent bodies on what, when and how information should be made available.

125.   When benchmarked against other global organisations, the overall level of transparency of the ICANN Board is also high; where ICANN should improve their practice is in explaining more clearly how stakeholder input is used when making decisions.

126.   As a multi-stakeholder organisation, ICANN engages in participatory decision making. The participation of stakeholders in the development of policy for example, is mandated by the By-Laws. To strengthen its approach to participation however, ICANN should focus their efforts across a number of areas. Given the importance of public engagement to the legitimacy and relevance of ICANN decisions and policy, ICANN should ensure the public are being engaged consistently across the different constituent bodies according to principles of good practice. If basic good practice principles such as explaining to stakeholders how their inputs impacted the final decision are not met, levels of engagement will fall.

127.   Another area where ICANN should focus its efforts is in providing additional administrative support to the Board, so as to facilitate better engagement of Directors in the governance of the organisations. As with much of ICANN, the Board is made up of volunteers who need to balance their ICANN responsibilities with full time jobs. To ensure Directors are able to participate effectively and efficiently in the decision making they need to be provided with additional support by ICANN staff.

128.   ICANN has numerous formal procedures in place for monitoring and evaluating activities.   For example they have a system for tracking performance in relation to their operational plan. They also conduct regular Independent reviews of the ICANN Supporting Organisations and Advisory Committees. Both are important for helping the organisation meet stated goals and commitments. Where ICANN should focus their efforts is on encouraging more self-evaluation and learning within the organisation.

129.   While some Supporting Organisations and Advisory Committees already self-evaluate, it is done on an ad hoc basis. And while ICANN are developing ways of disseminating lessons across different parts of the organisation (staff, volunteers, Supporting Organisations and Advisory Committees) these are not institutionalised to the same extent as in other global organisations. ICANN should therefore take steps

towards creating structures and processes that foster greater learning within the organisation.

130.   In relation to complaint and response procedures, ICANN has developed three separate but interrelated mechanisms: the Ombudsman, Reconsideration Committee, and Independent Review Panel of Board actions. Together they offer a robust approach to complaints handling; providing internal oversight of Board decisions and staff actions, and thus reducing the likelihood of litigation. While each of these mechanisms need further strengthening, their existence is in compliance with good practice.

131.   Where ICANN should focus their efforts is in creating greater coherence across the complaints functions, and better communicating their integrated nature externally. They also need to consider the accessibility of the different functions and ensure language and costs are not a barrier to their use by stakeholders. Specifically, in relation to the Independent Review Panel, ICANN should consider developing this into a more institutionalised and stable oversight mechanism.

132.   Through the course of the review a number of issues emerged that did not fit into any of the four dimensions, but related more to general issues of accountability. These are listed below along with the recommendations.

8.1 Compliance with accountability and transparency commitments

133.   Our review revealed that while ICANN have the policies and procedures in place to foster transparency and accountability they are not always consistently followed. We came across a number of examples such as the IRP operating procedures that the Board are supposed to have developed has yet to happen; until recently the Board struggled to make Board minutes available within the committed time frame; and the Board also failed to respond to the Ombudsman's recommendations within the stated timeframe.

134.   While the Ombudsman, Reconsideration Committee and the Independent Review Panel provide complaints based approaches to compliance, to generate greater trust among stakeholder, ICANN needs to take a more proactive approach.

135.   To address this issue, ICANN should consider a regular independent audit of their compliance with accountability and transparency commitments. Alternatively, it could develop a permanent compliance function to emphasize prevention by identifying shortcomings as they emerge and before they become systemic problems. In either case, a regular report on compliance should be produced and publicly disseminated.

136.   For either approaches, independence should also be ensured. Global organisations such as the International Finance Corporation have addressed this issue by locating their audit/compliance function in the office of the Ombudsman.

Recommendation 5.1: ICANN should consider having an independent report produced, perhaps annually, that would measure the organisation's compliance with transparency and accountability commitments made in its By-Laws.

8.2 Shared organisational culture

137.   In an organisation such as ICANN where there is a mixture of volunteers and staff conducting the work and where many people are working remotely, there are challenges associated with ensuring all parties share the same values and beliefs about what kinds of goals the organization should pursue, how they should interact with the outside world and the appropriate kinds or standards of behaviour that should be used to achieve these goals.

138.   To help cement a shared culture, ICANN should develop a code of conduct that identifies the values and norms common to ICANN that should guide how staff and volunteers conduct their work, interact with each other and interact with the outside world. The code could also delineate at a very general level the commitments required of volunteers when participating in ICANN structures and the scope of staff responsibilities.

Recommendation 5.2: ICANN should consider developing a code of conduct for all staff and volunteers that identifies the goals of the organisation, the appropriate kinds or standards of behaviour that should be used to achieve these goals, and how they should interact with the outside world.

8.3 Communicating mission

139.   An issue that emerged on a regular basis through out this review was that there is ambiguity around what it is that ICANN does (and should do.) This has considerable impact on issues of accountability, as it ultimately relates to what people perceive the organisation as being accountable for. The example of Registerfly is indicative of this.

140.   We are aware of the challenges associated with this; the Internet is continually evolving and so too must ICANN; it needs to adapt to fit emerging realities. ICANN has a technical mandate, but this does not exist within a vacuum.

141.   As ICANN evolves, they need to better communicate to the external world what their mission is, clearly stating what they do and what they do not do.

Recommendation 5.3: ICANN needs to communicate more effectively to the outside world what its core activities are.

8.4 Strategic issues to consider

142.   As mentioned previously, the focus of this review has specifically been on organisational and procedural accountability and transparency. As a result there are a number of more strategic issues that have not be covered, but which are important for ICANN to consider as they move forward on their accountability and transparency.

143.   The issue of stakeholder representation on the Board, and more specifically the representation of individual Internet users is important. ICANN experimented with the direct election of Internet users to the Board between 2000 and 2002, but it was deemed an unworkable model. Individual Internet users now have indirect

influence over the composition of the Board through ALAC which elects 5 members to the Nominating Committee which in turns selects 8 Directors to the Board.

144. Numerous reviews have been undertaken on these issues and we would encourage ICANN to look at the proposals made in these as they move forward on strengthening their accountability and transparency. As with all global organisations, it is these more strategic issues that are often the most intractable in relation to accountability; they need to be given due consideration and be properly addressed

9   Action Plan – Way forward

The following section summarizes the recommendations, splitting them into long- and short-term components. Whether the recommendation is considered as a long- or short-term goal is attributed to if it reflects a strategic or technical nature.

No.	Background	Recommendations	
		Strategic / Long Term	**Technical / Short Term**
1	**Transparency & access to Information**		
1.1	While ICANN is committed to transparency, the information (type and level of detail) made publicly available by its different bodies lacks consistency. For example, while Board minutes are publicly disseminated, only one of the Board's eight subcommittees discloses minutes from its meetings via the ICANN website; this is also the case with meeting agendas. As a basic good practice principle for transparent decisions making, meeting agendas need to be made available to relevant stakeholders in advance of the meeting. In ICANN, this principle is currently only applied by the Board and the GNSO Council.	Foster the consistent disclosure of information throughout the organisation	ICANN should consider developing a formal Information Disclosure Policy that clearly states what, when and how information will be made available at different levels of the organisation
1.2	High levels of openness and transparency both at the Board level and among its Supporting Organisations and Advisory Committees is necessary. However, there are circumstances where information needs to remain confidential due to legal, contractual or security issues. This is acceptable (as full transparency can at times be detrimental to an organisation's decision-making processes or activities) as long as narrowly defined criteria for non-disclosure are provided.		ICANN should develop an Information Disclosure Policy that identifies a set of clear and narrowly defined conditions for non-disclosure that apply throughout the organisation.

1.3	To ensure compliance with any organisational policy, it is important that there is high level oversight and leadership. Without this, implementation will only ever be piecemeal. To ensure implementation of the information disclosure policy within ICANN, oversight responsibility should be assigned to a senior manager. An annual review should also be undertaken which identifies how ICANN is complying with the policy, where some of the gaps lie and how they will be addressed.		A publicly named senior manager should be assigned ICANN should consider assigning responsibility for overseeing organisation-wide compliance with the Information Disclosure Policy to a publicly named senior manager; and making publicly available an annual review that documents compliance with the policy.
1.4	ICANN discloses large amounts of information that, while reflecting the organisation's openness, makes locating information difficult. Redesigning the website will make information more accessible; yet ICANN should also consider putting in place a function to support stakeholders in finding information. This could be similar to a 'contact us' function by enabling an individual to contact an ICANN staff member whose responsibility includes assisting stakeholders to locate information.		ICANN should consider assisting stakeholders in locating online information through a function that enables them to contact a staff member with a specific document query.
1.5	On its website, ICANN has translated basic information about the organisation and its operations, and has done this in 10 languages (including English). Across other documents, however, there is less consistency. ICANN should identify the key documents that need to be accessible to a wide range of stakeholders to foster informed engagement in the policy development process, but also to enable stakeholders to exercise scrutiny over ICANN.	Foster accessibility of documentation and processes throughout all ICANN constituent bodies.	ICANN should consider developing a translation policy that identifies which documents are translated and includes provisions on management and infrastructure issues for translation

1.6	Despite the openness of ICANN, there remains a lack of clarity among many in the ICANN community as to how and why the Board reaches certain decisions; specifically, how it weighs up the input of different stakeholders (Supporting Organisations, Advisory Committees and the public) and how it incorporates these into the decision-making process. The By-Laws already state that after taking action on policies that substantially affect the operation of the Internet or third parties the Board needs to "publish in the meeting minutes the reasons for any action taken, the vote of each director and the statements of directors requiring publication of such statement." The Board should take further steps in its reporting.		For the most important decisions, specifically those that relate to policy considerations, the Board should consider producing a report (separate to the minutes) that explains how all stakeholder input was used in coming to a final decision.
1.7	Currently the main way through which the Board communicates future decisions is through the Board agendas; these are disclosed seven days in advance of the meeting (as stated in the By-Laws). While it is not practical to expect the Board to disclose the *final* agenda earlier than this, stakeholders need to have adequate warning of what issues are under consideration so as to prepare and provide meaningful input into Board decisions; for this to happen, the current period for agenda disclosure does not suffice.	ICANN should consider providing stakeholders with advance warning of issues for consideration by the Board.	ICANN should consider developing a web-based schedule of Board discussions that are planned over a twelve-week period where the agendas are updated in real time.
1.8	The subcommittees play an important role in the governance of ICANN, having all the legal authority of the Board except for the authority to change the By-Laws, approve the budget and repeal a decision of the Board. It is imperative that they conform to the same standards of transparency as the rest of the organisation.		The subcommittees of the ICANN Board should consider disclosing minutes of their meetings (this should be guided by the Information Disclosure Policy).
1.9	It is currently difficult to follow the course of the policy development process (PDP) across each of the Supporting Organisations, because of how the information and documentation is structured on the website. The ccNSO, for example, places all the information related to a PDP under announcements ('What's New' section of the website). Over time, this information gets lost within the other news items.		Across Supporting Organisations, all documentation and information provided online that relates to policy development processes should be organised in a more accessible and consistent manner.

1.10	A result of the ICANN bottom up process is that each Supporting Organisation and Advisory Committee works according to its own procedures. While this is encouraging, it results in a lack of consistency in how information is presented across each of the respective websites. Not having information in similar places and formats reduces user accessibility.		ICANN should consider developing a shared framework of presenting online information across its Supporting Organisations and Advisory Committees (e.g. rules of procedure, charter, minutes, agendas etc) to ensure user friendliness of web pages.

No.	Background	Recommendations	
		Strategic / Long Term	Technical / Short Term
2	**Participation**		
2.1	Public engagement is key to the legitimacy and relevance of ICANN decisions and policy. Supporting Organisations and Advisory Committees undertake consultations on policy, as does the Board. To foster consistency across the different Supporting Organisations in how consultations are conducted and to ensure their potential is maximised, ICANN should develop a set of guidelines for staff and volunteers on how to conduct online public consultations.	Foster consistent engagement with the public across ICANN constituent bodies	ICANN should consider developing a set of guidelines on how to conduct an effective and meaningful online public consultation and assign responsibility for oversight to a senior member of staff.
2.2	To provide the Board of any organisation with the support they need to undertake their responsibilities and make informed decisions, it is good practice to have a secretariat. While a number of staff members within ICANN are assigned support roles to the Board, additional administrative support is required to facilitate more effective participation of Directors in the decision-making process.		ICANN should consider establishing a small secretariat function to support the Board. This would facilitate communication from Staff to the Board, ensure documentation was disseminated in a timely manner and provide general administrative support to individual Board members.
2.3	As ICANN grows and evolves and in parallel to ensuring fair representation of membership, the Board needs to take into account the qualifications of its members to ensure that they have the skills and the vision to respond to the organisation's evolving needs. Given the role of the Nominating Committee in the selection of Board members, it is important that this body is aware of the skill needs of the Board when it nominates the eight of the 21 Directors.		The ICANN Board should consider communicating its skill needs to the Nominating Committee. This process should be linked into an annual Board self-assessment (see recommendation 3.3).

2.4	As well as selecting Board Directors, the Nominating Committee is also responsible for selecting members to the GNSO and ccNSO Councils and ALAC. Similar to the Board, these too need to ensure that they have the necessary skills on their governing bodies. In this respect, it is also important that the Nominating Committee is aware of the skill needs of the GNSO, ccNSO and ALAC when it selects members to these bodies.		The GNSO Council, ccNSO Council and ALAC should consider communicating their skill needs to the Nominating Committee.
2.5	The Nominating Committee forms for eight months of every year to nominate a total of 19 positions throughout the ICANN structure. The workload that comes with participation on this committee is considerable. A substantial amount of this work falls on the Chair.		ICANN should consider providing additional administrative support to the Nominating Committee in the form of a small secretariat function.
2.6	The role of the Nominating Committee Chair is complex as is the process of selecting a new one each year. Given the importance of this body, ICANN should consider extending the time that the Chair stays in their post from 1 year to 2 years to allow time for them to acclimatise to the position.		ICANN should consider extending the time that the Nominating Committee Chair stays in their post from 1 year to 2 years.
2.7	There is currently a lack of clarity around the roles and responsibility of Directors on the ICANN Board. This is manifesting itself at two levels. Firstly at the level of general duties that individual Directors need to fulfil as part of the wider Board membership; and secondly, the roles that Directors play in relation to the Supporting Organisations that elect them. Directors elected by Supporting Organisations should bring the needs and views of these constituencies to the attention of the Board without necessarily endorsing or voting in favour of that view. Although Directors are part of a collective governing body, they also have individual duties. They are expected to attend meeting regularly, contribute actively to deliberations and put the interests of ICANN above any other interests	ICANN should consider ensuring more clarity around Board Directors' duties, roles and responsibilities.	One option would be to introduce a position description for Board members.

2.8	It is good practice among global organisations to enable those formally part of an organisation to hold Directors to account for gross negligence, misconduct, or dereliction of duty. ICANN's By-Laws provide the Board of Directors with the authority to remove other Directors by a ¾ majority of all Directors. However, ICANN policies do not expand on how the process to remove a Director is initiated and who can initiate the process.		ICANN should consider introducing a procedure to enable members of Supporting Organisations and Advisory Committees to initiate a process to dismiss Directors for negligence, misconduct, or dereliction of duty.
2.9	GNSO needs to engage more with individual Internet users in public consultations. A non-voting liaison from ALAC that currently sits on the GNSO Council does provide a communication link between the two bodies, but this does not enable sufficient participation of individual users. To facilitate this process, more effective channels of communication need to be opened between the GNSO and ALAC. A more meaningful channel for ALAC to input into the policy process of the GNSO needs to be developed.	The GNSO should consider ways of better integrating the views and perspectives of individual Internet users, through ALAC, into its policy activities.	

No.	Background	Recommendations	
		Strategic / Long Term	Technical / Short Term
3	**Monitoring, Evaluation and Learning**		
3.1	ICANN produced its first Annual Report in 2006; while this represents an excellent first step and provides a level of detail that surpasses that of many international non-governmental organisations, there are a number of ways in which it could be improved. It would benefit from more detail and the inclusion of information that would enable the reader to track progress year on year. Currently, the report identifies what activities ICANN has undertaken to achieve its goals; it makes no reference to challenges and how the organisation proposes to address them in the year ahead. ICANN already makes public the Operating Plan Status report. However, this is not accessible to the average Internet user.	ICANN should consider engaging with the ICANN community to identify organisational goals and objectives that are perceived to be most important.	ICANN should consider reporting on performance (including successes, setbacks and solutions) in the Annual Report.
3.2	While as a small organisation ICANN could rely on more informal channels for disseminating lessons, as the organisation grows, it will become necessary for more formal mechanisms to be put in place to facilitate organisational learning across staff, volunteers, Supporting Organisations and Advisory Committees.		ICANN should consider developing mechanisms to facilitate the dissemination of lessons learnt across Supporting Organisations, Advisory Committees, staff and volunteers.

3.3	Annual reviews of Board effectiveness are emerging as a key indicator of organisational performance across the public, private and non-profit sectors. It is considered good practice that the Board annually defines its duties, identifies performance in relation to the goals it set for itself, and suggests actions for better fulfilling them. Although the ICANN By-Laws already state that an independent review of the Board should take place, if feasible, at least once every three years, a Board self-assessment would be separate from this. Independent reviews provide an objective perspective on performance, while self-assessments are more focused on internal learning.		The ICANN Board should consider undertaking an annual self-assessment, similar to that of the Nominating Committee. This would focus on decision making processes, skill needs on the Board, etc.
3.4	Creating the space at the end of a process to reflect on what worked well and what did not work so well can foster a culture of learning and strengthen organisational effectiveness. ICANN needs to be continually improving the policy development processes, as a key component of ICANN activities.		Supporting Organisations should consider undertaking post-action reviews at the end of the policy development process.
3.5	A number of Supporting Organisations and Advisory Committees, including ALAC, GNSO and GAC undertake self-evaluation of their activities (SSAC is in the process of conducting a self-evaluation for the first time). In all cases, this has been noted as a useful process that has led to learning and changes to operating practices. These however have not always been undertaken on a regular basis and the results have not always been publicly shared (ALAC is the exception to this). Given the role that self-assessments play in fostering learning and enabling increased effectiveness, such processes should become more formalised in ICANN.		All ICANN Supporting Organisations and Advisory Committees should consider undertaking an annual self-assessment of their work and share key learning and ways forward.

3.6	To assist Supporting Organisations and Advisory Committees in undertaking self-evaluations, to foster a degree of consistency in how the evaluations are undertaken and ensure that they meet accepted good practice principles, ICANN should produce a guiding document for staff and volunteers on how to undertake such exercises.	Foster consistency in how self-assessments are undertaken and provide staff and volunteers with guidance on good practice principles for evaluations	ICANN should consider developing evaluation guidelines and provide training to policy support officers.

No.	Background	Recommendations	
		Strategic / Long Term	**Technical / Short Term**
4	**Complaint and Response / Compliance Mechanisms**		
4.1	The Ombudsman, Reconsideration Committee and the Independent Review Panel of Board actions, although independent of each other, function together to create a compliance system within ICANN. Each mechanism represents a step in a process of handling a complaint or grievance. As it stands, ICANN does not clearly describe the integrated nature of these mechanisms. Effort needs to be put into drawing the links between the three functions and communicating how they collectively make up the organisation's complaints system		ICANN should clearly describe the integrated nature of the Ombudsman, Reconsideration Committee and Independent Review Panel of Board actions. The links between the three functions and their integrated nature need to be properly communicated.
4.2	While ICANN has three mechanisms for investigating complaints from members of the ICANN community, the organisation does not have a policy or system in place that provides staff with channels through which they can raise complaints in confidentiality and without fear of retaliation. Having such a policy (often referred to as a whistleblower policy) is good practice among global organisations	ICANN should consider implementing processes that act as deterrents to abuses of power and misconduct and which would protect staff who might want to raise such instances.	ICANN should consider developing a whistleblower policy that enables staff to raise concerns in a confidential manner and without fear of retaliation; and developing appropriate systems to foster compliance
4.3	Since the creation of the Ombudsman, the number of complaints handled through the formal complaint channel of the Reconsideration Committee has dropped. As the Ombudsman's office continues to reach out to the community and raises awareness of the function within the ICANN community, there is the possibility that the number of complaints it has to handle will increase. The office's user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover	ICANN should consider strengthening the capacity of the Ombudsman's office	ICANN should consider recruiting full-time administrative support for the Ombudsman.

4.4	To be effective as a mechanism that stakeholders can use to query Board decisions, it is important that the Reconsideration Committee is accessible to its users. Key to this is that stakeholders are aware of the mechanism and how to use it; and that they are not prevented from accessing it because of procedural barriers. There is currently no statement in the By-Laws or otherwise, stating that a request for reconsideration can be made in multiple languages. Likewise, the Reconsideration Committee needs to take more active steps in disseminating information on how the mechanism can be used.	ICANN should consider making the Reconsideration Committee more accessible to all stakeholders.	ICANN should consider developing systems to support the handling of requests for reconsideration in multiple languages and actively raising awareness of the mechanism and its use among the Internet community.
4.5	The ICANN By-Laws state that Board decisions on the recommendations of the Reconsideration Committee shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. While this is good practice, the actions should also be reported online next to the documents on the Reconsideration Committee website that relate to the specific request for reconsideration. This would make it easier for the reader to follow the reconsideration process from start to finish (the initial request, the committee response, the recommendations and the board actions). This was something that ICANN seemed to do up until February 2000. Practice now however, is to state the date on which the Board took action, but not to provide a link to the appropriate minutes.		The Reconsideration Committee should consider publicly disseminating the actions taken by the Board alongside the documentation relating to the specific request for reconsideration so that stakeholders are able to follow the process from start to finish.
4.6	In the Ombudsman framework there is a specific commitment made by the Board to respond to Ombudsman recommendations within 60 days of the next Board meeting. There is no similar commitment made in relation to responding to Reconsideration Committee's recommendations.		The Board should consider making a commitment to responding to the recommendations of the Reconsideration Committee within a specific period of time.

4.7	The By-Laws state that the Reconsideration Committee, upon deciding to take forward a reconsideration request will deliver its recommendations within 90 days. Of the eight requests for reconsideration (that have been made since the reconsideration policy was revised in Oct 2000 and the commitment to the 90 days was made), three have not been handled in the stated time. Based on the response rate of the Reconsideration Committee since 1999, of the 29 requests made only 13 recommendations were delivered within a 90 day period. This evidence suggests that the Reconsideration Committee has historically struggled to deliver their recommendations in the time period that it now commits to.		ICANN should consider reviewing the capacity of the Reconsideration Committee to supply recommendations within 90 days of receiving a request for reconsideration with the purpose of either increasing the capacity of the Committee or increasing the stated response time.
4.8	When Board members who participated in the original decision are the only people reconsidering that decision possible issues arise related to the objectivity of the process. While having current Board members present for reconsideration does provide insight on the issue, there is a need for at least one non-executive individual to provide independent, objective thought. This role would essentially be one of facilitation where member would inject some impartiality into the Committee's reconsiderations.		ICANN should consider introducing an independent member onto the Reconsideration Committee to act as a facilitator. The individual would provide impartial and objective assessment to Committee members on reconsiderations.
4.9	The independent review of Board actions mechanism plays an important role in the accountability of ICANN. Although it has never been used to date, as the organisation evolves, ICANN needs to make sure it is well developed and meets the same high standards of the other parts of its complaints system. Currently, there is limited amount of information available on ICANN's website on how it works. Other than what is in the By-Laws, there is no information on the ICANN website on how to initiate a complaint through this process and no information on how the complaint will be dealt with.		ICANN should develop a separate page on their website that provides the rules of procedure for the Independent Review of Board actions, as mandated by the By-Laws, and which also provides an explanation of how to make a complaint through the Independent Review of Board actions function, and the steps that are involved in the review process.

4.10	The Independent Review states that the party that loses is liable to cover the costs of the Independent Review Panel, unless exceptional circumstances apply, then the winning party might be asked to cover half the costs. Understanding that this has been put in place to prevent frivolous complaints, there is the potential that the cost could pose a barrier to certain stakeholders using the mechanism.	ICANN should consider strengthening the accessibility of the Independent Review Panel mechanism to the ICANN community.	ICANN should consider removing the burden of making the losing party cover the costs of the Independent Review as a means of increasing the accessibility of the mechanism.
4.11	A major problem with the Independent Review mechanism is that it is not institutionalised; it only comes into being when a complaint is filed with the international arbitration provider. As a mechanism that plays an important role in overseeing the actions of the Board, it should have a more stable character and prominent role within ICANN. ICANN attempted to craft a more institutionalised and stable Independent Review Panel between 2000 and 2002. They should look at this option again, as good practice for external complaints mechanisms, suggests there are a number of areas where they might want to approach the issue differently (e.g. less stringent criteria for membership to the panel).	ICANN should consider creating a more institutionalised and stable Independent Review Panel.	

No.	Background	Recommendations	
		Strategic / Long Term	Technical / Short Term
5	**Overarching Accountability issues**		
5.1	Our review revealed that while ICANN has the policies and procedures in place to foster transparency and accountability, these are not always consistently followed. While the Ombudsman, Reconsideration Committee and the Independent Review of Board actions provide complaints based approaches to compliance, to generate greater trust among stakeholder, ICANN needs to take a more proactive approach. To address this issue, ICANN should consider a regular independent audit of their compliance with accountability and transparency commitments. Alternatively, it could develop a permanent compliance function to emphasize prevention by identifying shortcomings as they emerge and before they become systemic problems.		ICANN should consider having an independent report produced, perhaps annually, that would measure the organisation's compliance with transparency and accountability commitments made in its By-Laws.
5.2	In ICANN there is a mixture of volunteers and staff conducting the work; many people are working remotely. This creates challenges associated with ensuring all parties share the same values and beliefs about what kinds of goals the organization should pursue, how they should interact with the outside world and the appropriate kinds or standards of behaviour that should be used to achieve these goals.		ICANN should consider developing a code of conduct for all staff and volunteers that identifies the goals of the organisation, the appropriate kinds or standards of behaviour that should be used to achieve these goals and how they should interact with the outside world.
5.3	Within the ICANN community there is ambiguity around what it is that ICANN does (and should do). This has considerable impact on issues of accountability, as it ultimately relates to what people perceive the organisation as being accountable for.	ICANN needs to communicate more effectively to the outside world what its core activities are.	

Acronyms

ALAC: At-Large Advisory Committee

ccNSO: Country-Code Names Supporting Organization

ccTLD: Country Code Top Level Domain

ASO: Address Supporting Organization

GAC: Governmental Advisory Committee

GNSO: Generic Names Supporting Organization

gTLD: Generic Top Level Domain

ICANN: Internet Corporation for Assigned Names and Numbers

IETF: Internet Engineering Task Force

ISP: Internet Service Provider

NomCom: Nominating Committee

RIR: Regional Internet Registry

RSAC: Root Server System Advisory Committee

SO: Supporting Organization

SSAC: Security and Stability Advisory Committee

TLG: Technical Liaison Group

TLD: Top Level Domain

Appendices:

Appendix 1 – Information Disclosure Policy

Key elements of an information disclosure policy

- A commitment to respond to requests for information and provide a justification for denial

- Clarity about the timeframe for responding to information requests

- A narrowly defined set of conditions for non-disclosure

- An appeal process if an information request is denied

Example of narrowly defined conditions for non-disclosure:

The Asian Development Bank in its Public Communication Policy is one of the few global organisations that identify a narrow set of conditions for the non-disclosure of information. These are listed below.[14]

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ADB's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from Directors, their Alternates, Director's Advisors, members of Management, ADB staff, and ADB consultants.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ADB and its members and other entities with which ADB cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ADB and its members and other entities with which ADB cooperates by inhibiting the candid exchange of ideas and communications, particularly with respect to policy dialogue with developing member countries.

- Information obtained in confidence from a government or international organization that, if disclosed, would or would be likely to materially prejudice ADB's relations with that party.

- Individual records, including terms of employment, performance evaluations, and personal medical information of Directors, their Alternates, and Director's Advisors, members of Management, and ADB staff and consultants, as well as proceedings of internal appeal mechanisms and investigations, except to the extent permitted by staff rules and Board of Directors rules and regulations.

- Information provided to ADB by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party.

- Confidential business information.

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[14] The Public Communication Policy of the Asian Development Bank: Disclosure and Exchange of Information, June 2005.

- Information related to procurement processes, including pre-qualification information submitted by prospective bidders, tenders, proposals, or price quotations.

- Information that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual.

- Information that, if disclosed, would or would be likely to materially prejudice the administration of justice.

- Information subject to the attorney–client privilege, or whose disclosure might prejudice an investigation.

- The source of a corruption allegation.

ADB states that information that falls within these conditions can still be made public if ADB determines that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. The "public interest override" may be triggered by, for example, a request for information that reveals a serious public safety or environmental risk.

Example of key elements of a disclosure policy:

The United Nations Environment Programme (UNEP) employs the key principles of information disclosure in its policy and procedures on the availability of documentary information for GEF-related projects. The principles are listed below:[15]

- UNEP will make available the requested document within 15 working days of receipt of the request

- If the time limit will not be met, UNEP will write to the requester with a notification of an extension of the time limit and the reasons for the extension.

- UNEP lists eight narrowly defined conditions for not disclosing information:
    - information provided by a government or international organisations in the expectation that the information will be kept confidential;
    - records related solely to personnel files;
    - records related to employees, including performance evaluation;
    - trade secrets and commercial or financial information obtained from a person and privileged and confidential;
    - personnel files that constitute a clearly unwarranted invasion of personal privacy;
    - drafts of correspondence;
    - correspondence or messages of a deliberative nature prior to finalisation of documents or agreements;
    - identity of independent technical advisors of GEF projects.

- Requesters may appeal a denied request for information to the Executive Director who may convene a GEF Information Appeals Committee. The requester will be notified within thirty working days from the receipt of the appeal.

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[15] UNEP Administrative Note, Policy and Procedures related to public availability of documentary information on GEF operations, September 1993.

Appendix 2 – Translation policy

Within global organisations, a balance often needs to be struck between proactive translation and reactive translation. This involves two elements: First, identifying core groups of information/documentation that are important both to the communication of the organisations message and to facilitate the participation of stakeholders and actively translating these. Second, developing a set of criteria/guidelines that staff can use to inform their ad hoc decision on what to translate.

The World Bank, for example, identifies a number of core areas where translation needs to take place. This includes:[16]

- Documents and publications that address the institution's overall business and strategic thinking that are destined for a wide international audience (such institutional annual reports; operational policies, procedures, and guidelines; and issues and strategy papers)

- Documents provided to an audience for public consultation. Documents provided for international public consultation would be translated into relevant international languages, subject to the business sponsor's judgment. Documents provided for local public consultation would be translated into the language(s) used by the parties to be consulted.

For other documentation and information, a set of criteria/guidelines should be identified that help staff make decisions on translations. ADB for example lists the following:[17]

- *Nature and Purpose of the Document*. How does the document fit into the organisation's priorities? Who are the audiences of this document? Do they understand English? Will the document meet its purpose if it is not translated?

- *The Number of People Who Need the Information.* Do enough people need the information contained in the document to merit translation?

- *Life Span of Document.* Will this document be in effect or relevant long enough to merit translation?

- *Length of Document.* How long is the document? Will this length make it difficult, lengthy, or expensive to translate? Will this length make it unlikely that the audience would read it? Should only a portion of the document (e.g., summary) be translated?

- *Time Required for Translation.* How much time would it take to translate the document? Would it be available in a timely manner such that the audience could benefit from and make use of the information?

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[16] World Bank (2003) A Document Translation Framework for the World Bank Group, available at, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/11/17/000112742_20031117091909/Rendered/PDF/261450TranslationFramework.pdf
[17] ADB (2007) Translation Framework, available at http://www.adb.org/Documents/Guidelines/Translation-Framework/translation-framework-2007.pdf

- *Dollar Costs and Opportunity Costs.* What is the cost of translating the document? Given this cost, does it make sense to translate? Would using funds to translate this document limit the organisation's ability to the fund other translations of future documents that may be more important, impactful, and/or strategic?

Also important to a translation policy is the inclusion of information on how stakeholders can request the translation of a document. This is a principle currently lacking from most translation policies of global organisations, but one that is very important to accountability.

Additional approaches to translations

The World Bank offers some insight into how other international institutions manage translation, as seen in the following excerpt from the Bank's Translation Framework:[18]:

> Some international institutions have a language policy that mandates a set of official and working languages for organizational use, meetings and documents, recruitment, and public information. For some, their founding charters include a clause enumerating the organization's official and working languages, and their translation practice and policy derive from their language policy or approach. These organizations routinely translate all official documents into their official languages—which all have equal status— and translation is generally provided either through a central unit or outsourced to external vendors, or both as necessary.

> *United Nations:* The United Nations has six official languages (Arabic, Chinese, English, French, Russian, and Spanish); all the documents of the General Assembly, its committees and subcommittees and subsidiary organs, and the Security Council are produced in all official languages. Each United Nations institution selects official and working languages from the six official languages for its own constituency. In addition, Germany, Austria, Switzerland, and Liechtenstein finance a section of the Secretariat that translates into German all resolutions and decisions of the United Nations General Assembly, the Security Council, and the Economic and Social Council. The United Nations has about 460 staff involved in translation.

> *European Union:* At the European Union, all 23 official languages of member countries have equal status; however, not all languages are used in all European institutions for every occasion. The European Union translates all laws, job postings, procurement requests for bids, and so on, into all the official languages. The European Union has the world's largest translation bureau, with about 3,000 staff at an annual cost of US$475 million. In 1999 this figure corresponded to about 40 percent of the administrative budget of the European Union, which accounted for 2 percent of the overall budget.

> *OECD:* The official languages of the Organisation for Economic Co-operation and Development (OECD) are French and English: official documents are translated into these two languages. The OECD also translates official documents into German at the request of the German government, which

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[18] World Bank (2003) *op cit*

reimburses the associated costs to OECD. The OECD has a translation unit of 87 staff, which handles all requests for translation. The unit's budget for 2002 was about US$8.9 million (plus the German section, which accounted for about US$1.7 million).

IMF: The IMF's By-Laws provide that English is the working language. The IMF translates documents, speeches, and papers into English, and from English into other languages, as business requires. The languages into which IMF documents are most commonly translated are Arabic, Chinese, English, French, German, Portuguese, Russian, and Spanish. The IMF has about 90 staff in its Language Services Department, which handles all translation requests. They produce about 30 million words yearly, of which about 50 percent is outsourced.

African Development Bank (AfDB): The official languages are English and French. Documents are routinely translated into these languages, according to member countries' needs. AfDB also translates information—consultations, disclosed information, publications, and so on—into other languages, depending on its external communication needs. The Vice Presidency for Corporate Management includes the Languages Services Unit, which employs translation and interpretation staff.

European Bank for Reconstruction and Development (EBRD): English, French, German, and Russian are the working languages. The EBRD's policy is that the languages should be used "according to the Bank's day-to-day needs, and taking into consideration the interests of efficiency and economy." The EBRD has seven translation staff in London, and they outsource most of their translations. The EBRD is reviewing its public information and disclosure policies, and translation is a crucial issue in these reviews. A draft proposal recommends "on a one-year basis the Bank translate each approved Country Strategy into the relevant official national language as set out in the relevant laws. In those countries where there is more than one official language, and where one of those languages is a designated working language of the Bank, the translation will only be provided in such working language."

World Bank Group: The working language of the World Bank Group is English. Until 2003, the World Bank Group did not have a well-articulated policy or approach to document translation. In 2003, it issued a document translation framework that lays out a pragmatic and decentralized approach towards translation. Under this approach, the responsibility for decisions on translation (including what, when, and how) is vested in each document's business sponsor. Each institution within the World Bank Group funds and makes decisions about translation depending on its business needs and the language approach that would allow it to reach the widest relevant audience for its work.

The framework provides the following "good practice principles" to guide decision makers as they choose which documents to translate: (i) documents and publications that address the institution's overall business and strategic thinking and that are destined for a wide international audience; (ii) documents provided to an audience for public consultation; and (iii) documents and publications that address country- and project-specific information. The World Bank does not translate documents owned by borrowers.

Appendix 3 – Outline for Supporting Organisation and Advisory Committee website templates

About Us
- What the SO or AC does and what's it responsible for
- Joining information (becoming a member of the SO/AC)
- Mailing list

Governance
- Council
  - o Council members
    - ▪ Terms
    - ▪ Backgrounds
  - o Meetings
    - ▪ Schedule
    - ▪ Minutes
      - • Current
      - • Past
  - o Documents
    - ▪ Operating procedures
    - ▪ By-Laws pertaining to relevant body
- ICANN Participants
  - o Persons selected by SO/AC for other ICANN bodies, either Board. NomCom, or other SOs and ACs

Policy
- Current Policies
- PDP
  - o Ongoing
    - ▪ Each ongoing PDP
      - • Broken into milestones of PDP
      - • Each report produced by Issue/staff manager
  - o Past PDPs

Constituencies
- various constituencies listed

Appendix 4 – Guidelines for Public Consultation

Key elements of guidelines for public engagements are:

- The conditions under which external stakeholders can expect to be engaged and at what level of decision making

- Details on how external stakeholders can initiate engagement on issues that are of concern to them

- A commitment that the organisation will clearly communicate in a timely manner the purpose of the engagement and that the results of engagement will be made public unless otherwise specified by external stakeholders

- A commitment that the organisation will change policy or practice as a result of engagement else an explanation is provided to stakeholders

OECD guidelines for online public consultations[19]

The OECD guidelines for online public consultation divide the consultation process up into a number of different stages and identify the key considerations and principles that need to guide activities at these different stages. The Civil Society Liaison Manager oversees these guidelines:

LEADING UP to the consultation:

Begin the consultation process long before the consultation per se.

- Advertise upcoming online consultations several months in advance of the actual consultation so that organisations expect and prepare for it.

- Ask civil society organisations (CSOs) which follow your work to help circulate the information.

- Ask for suggestions about appropriate organisations to consult.

LAUNCHING the consultation:

Explain the consultation procedure and how you will treat responses.

A consultation document should be sent out to your contacts at the time of the launch of the consultation and posted on your website. It should:

- Explain who will use the responses and for what purpose.

- Explicitly state to whom to respond to direct queries to, giving a name, address, telephone number and e-mail address (the project manager), and highlight the information.

- Clearly state the deadline for responses, any alternative ways of contributing and the language(s) in which responses are preferred.

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[19] OECD, Guidelines for Online Public Consultation, available at
https://www.oecd.org/document/40/0,2340,en_2649_34495_37539752_1_1_1_1,00.html

- Make it clear that responses, including the names and addresses of respondents, may be made public unless confidentiality is specifically requested.
- State the date when and the web address where the summary of responses will be published.

Simplify the process; provide all relevant documentation.

- Include relevant documents on the subject along with the online questionnaire or survey. Not only does this lead to a more informed consultation exercise, but it also ensures that stakeholders have a better understanding of the issues.
- Provide a well-written executive summary that covers the main points so that those consulted can decide whether the consultation is relevant to them or not.
- Provide material on previous consultation(s) on the same topic, if any.
- Avoid jargon and only use technical terms where absolutely necessary. Explain complicated concepts as clearly as possible and, where there are technical terms, provide a glossary.
- Ask focused questions, and be clear about the specific points on which you are seeking views. Encourage respondents to provide evidence, where appropriate, to support their responses. Make it clear if there are particular areas where their input would be especially valuable. Responses are likely to be more useful and focused if the respondents know where to concentrate their efforts.

Allow adequate time for responses.

- Allow 8 to 12 weeks for responses – and, just as importantly, allow enough time between the end of the consultation and the formal discussion of the results to distil the responses and summarise them in a way that is can easily comprehensible. Where a consultation takes place over a holiday, remember to allow extra response time (up to an additional four weeks).

FOLLOWING the consultation:

Analyse and summarise responses for formal discussion and publication on the website.

- Compile and analyse the comments, then draw up a short summary, emphasising the main points. This should be presented for formal discussion and posted on the website at the end of the process.
- Do not simply count votes when analysing responses. Particular attention should be paid to possible new approaches to the question consulted on; further evidence of the impact of the proposals; and strength of feeling among similar pressure groups.
- Make every effort to ensure that discussion takes the public input into account.

Report back to the public via the website and other channels.

- It is not enough to simply publish the responses on the website. It is also important to present the final product under debate, and, where possible, any impact that the public input may have had on the discussion.

- Aim to publish the summary of public responses on the website at the end of the process. Other forms of feedback might also be considered, such as a note expressing appreciation for the public input and offering any information possible about its impact for publication on the website.

- Information should also be provided on themes that came out of the consultation which were not covered by the questions.

- Wherever possible, a summary of the next steps for the project should also be included.

- Consider sending any or all of the above elements to the organisations that helped circulate the information about the public consultation on their websites.

Monitor your effectiveness.

- Invite respondents to comment on the consultation process and suggest ways of further improving it.

- Explicitly state whom to contact if respondents have comments or complaints about the consultation process. This should be someone outside the team running the consultation.

- Look at usefulness, scope and coverage, numbers and types of comments received for future reference.

Appendix 5 – Whistleblower policy

Key Elements of a whistleblower policy

• Commitment to maintain confidentiality of complainants

• Guarantee of non-retaliation against complainants

• Clear description of how a complaint can be made and how it will be investigated

• Assurances of the independence of those assessing, investigating and responding to complaints

• An appeals process if a stakeholder is not satisfied with an investigation's outcome

• Require all negative consequences suffered by victims of proven whistleblower retaliation are reversed and that anyone found to have retaliated against a complainant receives mandatory discipline

Example of the key elements of a whistleblower policy in use:

The UN Anti-Retaliation Policy is considered to be one of the most thorough whistleblower policies available for internal and external stakeholders. The policy incorporates many of the best practice principles, as seen below in the Government Accountability Project's assessment of the document:[20]

> • A broad mandate protecting freedom of expression for those who disclose misconduct that threatens the body's core human rights mission.
>
> • Multiple internal channels for reporting corruption and abuse – Ethics Office, Office of Internal Oversight Services, and department head -- thus providing safeguards against institutionalized conflict of interest.
>
> • Qualified protection for external, public whistleblowing to the media or outside organizations, overriding the institutionalized gag order requiring advance permission for any communications outside organizational walls and thus closing a loophole that frequently cancels real whistleblower protection. The United Nations is the first IGO to endorse public freedom of expression.
>
> • Protection for 'outside parties' including contractors, consultants and even citizens affected by United Nations activities when they bear witness to misconduct.
>
> • Protection for refusal to violate the law, allowing whistleblowers to speak out when ordered to betray not only the Charter of the United Nations and any regulations or rules derived from it but any national or international law.
>
> • Modern legal burdens of proof comparable to the state-of-the-art provision of the U.S. Whistleblower Protection Act, guaranteeing fairness on standards of evidence of retaliation an individual must demonstrate to win the case.
>
> • The right to use the policy in the Joint Appeals Board and Administrative Tribunal process that already exists to challenge termination or other adverse action.
>
> • Mandatory discipline for those found guilty of retaliation.
>
> • A commitment to thorough training for staff and management, as well as posting of the new rights, to help insure the reforms are properly understood and take root in the institutional culture.

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[20] See http://www.whistleblower.org/content/press_detail.cfm?press_id=315

Appendix 6 – Individuals Interviewed

These individuals provided invaluable comments during the review process. This report is neither the reflection of their collective views or of the views of any particular interviewee.

Alphabetical by last name:

Carlos Afonso
Donna Austin
Doug Brent
Stace Burnette
Vint Cerf
Susan Crawford
Ute Decker
Alister Dixon
Avri Doria
Frank Fowlie
Tamra Frankel
Jeanette Hoffman
John Jeffrey
Janis Karklins
Paul Levins
Denise Michel
Milton Mueller
Dave Piscatello
Kurt Pritz
Rita Roden
Barbara Roseman
Theresa Swinehart
Mohamed Sharil Tarmizi
Paul Twomey
Laruen Weinstein

Appendix 7 – Referenced Documents

List of key organisational documents consulted for the assessment

General or non-specific documents

- ICANN Bylaws (28 February 2006)
- Crawford, Susan, "Meeting White Paper," ICANN (6 November 2005).
- Preliminary Report, Regular Meeting of the Board, Rio de Janeiro, 27 March 2003
- Submissions to the ICANN Accountability and Transparency Management Operating Principles
- Submissions to the President's Strategy Committee
- Annual Report (2005-2006)
- Memorandum of Understanding Status report (2005)
- Memorandum of Understanding Status report (2006)
- Proposed Budget (2006-2007)
- Operational Plan (2006-2007)
- Operating Plan Status Report (30 November 2006)
- Joint Project Agreement (2006)
- Reconsideration Committee Annual Report (2006)
- Conflicts of Interest Policy
- Nominating Committee Operating Procedures (2007)
- Nominating Committee Final Report (2005-2006)
- ICANN Summary of Input on Transparency and Accountability Management Operating Principles
- Reconsideration Committee Annual Report (2004)
- Uniform Domain Name Dispute Resolution Policy (1999)

Board

- Board Minutes
- Voting Transcripts

Ombudsman

- Case Report from Ombudsman to Board (2007)
- Case Report from Ombudsman to the Board (2006)
- Ombudsman Annual Report (2006)
- Ombudsman Annual Report (2005)
- Ombudsman Framework (2005)
- Ombudsman Management Principles (2005)
- Ombudsman Value Statement
- Results Based Management Framework for Ombudsman (2005)
- November, Independent Review of Lit Review (2006)

ASO

- ASO Council Minutes
- ASO Memorandum of Understanding (2004)
- Policy Development Procedures

GNSO

- GNSO Council Minutes
- Sharry, Patrick. "A review of the Council of the Generic Names Supporting Organization of the Internet Corporation for Assigned Names and Numbers," ICANN (2004).

ccNSO

- Accountability Framework Guidelines
- Best Practice Guidelines for ccTLD Managers (March 2001)
- ccNSO Council Minutes
- ccNSO Rules
- Re/Delegation Guidelines for ccTLD Managers
- Report of the ccNSO Budget Working Group to the ccNSO Council

ALAC

- At-Large Framework Formation
- Case Report from Ombudsman to the Board (2007)
- Case Report from Ombudsman to the Board (2006)

GAC

- GAC Communiqué – Marrakech (June 2006)
- 2005, GAC Operating Principles
- Address of the President and CEO of ICANN to Sub Committee A (14 November 2005)
- Statement by the Chairman of the GAC, ICANN to Sub Committee A (14 November 2005)

SSAC

- Security Committee Charter (2002)
- SSAC Work Plan Page (2006)

External documents

- Bastow, Simon, et al. "A Review of the Generic Names Supporting Organization (GNSO)," *LSE* (2006).

- Center for Democracy and Technology. *Assessing ICANN: Towards Civil Society Metrics to Evaluate the ICANN Experiment* (31 July 2003).

- Frankel, Tamar, "Accountability and Oversight of the Internet Corporation for Assigned Names and Numbers," *Boston University School of Law Research Paper Series,* Public Law & Legal Theory Research Paper No. 02-15 (August 2002).

- Hasbrouck, Edward. Submission to National Telecommunications and Information Administration (July 2006)

- International Institute for Sustainable Development for the Canadian Internet Registration Authority. *Accountability and Transparency in Internet Governance* (December 2006).

- Klein, Hans "the feasibility of global democracy: understanding ICANN's at-large election," *the Journal of Policy, Regulation and Strategy for Telecommunications Information and Media* (v3, n4, August 2001).

- Klein, Hans and Mueller, Milton. "What to Do About ICANN: A Proposal for Structural Reform," *Internet Governance Project* (5 April 2005).

- Koppell, Jonathan GS, "Pathologies of Accountability: ICANN and the challenge of 'Multiple Accountabilities Disorder,'" *Yale School of Management*.

- Mueller, Milton. "Political Oversight of ICANN: A Briefing for the WSIS Summit," *Internet Governance Project* (1 November 2005).

- Report of the NGO and Academic ICANN Study. *ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work* (August 2001).

- Society of Critical Care Medicine, *Volunteer Code of Conduct and Conflict of Interest, Assignment of Rights, Disclosure Policy* (2005).

- Weinstein, Lauren, and Neumann, Peter G., "Abolition," *People for Internet Responsibility* (2000).