ICANN Internal Understandings of the Term "Public Interest" within ICANN's Remit

The below background information is the product of a survey carried out across departments at ICANN to understand what current understandings exist of the term "public interest" as it relates to ICANN's work. In addition, the survey used the [Strategy Panel on the Public Responsibility Framework](#)'s definition as a starting point to understand what fiscal, operational, and legal implications this, or any definition, would have on ICANN's work.

The survey was carried out between May and November 2015 and involved staff from various departments across ICANN. The results of the survey are anonymized below.

To note: the survey related to both the term "global public interest" and "public interest," and does distinguish where possible where the two different terms are used. Upon discussion after initial surveys, given that the terms had been used interchangeably, future documents and work use the term "public interest" given that this is what is used in the bylaws, and that ICANN's work, mission and mandate are inherently global, and therefore, the public interest should be seen as such without the need for explicit distinction.

This document research was facilitated by the Development and Public Responsibility Department (DPRD) at ICANN; for further information on this or subsequent work, please contact dprd@icann.org. You can also subscribe to the ICANN mailing list on this topic publicinterest@icann.org, at this link: https://mm.icann.org/mailman/listinfo/publicinterest.

<u>Topic 1:</u>
<u>Current Understandings of the Terms "Global Public Interest" or "Public Interest"</u>

Question: Currently, amongst department staff, is there an understanding of the "global public interest" or "public interest"?

Key takeaway: This first question aimed to review what current understandings of either "global public interest" or "public interest" exist across ICANN Departments. Amongst most departments, there is a general idea and understanding of what these terms entail and how ICANN's work seeks to serve this aim. Departments highlighted that the primary mission of ICANN- to support a single, stable, interoperable Internet, is precisely so because it is in the "global public interest" but there is a gap in clear discussion, understanding, or implemention of a definition of either term.

Items to note:
- The term 'global' is not used or referenced as part of the ICANN Bylaws

<u>Topic 2:</u>
<u>Departmental Decisions Explicitly Referencing the "Global Public Interest" or "Public Interest"</u>

Question: Are there decisions made at the department level that explicitly reference or take into consideration the "global public interest?"

Key takeaway: This question focused on decision-making within departments that <u>explicitly</u> reference either term. The majority of departments surveyed said that, while they take the public interest into account throughout their work, they do not make formal decisions that <u>explicitly</u> reference either term. That being said, three departments did outline decisions that do make explicit reference.

Items to note: Some examples of the types of decisions taken that explicitly reference either term are:
- Assessing transparency obligations to meet the public interest
- In issues of procurement, to try and source firms from around the globe to conduct work
- Public comment processes, including summary and analysis of feedback, in course of decision-making, which are aimed at arriving at best outcomes for all stakeholders rather than narrow interest communities
- Defining contract terms and obligations in light of global public interest
- Organizational reviews and strategic planning
- Decisions involving stability of the Internet DNS relate directly to the public interest

Topic 3:
Departmental Documentation Making Specific References to Either Term

Question: Are there documents related to this department that reference the "global public interest" or "public interest"? If so, please list and cite resource location if possible.

Key takeaway: The survey also aimed to create an inventory of how often either term is referenced in ICANN documentation. A number of documents were listed, including the ICANN Bylaws, the ICANN Strategic Plan 2015-2020 and the New gTLD Applicant Guidebook to name a few. For a full list of this inventory, please visit here.

Items to Note: This inventory is intended to be a living inventory. Those with additional ICANN documents referencing either term are encouraged to contact dprd@icann.org so that it may be updated accordingly.

Topic 4:
Departmental Concerns with Words of Phrases in the Strategy Panel Definition of the "Public Interest"

As a starting point, and in order to test parameters of definition, the survey presented the definition formed by the Strategy Panel on the Public Responsibility Framework following Community input and expertise. The definition is as follows:

"Ensuring that the Internet becomes, and continues to be, stable, inclusive, and accessible across the globe so that all may enjoy the benefits of a single and open Internet. In addressing its public responsibility, ICANN must build trust in the Internet and its governance ecosystem."

For more on the Strategy Panel and the work on this topic, visit:
https://www.icann.org/resources/pages/public-responsibility-2013-10-11-en

Using this definition, departments were asked if there were concerns about any of the words of phrases in the definition.

Question: Regarding the above Panel definition, are there any words or components that give your department concern?

Key Takeaways: Generally, most of the departments had concern about the scope of the definition, wanting to ensure that it is understood specifically within an ICANN context and

ICANN's mission and mandate. In relation to the second sentence – as this relates to public responsibility and not public interest – it was recommended that this be separated out.

Specific comments related to words:
- Can the word "Accessible" be interpreted outside ICANN's mandate, such as in issues under a national government's jurisdiction, like Internet speeds/costs?
- "Stable" – most comments agree this fits with ICANN's mission and mandate
- "Inclusive" – needs clarification- does this mean ICANN is inclusive or promotes inclusivity, in terms of things like content, that are outside ICANN's remit? How is inclusivity measured?
- "Build trust" – concerns to ensure this is within mission and mandate; additional comment noted that trust is earned, not built
- How is "trust" measured?
- "Open Internet" – need definition to ensure it is within remit and does not relate to items like Net Neutrality
- "Ensure" – suggested replacement with "act" rather than "ensure," which is outside ICANN's control
- "Internet" – should this be refined to the remit of ICANN and the DNS, numbers, and parameters?
- The phrase "becomes, and continues to be" is considered outdated if one presumes that the Internet is stable

Topic 5:
Potential Impact on Departments if the Panel Definition were to be Adopted

Question: If this definition were to be adopted, how would it impact the department's work?

Key Takeaways: In order to understand conceptually what sort of impact a definition would have on the work of ICANN Departments, the survey asked what the potential impact would be if the Panel definition was adopted. While some departments said there would be little impact on day-to-day operations, there were comments that adopting the definition in its current form would foreclose the opportunity to further discuss this topic and develop clear consensus understandings, whether in the form of definition(s), references, or criteria. If adopted, there were concerns that the definition in its current form could be cited or stretched in unintended ways, either outside ICANN's remit or in an effort to limit ICANN's role.

Specific comments:
- Would need to understand more how it should be seen in light of ICANN's mission and core values

- How would it be operationalized? Would it be used and adopted by staff, working groups, the board, the wider community, and/or all of the above? How would ICANN measure the word "ensure?"
- What status would it have - would it have a similar status to ICANN bylaws?
- The second sentence could be used to justify content requests related to illegal activities.
- It could broaden the scope and work that ICANN supports
- Impact would be dependent on how it is interpreted
- There may need to be departmental-specific guidance on how public interest considerations apply to each department's work
- How are each of the points operationalized? What does 'stable' and 'inclusive' mean to each department?
- Would have to spend time explaining what is outside ICANN's remit

Topic 6:
Suggested Changes or Additions to the Definition to Better Align with Departmental Work and ICANN's Mission and Mandate

Question: What changes or additions would this department make to the current definition to better align both with its' work and with ICANN's mission and mandate?

Key Takeaways: As a method of exploration, departments were asked to suggest changes or additions that would better align the Panel definition with their work and ICANN's Mission and Mandate.
- Most respondents felt that the definition should be narrowed, and aligned further with ICANN's mission and mandate, linking it more to the coordination of the DNS, including security and stability, and reinforcing the notion of a unified Internet
- Definition could also be modified with specific considerations in various areas to make it useful and operational; examples of this include: providing guidance to Contractual Compliance, policy development groups, and the Board in assessing policy recommendations. This should also include focus on unique identifiers and the market place, with broad consensus on consent to a common test, and providing tools to test and operationalize
- The public *responsibility* aspect (second sentence) should be separated from the public interest definition
- Seek agreement on whether "global" should or should not be included: i.e. *global* public interest, or simply public interest
- There was also a suggestion to look at this as a conceptual definition – noting that it will not be the same in 10 years time
- Consider in definition that "Internet" is not the same as the Domain Name System (DNS) over which ICANN has accountability
- Consider how other topics may fit under this umbrella, such as human rights

- Consider changing "ICANN must build trust" to "ICANN must continue to build trust" and also add context of how this is achieved, such as, "ICANN must continue to build trust in the Internet and its governance ecosystem, through a transparent and accountable accomplishment of its mission in the global public interest."
- List of desires should also include the term "interoperable"

Topic 7:
Exploring Further Defining the "Global Public Interest" or "Public Interest"

Question: What concerns, if any, does this department have about further defining the global public interest in relation to ICANN's work?

Key Takeaways: Departments were also asked to give any other observations on if there is future work to explore further defining either term

- Departments welcome further conversation on this topic, stressing the need for conversation that is inclusive of community, staff, and board, as potential definition(s) or criteria will likely impact all in varying levels
- Primary concern amongst department is reaching a definition that is narrower, clear, and well defined within ICANN's remit
- If a definition or a set of criteria was agreed upon by all, then this could be helpful in operationalization by giving a clearer test on current work, establishing criteria against which staff, board, and community groups would conduct their work
- If a definition is agreed upon, it needs to be clear and consistently used and be updated in ICANN's strategic and operational plans
- It was recommended that future work should seek to assess where definitions of 'public interest' have been devised, how they relate or could apply to ICANN, noting that an ICANN definition should be narrowly tailored to ICANN's core mandate and remit
- Given the importance of stakeholder focus, further defining these terms is unlikely to stray from intent and mandate
- In further defining terms, it is important to avoid inadvertently increasing or limiting the scope of ICANN's mission