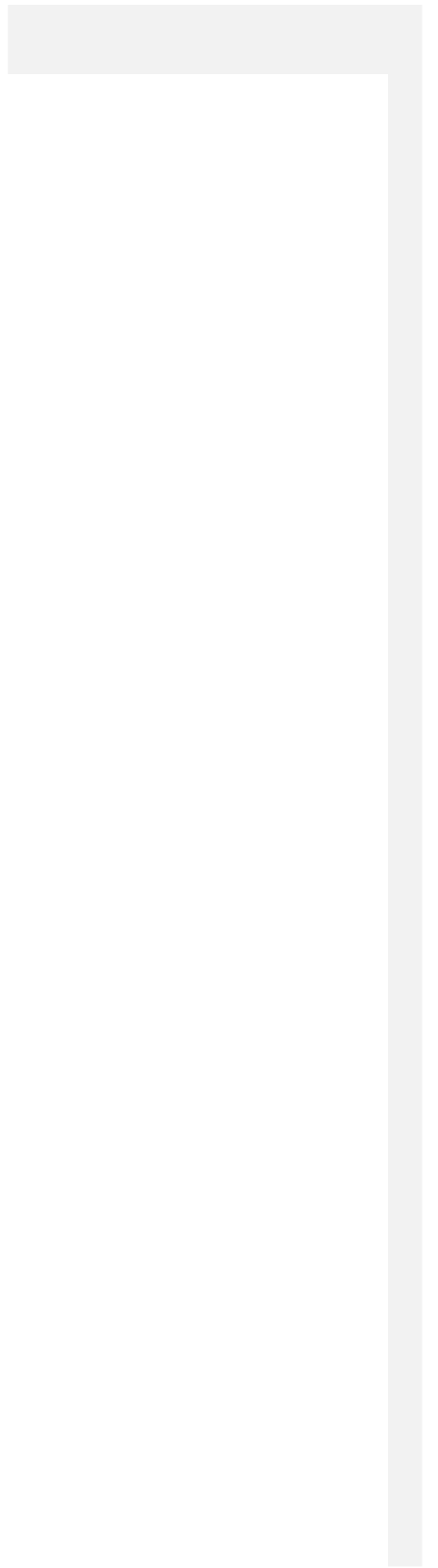


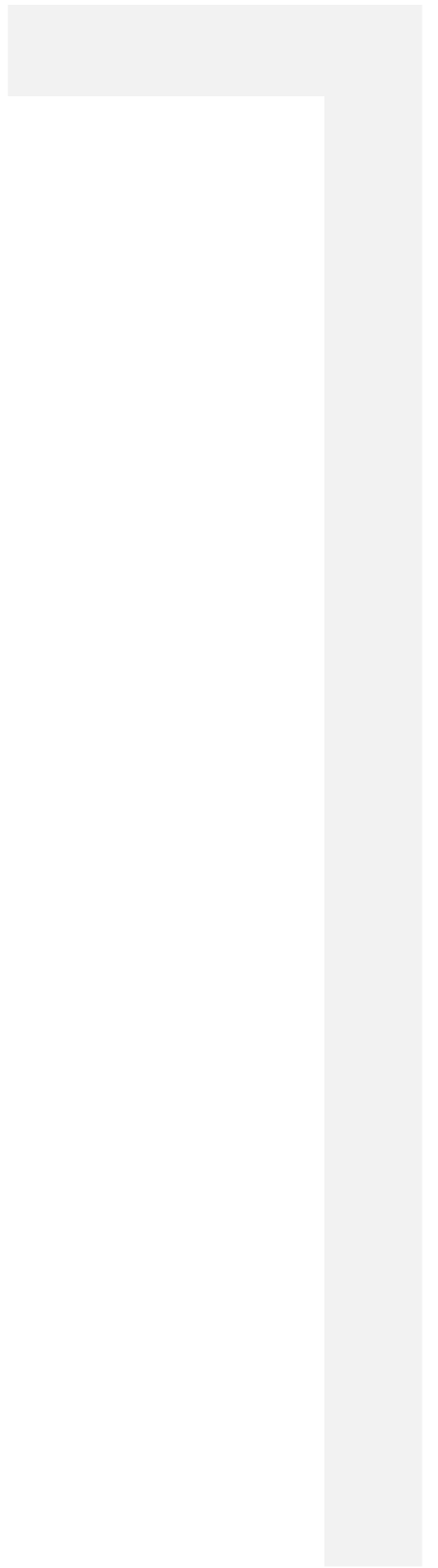
Rationale Text Superceded

2011-03-18 Annex-Redline-Cross-Ownership-Rationale

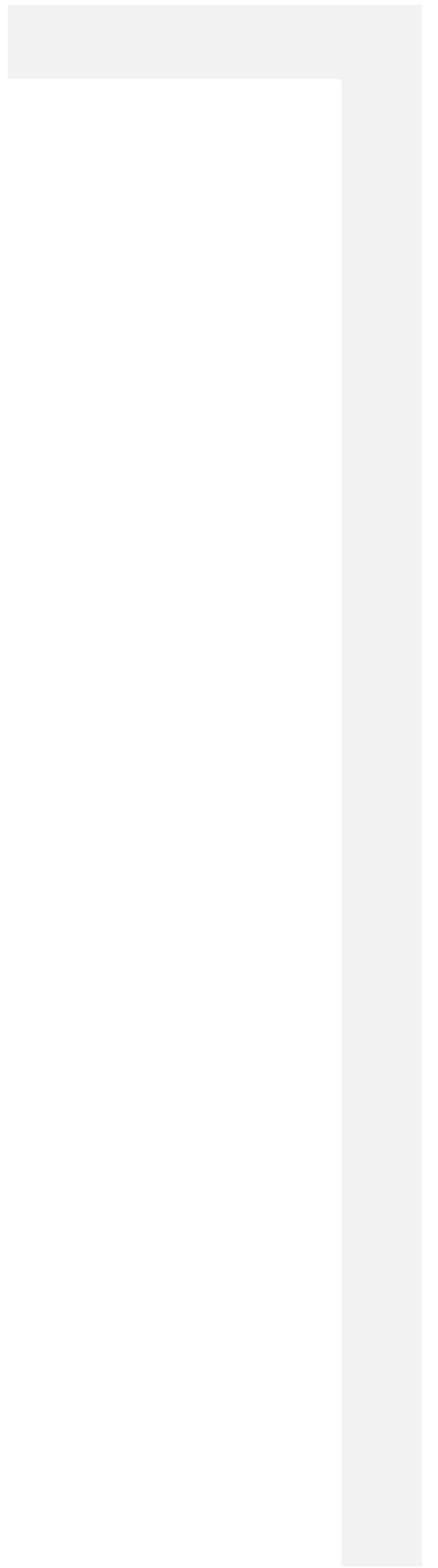
Rationale Text Superseded

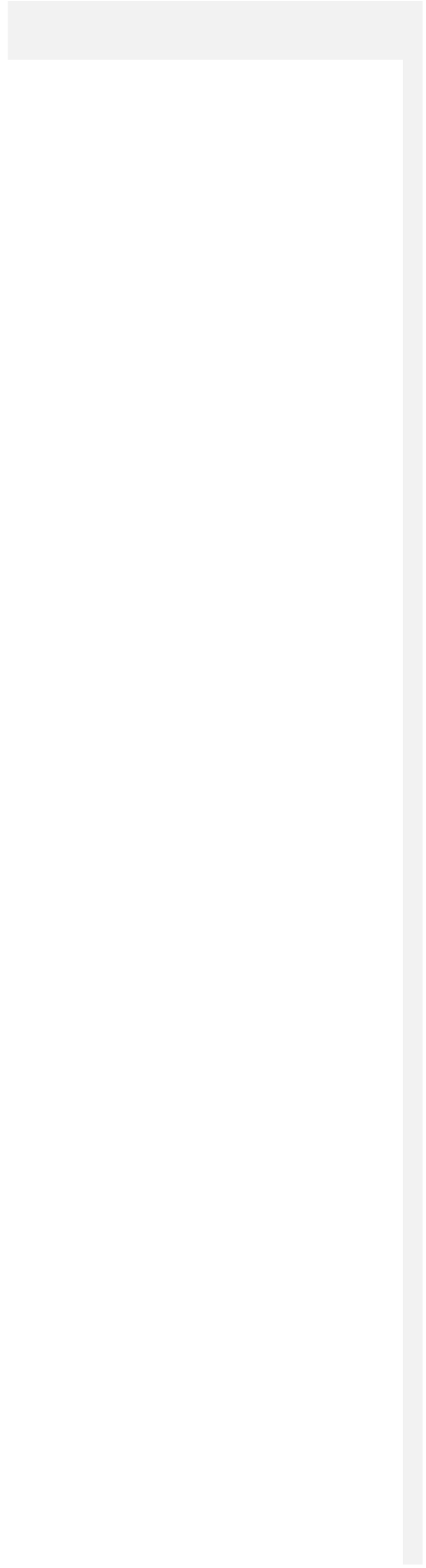


Rationale Text Superseded



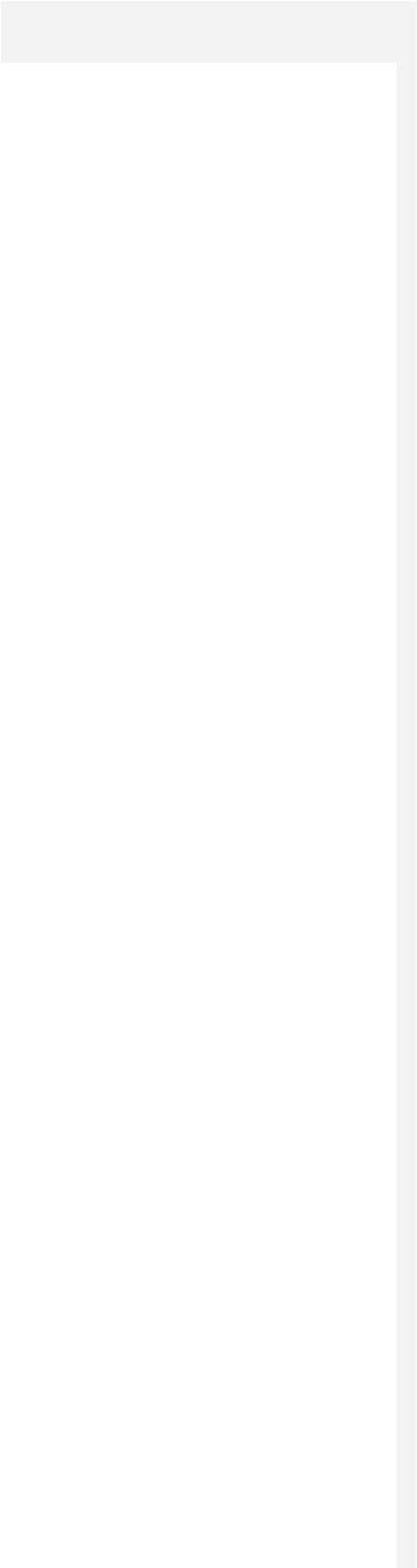
Rationale Text Superseded



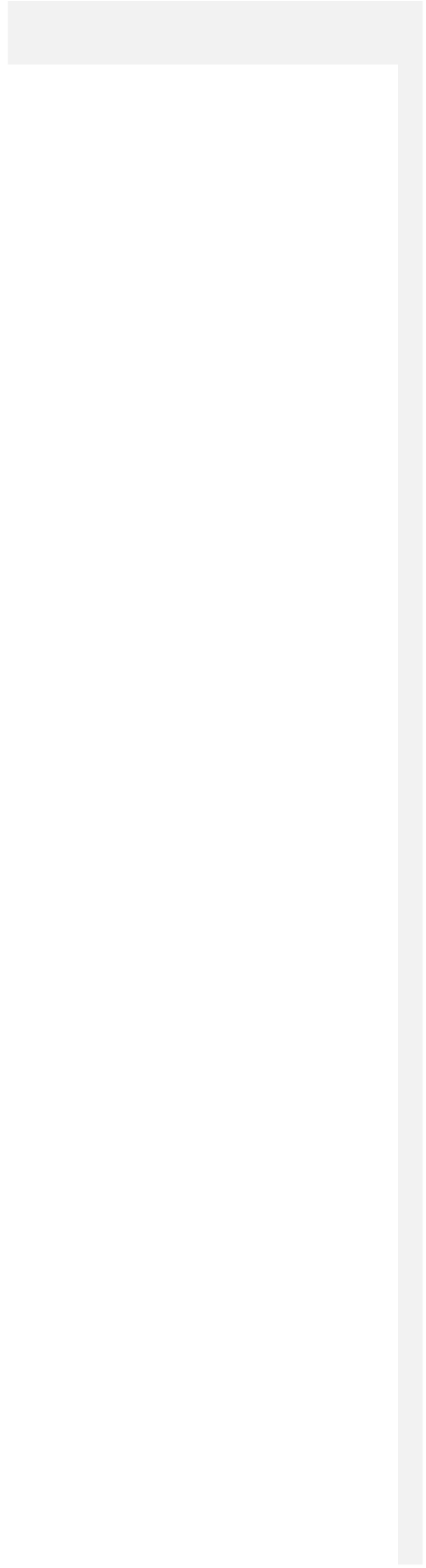


Rationale Text Superceded

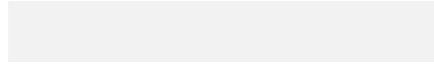
Rationale Text Superseded

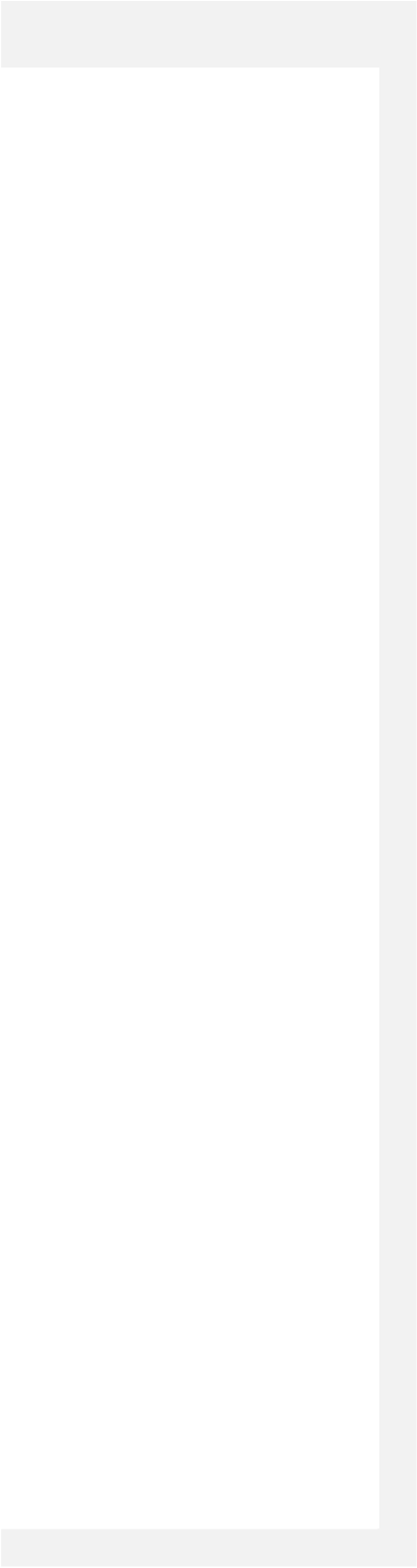


Rationale Text Superseded



Rationale Text Superseded





**2011-03-18-01 Annex Cover Letter SSAC New Member
David Conrad Feb 2011**



25 February 2011

To: ICANN Board
From: SSAC Membership Committee
Via: SSAC Liaison to the ICANN Board

The purpose of this letter is to bring you up-to-date on proposed changes to the Security and Stability Advisory Committee (SSAC) and to provide an explanation for the attached requests for Board actions. The changes we propose are incremental and positive.

As you know, SSAC has been in operation since spring 2002 and we periodically recruit new members to increase the expertise and breadth of the Committee. In addition, SSAC members may depart from time-to-time.

Beginning in 2011, the SSAC established a Membership Committee to consider new member candidates and to propose the appointment of new members. The Membership Committee also will hold an annual evaluation of SSAC member skills and recruitment, as necessary depending on skill gaps, of new members. In addition, the Membership Committee will consider member candidates that are presented outside of the annual membership review. The Membership Committee is comprised of the SSAC Chair, the SSAC Vice Chair, the SSAC Board Liaison, and other SSAC member volunteers.

In selecting members, we strive first and foremost for technical competence, integrity and independence of thinking, and a willingness to devote the time needed for the Committee's work. We look for people from all segments of the technical community.

In this case, the Membership Committee identified David Conrad as a new member candidate. David has extensive experience working with the SSAC as an ICANN employee. Upon leaving ICANN the SSAC decided to continue David's involvement in the Committee as an Invited Guest. In February 2011 the Membership Committee proposed that David should be appointed to the SSAC and the SSAC members agreed with this proposal. Thus, the SSAC Membership Committee respectfully requests that the Board appoint David Conrad to the SSAC. Attached is his bio for your reference.

The SSAC welcomes comments from the Board concerning these requests.

Jim Galvin, SSAC Vice Chair
Chair, SSAC Membership Committee

2011-03-18-01 Annex drc-resume

Personal Information Redacted

Personal Information Redacted

Personal Information Redacted

2011-03-18-04 Annex SSAC-Related Bylaws Changes

ANNEX TO BOARD SUBMISSION NO. 2011-03-18-04

TITLE: **SSAC-Related Changes to ICANN Bylaws**

BACKGROUND:

Recommendation number 18 in the Report of the Board Working Group on improvements to the Security and Stability Advisory Committee (SSAC) is that task area one of the SSAC Charter should be removed because it is out of scope of the activities of the SSAC. See <http://www.icann.org/en/reviews/ssac/ssac-review-wg-final-report-29jan10-en.pdf>. Task area one reads as follows: "Develop a security framework for Internet naming and address allocation services that defines the key focus areas, and identifies where the responsibilities for each area lie." This recommendation will require a change to the ICANN Bylaws in Article XI, Section 2(2)(a)(1) at <http://www.icann.org/en/general/bylaws.htm#XI>. The reviewers also recommended that a process be put in place to allow for the Board to remove SSAC members. The SIC agreed that, as the Board has the power of appointment of SSAC membership, the Bylaws should be revised to allow for the complementary power of removal, so long as its performed in consultation with the SSAC.

On 28 October 2010 the Board approved resolution 2010.28.10 directing that the proposed Bylaws amendments should be posted for public comment for a period of no less than 30 days. Following the Board's directive, staff identified the required Bylaws revisions and posted the proposed revisions for public comment on 03 November 2010. The public comment forum was opened on 03 November 2010 and will close on 02 December 2010, prior to the meeting and in sufficient time to identify any additional comments or concerns arising out of that public comment period. As of 18 November 2010, no comments were submitted in the public comment forum.

Staff continues to monitor the public comment forum and will update the Board prior to a decision if any comments are received that recommend changes to the proposed Bylaws or do not support the proposed Bylaws revisions. In that event, staff will provide a revised recommendation, if applicable. The current draft of the Summary and Analysis document to be posted in the public comment forum is attached as Exhibit A.

The following recommendation has been proposed for the SIC's consideration in Cartagena: The SIC recommends that the Board approve the proposed changes to the ICANN Bylaws to remove task area one of the SSAC Charter and to allow for the complementary power of SSAC member removal, so long as its performed in consultation with the SSAC.

GENERAL COMMENTS & CONTRIBUTORS:

The public comment period was opened on 03 November 2010 and will close on 02 December 2010. At the time this summary was prepared no comments were received.

Submitted by:	Julie Hedlund
Position:	Director, SSAC Support
Date Noted:	18 November 2010
Email and Phone Number	Julie hedlund@icann.org; 202-549-3799

2011-03-18-04 Annex Attachment SSAC-Related Bylaws Changes-Redline

ATTACHMENT TO BOARD SUBMISSION NO. 2011-03-18-04

TITLE: **Proposed Amendments to Article XI of the ICANN Bylaws to Implement Improvements Relating to the Charter and Membership of the Security and Stability Advisory Committee (SSAC)**

REDLINED LANGUAGE:

Article XI: Advisory Committees

Section 2. Security and Stability Advisory Committee

a. The role of the Security and Stability Advisory Committee (“SSAC”) is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

Author
Deleted: 1 To develop a security framework for Internet naming and address allocation services that defines the key focus areas, and identifies where the responsibilities for each area lie. The committee shall focus on the operational considerations of critical naming infrastructure.

Author
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2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

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3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

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4. To report periodically to the Board on its activities.

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5. To make policy recommendations to the ICANN community and Board.

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b. The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. [The Board shall also have the power to remove SSAC appointees as recommended by or in consultation with the SSAC.](#) (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC chair shall recommend the re-appointment of all current SSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

Item Removed from Agenda

2011-03-18-07 Annex October 2012 North America Meeting Location

Location of October 2012 ICANN Meeting

DETAILED ANALYSIS:

1. Background:

In November 2010, ICANN called for expressions of interest to assist as host of the 2012 North America ICANN Meeting. The proposal that is recommended for approval, from the Canadian Internet Registration Authority (CIRA), is discussed below.

2. Site Visit to Toronto, Canada

Discussion of Issues:

A site visit to Toronto, Canada was made in February 2011.

Toronto offers an excellent combination of accessibility, meeting facilities and hotel accommodations for the October 2012 ICANN Meeting. The Westin Harbour Castle Hotel would be used for all meetings, as well as guest room accommodations for the Board, staff and most delegates. Nearby hotels - Admiral Radisson, Novotel, Royal York - are a short walk away, and offer accommodations at varying price points. Representatives from CIRA are capable and anxious to host. Heather Dryden, GAC Chair and ICANN Board member, is in support of holding the Meeting in Toronto.

Staff recommends that the board approve Toronto, Canada as the location of the October 2012 ICANN Meeting.

A budget of US\$2.01M is proposed for the ICANN Meeting in Toronto, Canada. It includes all expenses for the Meeting, including travel for the ICANN Board, staff, meeting contractors, Fellows, ALAC, GNSO and ccNSO. The budget does not include travel support assistance for NomCom, or travel expenses for consultants hired by other departments, as these funds are in other departments' budgets.

***** Confidential Proposal Information Set Forth Below *****

Alternate Proposals Redacted

***** Confidential Proposal Information Set Forth Above *****

Key stakeholders and their positions are:

3. Consultation—internal and/or external:

Internal: Government Affairs

External: The potential host for Toronto.

4. Potential Objections and Proposed Responses:

Objections: No objections to Toronto, Canada have been raised. Other entities interested in hosting the October 2012 meeting may raise objection.

5. Resource implications:

The proposed budget for this meeting is not to exceed US\$2.01M. By comparison, the Dakar budget is \$2.2M, the San Francisco budget is \$1.941M, the Cartagena budget was US\$2.126M, and the Brussels budget was US\$2.094M.

***** Confidential Budget Estimate Information Set Forth Below *****
Estimates Redacted

***** Confidential Budget Estimate Information Set Forth Above *****

2011-03-18-08 Annex 2014-16 ICANN Mtg Dates

ANNEX TO BOARD SUBMISSION No. 2011-03-18-xx
Dates of 2014, 2015 and 2016 ICANN Meetings

DETAILED ANALYSIS:

1. Background:

In 2010, staff worked to identify dates for future ICANN Meetings. The proposed dates were selected based on careful avoidance of important holidays, celebrations and observances around the globe. Similarly, every effort was made to identify and prevent scheduling conflicts with other community events. The attached spreadsheets show details by year.

There will be no financial impact on ICANN in announcing the dates of upcoming ICANN Meetings. There is no impact on the security or the stability of the DNS due to announcement of the dates.

Submitted by:	Nick Tomasso
Position:	Senior Director, Meetings & Language Services
Date Noted:	28 February 2011
Email and Phone Number	nick.tomasso@icann.org +1-310-630-7730

2. Key stakeholders and their positions are:

3. Consultation—internal and/or external:

External: Public comment period

4. Potential Objections and Proposed Responses:

Objections: No significant objections to the proposed dates have been raised.

5. Resource implications:

None

2011-03-18-08 Annex 2014-16 ICANN Mtg Dates

ICANN Meetings - 2014 Calendar Dates
 Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 49 EUROPE 23 - 28 March 2014
ICANN 50 NORTH AMERICA 22 - 27 June 2014
ICANN 51 ASIA PACIFIC 12 - 17 October 2014

Major holidays and events

JANUARY 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOTE: Month of January is too soon following

Jan 1: New Years Day

week following New Year - no time for pre-con

Jan 14: Prophet's Birthday (Islamic)

Jan 20: Martin Luther King Day (US)

Jan 26: Australia Day;

Jan 31: Chinese New Year

FEBRUARY 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

NOTE: Month of February is barely 2 months c

week prior to APRICOT

Feb 18-28: APRICOT

MARCH 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Mar 2-7: 89th IETF (location TBD);
 Mar 5: Ash Wednesday

week following IETF

16-21 March: Possible Dates

PROPOSED DATES: 23-28 March 2014

APRIL 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

30 March - 4 April: Possible Dates

April 15-22: Passover;
 April 18: Good Friday
 April 20-21: Easter Sun/Mon;
 April 25: Anzac Day (Aus)

ICANN Meetings - 2014 Calendar Dates
Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 49 EUROPE 23 - 28 March 2014
ICANN 50 NORTH AMERICA 22 - 27 June 2014
ICANN 51 ASIA PACIFIC 12 - 17 October 2014

Major holidays and events

NOTE: Month of May is too close to possible d

MAY 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

May 26: Memorial Day (US);
May 26: Isra and Mi'raj (Islamic)

JUNE 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

week following Memorial holiday - no time for pre-con

too close to possible dates in March

15-20 June: Possible Dates

PROPOSED DATES: 22-27 June 2014

June 29: Ramadan Begins (Islamic)

JULY 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

July 4: Independence Day (US)

week following July 4th - no time for pre-con

week prior to IETF

July 20-25: 90th IETF (location TBD);
July 24: Laylat al-Qadr

July 29: Eid-al-Fitr (Islamic)

AUGUST 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

***European Holiday Month**

ICANN Meetings - 2014 Calendar Dates
 Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 49 EUROPE 23 - 28 March 2014
ICANN 50 NORTH AMERICA 22 - 27 June 2014
ICANN 51 ASIA PACIFIC 12 - 17 October 2014

Major holidays and events

SEPTEMBER 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Sept 1: Labor Day

week following Labor Day holiday - no time for pre-con

14-19 September: Possible Dates

Sept 25: Rosh Hashanah (Jewish)

OCTOBER 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Oct 4: Yom Kippur (Jewish)

Oct 4: Dussehra (Hindu)

Oct 5: Eid-al-Adha (Islamic)

week following Yom Kippur - no time for pre-con

PROPOSED DATES: 12 - 17 OCTOBER 2014

Oct 25: Muharram/New Year (Islamic)

Oct. 23-27: Diswali (Hindu)

26 - 31 October: Possible Dates

NOVEMBER 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

week prior to IETF

Nov 9-14: 91st IETF (Location TBD)

week following IETF

Nov 27: Thanksgiving Day (US)

week following Thanksgiving- no time for pre-con

DECEMBER 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

week following Thanksgiving holiday - no time for pre-con

7-12 December: Possible Dates

Dec 17 - 24: Chanukah (Jewish)

Dec 24- Jan 1: Christmas/Winter Break

ICANN Meetings - 2014 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

ICANN 48: 17-22 Nov 2013

Jan 7: Orthodox Christmas Day (RU)

Jan 13: Coming of Age Day (JP)

Jan 30: Spring Festival Golden Week (ZH)

Out from ICANN 48: 17-22 Nov 2013

Feb 1: Spring Festival Golden Week (ZH)

Feb 9-13: (IEEE ISSCC); Feb: 11: National Foundation Day (JP)

Feb 17: President's Day (US)

Feb 23: Defender of the Fatherland Day (RU);

Feb 28: 228 Memorial Day (TW)

Mar 1-5: Carnival (BR)

Mar 8: International Women's Day (RU)

Mar 21: Spring Equinox (JP);

Mar 21: Human Rights Day (SA)

Mar 24: Memorial Day (AR)

April 2: Veterans Day (AR); April 5: Qing Ming Jie (ZH);

April 5: Tomb Sweeping Day (TW)

April 21: Family Day (SA)

April 27: Freedom Day; April 29: Shōwa Day (JP)

ICANN Meetings - 2014 Calendar Dates
Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

ates in March

May 1: Labor Day (FR); May 3: Constitution Memorial Day (JP)

May 4: Greenery Day (JP); May 5: Children's Day (JP);
May 5: Bank Holiday (UK); May 8: WWII Victory Day (Fr);
May 9: Victory Day (RU)

May 19: Victoria Day (CA)

May 25: Independence Day (JO); May 25: National Day (AR);
May 26: Spring Bank Holiday (UK); May 29: Ascension Day

June 2: Dragon Boat Festival (ZH, TW)

June 9: Whit Monday (FR); June 12: RU Day

June 16: Youth Day (SA); June 16: Flag Day (AR);
June 19: Corpus Christi (BR)

July 1: CA Day

July 9: Independence Day (AR)

July 14: Bastille Day (FR);

July 21: Sea Day (JP)

Aug 9: National Women's Day (SA)

Aug 15: Assumption of Mary (FR)

Aug 18: San Martín Day (AR)

ICANN Meetings - 2014 Calendar Dates
Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Sept 3: Armed Forces Day (TW)

Sept 7: Independence Day (BR);

Sept 8: Mid-Autumn Festival (ZH, TW)

Sept 15: Respect for the Aged Day (JP)

Sept 23: Autumn Equinox (JP); Sept 24: Heritage Day (SA)

Oct 1-3: National Day (ZH); Oct 3: Day of German Unity

Oct 10: Double Tenth National Day (TW)

Oct 12: Columbus Day (AR); Oct. 12: Holy Mary's Day (BR);

Oct 13: Sports Day (JP); Oct 13: Thanksgiving Day (CA)

Nov 1: All Saints (FR)

Nov. 2: Remembrance Day (BR);

Nov 3: Culture Day (JP); Nov. 4: Unity Day (RU)

Nov 11: Veterans Day (US); Nov. 11: Armistice Day (FR);

Nov. 15: Republic Proclamation Day (BR)

Nov 23: Labor Thanksgiving Day (JP)

Dec 8: Feast of the Immaculate Conception (AR)

Dec 23: Emperor's Birthday (JP);

Dec 26: Boxing Day; Dec 26: Day of Goodwill (SA)

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 52 AFRICA 8 - 13 February 2015
ICANN 53 LATIN AMERICA 21 - 26 June 2015
ICANN 54 EUROPE 18 - 23 October 2015

Major holidays and events

NOTE: Month of January is too soon after p

JANUARY 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Jan 1: New Years Day;
Jan 3: Prophet's Birthday (Islamic)
Jan 19: Martin Luther King Day (US)
Jan 26: Australia Day

FEBRUARY 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

1-6 February: Possible Dates
PROPOSED DATES: 8-13 February 2015
Feb 18: Ash Wednesday;
Feb 19: Chinese New Year
Feb 24-Mar 6: APRICOT

MARCH 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

(APRICOT)
week following APRICOT
week prior to IETF
Mar 22-27: 92 nd IETF (Location TBD)
week following IETF

APRIL 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	

April 3: Good Friday;
April 4: First day of Passover
April 4-11: Passover;
April 5-6: Easter Sun/Mon
week following Easter holiday - no time for pre-con
April 25: Anzac Day (AU)
too close to proposed dates in February

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 52 AFRICA 8 - 13 February 2015
ICANN 53 LATIN AMERICA 21 - 26 June 2015
ICANN 54 EUROPE 18 - 23 October 2015

Major holidays and events

MAY 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

3-8 May: Possible Dates

May 15: Al Isra and Mi'raj (Islamic)

too close to upcoming Memorial holiday

May 25: Memorial Day (US)

JUNE 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

week following Memorial holiday - no time for pre-con

7-12 June: Possible Dates

June 18: Ramadan Begins (Islamic)

PROPOSED DATES: 21 - 26 June 2015

JULY 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

July 4: Independence Day (US)

too soon after July 4th Holiday

July 13: Laylat al-Qadr (Islamic);
July 18: Eid-al-Fitr (Islamic)

July 19-24: 93rd IETF (Location TBD)

AUGUST 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

***European Holiday Month**

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 52 AFRICA 8 - 13 February 2015
ICANN 53 LATIN AMERICA 21 - 26 June 2015
ICANN 54 EUROPE 18 - 23 October 2015

Major holidays and events

SEPTEMBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Sept 7: Labor Day (US, CA)

Sep 14: Rosh Hashanah (Jewish)
week following Labor Day - no time for pre-con

Sep 23: Yom Kippur (Jewish);
Sept 24: Eid-al-Adha (Islamic)
week following Yom Kippur - no time for pre-con

OCTOBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

week following Yom Kippur - no time for pre-con

Oct 4: Last Day of Sukkot (Jewish)

Oct 15: Muharram/New Year (Islamic)

PROPOSED DATES: 18-23 October 2015

week prior to IETF

NOVEMBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Nov 1-6: 94th IETF (Location TBD)
week following IETF

Nov. 11-15: Diswali (Hindu)

15-20 November: Possible Dates

Nov 26: Thanksgiving Day (US)

DECEMBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

week following Thanksgiving- no time for pre-con

Dec 7-14: Chanukah (Jewish)

Dec 24: Prophet's Birthday (Islamic)
Dec 24- Jan 1: Christmas/Winter Break;

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Possible dates at the end of 2014

Jan 7: Orthodox Christmas Day (RU)

Jan 12: Coming of Age Day (JP)

Feb 11: National Foundation Day (JP);

Feb 14-18: Carnival (BR)

Feb 18: Spring Festival Golden Week (ZH)

Feb 23: Defender of the Fatherland Day (RU);

Feb 28: 228 Memorial Day (TW)

Mar 8: International Women's Day (RU)

Mar 21: Spring Equinox (JP);

Mar 21: Human Rights Day (SA)

Mar 24: Memorial Day (AR)

April 2: Day of the Veterans (AR);

April 5: Qing Ming Jie (ZH); April 6: Family Day (SA)

April 21: Tiradentes Day (BR)

April 27: Freedom Day (SA); April 29: Shōwa Day (JP)

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

May 1: Labor Day (FR)

May 3: Constitution Memorial Day (JP);

May 8: WWII Victory Day (FR) May 9: Victory Day (RU)

May 14: Ascension Day

May 18: Victoria Day (CA)

May 25: Whit Monday (FR);

May 25: Independence Day (JO); May 25: National Day (AR)

June 4: Corpus Christi (BR)

June 7: Independence Day (BR)

June 15: Flag Day (AR); June 16: Youth Day (SA)

July 1: CA Day;

July 9: Independence Day (AR)

July 14: Bastille Day (FR)

July 20: Sea Day (JP)

Aug 9: National Women's Day (SA);

Aug 15: Assumption of Mary (FR)

Aug 17: San Martin Day (AR)

ICANN Meetings - 2015 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Sept 3: Armed Forces Day (TW)

Sept 21: Respect for the Aged Day (JP);
Sept 23: Autumn Equinox (JP); Sept 24: Heritage Day (SA)
Sept 27: Mid-Autumn Festival (ZH, TW)

Oct 1: National Day (ZH);

Oct 10: Double Tenth National Day (TW)

Oct. 12: Holy Mary's Day (BR);
Oct 12: Thanksgiving Day (CA)

Nov 1: All Saints (FR); Nov 3: Culture Day (JP);
Nov 4: Unity Day (RU)
Nov 11: Veterans Day (US); Nov. 11: Armistice Day (FR)

Nov 15: Republic Proclamation Day (BR)

Nov 23: Labor Thanksgiving Day (JP)

Dec 8: Feast of the Immaculate Conception (AR)

Dec 16: Day of Reconciliation (SA)

Dec 23: Emperor's Birthday (JP); Dec 26: Boxing Day;
Dec 26: Day of Goodwill (SA)
Dec 28: Bank Holiday (UK)

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 55 NORTH AMERICA 28 Feb - 4 March 2016
ICANN 56 ASIA PACIFIC 19 - 24 June 2016
ICANN 57 AFRICA 30 Oct - 4 Nov 2016

Major holidays and events

NOTE: Month of January is too soon aft

JANUARY 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Jan 1: New Years Day

Jan 18: Martin Luther King Day (US)

Jan 26: Australia Day

FEBRUARY 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

Feb 8: Chinese New Year;
Feb 10: Ash Wednesday

14-19 February: Possible Dates

21-26 February: Possible Dates

MARCH 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
28	29	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

PROPOSED DATES: 28 February - 4 March 2016

6-11 March: Possible Dates

13-18 March: Possible Dates

Mar 25: Good Friday

Mar 27-April 1: 95th IETF;
Mar 27-28: Easter Sun/Mon

APRIL 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

NOTE: Month of April is too close to po:

April 1: Last day of IETF

week following IETF

April 23-30: Passover

April 25: Anzac Day (Aus)

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 55 NORTH AMERICA 28 Feb - 4 March 2016
ICANN 56 ASIA PACIFIC 19 - 24 June 2016
ICANN 57 AFRICA 30 Oct - 4 Nov 2016

Major holidays and events

NOTE: Month of May is too close to pos

MAY 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

May 4: Al Isra and Mi'raj (Islamic)

too close to upcoming Memorial holiday

May 30: Memorial Day (US)

JUNE 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	

June 7: Ramadan Begins (Islamic)

12-17 June: Possible Dates

PROPOSED DATES: 19-24 June 2016

26 June - 1 July: Possible Dates

JULY 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

July 2: Laylat al-Qadr

July 4: Independence Day (US);

July 7: Eid-al-Fitr (Islamic)

week prior to IETF

July 17-22: 96th IETF (Location TBD)

week following to IETF

AUGUST 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

***European Holiday Month**

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Proposed Dates:

ICANN 55 NORTH AMERICA 28 Feb - 4 March 2016
ICANN 56 ASIA PACIFIC 19 - 24 June 2016
ICANN 57 AFRICA 30 Oct - 4 Nov 2016

Major holidays and events

SEPTEMBER 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Sept 5: Labor Day (US, CA)

Sept 13: Eid-al-Adha (Islamic)
week following Labor Day- no time for pre-con

18-23 September: Possible Dates

25-30 September: Possible Dates

OCTOBER 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Oct 3: Rosh Hashanah;
Oct 3: Muharram/New Year (Islamic)
Oct 11: Dussehra (Hindu)
Oct 12: Yom Kippur

week following Yom Kippur - no time for pre-con

Oct 23: Last Day of Sukkot (Jewish)

Oct 30 - Nov 3: Diswali (Hindu)

NOVEMBER 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

PROPOSED DATES: 30 Oct - 4 Nov 2016

week prior to IETF

Nov 13-18: 97th IETF (Location TBD)

Nov 24: Thanksgiving Day (US)

week following Thanksgiving- no time for pre-con

DECEMBER 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

week following Thanksgiving- no time for pre-con

Dec 12: Prophet's Birthday (Islamic)

Dec 24: Christmas Eve

Dec 25 - Jan 1: Christmas/Winter Break
Dec 25 - Jan 1: Chanukah (Jewish)

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Other possible dates at the end of 2015

Jan 7: Orthodox Christmas Day (RU)

Jan 11: Coming of Age Day (JP)

Feb 6-10: Carnival (BR)

Feb 7: Spring Festival Golden Week (ZH);

Feb 11: National Foundation Day (JP)

Feb 15: President's Day (US)

Feb 23: Defender of the Fatherland Day (RU)

Feb 28: 228 Memorial Day (TW)

Mar 8: International Women's Day (RU)

Mar 20: Spring Equinox (JP); Mar 21: Human Rights Day (SA);

Mar 24: Memorial Day (AR)

Mar 28: Family Day (SA)

Other possible dates in June

April 2: Day of the Veterans (AR);

April 4: Qing Ming Jie (ZH); April 4: Tomb Sweeping Day (TW)

April 21: Tiradentes Day (AR)

April 27: Freedom Day (SA); April 29: Shōwa Day (JP)

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Visible dates in Feb/March/April

May 1: Labor Day (FR); May 3: Constitution Memorial Day (JP);
May 5: Children's Day (JP); May 5: Ascension Day
May 8: WWII Victory Day (FR); May 9: Victory Day (RU)

May 16: Whit Monday (FR)

May 23: Victoria Day (CA); May 25: Independence Day (Islamic);
May 25: National Day (AR); May 26: Corpus Christi (BR)
May 30: Spring Bank Holiday (UK)

June 12: RU Day; June 16: Youth Day (SA)

June 20: Flag Day (AR)

July 1: CA Day

July 9: Independence Day (AR)

July 14: Bastille Day (FR)

July 18: Sea Day (JP)

Aug 9: National Women's Day (SA)

Aug 15: Assumption of Mary (FR); Aug 15: San Martín Day (AR)

ICANN Meetings - 2016 Calendar Dates

Holidays and Scheduled Events in Red | Other conflicts in Blue

Other Holidays

Sept 3: Armed Forced Day (TW)

Sept 7: Independence Day (BR)

Sept 15: Mid-Autumn Festival (ZH, TW)

Sept 19: Respect for the Aged Day (JP);

Sept 22: Autumn Equinox (JP); Sept 24: Heritage Day (SA)

Oct 1-3: National Day (ZH)

Oct 3: Day of German Unity (Germany)

Oct 10: Thanksgiving Day (CA); Oct 12: Holy Mary's Day (BR)

Nov 1: All Saints (FR); Nov 2 Remembrance Day (BR);

Nov 3: Culture Day (JP); Nov 4: Unity Day (RU)

Nov 11: Veterans Day (US), Nov 11: Armistice Day (FR)

Nov 15: Republic Proclamation Day (BR)

Nov 23: Labor Thanksgiving (JP)

Dec 8: Feast of the Immaculate Conception (AR)

Dec 16: Day of Reconciliation (SA)

Dec 23: Emperor's Birthday (JP)

Dec 26: Boxing Day (UK, AU, CA); Dec 26: Day of Goodwill (SA);

2011-03-18-08 Annex-Strat Plan

ANNEX: ICANN BOARD SUBMISSION NO.

TITLE: 2011-2014 ICANN Strategic Plan

**I. 2011-2014 Strategic Plan
(Clean Version posted 22 Feb 2011)**

**II. 2011-2014 Strategic Plan
(Redline from Draft Version posted 27 Nov 2010)**

Submitted by: Kurt Pritz
Position: Senior Vice President, Stakeholder Relations
Date Noted: 2 March 2011
Email: Kurt.Pritz@icann.org

**2011-03-18-09 Annex Strat Plan-CLEAN-ALL
CHANGES[1]**

REDACTION NOTE

21 April 2011

Pages 71 – 95 of this portion of the Board Briefing Materials contained the clean and redlined versions of the Strategic Plan, as posted on 21 February 2011 at <http://www.icann.org/en/announcements/announcement-7-21feb11-en.htm>.

The 2011-2014 Strategic Plan approved by the Board on 18 March 2011 contained further refinements.

Because the 21 February 2011 version is publicly available and accessible, and to remove any chance of confusion regarding the final version of the Strategic Plan, ICANN is REMOVING the original pages 71 – 95 of this Annex, and providing a copy of the 2011-2014 Strategic Plan as approved. The 2011-2014 Strategic Plan is also available at <http://www.icann.org/en/planning/>.



ICANN STRATEGIC PLAN
JULY 2011 – JUNE 2014

One World. One Internet.

ICANN

One World. One Internet.

ICANN is a global organization that coordinates the Internet unique identifier systems for worldwide public benefit, enabling a single, global interoperable Internet. ICANN's inclusive multi-stakeholder model and community-developed policies facilitate the use of the Internet's systems unique identifiers by the billions of computers, phones, devices and people connected into one Internet and the people who use them.

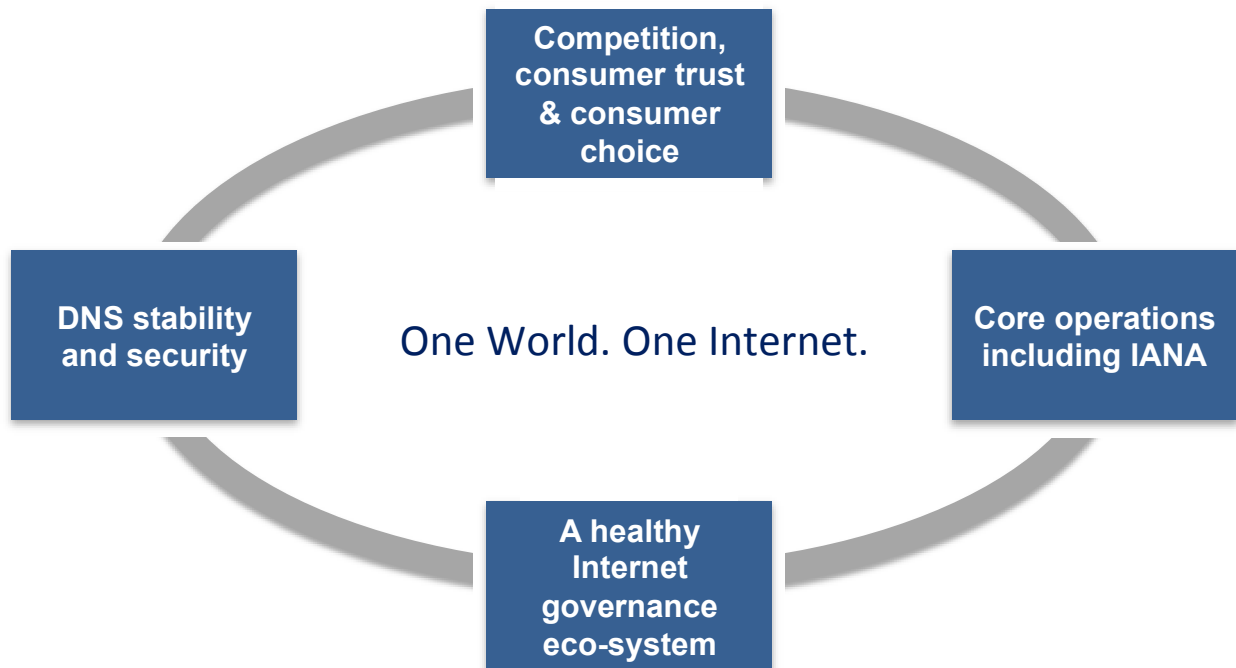
ICANN's **vision**: *One world. One Internet.*

ICANN's **mission**:

- coordinate, at the overall level, the global Internet's systems of unique identifiers; and
- ensure the stable and secure operation of the Internet's unique identifier systems.

The unique identifier systems are comprised of the Internet's: domain name system (DNS), Internet Protocol (IP) addresses, autonomous system (AS) numbers, and protocol ports & parameter numbers. Additionally, ICANN affirms its commitment to work for the maintenance of a single, global interoperable Internet.

ICANN's vision and mission encompass four strategic focus areas addressed in this plan.



Key themes for this strategic plan are: global coordination of the security, stability and resiliency (SSR) regime; internationalization of ICANN and its relationships; formulation of policies and enforceable agreements; and serving Internet users through renewal of the IANA contract and launch of the New gTLD Program. ICANN is a non-profit, public benefit corporation with approximately 140 employees globally and supported by thousands of volunteers. Primarily through contracts with gTLD registries and registrars, ICANN receives approximately \$64M in annual funding. ICANN works for the maintenance of a single, interoperable Internet. One World. One Internet.



Strategic Plan 2011-2014: Four Strategic Focus Areas

Supporting... One World. One Internet.

	DNS stability and security	Competition consumer trust and consumer choice	Core operations including IANA	A healthy Internet governance eco-system
Strategic Objectives	<ul style="list-style-type: none"> Maintain & drive DNS uptime Enhance DNS risk management Broad DNSSEC adoption Enhanced international DNS cooperation Improved DNS resiliency 	<ul style="list-style-type: none"> Maintain single authoritative root Increased TLD options in more languages New gTLDs including IDNs Lower registration abuse Increased industry competition 	<ul style="list-style-type: none"> Flawless IANA operations Resilient L-Root operations Continual improvements (TQM) Internationalization Long-term IANA functions responsibility 	<ul style="list-style-type: none"> Continuing role in internet governance Stakeholder diversity World-class accountability and transparency Enhanced trust in ICANN's stewardship Act in global public interest Cross-stakeholder work
Strategic Projects	<ul style="list-style-type: none"> DNSSEC propagation Facilitate work on DNS security Full business continuity planning IPv4 exhaustion risk management Advocate IPv6 adoption RPKI deployment 	<ul style="list-style-type: none"> Internationalized Domain Name (IDNs) expansion Implement new gTLDs Whois program improvements Improve policy processes Registrant protection 	<ul style="list-style-type: none"> IANA infrastructure upgrade IANA services outreach Monitoring root zone performance IANA excellence efforts Organizational Effectiveness Initiative (OEI) 	<ul style="list-style-type: none"> Affirmation of Commitments & organizational reviews Retain & support existing community while attracting new & diverse community members Build global support for single authoritative root Enhanced cooperation in Internet Governance
Community Work	<ul style="list-style-type: none"> Local DNSSEC adoption Whois Internationalized Registration Data Develop solutions for DNS security IPv6 rollout 	<ul style="list-style-type: none"> IDNA protocol implementation New TLD rollout Registrar Accreditation Agreement amendments gTLD Registrant Rights Charter 	<ul style="list-style-type: none"> Strengthening regional presence Monitoring of performance Key committee participation Engagement within technical community Final IPv4 address allocation Root Zone Management 	<ul style="list-style-type: none"> Increased public participation in multi-stakeholder model Contributing to international fora Review SOs and ACs
Staff Work	<ul style="list-style-type: none"> Collaborative business continuity planning (BCP) Collaboration with RIRs & technical groups DNSSEC operations & propagation IPv4 & IPv6 engagement Cooperative TLD training in developing countries 	<ul style="list-style-type: none"> Compliance improvements Support SO & AC work Global outreach IDN ccTLD Fast Track New gTLD implementation ICANN regional footprint 	<ul style="list-style-type: none"> IANA request processing Board support Security and contingency operations L-Root operations Improve financial system and controls Staff retention and engagement 	<ul style="list-style-type: none"> Thought leadership Widen international engagement Strengthen corporate, government & other stakeholder partnerships Decision impact analysis & reporting Enhance communications & accessibility via improved web site Enhance translation strategy

Multi-stakeholder – Collaborative – International – Transparent – Accountable

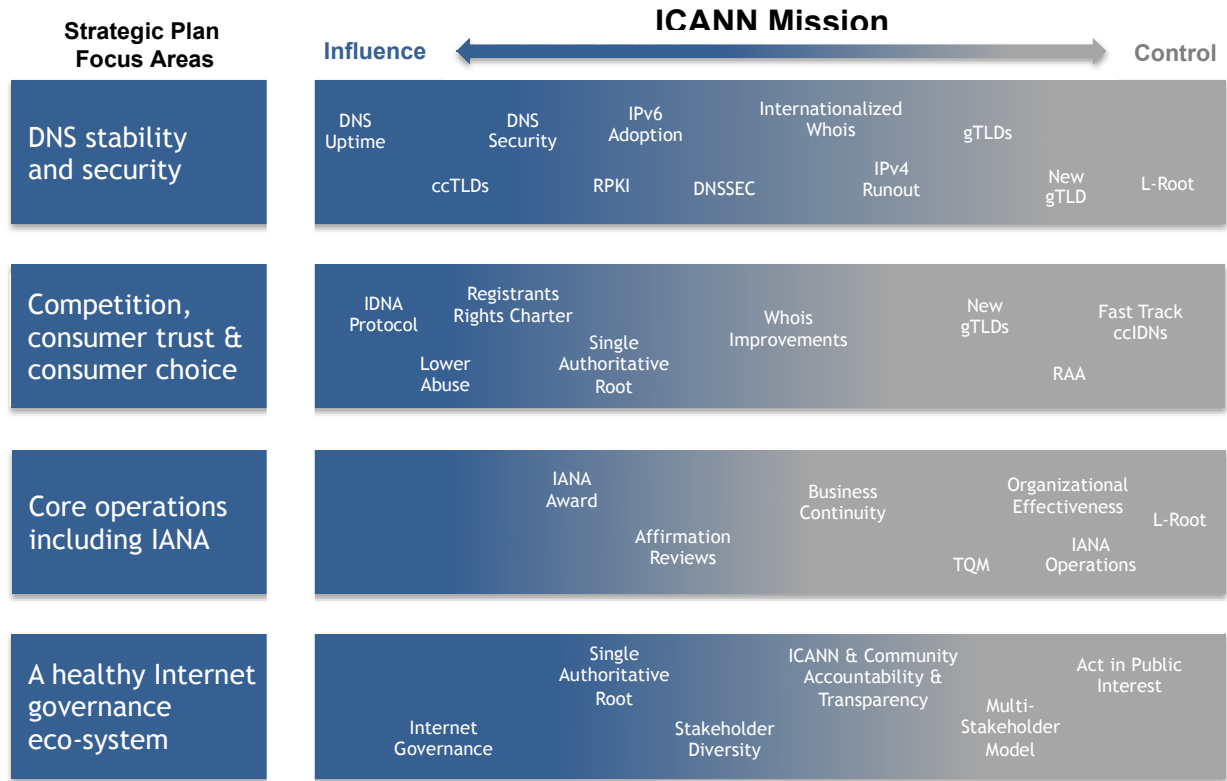
Influence versus Control

ICANN's mission describes goals across the DNS: ensuring the stability and security of the Internet's unique identifier systems, promoting competition and choice for consumers, supporting an independent, broad-based, bottom-up policy development process. Setting appropriate, achievable strategic objectives consonant with the mission requires the organization to understand what things it can and should influence versus what things it can and should control. ICANN's strategic plan is chartered (and bounded) by its Bylaws, mission and Affirmations of Commitments. For example, ICANN cannot ensure 100% DNS uptime, however, through forums, outreach and thought leadership ICANN can influence actions of key participants to ensure security, stability and resiliency within their Internet areas of control.

Therefore, ICANN's strategic plan includes objectives where it can and should wield influence to achieve goals not within its direct control – in order to provide benefit to the broad Internet community. The plan will also include objectives to achieve elements of the mission statement within ICANN's direct control. Often, there are objectives where ICANN has some control and also can exert influence. It is important that goals are written to appropriately reflect this environment.

While the one-page version of the Strategic Plan does not reflect the differences between areas of influence and control, the goals are written with this consideration in mind. The one-page version of the plan above are combined with the following graphic depicting the spectrum of ICANN's influence to control across the four Strategic Plan Focus Areas to create achievable goals targeted at the Mission statement and benefit the community.

Each focus area of the Plan has a different distribution of influence versus control. As an example, ICANN has a high degree of control over objectives falling within its operations (including IANA), some control but substantial influence regarding the successful maintenance of the ICANN's policy development process; and more influence than control over broad DNS issues – often related to security aspects and protocol development and deployment.



DNS stability and security

Focus Area Definition: ICANN is chartered to: (i) ensure the stable and secure operation of the Internet's unique identifier systems, (ii) facilitate international participation in the DNS technical coordination, and (iii) coordinate operation and evolution of the DNS root name server system. This area focuses on external security and stability activities (cf., the IANA & Core Operations address internal activities). ICANN's role DNS stability and security can be accomplished in certain circumstances through direct control, or limited in other circumstances to using its position to influence other stakeholders. Examples of these circumstances include root name servers (where ICANN has direct relationships), gTLD name servers (direct control via contract), ccTLD name servers (direct relationships), second and lower level domain name servers (millions of these, influenced by IETF standards, SSAC best practices and education).

Environmental Scan: The stability, security and resiliency (SSR) of the Internet's global unique identifier systems (DNS, IP addresses & AS numbers, Parameters & Ports) are important priorities for ICANN, industry and Internet users globally. SSR form the core elements of ICANN's mission. Misuse of and attacks against the DNS and other Internet infrastructures challenge overall unique identifier security. Cyber security attacks continue to grow in size and sophistication, targeting individuals, corporations and governments. Business continuity planning (BCP) is gaining traction as more organizations plan and perform business interruption simulation testing. Additionally, new TLDs (including IDNs) and overall growth of domain names will continue to provide opportunities and challenges as ICANN and new TLD cooperate to maintain stability, security and resiliency. IDNs and their variants could also increase the vulnerabilities on the Internet by increasing phishing, thus jeopardizing the security and stability of the root servers. The last IPv4 address blocks are being allocated in an ICANN / RIR guided manner while the international community is adopting IPv6 addresses. To ensure the security, stability and resiliency that are crucial to the unique identifier systems, ICANN must work in partnership with others on these issues.

Strategic Objectives: ICANN has identified four strategic objectives in the focus area Stability, Security & Resiliency. Each objective has related projects, staff and community work to support the achievement of the strategic objectives over the life of this plan. The strategic objectives are:

Maintain and drive DNS uptime. Since its inception, ICANN has been working with the community to ensure the security, stability and resiliency of the DNS. Of course, this is an area where ICANN has a strong strategic objective (maintain 100% DNS uptime) without the means to assure its achievement. There are certain aspects that ICANN controls, certain aspects ICANN can materially influence, and certain areas where ICANN can more directly drive communications to achieve common community understanding. For example, ICANN can work to control and ensure stable, continuous L-root operations. ICANN also has contractual and other strong relationships with TLDs and registrars to leverage in this area. Strategic projects to support DNS uptime include Business Continuity Planning for Registries and Registrars, IPv4 Exhaustion Communications and facilitation of IPv6 Adoption. ICANN will work for RIR interests to advocate (through its constituency groups) for IPv6 adoption by ISPs, and consumer and business entities. Staff and community work will focus on building DNS capacity and better integration of global efforts.

Increase security of the overall systems of unique identifiers. Domain Name System Security Extensions (DNSSEC) implementation will continue to be a strategic objective for ICANN. DNSSEC provides a mechanism for authentication of DNS requests and reduces the risk of some malicious behavior. ICANN will work with the community to monitor and improve DNS resiliency to attacks. ICANN will continue to work with the community for DNSSEC deployment at all DNS levels with a goal that 30 new TLDs in developing countries will have signed their zone by the by the end of calendar year 2011 and DNSSEC

will be broadly adopted by the end of this plan period. Also, ICANN will coordinate the development of Resource Public Key Infrastructure (RPKI) as a means to increase Internet Protocol (IP) security.

Increase international participation in unique identifier security. Attacks on the unique identifier system can come from anywhere around the globe. Strong international security systems and skills are first line deterrents to bad behavior. Staff and community work will focus on global security outreach and collaboration with Regional Internet Registries (RIR) operators to influence the improvement of overall security and support regional and local organizations to become leaders in stability, security and resiliency promotion. ICANN will follow the lead of its community working groups to develop an approach to the establishment of solutions, such as coordination of an emergency response team (DNS CERT), solutions for IDN variant challenges, or other appropriate solutions to address the issues of Internet security. Also, community work needs to facilitate the acceptance of internationalized registration data in the Whois database.

Coordinate DNS global risk management. This is an area where ICANN's efforts will directly influence the improvement of the overall DNS security and stability through international participation in continuity exercises, training and emergency simulations. ICANN will coordinate improved global DNS risk management through registry and registrar continuity planning and performance of business interruption simulation exercises. ICANN will work with others to protect the integrity of the global DNS through initiatives such as training for TLD operators. ICANN will also encourage collaboration with the global computer security and incident response community to improve and seek to promote work in the community to develop BCP and testing to address risks and threats. ICANN will seek to work with others to develop objective risk management models.

Strategic Metrics: In summary, the strategic metrics for the Focus Area of DNS Stability and Security are:

- 100% L-Root uptime
- Initiate community development of key performance indicators for measuring "100% DNS uptime"
- 100% contract compliance to TLD uptime service level agreements
- Number of global business continuity exercises
- Range of participation in global business continuity exercises
- Number of DNSSEC TLD signings: 30 new in developing countries in 2011 and broadly adopted by end of plan period
- No Internet stability issues due to IPv4 exhaustion
- Initiate an RPKI security effort in 2011 and complete the policy within the plan period
- Define metrics to ensure that appropriate percentage of the ICANN budget is dedicated to DNS stability, security and resiliency

Competition, consumer trust and consumer choice

Focus Area Definition: ICANN is chartered to: (i) operate through open and transparent processes that enable competition and open entry in Internet-related markets, (ii) develop policies for determining circumstances under which new TLDs are added, (iii) introduce competition in the registration of domain names where practicable and beneficial in the public interest and (iv) promote consumer trust and choice in DNS the marketplace. ICANN's role in this focus area is to facilitate the multi-stakeholder model by working with the community to identify, develop, adopt and implement policies that will promote through influence or control the behaviors of trust, choice, competition, innovation and mitigation of abuse. ICANN maintains a portfolio of projects that move these new policies forward in the community.

Environmental Scan: Calendar year 2010 ended with over 200,000,000 domain names. Country code top-level domains (ccTLDs) presently represent the fastest growing segment of this environment. Several internationalized top-level domain names (IDN) were added to the Internet: for the first time, new language characters are "right of the dot". The .com generic top-level domain (TLD) was established in 1985; total TLDs have grown to over 290 in number. The Internet registry and registrar markets are still maturing and comprised of many different and evolving business models. Many new TLD (including IDN) applicants will have innovative businesses models and high expectations. As with any maturing market: competition increases, some business models will survive and be emulated, and others will fail and fade away. Importantly, ICANN has focused significant attention on continuity and registrant protection as new processes are implemented. Comments indicate the increasing importance of DNS security, improved compliance mechanisms, and earned consumer trust. Consumer trust includes, but is not limited to, the concept that unique identifiers work all the time, and deliver consistent results when used. Consumer choice includes, but is not limited to, the concept that users can access unique identifiers in their own languages and language scripts. By the end of this plan, over 100,000,000 new names may exist, in many innovative areas.

Strategic Objectives: ICANN has identified five strategic objectives in this focus area.

More TLDs available in multiple languages (IDNs). ICANN has a strategic goal to continue to open the Internet up to more languages and cultures around the globe. Strategic projects are to continue the implementation of IDNs, through the Fast Track, new gTLDs, and IDN Policy Development Process currently conducted in the ccNSO. New gTLDs offer the opportunity for more communities and languages to be represented on the Internet and for expanded customer choice for domain name registrations. ICANN will encourage the ccTLD community to provide awareness programs on the added-value of introducing ccIDNs and will also provide effective program management for the successful deployment of IDNs through the New gTLD and ccTLD Programs. ICANN will work with the ccTLD community to introduce mechanism (eg. IDN regional consultants, blogs, IDN application forums) that will assist in expanding the deployment and success of IDNs globally.

Increase regional participation in the industry. Expanding the global DNS skillset for technology and operations is a key goal for ICANN. The IDN and New gTLD Programs will result in more registries and registrars across all international regions. ICANN will build capacity to serve contracted parties and the interests of registrants and users across all regions. Specific strategic projects include conducting education and training programs in partnership with ISOC, local TLD operators, and the local Internet communities.

Mitigate malicious conduct. ICANN's goal is to reduce the incidence and impact of malicious conduct by using projects to influence the behaviors of global Internet participants. Related projects are to improve the contractual compliance regime for registrars and registries and pursue the implementation of an expanded Whois program and secure, predictable environments for users through a registrant's rights

charter and incorporation of Registrar Accreditation Agreement amendments. Staff and community will continue to work with WIPO and other authoritative bodies to protect and enforce intellectual property rights on the Internet.

Foster industry innovation. The Internet is a target and source of significant business and technological innovation. ICANN has a goal to see similar innovation brought to the stable evolution of the unique identifier system.

Promote fair opportunities to facilitate and support open entry to Internet-related markets around the globe. ICANN's projects related to this objective are to continue to support the development and implement of open and transparent policies and processes that will enable competition. ICANN will promote the implementation and deployment of the IDNA protocol to ensure that IDNs operate as expected. ICANN will work with the community to address potential assistance for disadvantaged organizations. Staff and community work will focus on capturing, evaluating and incorporating input for open entry programs such as IDNs and new gTLDs.

Strategic Metrics: In summary, the strategic metrics for the Focus Area of Competition, consumer trust and consumer choice are:

- Launch of the new gTLD program and timely processing of applications
- Number of IDN ccTLDs delegated during the period of the plan
- New gTLDs and IDN Fast Track: Implementation of measures of success that align with ICANN core values and original program objectives
- Measure effectiveness of Rights Protection Mechanisms in New gTLD Program
- Publish an expanded regional education program plan and report progress to the plan
- Publish and execute a contractual compliance regime for addressing the new expanded TLD space
- Launch and timely progress of the Whois program enhancements, especially to address internationalized data
- 2011 Completion of the Registrant's Rights Charter
- 100% application of the approved RAA amendments into relevant contract renewals
- Launch and implement the IDNA protocol during the period of the plan, encourage implementation of the new protocols in the DNS community, and measure the implementation penetration and its effectiveness in making IDNs "work."

Core operations including IANA

Focus Area Definition: ICANN is chartered – through its IANA function – to (i) coordinate the assignment of Internet technical parameters to maintain universal connectivity, (ii) perform and oversee functions for coordinating the IP address space and operation of the authoritative Internet DNS root server system, and (iii) coordinate allocation and assignment of three sets of unique identifiers (DNS, IP, Ports & Parameters); and also to: (iv) adhere to transparent & accountable budgeting & operational processes and (v) publish annual report of progress against Bylaws, strategic and operating plans. ICANN’s role in this focus area is characterized by direct control over its functional operations and highlights the way in which ICANN performs through processes, reporting, compliance, transparency and accountability.

This focus area provides for continuous improvement and excellence by, in each area:

1. Assessing the current environment
2. Creating a plan for specific improvements
3. Measuring the value of those improvements when implemented

Environmental Scan: ICANN’s core operations are focused on building the capacity and ability to provide services and coordinate the Internet DNS. ICANN operates the L-root sever and has significant skills and documentation to share with the international community. Operations excellence is required to support the IDN Fasttrack and New gTLD Programs. As the Internet continues to grow and evolve, technical advancements (e.g., RPKI, new standards) should be considered as they relate to the evolution of ICANN services and operations. Over the life of this plan, there are many factors that will increase the load on operations, among them: the introduction of new top-level domains, an increasingly connected global community, and the rapidly growing number of devices. ICANN began performing the IANA operations in 1998 through an agreement with the US Government. The current multi-year contract expires September 30, 2011. ICANN will submit a proposal for the IANA contract renewal or its replacement, is well positioned to compete for the award, and expects to continue to operate the IANA function. ICANN, including its IANA function, also effectively participates with other global organizations to work for the maintenance of a single, interoperable Internet.

Strategic Objectives: Below are the strategic objectives for the IANA and Core Operations focus area.

Continued flawless IANA operations. ICANN is committed to continued excellence in the Internet Assigned Numbers Authority (IANA) function and other core operations. The continuation of neutral delivery of IANA services will be secured through the anticipated award of a long-term IANA functions contract. ICANN continues to invest in the IANA infrastructure, and process improvements through the European Foundation for Quality Management (EFQM) model to support meeting or exceeding IANA service level agreements. During the term of this plan, ICANN will develop advancements in security (specifically, deploy RPKI) and continue to upgrade its processes through automation (specifically, the root-zone management tool). The IANA function will remain focused on the timely processing of unique identifier requests and DNSSEC management. We will respond to community monitoring of IANA performance but also implement our own measurements and feedback mechanisms.

L-Root operational excellence. Enables ICANN to lead by example and provides the international Internet community a transparent and collaborative model for root server operations. ICANN will look for opportunities to share this knowledge through international outreach. ICANN will be recognized as a top-tier root zone manager.

Efficiency and effectiveness of operations. ICANN is implementing a long-term, culturally embedded operational effectiveness initiative to drive process, system and documentation improvements across

core operations. ICANN is committed to improving the ongoing efficiency and effectiveness of policy development and implementation processes and the multi-stakeholder model that engages the global community. It will support the ongoing GNSO initiative to improve the policy development process (PDP) and also encourage and support additional initiatives. ICANN will continue to strengthen the security, stability and continuity of its own operations through an Operational Effectiveness Initiative to ensure: continual operational improvement, and staff retention and engagement. Staff work in these areas (staff retention, internal operating systems, Board support) is necessary to support the primary objectives associated with DNS stability and DNS coordination. Therefore, these objectives too are strategic in nature.

Strengthen international operations and presences. by providing adequate levels of service to stakeholders around the globe, working in multiple languages and in multiple time zones. The Internet is a global, virtual technology, but the people who make the Internet's unique identifier systems work are located in all geographies around the globe. The introduction of new IDNs and TLDs during the life of this plan will continue to require ICANN to build capability and presence. Another important aspect of strengthened operations is to maintain or improve service standards in all key operational measures during the life of this plan, including managing the impact of new gTLDs and new IDN ccTLDs. ICANN will also engage effectively with the technical community, e.g., the IETF, root server managers, and the RPKI communities of each of the RIR's.

Improve the financial system and controls to realize: increased capacity and scalability of operational workload, increased operational efficiencies, reduction in operating costs, improved data integrity and availability, faster generation and publication of reports, better accessibility to financial information, improved customer service (both internal and external), greater sustainability of the base technology. ICANN will work to improve the interrelationship between the Strategic and Operating plans and identify the operating budgets allocated to support each of the four Strategic Focus Areas and the rationale for the levels of expenditures.

Strategic Metrics: In summary, the strategic metrics for the Focus Area of Core Operations including IANA are:

- Meet or exceed IANA contract service level agreement performance
- 2011 award of the IANA follow-on contract or replacement
- EFQM ratings demonstrating improvement over time
- RPKI deployment in 2011
- 100% L-root uptime
- Organizational Effectiveness Program Benchmarks, Metrics and Results
- Definition of global stakeholder service level metrics
- 2011 implementation of a new ICANN finance information technology system
- Develop and publish additional metrics and reporting of contractual compliance performance

A healthy Internet governance eco-system

Focus Area Definition: ICANN is chartered to (i) operate for the global public benefit of the Internet community as a whole, (ii) coordinate cross-community deliberations and policy development that germane to ICANN's mission, (iii) cooperate as appropriate with relevant international organizations, (iv) ensure that DNS technical coordination decisions are made in the public interest and are accountable and transparent, and (v) operate as a multi-stakeholder, private sector led organization with input from the public for whose benefit ICANN shall in all events act. ICANN's role in this focus area is to contribute to the development, deployment and operation of robust mechanisms for good governance of the Internet's unique identifier systems. This requires ICANN to participate in and influence Internet governance fora and other opportunities for community dialogue on the topic and periodically evaluate progress. The multi-stakeholder model includes and provides a voice for many diverse groups such as: geographic, governments, businesses, technical, non-technical, multi-cultural and at-large. Additionally, ICANN developed policies must coincide with beneficial public interest.

Environmental Scan: ICANN is charged to operate for the benefit of the Internet community as a whole. The public is a diverse and disparate collection of communities knitted together by the Internet and operating as a complex eco-system. As the Internet continues to be a greater enabler of gross domestic product, government daily operations and global security activities, the profile of Internet governance has also elevated. In September of 2009 the US Department of Commerce and ICANN signed the Affirmation of Commitments (Affirmation) that affirmed the transition of technical coordination of the Internet's DNS to a private sector led organization – ICANN. Over the past few years, the United Nations and other global bodies have also increased their participation in Internet governance.

Strategic Objectives: ICANN has identified four strategic objectives in the focus area of *A healthy Internet governance eco-system*. Each objective has related projects, staff work and community work to support the achievement of the strategic objectives over the life of this plan. The strategic objectives are:

One unified, global Internet. To deliver on ICANN's vision of "One World. One Internet." Strategic projects supporting this objective interweave this entire strategic plan. With the potential growth of ccTLDs, IDNs and new gTLDs, continued internationalization of ICANN is crucial to maintaining a single, global interoperable Internet and a single Internet zone file used globally. Staff work will include development of thought leadership on key issues to influence the continuation of a single authoritative root.. In particular, preserve the stable management of the naming and addressing system.

Building stakeholder diversity. ICANN commits to maintain and improve robust mechanisms for public input, accountability and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders. Strategic projects include continued refinement of the inclusive multi-stakeholder model that encourages and manages the active collection of views from the global community. ICANN will also actively participate in a wide range of constructive Internet governance-related debates in partnership with other organizations. ICANN will continue efforts to increase community participation utilizing more remote participation technologies. Importantly, ICANN will work to retain and support existing community members and build upon recent efforts to formalize a cross-stakeholder model (i.e., across the GAC, Supporting Organizations and other Advisory Committees). The multi-stakeholder model recognizes the influence of governments, corporations, not-for-profits and how they fit into the naming and addressing system. Starting with the new Board seat elected by the At-Large community, we will also work to formalize input from the At-Large community into Board discussions. Improve communications and accessibility through, among other things, web page improvements that facilitate the objectives set out in this strategic plan and

addresses community concerns regarding translations, introductions for newcomers, technical and policy navigation and ease of access to information.

Ongoing accountability and transparency. ICANN is charged with fact-based policy development and decision-making. Strategic projects related to this are the implementation of the Affirmation of Commitment reviews, implement impact reporting based upon the results of the reviews, provide Internet governance education to an expanding group of international participants and promote programs that enhance global participation. ICANN's Bylaws mandate ongoing review of its respective Supporting Organizations and Advisory Committees to ensure continued improvements to the organization's structure and responsibility to the stakeholders. Staff work will focus on providing a thorough and reasoned explanation of decisions taken, the rationale and sources of data.

International engagement. ICANN initiated the Global Partnerships program in 2006 to create a network of international liaisons to improve engagement at the local level. It will continue to evolve the program, possibly engaging local IDN points-of-contact in specific regions, to meet the needs of specific communities and maximize the efficacy of the IDN program. Additionally, ICANN's goal is to preserve the stability of the unique identifier system and as such recognizes the authority and participation of different actors with different remits such as law enforcement and open access to information. In order to achieve its goals, ICANN will: participate in constructive IGF fora, collaborate with international organizations such as the EU and OECD on standards and best practices, engage in offline discussions, write papers, and otherwise engage with industry participants.

Trust in ICANN's stewardship. Contributing to a healthy governance Internet eco-system. The ICANN Board has created the Board Global Relationships Committee to support ICANN's global capacity-building efforts. ICANN strives to ensure the independence of the Board and that the Board membership reflects the diversity of the multi-stakeholder model participants. Staff work will provide thought leadership contributions to international forums and discussions on Internet governance, including the United Nations-organized Internet Governance Forum and other intergovernmental forums. Additionally, the ICANN Fellowship program provides training in partnership with other organizations to support the DNS needs in developing countries.

Strategic Metrics: In summary, the strategic metrics for the Focus Area of A healthy Internet eco-system are:

- Timely completion of the Affirmation Reviews
- Timely Board determination and action to implement Affirmation of Commitments reviews recommendations
- Continuation of a single authoritative root
- Formalized cross-stakeholder participation process in the multi-stakeholder model
- Formalized At-Large community input process for the Board
- Number of international Internet governance events with constructive ICANN participation
- Number and trend of ICANN Fellowships
- Global and skill set diversity of the ICANN Board of directors meet the Bylaws requirements

Pages 85-95 Intentionally Removed
See Explanatory Note at Page 71

**2011-03-18-12 Annex Exhibit A Board Paper ATRT
Report 28 Feb 2011 - ATRT RECOMMENDATIONS
PROJECT LIST**

ATRT RECOMMENDATIONS PROJECT LIST
28 February 2011

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
1. Board should establish formal mechanisms for identifying collective skill-set required by Board.	Adopt	Late 2011 (for next NomCom)	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
1.a. Benchmarking Board skill-sets against similar corporate & other governance structures.	Adopt	Late 2011 (for next NomCom)	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
1.b Tailoring required skills to suit ICANN’s unique structure & mission through open consultation process, including with SOs & ACs.	Adopt	Late 2011 (for next NomCom)	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
1.c. Reviewing these requirements annually, & provide as formal starting point for each NomCom.	Adopt	Late 2011 (for next NomCom)	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
1.d. Publishing outcomes & requirements as part of NomCom’s call-for-nominations.	Adopt	Late 2011 (for next NomCom)	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; no additional funds	Board, NomCom	Lead: Legal	Exhibit B
2. Board should regularly reinforce & review training & skills building programs.	Adopt	At least every 3 years	Mar. 2011 – Mar. 2012 (meets next NomCom deadline)	Current Staff; FY2012 US\$200,000 for consultants	Board	Lead: Legal	Exhibit B
3. Board & NomCom should increase transparency of NomCom’s deliberations & decision-making process; e.g. explain timeline, skill-set criteria before process starts, & explain choices made at the end	Adopt	ASAP but Starting no later than next Nom Com – late 2011	Mar. 2011 – Oct. 2012	Current Staff; no additional funds	Board, NomCom	Lead: Reviews	Exhibit B
4. Board should continue to enhance Board performance & work practices.	Adopt	None listed	Ongoing, Oct. 2011, Jan. 2012	Current Staff + 2 FTEs; FY2011 US\$5000 for consultants	Board	Lead: Legal	Exhibit B
5. Board should implement compensation scheme for voting Board Directors	Do not adopt; consider further	Expediently	April 2011, Sept. 2011, new timeline if needed	Privileged and Confidential; aff;	Board	Lead: Legal	Exhibit B

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
6. Board should clarify the distinction between issues that are subject to ICANN’s policy development processes & those matters that are within the executive functions performed by staff & Board, and develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs & ACs on administrative & executive issues that will be addressed at Board level.	Adopt w/ change in timeline	ASAP but no later than June 2011 as soon as practicable	Mar. 2011 – June 2012	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
7.* Board should: 7.1* Promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing materials provided by staff & others, detailed Minutes, & individual Directors’ statements relating to significant decisions	Adopt	Starting immediately	June 2010, Sept. 2011	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
7.2* Publish a “thorough & reasoned explanation of decisions taken, the rationale thereof, & the sources of data & information on which ICANN relied” & “ICANN should also articulate that rationale for accepting or rejecting input received from public comments & the ICANN community, including [SOs & ACs].”	Adopt	Starting immediately	Jan. 2011- June 2011	Current Staff; *Privileged & Confidential Privileged and Confidential	Board	Lead: Legal	Exhibit B
8. Board should have a document produced & published that clearly defines the limited set of circumstances where materials may be redacted & that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board & staff when assessing whether material should be	Adopt	ASAP but no later than the start of the March 2011 ICANN meeting	Mar. 2011	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
redacted & cited when such a decision is taken.							
9.* Board, acting through the GAC-Board joint working group (JWG), should clarify what constitutes GAC public policy “advice” under the Bylaws	Adopt w/ change in timeline	By March 2011	Unknown (pending JWG report action)	Current Staff; no additional funds (more resources will be needed if Board/ GAC consultations cont.)	Board, GAC (JWG)	Lead: GAC Liaison	Exhibit B
10.* Board, acting through the JWG, should establish a more formal, documented process by which it notifies the GAC in writing of matters that affect public policy concerns to request GAC advice ICANN should develop an on-line record of each request to, & advice received from, the GAC along with the Board’s consideration of & response to each advice.	Adopt w/ change in timeline	By March 2011	April, 2011, June 2011, and possibly into FY2013	Current Staff + (see Rec. 13); FY2011 US\$50,000 for consultants	Board, GAC (JWG)	Lead: Legal	Exhibit B
11.* Board & GAC should work together to have the GAC advice provided & considered on a more timely basis; Board, acting through the JWG, should establish a formal, documented process by which the Board responds to GAC advice. This process should set forth how & when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice & will specify what details the Board will provide to the GAC if it disagrees with the advice; process should also set forth procedures by which GAC & Board will then “try in good faith & in a timely efficient manner, to find a mutually acceptable solution.” Consider establishing other mechanisms by which Board & GAC	Adopt w/ change in timeline	By March 2011	Unknown (pending JWG report action)	Current Staff; no additional funds (more resources will be needed if Board/ GAC consultations cont.)	Board GAC (JWG)	Lead: GAC Liaison	Exhibit B

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
can satisfy the Bylaw provisions relating to GAC advice.							
12. Board, acting through the JWG, should develop & implement a process to engage the GAC earlier in the policy development process.	Adopt	None specified	Mar. 2011, Dec. 2011, longer term (depending on GAC)	Current Staff; no additional funds	Board GAC (JWG)	Lead: Policy	Exhibit B
13. Board & GAC should jointly develop & implement actions to ensure that GAC is fully informed of ICANN policy agenda & policy staff is aware of/sensitive to GAC concerns; may wish to consider changes to role of ICANN staff support relating to communication with & support to GAC, & whether Board & GAC would benefit from more frequent joint meetings.	Adopt	None specified	Mar. 2011, Dec. 2011, longer term (depending on GAC)	Current Staff + 1 FTE; no additional funds	Board, GAC	Lead: Policy	Exhibit B
14. Board should endeavor to increase the level of support & commitment of governments to the GAC process; encourage member countries & organizations to participation in GAC & place particular focus on engaging nations in developing world & need for multilingual access to ICANN records; Board also should work with GAC to establish a process to determine when & how ICANN engages senior govt. officials on public policy issues on a regular & collective basis to complement existing GAC process.	Adopt	None specified	Unknown (pending JWG report action)	Unknown (pending JWG action and additional planning)	Board, GAC	Lead: GAC Liaison	Exhibit B
15.* Board should direct the adoption of, & specify a timeline for the implementation of, public Notice & Comment processes that are stratified (e.g. Notice of Inquiry, Notice of Policy Making) & prioritized; prioritization & stratification should be established based on coordinated community	Adopt w/ change in timeline	ASAP but no later than June 2011	June 2011, Aug. 2011, Dec. 2011	Current Staff + 1 FTE; FY2011 US\$20,000 for consultants	Board	Lead: Policy	Exhibit B

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recom- mendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Respon- sible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
input & consultation with Staff.							
16.* Public notice & comment processes should provide for both distinct “Comment” cycle & a “Reply Comment” comment cycle that allows community respondents to address & rebut arguments raised in opposing parties’ comments.	Adopt w/ change in timeline	ASAP but no later than June 2011	Aug. 2011, Dec. 2011, longer term	Current Staff; no additional funds	Board	Lead: Policy	Exhibit B
17.* Timelines for public Notice & Comment should be reviewed & adjusted to provide adequate opportunity for meaningful & timely comment; Comment & Reply Comment periods should be of a fixed duration.	Adopt w/ change in timeline	ASAP but no later than June 2011	Aug. 2011, Dec. 2011, longer term	Current Staff; no additional funds	Board	Lead: Policy	Exhibit B
18. Board should ensure access to, documentation within, policy development processes & multi-lingual access to maximum extent feasible.	Adopt w/ clarifica- tion request	None specified	June 2011, July 2011	Current Staff; no additional funds	Board	Lead: Communica- tions	Exhibit B
19. Board should publish its translations (including rationale) within 21 days of take a decision (in languages called for in ICANN Translation Policy).	Adopt w/ modifica- tion	None specified	Mar. 2011, April 2011,	Current Staff; FY2012 US\$125,000 + more resources to be required based on final implementation plans	Board	Lead: Legal	Exhibit B
20. Board should ensure that all necessary inputs that have been received in policy making processes are accounted for & included for consideration by the Board; to assist this the Board should adopt & post a mechanism (e.g. checklist or decision template) that certifies what inputs have been received & are included for Board consideration.	Adopt	ASAP	Apr. 2011, June 2011	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
21. Board should request staff to work on process for developing annual work plan that forecasts matters that will	Adopt	None specified	June 2011	Current Staff; no additional funds	Board	Lead: Policy	Exhibit B

ATRT Recommendation (* indicates ATRT “high priority”)	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
require public input.							
22. Board should ensure that senior staffing arrangements are appropriately multi-lingual, delivering optimal levels of transparency & accountability to community.	Adopt	None specified	Mar. – July 2011	Current Staff; FY2012 US\$15,000	Board	Lead: HR	Exhibit B
23.* Board should implement IIC Rec. 2.7 that calls on ICANN to seek input from a committee of independent experts on the restructuring of its three review mechanisms; see ATRT guidance for review, including direction to look at mechanisms in IIC Rec. 2.8 & 2.9; upon receipt of experts’ final report, Board should take actions on the recommendations .	Adopt w/ change in timeline	ASAP but no later than June 2011 As soon as practicable	June 2011 + longer term depending on work plan	Current Staff; FY 2012 US\$200,000 - \$500,000; + *Privileged & Confidential Privileged and Confidential	Board	Lead: Legal	Exhibit B
24. Assess Ombudsman operations & relationship between Board & Ombudsman, & if needed, bring into compliance with internationally recognized standards for Ombudsman function & Board supporting the function	Adopt w/ change in timeline	ASAP but no later than March 2011	Wait for hiring of new Ombudsman	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
25. Clarify standard for Reconsideration requests with respect to how it is applied & whether the standard covers all appropriate grounds for using the Reconsideration mechanism.	Adopt	ASAP but no later than Oct. 2011	June 2011	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
26. Board should adopt a standard timeline & format for Reconsideration Requests & Board reconsideration outcomes that clearly identifies the status of deliberations & then, once decisions are made, articulates the rationale used to form those decisions.	Adopt	ASAP but no later than October 2011	June 2011	Current Staff; no additional funds	Board	Lead: Legal	Exhibit B
27. Board should regularly evaluate progress against these recommendations & the accountability &	Adopt	Annually	Mar. 2011, June 2011, Jan. 2012 & annually	Current Staff; FY2012 US\$25,000	Board	Office of CEO	Exhibit B

ATRT Recommendation (* indicates ATRT "high priority")	Staff Recommendation	ATRT Timeline (recommended in report)	Staff Timeline (proposed)	Resources (Initial Estimate)	Responsible Entity	Lead Dept/Staff Support	Staff Implementation Recommendation
transparency commitments in the AoC, & in general analyze the accountability & transparency performance of the whole organization to annually report to the community on progress made & to prepare for the next ATRT review; all evaluation should be overseen by Board.							
<p>Reporting - ATRT asks the Board to provide a status report on all recommendations at the March 2011 ICANN meeting and a more formal report at the June 2011 ICANN meeting detailing:</p> <ul style="list-style-type: none"> - Which recommendations have been fully implemented; - The status and schedule for implementing the remaining recommendations; and - The recommendations which the Board has concluded it cannot implement including a detailed explanation as to why the recommendations cannot be implemented. 	Adopt	March 2011 June 2011	March 2011 June 2011	Current Staff; no additional funds	Board	Office of CEO	

**2011-03-18-12 Annex Exhibit B Board Paper ATRT
Report 28 Feb 2011 - All ATRT Implementation Plans**

Exhibit B – ATRT Recommendations Initial Implementation Plans Staff Proposals, 28 Feb. 2011

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ATRT Implementation Project, Recommendation 1, 2

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project:

1. Board should establish formal mechanisms for identifying the collective skill-set required by the Board (in time to enable integration of recommendations into next NomCom process beginning in late 2011):
 - a. Benchmarking Board skill-sets against similar corporate and other governance structures;
 - b. Tailoring required skills to suit ICANN's unique structure and mission through open consultation process, including with SOs and ACs;
 - c. Reviewing these requirements annually, and provide as formal starting point for NomCom each year;
 - d. Publishing outcomes and requirements as part of NomCom's call-for-nominations (starting with next NomCom – late 2011).
2. Board should regularly reinforce and review training and skills building programs (at least every 3 years).

Responsible Entity: Board

ATRT proposed project deadline: Late 2011 (Next NomCom cycle)

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt these recommendations.

The portion of the recommendation regarding benchmarking (Rec 1.a) is likely to require the retention of consultants, and staff recommends that the process of skill identification and refinement first be viewed as a Board and community effort, prior to spending funds for a

benchmarking exercise. The ICANN Board has already received some inputs into skills identification; the 2008 Independent Review of the Board, as well as the comprehensive list of skills identified within the ATRT report. Because of the unique structure of ICANN, comparison with other organizations may be of limited utility at this time. In addition, the staff supporting the Board have access to materials and trainers at major associations dealing with corporate directorships, and those materials can be used in further refining a baseline for community discussion.

The work produced by the Board, and the discussions with the NomCom, have to take into account the Board turnover issue, with clear identification of skills held by the Board members with terms ending and the gaps that may be faced on the Board if those skill sets aren't considered in the selection of directors.

The remainder of the work recommended should proceed toward adoption. However, the need for community consultation and input, as well as coordination with NomCom processes, may require additional time for implementation. The Chair of the NomCom has already started work towards informal consultations towards the implementation of this item, and the continued cooperation of the NomCom (as anticipated) is essential. Further, the NomCom Review Final Report includes a recommendation on the drafting processes for solicitation of advice from the Board and SO/AC Chairs, work that is currently underway within the NomCom, including reference to how such a process can be formally included within NomCom procedures.

The current state of work within ICANN towards these measures is promising. The BGC has been very active in creating a framework for enhancing the skills of the Board. More information about this work can be found in reference to Recommendation 4.

Upon completion of the consultations described above, the ICANN Bylaws on the NomCom should be reviewed to determine if any amendments are recommended to formally recognize this work.

Preliminary Plan for Implementation:

Task 1: Review 2010 Board Governance Committee work to identify Board member skill sets, both in terms of committee needs and individual Board member skill identifications.

Task 2: Compile list of specific skills necessary for independent directors to assure proper staffing of Audit and Finance Committees.

Task 3: Solicit SO, NomCom and At-Large input on skills considered in making appointments to ICANN Board and prioritization of those skills.

Task 4: Poll past ICANN Board members and Liaisons for identification of skills necessary for service on the ICANN Board and the training needed.

Task 5: Include skill assessment on annual BGC workplan.

Task 6: Review scheduling for ongoing consultations with community regarding proper tailoring of skill sets to ICANN.

Task 7: Coordinate conversation between NomCom Chair and Chair of Board to identify scope of information requested from Board for skill assessment, in respect of the independence of the NomCom processes.

Task 8: Coordinate with SOs and the At-Large on consideration of skill assessment for future selection.

Task 9: Retain independent consultant to form Board training program.

Task 10: Implement consultant recommendation of Board training program.

Task 11: [NomCom] Revise call for nominations to include identified skill sets as well as any enhanced training commitments identified.

Task 12: Review need for revisions to ICANN Bylaws

Proposed Timeline:

By March 2011: Propose workplan items for BGC agenda regarding skill set selection and outreach. Include provision of skill set identification to NomCom as annual item of work. Begin information consultation with the NomCom to prepare for receipt of Board inputs.

By June 2011: Initiate calls for skill set identification and prioritization by SOs and former Board members;

Initiate RFP for consultant for Board training consultant.

By late September 2011: Using SO/Board member inputs, BGC to create list of identified skills and matrix of Board members skills for current members.

By October 2011: Coordination of provision of skill set identification to the NomCom for inclusion in call for nominations for 2011 and consideration in selection.

Complete RFP process for Board training consultant and select vendor

Between November 2011 – March 2012: Create and implement consultation mechanism with community for further refinement of Board member skills selection.

By end of March 2012: Formal launch of Board training program; interim trainings and orientations may occur.

Milestone: 2012 NomCom Call for Nominations includes additional skill sets information.

After 2012 community consultation on skill sets, determine if outside consultant needed to assist in benchmarking to other organizations.

Training and skill identification will be ongoing processes.

Proposed Resources:

FY 2011 (immediate): Legal, NomCom and Policy staff resources for coordination of outreach and compilation of skill sets.

FY 2012: Legal, NomCom and Policy staff resources for coordination of consultation and implementation.

FY 2012: Board Training Consultant, budget requested (est cost: \$50,000); implementation of training programs (est cost:\$150,000). Future trainings will be budgeted in future FY.

FY 2013: Consider allocation for future outside consultant work on skills assessment and budgeting.

Key Consultations:

BGC and Board as a whole to oversee skill set identification and participate in identification exercised;

NomCom, GNSO, ccNSO, ASO and At-Large Community, for consultation on skill set identification;

Prior Board members and Liaisons

Potential public comment period in 2011-2012 for community consultation on Board skills after first skills identification completed.

ATRT Implementation Project, Recommendation 3

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project: Board & NomCom should increase transparency of NomCom's deliberations & decision-making process; e.g. explain timeline, skill-set criteria before process starts, & explain choices made at the end.

Responsible Entity: Board and NomCom

ATRT proposed project deadline: ASAP but starting no later than next Nom Com (late 2011)

Project's Lead Department: Organizational Reviews (Operations Dept.)

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation.

This recommendation is in line with the already adopted [NomCom Review Implementation Plan](#), which was approved by the Board as part of ICANN's Organizational Review processes and followed the NomCom Review Working Group's Final Report making recommendations relating to this issue. Implementation can be done in two ways: a) by voluntary NomCom action, mainly informally, supported by Board/BGC and NomCom guidelines, or b) formally, by specifying the recommendation's provisions as detailed requirements in the ICANN Bylaws. Staff advice is to follow approach a), which enables more rapid implementation and flexibility for future enhancements. The only drawback of a) compared to b) is that the statutory independence of NomCom does not guarantee that future NomComs will follow the chosen approach. If this is considered a problem, an added process-oriented provision may be justified in the Bylaws as a basis for compliance with the recommendation.

Preliminary Plan for Implementation:

The current NomCom has already taken voluntary steps to comply with the recommendation and will hold consultations and public sessions to that effect at ICANN's Silicon Valley meeting in March 2011.

Staff will redraft the NomCom guidelines with processes needed to implement this recommendation, in consultation with with the NomCom, SIC and BGC. These consultations

will also aim to identify any Bylaws changes that may be advisable and, if needed, staff will draft such for public comment and subsequent Board adoption.

A questionnaire/public comment period will provide feedback concerning the voluntary efforts of this year's NomCom and will further inform drafting of guidelines and Bylaws changes if needed.

All actions shall be finalized to enable full implementation with the launch of NomCom 2012.

Proposed Timeline:

March 2011: NomCom consultations and public sessions at ICANN's March meeting.

March - July 2011: Consultations, redrafting of guidelines and, if needed, Bylaws changes.

August- September 2011: Questionnaire/public comments to gauge satisfaction with current NomCom's efforts to follow the recommendation. Public comment period for any Bylaws changes.

October 2011: Finalization of guidelines in light of public comments. Adoption of any agreed Bylaws changes. Launch of NomCom 2012.

Proposed Resources:

The plan mainly requires efforts from the current NomCom and Legal staff and does not require additional budget resources to any appreciable degree.

Key Consultations:

NomCom2011, BGC, SIC, ALAC, ccNSO and GNSO.

ATRT Implementation Project, Recommendation 4

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project: Board should continue to enhance Board performance & work practices.

Responsible Entity: Board

ATRT proposed project deadline: None listed

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt these recommendations.

This work is already ongoing and Staff suggests it continue. In addition, the Board training programs identified for implementation under ATRT Recommendation #2 are expected to provide further refinement to Board performance and work practices.

The BGC has been active in enhancing Board practices, including the standardization of Committee charters - requiring Committee annual review of activities and standardizing committee work practices. Highlights of this work include the Audit Committee identification of committee best practices, and the recent revisions to the Audit Committee and Finance Committee Charters.

For both 2009 and 2010, the Board has conducted self-appraisals in an attempt to continue to identify where work improvements can be made. While "full-blown" self-appraisals are likely not necessary on an annual basis, some form of regular self-appraisal is of value, particularly as the Board membership evolves. The Board is also continually working with the CEO to enhance the Board's performance through better definition of staff roles and Board roles, and through the continued improvement of staff briefing papers to the Board. The work processes of the Board should also be improved through the better definition and utilization of consultation processes, to create clear channels of communication as well as predictability of cycles of information for use in Board decisions.

In addition, work is already underway to review the tools the Board uses in performing its work. The enhancement of tools is anticipated to facilitate communications among Board members, and to reduce the burden on each member in performing his or her duties. Finally,

staff is actively working on how to enhance the Board Support functions to allow the Board to work more efficiently.

Preliminary Plan for Implementation:

Task 1: Complete the 2010 self-appraisal work for BGC review and public posting.

Task 2: Create annual work plan for each Board Committee, including annual review of committee charter.

Task 3: Continue refinement to Board papers to address Board member needs in information and work flow.

Task 4: Clarify and define process for flow of communications to/from Board/staff and Board/community.

Task 5: Review tools necessary for the fulfillment of Board responsibilities and research feasibility of providing a standardized tool set to each Board member.

Task 6: BGC, with the Chair, to review the scope and regularity of Board self-appraisals as tools for improvement of Board performance.

Task 7: Survey Board members to determine if any further regularized reporting from staff would improve Board performance.

Task 8: Provide leadership training to staff responsible for supporting Board committees to better serve the Board committees.

Proposed Timeline:

Immediate and continuing work: Task 3 is ongoing.

By October 2011, complete tasks 1, 2, 4, 7. Decide on fact of and scope of self assessment for 2011 as discussed in Task 6. Have plan for completion of task 8, identifying resource implications to determine if feasible to complete in FY2012 or if resource allocation is necessary for FY2013.

By January 2012, complete initial round of tools assessment and resource impact for inclusion in FY 2013 budget (task 5).

Proposed Resources:

Proper completion of the Board support needs will require approximately 2 additional FTEs in a Board support role, to uniformly coordinate workplans, committee processes and communication flows.

If a self-assessment is completed in 2011, approximately US\$5000 is necessary for external consultants.

Key Consultations:

BGC, Chair of Board, all Board Committees, all staff supporting Board committees.

No public comment period will be required to meet this recommendation. However, the successful revision of public comment processes will be key in assisting the Board in modifying its internal practices.

ATRT Implementation Project, Recommendation 5

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project: Board should implement compensation scheme for voting Board Directors.

Responsible Entity: Board

ATRT proposed project deadline: Expeditiously

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board not adopt this recommendation at this time, but give adoption and implementation further consideration as detailed below.

Privileged and Confidential Advice Set Forth Below

Privileged and Confidential

Privileged and Confidential

Privileged and Confidential Advice Set Forth Above

Key Consultations:

Board of Directors as a whole, and possible assistance by designated committees of the Board

Required public comment on Bylaws change.

ATRT Implementation Project, Recommendation 6

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project: Board should clarify the distinction between issues that are subject to ICANN's policy development processes & those matters that are within the executive functions performed by staff & Board, and develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs & ACs on administrative & executive issues that will be addressed at Board level.

Responsible Entity: Board

ATRT proposed project deadline: As soon as possible, but no later than June 2011

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with a modification of the proposed completion date.

While work to implement the recommendation will be well underway in advance of the June 2011 suggested deadline, completion of implementation is not feasible in that time period. Historical analysis should be conducted to classify the various actions taken by the Board in the past and identify whether an SO/AC was consulted prior to Board action. The classification of actions and decisions within ICANN will be a helpful exercise for the entirety of the organization in addressing the recommendations of the ATRT. The categorization called for will inform the proper structure of public comment processes or consultation for each type of action or decision, and in the creation of consultation mechanisms that are more useful than the "one size fits all" model used today. This work may also assist the Board in improvements to its work practices, through better identification of more administrative items.

In order to create a framework to competently address this recommendation, staff will immediately undertake a categorization exercise, using the Resolution wiki unveiled during the Cartagena meeting. Staff will work to categorize Board action into policy/executive/administrative and other categories, and then review whether public comment was received on those items. After that categorization is completed, consultation with the SOs

and ACs will likely be necessary to identify the appropriate levels of consultation needed for each type of decision.

Another challenge posed by this recommendation is the lack of clear definition – organization wide – of what constitutes a new “policy” rather than “implementation advice” or other type of Board action. The appropriate level of consultation may vary depending on the circumstance, such for a policy/not policy decision, and the need to recognize that many consultations on policy-related decisions should be coordinated prior to reaching the point of Board action. A community consultation will likely be necessary on this item. However, such a consultation should not take place prior to establishing a baseline understanding of categorization.

Preliminary Plan for Implementation:

Task 1: Prepare document identifying current requirements for public comments prior to Board action, based in Bylaws, operating procedures or in established practice.

Task 2: Undertake a categorization exercise using the Resolution wiki, to assign each type of action taken and the scope of consultation prior to the Board’s decision. Include historical public comment periods to aid in categorization.

Task 3: After completion of the categorization exercise, create a proposal for Board and community consideration regarding the categorization and levels of consultation needed prior to Board action.

Task 4: As part of the Board’s setting of the agenda, categorization of the type of actions under consideration by the Board to be identified.

Task 5: Determine if references to the Policy Development Processes within the Bylaws have to be refined to reflect the distinction between policy creation and other decisions.

Task 6: Initiate community consultation on better definition of policy work within the organization, based upon the baseline created through the categorization work.

Proposed Timeline:

By March 2011: Produce document identifying the current Bylaws-mandated and other required public comment based upon established practice.

By June 2011: Categorization of wiki actions complete and proposal produced for Board consideration.

By October 2011: Begin consultation on the categorization proposal, and integrate proposed categorizations into Board agendas on ongoing basis.

By March 2012: Categorization in place and levels of consultation are put into practice.

By June 2012: If Bylaws changes are necessary to address any policy development process related issues, proposed amendments should be nearing approval by the Board; Initiate community consultation on definition of policy.

Proposed Resources:

Legal Department support for this implementation will consume approximately 30% of one FTE. Policy department support will consume approximately 10% of one FTE, particularly during the creation of a proposal. The heavy resource allocation will likely end approximately 3-4 months into implementation, however the community consultations required in 2012 will require approximately 10% of one policy FTE and legal FTE at minimum.

Key Consultations:

ICANN Executive Staff, ICANN Board, and all ICANN SOs/ACs, particularly SOs with active Policy Development Processes. A public comment period is likely once the Board approves a proposal for categorization for community consideration.

ATRT Implementation Project, Recommendation 7, 8

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project:

7. Board should:

7.1 Promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing materials provided by staff & others, detailed Minutes, and individual Directors’ statements relating to significant decisions.

7.2 Publish a “thorough and reasoned explanation of decisions taken, the rationale thereof, and the sources of data and information on which ICANN relied” and “ICANN should also articulate that rationale for accepting or rejecting input received from public comments & the ICANN community, including [SOs & ACs].”

8. Board should have a document produced and published that clearly defines the limited set of circumstances where materials may be redacted and that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board and staff when assessing whether material should be redacted and cited when such a decision is taken.

Responsible Entity: Board

ATRT proposed project deadline: Immediately, for 7.1 and 7.2. Start of March 2011 ICANN meeting 8.

Project’s Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt these recommendations.

Much of the work called for in Recommendation 7 is already underway. While refinements are necessary, the implementation has begun. The milestones already achieved include:

- As of June 2010, the briefing materials provided to the Board have been posted along with the approved minutes of that Board meeting. The first meeting the briefing

materials posting was completed for was the 22 April 2010 meeting. The postings have continued for every meeting since.

- The comprehensive nature of the Board minutes has been improved, and staff will continue to reflect the Board's detailed discussions.
- As of the 25 January 2011 meeting, staff began including proposed rationale statements in Board submissions, addressing the items set forth in the Affirmation of Commitments. If the Board does not propose significant modification to the draft rationale statements, those draft statements will be posted with the Approved Resolutions for each meeting. This practice was instituted on 27 January 2011, with the posting of the 25 January 2011 Approved Resolutions. The rationale statements will be considered final when posted with the Minutes as approved for each meeting. The rationale statements are to address the sources of data and information, as well as to address community input accepted and rejected. Given that some decisions are far more straightforward than others, there are varying levels of rationale statements being produced (light, medium and heavy). The more substantial the comment and the more significant the decision, the broader the rationale statement will be. As the categorization work proceeds in accordance with Recommendation 6 above, the categorizations may be of use in determining the level of rationale statement necessary.
- As discussed in the Implementation Steps below, there is more work to be done to meet the recommendations.

There are some limitations that will have to be recognized when addressing Recommendation 7.

- Minutes: Detailed discussion is not available in actions taken on the Consent Agenda. In an effort to improve Board performance, the Board implemented a consent agenda process to quickly address items that the Board does not require discussion to address. However, rationale statements will be provided for the actions taken on the Consent Agenda.
- Individual Director Statements: There is no obligation for directors to produce statements in support of any vote. However, if directors wish to produce such statements, the Board (through a designated committee) could facilitate the creation of a template to assist the directors in the drafting of such statements. In addition, if any director makes a statement on the record of a meeting, that statement is included within the minutes of the meeting.
- Rationale Statements For Items Arising Out of the ICANN structure: As discussed in response to ATRT Recommendation 20, there are some items that are presented to the Board, such as policy recommendations arising out of the SOs, for which the Board has to rely upon the proper inputs being considered and rationale statements being prepared. The Board's decision on the policy matter should not be considered an opportunity to re-weigh the community inputs into the policy development process; such a result would be a failure of accountability. The work described in ATRT Recommendation 20 will help cure this limitation.

New work to be done to meet the recommendations

In terms of "preliminary announcements", it is understood that the ATRT is referring to the detail of the notice provided to the community regarding the items under discussion on the Board's upcoming agenda, and whether action on the item is anticipated. Consideration needs to be given on what level of detail can be placed on the publicly-posted agenda, when balanced with the need to post agendas as soon as practicable. Staff will begin to review how additional detail can be provided and will start to incorporate additional detail into the agendas as soon as possible.

Staff is in the process of preparing a document defining the set of circumstances used when redacting Board briefing materials. The Defined Conditions for Non-Disclosure set forth in the Documentary Information Disclosure Policy (DIDP) currently guide the set of circumstances associated with redaction of the Board briefing materials. While these DIDP conditions will remain the baseline for redactions, there is great value in producing a document to guide staff and inform the community on the specific issue of redaction of Board materials. As evidenced through the very publication of the Board briefing materials, ICANN has narrowed the previously-applied scope of its application of the conditions for non-disclosure in favor of increased transparency and accountability.

Of note, beginning with the 12 December 2010 Board meeting materials, the basis for each redaction was set forth on every page where a redaction occurred. A review of how to best cite to the circumstances requiring a redaction will continue.

Preliminary Plan for Implementation:

Task 1: Obtain Board feedback on the sufficiency of the rationale statements being drafted and modify statements accordingly

Task 2: Revise internal Board submission templates to set out a template to produce a proposed rationale

Task 3: Continue practice of posting Board materials with approved minutes, and produce description of timing of Board material posting for release to the community

Task 4: Include more detail on posted Board agendas, to identify: (1) a better description of issue before the Board; (2) whether action is anticipated on the item. The inclusion of detail will be an iterative exercise, and should be performed in a manner that maximizes the public availability of agendas.

Task 5: Board to consider feasibility of producing template for individual director statements on votes and whether such templates are needed

Task 6: Draft document setting forth conditions for redaction of Board material and make publicly available

Task 7: Refine redaction of Board materials to indicate basis for redactions

Task 8: In coordination with Language Services team, determine best process for timely posting of translation of Board materials

Proposed Timeline:

March 2011: Document setting forth conditions for redaction of Board materials posted, along with explanation of timing of the postings (Tasks 3, 7); Revisions completed to Board submission template (Task 2)

By end of March 2011: Begin process of receiving Board feedback on proposed rationale statements (Task 1)

By Sept. 2011: Board to consider feasibility of providing a template for individual director statements on votes (Task 5)

As soon as possible: Begin consideration of posting additional detail on the Board agenda, and implement changes as available (Task 4)

Timeline for completion of Task 8 is dependent on ATRT Recommendations 18 and 19.

Proposed Resources:

Resources for translations of materials is addressed within staff response to ATRT Recommendations 18 and 19.

Privileged and Confidential Material Identified Below

Privileged and Confidential

Privileged and Confidential Material Identified Above

The time of .5 - 1 FTE within the Legal department could be solely dedicated to the creation of rationale statements for in-depth decisions. Every department that produces Board papers will devote additional resources to the production of rationale statements.

Meeting the remainder of the recommendations will not require substantial staff resources.

Key Consultations:

Board, and SOs/ACs.

ATRT Implementation Project, Recommendation 9

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Board, acting through the GAC-Board joint working group (JWG), should clarify what constitutes GAC public policy “advice” under the Bylaws

ATRT proposed project deadline: By March 2011

Project’s Lead Department: GAC Liaison

Project Manager: GAC Liaison

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with a modification to the proposed project deadline.

The Board/GAC Joint Working Group (JWG) included this issue in the Terms of Reference for its work, and discussions have been ongoing to assess what constitutes GAC advice. The JWG is expected to deliver its final report around the time of the ICANN March 2011 Meeting, though not before. Once the final report is provided, the Board as a whole will have an opportunity to review the recommendations within the report for acceptance or further clarification. Therefore, even at the time of the transmission of the JWG final report, the work required to fulfill this Recommendation 9 will not be completed. Given the ongoing work of the JWG, there is no feasible way that this recommendation can be completed within the time stated.

Depending on the scope of the JWG recommendation on this topic and the Board acceptance of that work, it may be necessary to constitute a separate joint group of GAC and Board representatives to work through later phases of consultation.

Preliminary Plan for Implementation:

Task 1: JWG submits its final report.

Task 2: Board reviews recommendations in JWG final report regarding how to clarify what constitutes GAC public policy “advice.”

Task 3: Board determines whether to accept JWG final report recommendation. If yes, Board adopts resolution accepting JWG recommendation. If no, Board consults with GAC Chair to determine process for further joint Board-GAC consideration of this issue. Once Board and GAC reach agreement as to what constitutes GAC public policy advice under the Bylaws, Board adopts resolution reflecting same.

Proposed Timeline:

According to current estimates, the JWG will deliver its final report at the SVSF Meeting in March 2011.

The Board will then consider the JWG recommendation as soon as it is feasible. Depending on the scope of the JWG recommendations, the Board may determine to have the JWG report as a topic at its upcoming May retreat. While the internal operations of the Board on this broad of an issue cannot be completely forecast, it is likely that the Board could take action regarding acceptance of the JWG recommendations at or before its June 2011 meeting.

The remainder of the timeline for implementation is dependent upon the Board's decision. There will likely be further implementation work necessary if the Board accepts the recommendation set out in the JWG final report. If the Board rejects the recommendation, the Board would then initiate further consultation with the GAC on this issue, and a further timeframe for that work would have to be agreed upon between the Board and the GAC.

Proposed Resources:

If the Board accepts the JWG Final Report recommendation on clarifying GAC public policy advice, no requirements for additional resources are anticipated. If however the Board rejects the JWG recommendation, it is possible that additional staff resources and financial resources to support Board-GAC consultations on this issue will be required.

Key Consultations:

Board, GAC, Board-GAC Joint Working Group

(No public comment anticipated)

ATRT Implementation Project, Recommendation 10

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project:

Board, acting through the JWG, should establish a more formal, documented process by which it notifies the GAC in writing of matters that affect public policy concerns to request GAC advice ICANN should develop an on-line record of each request to, & advice received from, the GAC along with the Board's consideration of & response to each advice.

ATRT proposed project deadline: By March 2011

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with a modification to the proposed deadline.

Given the inaugural consultations with the GAC, as well as the need to involve the GAC in the creation of a meaningful process of notification, there is no feasible way that this recommendation can be completed within the time stated. In addition, the stated time is not sufficient to properly design a useful online mechanism for the tracking of GAC advice and the Board's response thereto.

As seen in the 28 October 2010 meeting, ICANN has started producing charts identifying GAC advice or communications on a variety of topics. The creation of a single online record tracking the GAC advice will be a helpful tool as the Board and the GAC address the consultation processes. However, the types of information that will be populated in such an online record will likely need to be a topic of discussion between the Board and the GAC, and is dependent upon the definition of GAC "advice", as sought through Recommendation 9. In addition, the information that will be used to populate this system is partially dependent upon the rationale documents that are now being produced. Internal planning for such a tool should commence.

The creation of a process for notification of the GAC is a multi-faceted issue. For GAC/Board interactions, the JWG (or another group as designated by the Board and GAC) should work to

obtain some clarity on the GAC's expectations of notification and timing of such matters. However, the issue of GAC participation and engagement at the policy development level also must be addressed. The timing of GAC/Board discussions relating to earlier policy recommendations can result in modifications of policy decisions reached through the defined policy development processes – a result that may be avoided through earlier engagement in policy development processes. The outcomes of ATRT Recommendations 12 and 13 will be helpful to this discussion.

Preliminary Plan for Implementation:

Task 1: Plan/design online record system

Task 2: JWG (or other) to consult with GAC on proposed notification process as well as the scope of items the GAC wishes to have included in the online tracking system

Task 3: Upon completion of consultation, the notification process should be documented and made publicly available

Task 4: While planning is done to create a robust online tool for tracking of GAC advice, staff to compile identified GAC advice and post in a single location on the ICANN website

Task 5: Staff to create process for continued population of items in the online record system, reflecting updates in a timely fashion

Proposed Timeline:

By end of April 2011: Compile identified GAC advice and post in single location on ICANN website; Determine if external consultant is needed for design of more robust online tool to meet recommendation. If external consultant is needed, completion of robust tool may need to be completed within FY 2013. Seek advice from the Board/GAC JWG regarding the notification process and online tools.

By June 2011: Initiate discussions with GAC on proposed notification processes and content of online tools. Because of the interdependency with the other GAC-related recommendations, the deadline for the completion of this work is unknown.

Note: The proposed timeline for all work identified is subject to GAC availability and timely provision of responses

Proposed Resources:

Potential external consultant to design online record tool: Approximately US\$50,000

Additional staff resources will be necessary to support the consultation on the process, as well as ongoing maintenance of a record tool. These resources will be partially addressed in staff response to ATRT Recommendation 13.

Key Consultations:

ICANN Board, GAC, and Joint Working Group or other, as designated. No public comment anticipated

ATRT Implementation Project, Recommendation 11

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Board & GAC should work together to have the GAC advice provided & considered on a more timely basis; Board, acting through the JWG, should establish a formal, documented process by which the Board responds to GAC advice. This process should set forth how & when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice & will specify what details the Board will provide to the GAC if it disagrees with the advice; process should also set forth procedures by which GAC & Board will then “try in good faith & in a timely efficient manner, to find a mutually acceptable solution.” Consider establishing other mechanisms by which Board & GAC can satisfy the Bylaw provisions relating to GAC advice.

ATRT proposed project deadline: By March 2011

Project’s Lead Department: GAC Liaison

Project Manager: GAC Liaison

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with a modification to the proposed project deadline.

The Board/GAC Joint Working Group (JWG) included this issue in the Terms of Reference for its work, and discussions have been ongoing to assess these issues. The JWG is expected to deliver its final report around the time of the March ICANN Meeting, though not before. Once the final report is provided, the Board as a whole will have an opportunity to review the recommendations within the report for acceptance or further clarification. Therefore, even at the time of the transmission of the JWG final report, the work required to fulfill this Recommendation 11 will not be completed. Given the ongoing work of the JWG, there is no feasible way that this recommendation can be completed within the time stated.

The Board/GAC consultations are in the planning stages, and one of the anticipated outcomes of that work is a defined process for the good faith consultation. The work set out in Recommendation 9 and 10 will also guide the implementation of this Recommendation, as a definition of advice, as well as a defined process for notification of a potential decision, will necessarily impact a process for when and how that advice is to be provided to the Board.

The creation of the online tool as discussed in Recommendation 10 will help provide tracking from which a more formal process can be generated, and will also assure that items of GAC advice are not disregarded as the Board proceeds to action.

Establishing the timing for Board consideration of GAC advice may be premature at this time. Given the inaugural implementation of the consultation mechanism at the March 2011 meeting, the GAC and the Board may not be able to forecast the timing for implementation of this recommendation until after a few rounds of discussions.

Preliminary Plan for Implementation:

Task 1: JWG submits its final report.

Task 2: Board reviews recommendations in JWG final report regarding Recommendation 11.

Task 3: Board determines whether to accept JWG final report recommendations. If yes, Board adopts resolution accepting JWG recommendations. If no, Board consults with GAC Chair to determine process for further joint Board-GAC consideration of these issues. Once Board and GAC reach agreement on these issues, Board adopts resolution reflecting same.

According to current estimates, the JWG will deliver its final report at ICANN's March 2011 Meeting.

The Board will then consider the JWG recommendations as soon as it is feasible. Depending on the scope of the JWG recommendations, the Board may determine to have the JWG report as a topic at its upcoming May retreat. While the internal operations of the Board on this broad of an issue cannot be completely forecast, it is likely that the Board could take action regarding acceptance of the JWG recommendations at or before its June 2011 meeting.

The remainder of the timeline for implementation is dependent upon the Board's decision. There will likely be further implementation work necessary if the Board accepts the recommendations set out in the JWG final report. If the Board rejects the recommendation, the Board would then act to initiate further consultation with GAC on these issues, and a further timeframe for that work would have be agreed upon between the Board and the GAC.

Proposed Resources:

If the Board accepts the JWG Final Report recommendation on clarifying GAC public policy advice, no requirements for additional resources are anticipated. If however the Board rejects the JWG recommendation, it is possible that additional staff resources and financial resources to support Board-GAC consultations on this issue will be required.

Key Consultations:

Board, GAC, Board-GAC Joint Working Group

(No public comment anticipated)

ATRT Implementation Project, Recommendation 12, 13

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

12. The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.

13. The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.

ATRT proposed project deadline: None Specified

Project's Lead Department: Policy

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt these recommendations.

To implement these recommendations, there is a wealth of existing tools and resources that the GAC can take advantage of and that can be easily customized to the GAC's interests and needs. Additional short and long-term actions, as described below, can be taken to implement these recommendations. It is important to keep in mind that the GAC itself will have an important role in successfully implementing these two closely connected recommendations. Staff suggests that the Board and GAC agree on the best method for addressing implementation – either extending the current JWG or creating a new group to address implementation details.

Preliminary Plan for Implementation:

Immediate Actions:

- Monthly Policy Update – While in the past each GAC member was encouraged to subscribe individually to receive this newsletter directly, the publication also could be sent directly to the GAC email list every month (if GAC allows).

- There are other newsletters prepared by ICANN (and available to each GAC member) that the GAC might also be interested in and for which the same action could be taken, such as the Compliance Newsletter: <http://www.icann.org/en/compliance/newsletter/>.
- GAC members currently are able to participate in the pre-ICANN meeting policy update interactive webinars staff conducts for all interested individuals (e.g. <http://www.icann.org/en/announcements/announcement-04feb11-en.htm>); Policy Staff could provide a special alert and invitation to GAC members for these sessions.
- All of the GNSO's policy development working groups are open to all individuals, including GAC members; Policy Staff could provide a special alert and invitation to GAC members to participate in their individual capacities (or on behalf of individual countries).
- Individual GAC members are also free to comment on topic of interest during public comment forums; while staff recognizes that this input still does not constitute "GAC advice", it does allow input from individual government perspectives to be heard and open forums are highlighted in the Monthly Policy Update.
- The GAC could consider assigning volunteers to act as liaisons to SO and other AC working groups that are of broad interest to the GAC (understanding that a "liaison" would not be representing the GAC, but could act as a conduit for more detailed, or GAC-nuanced information); this is already standard operating procedure between the GAC and the ccNSO in working groups that are mutually considered of interest (the ccNSO currently invites the GAC to participate in or liaise with all working groups that potentially touch on policies or practices that may be relevant to the GAC).
- As with all of ICANN's Advisory Committees, the GAC has the right under the bylaws to "raise an issue for policy development" (for the GNSO this is specified under 1.c of Annex A, for the ccNSO this is specified in section 1.d of Annex B); the ALAC has taken advantage of this ability to initiate GNSO policy work on more than one policy issue, yet the GAC has never done so; ICANN Policy staff can meet with the GAC and describe what this Bylaws provision means and how it might be used.
- In the event that a Task Force is formed according to the rules of the ccNSO PDP, the GAC may appoint two GAC representatives or more to a Task Force, following a formal request (section 5.a Annex B); in the event no Task Force is formed, the Chair of the ccNSO shall formally request the Chair of the GAC to offer opinion or advise as part of the ccPDP (section 8.b of Annex B).
- Upon receipt of the Final Report under a ccNSO PDP, the ccNSO Council shall formally send an invitation to the Chair of the GAC to invite the GAC to offer opinion or advise on the Final Report (section 9.a of Annex B).
- Other ACs and SOs have occasionally requested speakers who are active on various policy issues (ICANN staff members, Working Group chairs, etc.) to attend their in-person and conference call meetings to brief them on work of interest; the GAC could invite speakers on topics of interest at any time.
- Preparation of Issue Briefs, presentations and background papers by staff on topics of interest to the GAC could be provided by staff; these are typically prepared for the GNSO Council when reports are prepared, and the briefings also could be given to the GAC at times convenient to them.
- ICANN staff can help the GAC identify high-priority, and new and emerging topics that may be timely for workshops or discussion sessions at ICANN meetings.

- Historically the GAC has collaborated with both the GNSO and ccNSO on policy topics of mutual concern and interest (e.g. ccNSO/GAC Issues Paper on IDN ccTLDs, IDNC WG, Cross-SO/AC working group on Recommendation Six of the new gTLD implementation); these joint groups have produced important results to aid informed policy making and could be further encouraged where appropriate.
- To the degree that the GAC is in a position to formulate input into current policy working groups, (see endnote for background information)[ii]#_edn1] that input can be considered by working group participants, as would be the case with comments received from other advisory committees within ICANN. This would be a very positive contribution to pending, bottom-up, policy development processes engaged in by all the SOs.
- Currently the Chair of the GAC is notified of any proposal raising **public policy issues** on which any SO or AC is seeking public comment. Going forward, Policy staff can provide specific notice to the GAC on a broader set of policy activities that might be of interest to the GAC, and provide briefings, if desired. It could be that the GAC has an interest in providing a government view on a broader range of topics, and if informed about a broader set of policy activities, the GAC might identify public policy implications or considerations not previously articulated.

Short-term Actions:

- Extend the JWG's charter to address implementation of these recommendations, or form a new Board/GAC group to do so, with staff support as needed;
- The GAC can consider re-instating one or more official "liaisons" to the GNSO Council and to other ACs and SOs where none may be active currently.
- Staff can work with the Board and GAC to identify new ways for the GAC to participate earlier in the policy development process.
- Continue the dialogue the GNSO started with the GAC at the ICANN Cartagena meeting about the efficacy of joint SO/AC working groups. This addressed: whether there are any limitations to participation by the GAC and individual GAC representatives in cross-community working groups; if so, what those limitations might be; what subjects are suitable or eligible for cross-community WGs (CWGs); and what the role of the SOs and ACs should be in reviewing/approving a CWG report. Staff thinks this dialogue could have important consequences for how the GAC and other Advisory Committees might advise the Supporting Organizations and their working groups in the future, recognizing that this also is a longer-term project.
- Recently there have been cases where investigative or exploratory work conducted by an ICANN Advisory Committee has led to subsequent policy action on the part of a supporting organization. [ii]#_edn2] Recognizing that the GAC may only be in a position to comment on selected issues, or within specified timeframes, the GAC could consider how it might take best advantage of additional staff support and a more regular information flow on policy matters to weigh in earlier when and where it can do so. For example, the GNSO can often anticipate many months ahead certain topics that it will likely solicit SO and AC or community comments on. These could be flagged for the GAC early on so that selected topics can be considered "pre-emptively". In addition, the GAC could consider communicating more through correspondence such as the letter sent to the ICANN Chair from the GAC Chair on behalf of the GAC on the WHOIS

studies, other than relying primarily on formal communiqués delivered during public ICANN meetings. Where feasible, this might help provide more timely input.

Long-Term Actions:

- (If requested by the GAC) assign additional Policy staff to support the GAC, and additional Secretariat support to help share information and publications from other SOs and AC that might be of particular interest to the GAC.
- Encourage the GAC to find ways within its own structure to contribute policy insights and expertise earlier in the policy development process – to explore additional ways that might assist the GAC to provide meaningful input earlier in policy development processes that are in the formative stages of community consideration. For example, there may be ways that could enable the GAC to provide collective input to pending policy work more readily in the future. The duration of public comment periods are likely to be extended in many cases as a result of other of these recommendations. This might provide the GAC with greater time to consider a pending policy matter than the shorter intervals sometimes conducted in the past. There is also a “capacity-building” element that may be necessary to help the GAC figure out best how it can provide input earlier in the policy development process.
- The Board and GAC should determine how frequently they should hold joint meetings and how these meetings should be planned and structured for optimal results. Staff notes language in the current bylaws that allows the GAC to “put issues to the Board directly”, and in light of this ATRT recommendation, staff suggests that the Board and GAC set aside additional time for at least one additional joint meeting a year (which could be coincident with a public ICANN meeting) that focuses exclusively on early information sharing on a pre-selected policy topic or topics that is understood to also be of significant public policy interest to the GAC. The purpose would be to engage in an early exchange of ideas on a timely issue “of the day”. Staff recommends that the SOs be consulted to determine if they have issues under discussion that might benefit from an early exchange of ideas between the Board and the GAC, and whether there are questions that could be proposed as a foundation for that discussion.
- Consider the need to review the Bylaws to determine if any amendments are needed to reflect the enhanced processes.

Proposed Timeline:

All of the immediate actions suggested above can be implemented by the March 2011 ICANN meeting.

Short-term actions proposed above can be implemented by December 2011.

Longer-term options such as staffing, and reworking existing GAC processes to provide more capacity for early input on policy making would be dependent on budget allocation and GAC support for considering changes to existing ways of providing input on policy matters.

Staffing a separate Board-GAC meeting with a new agenda will also take incremental resources to arrange and prepare briefing papers.

Proposed Resources:

Up to one additional FTE executive/senior-level Policy staff support and incremental Secretariat support to distribute policy-related documents, coordinate GAC communications with Policy Staff and other SO/ACs as appropriate, and for related administrative assistance.

Key Consultations:

- Internal consultation involving the Policy, Legal and GAC-related staff and with HR and the CFO regarding the potential staffing and budget implications.
- Consultations with the GAC Secretariat.
- Consultation with the Board and GAC about improvements and proposals that they would see as most useful, and with the Board/GAC working group designated to conduct this work and the options they identify has having the greatest potential (draft report contains a great deal of useful information and observations, but also identifies some challenges with previous efforts to improve the situation, for example, use of liaisons in the past).
- Direct consultation between the GAC and the Board whether they think they would benefit from more frequent joint meetings, and if so, how those meetings should be structured and organized to achieve maximum results.

i Background: As reflected in the Bylaws, the focus of the GAC is on public policy advice. The Bylaws note that the GAC should provide advice particularly on “matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues”. Such advice constitutes the majority of advice that is issued by the GAC, but is only a subset of policy issues being discussed by ICANN policy making bodies. It is also worth noting that in the case of GNSO and ASO policy proposals the ICANN Bylaws call for GAC advice to go solely to the Board, rather than to the other Supporting Organizations and Advisory Committees. While the Board could certainly convey GAC advice on a particular matter to a pending SO or AC working group if one exists, at times it may be preferable for the GAC to provide advice directly. In the case of the ccNSO, the GAC is formally requested to either participate in a task force or offer its advice to the ccNSO Council if no task force is formed on issues relevant to the GAC. The GAC also can be requested by the ccNSO to offer its advise or opinion on the ccNSO’s final recommendations.

Since policy development at ICANN is a bottom up, iterative process, policy working groups benefit significantly from input that is provided as early in the consideration process as possible. Typically today, the Board considers policy recommendations only once they have been fully discussed and analyzed by one or more SO working groups, and only after the relevant Supporting Organization has reviewed the issue and associated recommendations and has made an official recommendation to the Board. If the Board reaches out to the GAC once it receives a recommendation from an SO for action, most of the policy development process would be complete and it can be difficult to consider fully GAC concerns or suggestions at such a late point in the process.

The GNSO is in the process of changing its Policy Development Process (PDP) and is placing new emphasis on early information gathering activities that should be conducted even before a PDP is launched. In light of this, it may be useful to consider some of the barriers that have

made it relatively difficult for the GAC to provide advice early in the policy development process, and to encourage the GAC to develop proactive advice that can be directed to specific working groups where it can be considered “in real-time”.

Note that staff is not suggesting that these recommendations preclude in any way the options currently afforded to the GAC and to the Board under the ICANN Bylaws to advise the Board on policy matters.

The Policy Department has a wealth of expertise and information on a broad range of policy topics of interest to the GAC, and some excellent opportunities exist to communicate this information to the GAC more regularly and in a more targeted way. Many tools could be implemented with minimal funding right away. With additional funding, more senior policy staff resources could also be assigned to help the GAC engage earlier in the policy development process, and more Secretariat functions to help the GAC keep more informed of those policy activities that are of greatest interest to the GAC in a systematic and thorough way.

ii For example, early work by the SSAC, which wrote several papers analyzing deficiencies in WHOIS, led to GNSO focus on studies and further GNSO documentation of those deficiencies. Early concerns identified by the ALAC relative to the recovery of expired domain names led to a GNSO policy development process that is currently underway and is considering changes to improve the situation. When the GAC has provided input on policy and other matters in the formative stages, such as the GAC’s detailed and extensive set of recommendations that it provided in April 2008 on WHOIS studies, the input has been of significant value. In the case of the WHOIS studies, the GAC input was instrumental in helping to define the studies ultimately selected by the GNSO to pursue. This was also true with the ccNSO-GAC IDNC WG recommendations on the fast track process.

ATRT Implementation Project, Recommendation 14

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Board should endeavor to increase the level of support & commitment of governments to the GAC process; encourage member countries & organizations to participation in GAC & place particular focus on engaging nations in developing world & need for multilingual access to ICANN records; Board also should work with GAC to establish a process to determine when & how ICANN engages senior govt. officials on public policy issues on a regular & collective basis to complement existing GAC process.

ATRT proposed project deadline: None provided.

Project's Lead Department: GAC Liaison

Project Manager: GAC Liaison

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board should approve and implement this recommendation.

Governments play an extremely important role in the ICANN multi-stakeholder environment. Currently, more than 100 nations have representatives on the Governmental Advisory Committee but not all are heavily engaged or committed to ICANN or the multi-stakeholder model. Some governments advocate for ICANN's role to be subsumed into an Intergovernmental organization (IGO) such as the UN or the ITU. Many others have not declared a position and others appear not to be aware of ICANN and the role it plays. For some GAC members, it is not clear how much support they have for their involvement with ICANN from their governments.

Increasing GAC membership and making it easier for GAC members to participate in ICANN is important for the future success and legitimacy of the organization. While most of this recommendation calls for Board action, it cannot be implemented without the cooperation and support of the GAC. Progress will require joint dialog, planning and execution by the Board and GAC.

Finally, the Board/GAC Joint Working Group (JWG) is expected to release its final report at the March 2011 ICANN meeting. The current draft addresses one element of this recommendation (ICANN engagement of high-level government officials) but further work

remains to be done. The Board should review the final report for guidance on how to implement this recommendation.

Preliminary Plan for Implementation:

Task 1: JWG submits its final report in March.

Task 2: Board reviews recommendations in JWG final report regarding how to enhance effective governmental participation in ICANN.

Task 3: Board determines whether to accept JWG final report recommendation. If yes, Board determines how best to work with GAC to implement each of the elements of the recommendation and considers whether to adopt a resolution reflecting same. If no, Board consults with GAC Chair to determine process for further joint Board-GAC consideration of this issue.

Proposed Timeline:

According to current estimates, the JWG will deliver its final report at the ICANN Meeting in March 2011.

The Board will then consider the JWG recommendation as soon as it is feasible. Depending on the scope of the JWG recommendations, the Board may determine to have the JWG report as a topic at its upcoming May retreat. While the internal operations of the Board on this broad of an issue cannot be completely forecast, it is likely that the Board could take action regarding acceptance of the JWG recommendations at or before its June 2011 meeting.

The remainder of the timeline for implementation is dependent upon the Board's decision. There will likely be further implementation work necessary if the Board accepts the recommendation set out in the JWG final report. If the Board rejects the recommendation, the Board would then action to initiate further consultation with GAC on this issue, and a further timeframe for that work would have be agreed upon between the Board and the GAC.

Proposed Resources:

Depending on the relevant recommendations in the JWG Final Report, it is very possible that implementation of this recommendation will require additional financial and human resources that have not been included in the FY12 budget proposal. In particular, additional support may be needed to “engag[e] nations in developing world;” to ensure “multilingual access to ICANN record;” and to engage “senior govt. officials on public policy issues on a regular & collective basis to complement existing GAC process.” The draft GAC budget for FY12 seeks additional resources for translation services and travel support. It does not contain a request to support senior government officials' engagement with ICANN. Those expenses may fall properly under the meetings budget. Regardless, without further detail on the parameters of senior government engagement at ICANN meetings, it is not possible to forecast what those expenses may be.

Key Consultations: Board-GAC Joint Working Group; ICANN Board; GAC

ATRT Implementation Project, Recommendation 15

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

15. The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.

ATRT proposed project deadline: ASAP but no later than June 2011

Project's Lead Department: Policy

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with modification of the due date. The need for this modification is explained below.

Many improvements can be made to ensure that the Public Comment Notices are clear, understandable and provide sufficient information in plain language so that interested parties can decide quickly and easily which topic they want to follow and comment upon.

Stratification: Staff performed an initial assessment of public comment forums over the last two years and notes that the topics are extremely varied and do not fit neatly into common categories, such as a Notice of Inquiry or Notice of Policy Making. Further consultation with the ICANN community will be required in order to develop a more standardized categorization linked to ICANN policy and procedures. Staff recommends that additional research be conducted and a survey developed to ask community members for their preferred ways to categorize topics under discussions. At the end of this process, staff can propose a public comment forum stratification plan that can be posted for public comment, finalized and implemented. This stratification work may be assisted by the categorization work identified in response to ATRT Recommendation 6 (on distinguishing between policy and staff functions).

Prioritization: Solicitations for public comments at ICANN typically cover a broad array of topics of interest to diverse stakeholders, but most are very important to some sub-set of the

ICANN community. Staff should not be placed in a position of deciding on the importance or priority of one public comment request over another, as this is neither appropriate nor useful to a broad and diverse community.

Staff recommends that a process be put in place so that Public Comment requests based on a scale of low/medium/high priority. When the item for Public Comment arises from an SO or AC, the process should include seeking the SO/AC input on the prioritization level applied.

Staff also recommends that the ICANN Public Comment web page be re-designed for clarity of the display. The current system based on “sorting by due-date” of Public Comments can be improved to provide greater details and background information. Later on, depending on the results of the survey (mentioned above), a more comprehensive and clear listing of Public Comments can be deployed with a more comprehensive sorting mechanism.

The implementation of a Language Service Policy may affect the implementation timeline for this recommendation.

Preliminary Plan for Implementation:

Staff proposes a two-phase deployment for a successful implementation of this recommendation. Phase 1 focuses on more immediate changes that can be made, while Phase 2 contains improvements that will take more time to implement due to the complexity of the tasks involved.

Phase 1:

Task 1: The Sr Dir Participation and Engagement will coordinate with other staff to implement a new coordination and clearance process. The level and depth of this coordination and clearance effort will depend heavily on the resourcing and support received. The “ICANN Internal Public Comment Process” document, will provide clear guidance on how public comment forums should be started, carried out, and concluded by both ICANN Staff and by the other stakeholders (ICANN Board, SOs, ACs).

Task 2: Create a new template for opening a public comment forum to collect and post the necessary information. This template would note the designated priority level (low/medium/high) by the SO/AC requesting the public comment period. By using this template, all essential information will be collected to ensure a clear and concise notice is posted on the ICANN Public Comment web page, indicating what kind of input is expected.

Task 3: Create a new summary template to ensure that the “summary and analysis” that is posted at the conclusion of all public comment processes by the responsible ICANN Staff meets the communities’ needs.

Task 4: Develop an internal training program for ICANN Staff to provide guidelines and best practices for the processing of comments and to establish an understanding of the importance of their role in facilitating the Public Comment processes.

Task 5: Re-design the ICANN Public Comment web page for basic improvements such as:

- Directing attention first to the current Open issues, then listing the issues that are awaiting Summary/Analysis and finally to those Archived. This would involve a

restructuring of the current interface to place a clear visual priority in the Open issue section.

- Deploying a clearer sorting mechanism for Public Comment processes.
- Including a notice for “Upcoming Public Comments”.

Phase2:

Task 6: Staff conducts further research on an appropriate stratification system, and conducts a survey to collect additional input from the community.

Task 7: Based on the survey results, a stratification system will be developed and implemented for the Public Comment Process.

Task 8: Review the input provided by the community during the survey process (Task 6).

Task 9: Re-design ICANN’s Public Comment web page based on inputs received

Proposed Timeline:

Phase 1: (Most tasks in Phase 1 can be performed simultaneously.)

Tasks 4 & 5 (template for requesting a Public Comment period and the summary template) can be completed before June 2011.

Task 1, 2, 3 are estimated to be completed by August 2011.

Phase 2: (Tasks in Phase 2 are more time consuming and they have external dependencies requiring consultation and coordination.)

Task 6-9 are estimated to be completed by December 2011.

Proposed Resources:

Staffing: 6 FTEs will need to devote at least 20% to 40% of their time to this implementation plan within the proposed timeline above.

Once the improved ICANN Internal Public Comment Process is put in place, additional resources will be needed for oversight and maintenance. It is estimated that one new FTE support for the Sr Dir Participation will be required for the continuing management and coordination of the Public Comment Process.

For the proposed survey to collect community feedback on stratification, the outsourcing cost is estimated to be about \$20,000 (this estimate is based on previous budget information, not on an actual quote).

Key Consultations:

Internal Executive Team and Staff, Board and Public Participation Committee, SOs and ACs, ICANN Community via Public Comment and Surveying

ATRT Implementation Project, Recommendation 16, 17

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Project Information:

16. Public notice and comment processes should provide for both a distinct “Comment” cycle and a “Reply Comment” cycle that allows community respondents to address and rebut arguments raised in opposing parties’ comments.

17. As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

ATRT proposed project deadline: Prior to June 2011

Project’s Lead Department: Policy

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with a modification of the deadline.

Recommendations 16 and 17 are understood to have two aspects: structural improvements for the commenting cycles (see Staged description below); and technical improvements to the Public Comment interface.

Structural improvements:

Staff proposes a two-staged Public Comment Process that will be deployed:

Stage 1: Comment:

This period will be a minimum of 30 days. It can be set for a longer term or extended based on clear and explicit announcement of the requesting entity. The 30-day comment period will start when the Public Comment material is published on the ICANN Public Comment web page. During and prior to this 30-day Comment period, all interested stakeholders of the ICANN Community will be encouraged to provide their inputs.

Stage 2: Reply Comment:

This period will be a minimum of 15 days, starting immediately after the close of the 30-day comment period. This period will allow interested parties an opportunity to review all comments submitted during the 30-day Comment period and add additional points or materials.

All the comments received within the entire minimum 45 days (Comment Period + Reply Comment Period) will be taken into account in the summary and analysis process.

The end date of the entire Comment and Reply Comment periods cannot be later than a week before the regularly-scheduled Board meeting where action on the item for Public Comment is anticipated. This will allow the completion of summary and analysis prior to the Board being asked to make a decision.

With regards to Recommendation 17 and “fixed duration” for the stages of Public Comments, staff suggests that only a fixed “minimum” time be required. Since ICANN’s stakeholders have different needs and some issues may require more time than others, Staff believes flexibility on timelines is warranted. Establishing a minimum timeline and issuing clear announcements will help achieve the goal of collecting meaningful and timely comments.

Technical Improvements:

The current forum system for ICANN Public Comments does not provide an easy and user-friendly mechanism to reply to a particular comment that has been made by another participant. This system needs to be improved. The primary problem is that the current Public Comment Forum runs on very old forum software. ICANN’s web development team has been planning to transition the Forum to Confluence wiki software with modifications, but the task is not trivial.

It is envisioned that with the redesign of the ICANN website, the public comment forum interface can also be improved, allowing instant interaction and discussion between commenters if the participants would like to post their opinions in this manner. Staff already has considered this topic as part of the ongoing effort to redesign all of ICANN.ORG. At this stage, no deadline can be set for this improvement. In March, staff expects to contract with a web vendor to redesign ICANN.ORG. Because this relationship does not exist yet, staff cannot commit to what the vendor will or will not accomplish by June. However, staff will make ATRT recommendations a priority and an area of early focus in the redesign process. Staff will have more precise dates in April.

Preliminary Plan for Implementation:

Task1: Staff develops the two-staged Public Comment period as described briefly above and posts it for public comment.

Task 2: Based on inputs received, implement a new Public Comment structure, making all necessary web page changes, and announcements.

Task 3: Integrate the technical improvements that are mentioned under the title of “Technical Improvements” above to Public Comment forum interface.

Proposed Timeline:

Task 1: Estimated to be completed by August 2011 (Within Phase 1 of Implementation for Recommendation 15)

Task 2: Estimated to be completed by December 2011 (Within Phase 2 of Implementation for Recommendation 15)

Task 3: TBA

Proposed Resources:

Staffing: 6 current FTEs will need to devote at least 20% to 40% of their time to this implementation plan within the proposed timeline above.

The proposed implementation may require changes to ICANN's By-laws as well as some specific changes to the PDPs or operational procedures of some ICANN supporting organizations or advisory committees. ICANN Legal and Policy teams as well as the SOs/ACs may need to devote extra resources to this area.

ICANN's Translation policy may also affect the proposed resources required as well as the timelines described above.

Key Consultations:

Board, Public Participation Committee, SOs and ACs, ICANN Community via Public Comment

ATRT Implementation Project, Recommendation 18

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

18. The Board should ensure that access to, documentation within the policy development processes, and the public input processes are, to the maximum extent feasible, provided in multi-lingual manner.

ATRT proposed project deadline: None specified

Project's Lead Department: Communications

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation, with a request for clarification that might result in a proposed modification.

ICANN is engaged in significant translation activities in support of its policy development processes, but staff recognizes that more can be done. Staff understands the intent with respect to the ATRT recommendation that “documentation” within the policy development processes and the public input processes be provided in a multi-lingual manner. Staff needs clarification, however, on what the ATRT intends by the phrase “access to ... the policy development processes ...”. What is intended by this beyond the matter of multi-lingual documentation, “to the maximum extent feasible”? Is there an expectation that all facets of policy development be conducted in multiple languages? Is there an expectation that all policy development-related public comment forums be conducted in multiple languages? Public comment on communities’ needs in this area, of course, also would be valuable.

The Board approved “Translation Principles” in February 2008 as part of the “[Accountability and Transparency Frameworks and Principles](#).” The Policy Department has had a [Translations Policy](#) in place since October 2008. Although many other ICANN documents and web page postings are available in translated form, and real-time translations are done for key events at ICANN meetings, there is no single translations policy that applies to all of ICANN’s publications, documents or public input processes and meetings. This is not to say that everything should be translated equally. The Policy Department Translations Policy recognizes that SOs and ACs may have differing needs, and sets guidelines for translations of web postings for each SO and AC accordingly.

Staff recommends that the ICANN Language Services Manager take steps to propose an ICANN-wide Language Services Policy as suggested below.

Preliminary Plan for Implementation:

To move forward with short-term improvements while allowing time for more extensive, long-term changes, staff proposes the following multi-phase approach:

1. By June 2011, Staff proposes to roll-out a new Language Services Policy which will provide processes and rules to be followed by all ICANN departments (including those that support the Board and SOs and ACs) related to services such as:
 - a. Editing for Plain English
 - b. Translation
 - c. Interpretation
 - d. Conference Call Interpretation
 - e. RTT (Scribing)
 - f. Transcriptions (After the fact transcription of audio files)
2. Once the ICANN English web site has been revamped, an assessment will be conducted to determine cost and time needed to produce mirror sites in the other five U.N. languages. The production of ICANN sites in other languages will not be scheduled to take place in FY12. Additional studies may also be needed to examine how other organizations facing similar challenges handle their transition to becoming a multilingual organization.
3. Staff will research and seek community input on whether and how ICANN's public comment forums should be multi-lingual. Issues addressed will include:
 -
 - Should all public comment forums be run in other languages, in addition to English? If yes, which languages? What is the impact on timing as allowing comments in different languages would also mean translating those comments back to English?
 - Often translations are available at a later date, does that mean that a public comment forum does not start until all versions are available and can run for the same time?
 - What would be the budgetary impact?

Proposed Timeline:

Now through June 2011: ICANN Language Services Policy to be finalized and reviewed internally

19 June 2011: Language Services Policy to be provided to the Board, SOs and ACs (by/at ICANN June meeting)

1 July 2011: FY12 begins, ICANN Language Services Policy will be implemented

Proposed Resources:

The FY12 budget includes all the expenses related to bringing the ICANN Language Services Policy into place. The proposed budget for FY12 is \$ 2.1, this budget includes all the proposed services included in the Language Service Policy except for the possible additional translations resulting from the outcome of work related to holding Public Comment Forums in multiple languages.

Please note, the cost for any translations and linguistic support related to the production of ICANN's web site in other languages (mirror sites), is not included in the FY12 budget.

Key Consultations:

Policy, Legal, Communications Staff, Board, SOs, ACs, community

ATRT Implementation Project, Recommendation 19

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

19. Board should publish its translations (including rationale) within 21 days of take a decision (in languages called for in ICANN Translation Policy).

ATRT proposed project deadline: None listed

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends the Board adopt this recommendation with modification.

The Language Services department is already in the process of translating the 25 January 2011 Approved Resolutions into the UN languages, and the translations will be posted prior to the Silicon Valley Meeting. The approved Minutes of the 25 January 2011 meeting will be available in translated versions within 21 days of the approval of the minutes. Staff is in the process of creating a workflow for the continued translation of these materials within the timeframe set forth in the Recommendation. As noted in response to Recommendation 7, the Board has already begun including draft rationale statements within the Approved Resolutions, to be finalized within the Minutes, and will be translated as part of each of these documents. In the event of particularly lengthy rationale statements, those specific items may not be available within the 21-day window. However, every attempt will be made to complete all rationale translations within 21-day window, and the unavailability of individual rationale statements will not delay the posting of the other translated materials.

The usefulness of translating Board Preliminary Reports has to be determined in light of the costs of translation. Preliminary Reports are only posted for short periods of time, and are not maintained as official records of the Board meetings. However, because a main part of the Preliminary Report is the Approved Resolutions, the additional costs in producing the Preliminary Report translations may not be high. Staff will continue to research the additional costs incurred, and will produce a further recommendation regarding this issue.

Work is also being done to coordinate the translation of Board briefing materials. To best maximize resources within the organization, usage of translated Board briefing materials should be monitored and reviewed within a year's time to determine if it may be more feasible

to move to a translation-upon-request model for selected items within the briefing materials. As some items within the briefing materials are not in furtherance of Board decisions (such as press clips and informational reports from third parties) the value of translating such materials may be minimal when compared to the cost of translation. To address these concerns, staff will propose guidelines for Board briefing materials translations with a focus on the translation of deliberative materials.

Because much of the Board and community work is dependent upon the ICANN Bylaws, ICANN will be producing translations of the ICANN Bylaws in the UN Languages as soon as possible. The work is already underway. Staff is also coordinating a workflow to obtain timely translations of amendments to the Bylaws as approved by the Board.

The Language Services department is aware of the need to prioritize the translation of Board decisional work. In addition, Language Services will be working closely with the Legal department to monitor the quality of the translations of Board decisional documents to assure the high quality of translations made available to the public.

Preliminary Plan for Implementation:

Task 1: Post translations of Approved Resolutions and Minutes from 25 January 2011 (including rationale statements), and implement internal process for ordering translations as part of the Resolution posting process for all future Board meetings

Task 2: Determine incremental costs of translating Preliminary Reports of Board meetings and provide recommendation on regularly creating translations

Task 3: Review Board briefing materials to create proposed guidelines regarding the translation of Board briefing materials, with a focus on translation of decisional materials. After 1 year's time, review the usage of Board briefing material translations to determine if another mode of identifying documents for translation should be implemented.

Task 4: Post translations of ICANN Bylaws and implement internal process for notifying Language Services of future Bylaws amendments for timely translation and posting

Task 5: Continually monitor quality of Board decisional material translations to determine if new vendors are required

Proposed Timeline:

The first translation of Approved Resolutions (from the 25 January 2011 Board meeting) will be available prior to the Silicon Valley Meeting, and both the Minutes approved at the Board's meeting in Silicon Valley and the Approved Resolutions arising out of the meeting in Silicon Valley will be staged for translation in line with the ATRT's Recommendation. This translation and publication will continue for future meetings.

The translations of the ICANN Bylaws are estimated to be complete by the end of April 2011, and will be posted as soon as the translations are available.

Translations of Board briefing materials for the 25 January 2011 Board meeting will be available in April 2011. An initial guideline for translations of the Board briefing material will be made available in April 2011, as a companion to the guidelines for redactions that will be

produced in response to Recommendation 8. By March 2012, staff will undertake a review of the scope of translation of Board briefing materials to determine if any refinements to the guidelines need to be recommended.

Proposed Resources:

ICANN Language Services staff budgeted the translations discussed above for US\$125,000 within FY12. The actual cost could substantially exceed the budgeted amount; the Board briefing materials are over 200 pages for each meeting, sometimes over 300. With the inclusion of rationale statements, the Approved Resolutions for each meeting will be nearly twice the length of the 2010 postings. Additional resources may be necessary.

The internal staffing to request translations of existing material is incremental.

Key Consultations:

The translations will assist organization-wide in community consultation.

At the time of the review of the scope of Board briefing material translation, community consultation/public comment may be needed.

ATRT Implementation Project, Recommendation 20

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

20. Board should ensure that all necessary inputs that have been received in policy making processes are accounted for and included for consideration by the Board; to assist this the Board should adopt & post a mechanism (e.g. checklist or decision template) that certifies what inputs have been received & are included for Board consideration.

ATRT proposed project deadline: As soon as possible

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation.

The work to address this recommendation is two-fold. First, the Board can implement a checklist process to confirm that necessary inputs have been considered, for submission to the Board as part of its briefing materials. Second, processes can be implemented to address a void that currently exists in assuring that the necessary inputs were considered at the SO level during a policy development process. The Board needs to be provided with documentation of the comprehensive work and inputs into policy development processes.

The policy development work done at the SO level should evolve to assure that the necessary inputs are made, and the outcomes of that process need to include documentation of those inputs. Currently, Annex A of the ICANN Bylaws spells out the seven requirements that must be included in a GNSO Council Report to the Board (to be prepared by staff within five days of a GNSO Council decision to make a recommendation to the Board), so in the GNSO policy development process, extensive detail is required today. The reports arising out of the ASO Global Policy Development Process include reference to public forums and discussions within each RIR. The ccNSO PDP, set forth in Annex B to the ICANN Bylaws, requires certain inputs to be included within reports to the Board

These reports from the SOs can be enhanced through work already underway towards creating Board rationale statements (introduced for the 25 January 2011 meeting). The template for Board Rationale Statements can be refined for the SOs in order to provide

information to the Board on the inputs received. The creation of templates to be used by the SOs in the policy development processes may be helpful.

In addition, a review of inter-SO/AC provision and use of liaisons may also facilitate the provision of necessary inputs into SO-level policy work. Currently, the Bylaws do not clarify the expected role of liaisons to the various SO/ACs. These liaisons could be assigned the responsibility for making sure that the represented SO/AC's input is submitted during the PDP in a timely manner. Finally, achieving commitments on the timely completion of summary and analysis of public comments will also create some discipline around the acknowledgement of and consideration of inputs.

The SO-focused items are suggested to avoid the situation where the Board would send items back to the SO for re-evaluation of its policy recommendations for the purpose of considering the inputs of other SO/ACs into the PDPs. It is important to note that due to the variations among the SO's policy development work, the extent of impact of these recommendations may vary.

A full integration of these practices may require changes to the Bylaws or the SO operating procedures, as applicable, to clarify the use of liaisons, or to revise policy development processes.

Preliminary Plan for Implementation:

Task 1: Create decisional checklist for inclusion in Board briefing materials to provide a "quick look" for confirmation of necessary inputs

Task 2: Create an interim template for SO usage identifying the information necessary for a robust Board consideration of policy recommendations, using the requirements and processes stated in the current Bylaws/PDPs where applicable.

Task 3: Engage in a consultation with the SOs and ACs to address how inputs can be received and better documented, including the use of liaisons and the creation of templates to document receipt of input in policy development processes.

Task 4: Create the templates identified within the community consultation, if any.

Task 5: Review Bylaws and SO Operating Procedures to determine extent of changes needed, if any, to meet the changes identified in the community consultation.

Task 6: Establish commitments for timely completion of public comment summaries/summary and analysis (dependent upon work in Recommendation 16-17)

Proposed Timeline:

By April 2011: Create decisional checklist for inclusion in Board briefing materials; create interim template for use in SO output from PDP activities.

By June 2011: Initiate community consultation on assuring proper inputs into the policy development process

Dependent upon the length and outcome of the consultation, the remaining implementation steps will be set forth after the consultation

Proposed Resources:

The creation of the checklist and interim template will take approximately 10 hours each from Legal and Policy staff

The completion of the interim template will add additional time to each report prepared by policy staff supporting the SOs

The consultation will require approximately 10-15% of policy support FTEs each supporting the various SOs.

Key Consultations:

The Board (possibly through a designated committee) for the creation of a decision template.

All ICANN SOs/ACs

ATRT Implementation Project, Recommendation 21

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

21. The Board should request ICANN staff to work on a process for developing an annual work plan that forecasts matters that will require public input so as to facilitate timely and effective public input.

ATRT proposed project deadline: NOT LISTED

Project's Lead Department: Policy

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation.

The implementation will require communication and coordination among staff and the community. Staff compiling the list of activities should be careful to identify that any annual plan is a projection only. In addition, staff may identify that there are sub-parts to anticipated work that may require additional consultation – for example, if a proposed work item arising out of an SO/AC is likely to require a Bylaws change, the public input on that resulting Bylaws change should be identified as well as the public input on the substantive discussion within the SO/AC. This exercise will likely result in a better understanding of the internal timing and processes among all parts of the ICANN structure.

Preliminary Plan for Implementation:

Task 1: Sr Dir Participation and Engagement coordinates with staff to collect possible public comment forum topics that are likely to be raised by the SOs, ACs, Board and staff in the coming year. This process starts in December.

Task 2: Before the end of February of the following calendar year, the list of possible topics likely to be under consideration is published on the ICANN Public Comment web page under the placeholder of “Upcoming Public Comments” (see Implementation for ATRT Recommendation 15 on changes to the Public Comment web page).

Proposed Timeline:

A first attempt at coordinating an annual list can be implemented by June 2011. A more fulsome roll-out could be implemented for the 2012 calendar year.

Proposed Resources:

No significant resources are required.

Key Consultations:

ICANN Staff/Executive Team, Board and Board Committees, SOs and ACs

ATRT Implementation Project, Recommendation 22

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

Project: Board should ensure that senior staffing arrangements are appropriately multi-lingual, delivering optimal levels of transparency.

ATRT proposed project deadline: none listed

Project's Lead Department: Human Resources (Operations Dept.)

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt these recommendations.

This work is already ongoing and Staff suggests that it continue. In addition, it is recommended that position descriptions and job posting be updated to reflect the desire for multiple language skills in order to deliver optimal levels of transparency. It is also recommended that ICANN identify language learning opportunities for senior staff to learn new languages, as appropriate.

Of the eight current members of the executive staff, seven speak at least a basic second language (other than English) and many are at least tri-lingual.

Preliminary Plan for Implementation:

Task 1: Review all appropriate job descriptions and update to reflect the desire for multiple language skills.

Task 2: Review all appropriate job postings and update to reflect the desire for multiple language skills.

Task 3: Ensure all candidate review forms completed on candidates for senior staff positions include a section on multiple language skills.

Task 4: Identify language training programs to be made available to senior staff.

Proposed Timeline:

Task 1: By March 2011 complete review and update of all current appropriate job postings.

Task 2: By March 2011 all candidate review forms to be completed on candidates for senior staff will include a section on multiple language skills.

Task 3: By April 2011 complete review and update of appropriate position descriptions.

Task 4: By June 2011 identify language training programs to be made available to senior staff; and by July 2011 implement, as appropriate, language training programs for senior staff.

Proposed Resources:

Activities will be done by current Human Resources staff; no additional FTEs are required. Language training programs will be sourced by HR staff and an estimated \$15,000 USD will be needed in the next fiscal year.

Key Consultations:

Staff

ATRT Implementation Project, Recommendation 23

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

23. Board should implement the Improving Institutional Confidence (IIC) Recommendation 2.7 that calls on ICANN to seek input from a committee of independent experts on the restructuring of its three review mechanisms; see ATRT guidance for review, including direction to look at mechanisms in IIC Recommendations 2.8 & 2.9; upon receipt of experts' final report, Board should take actions on the recommendations.

ATRT proposed project deadline: As soon as possible but no later than June 2011 to seek input from a committee of independent experts

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation with revision to the timeline.

It is unclear whether the ATRT is calling for the completion of the work of independent experts by June 2011, therefore it must be clarified that only the identification of experts will be completed by that time.

In 2009, Paul Twomey independently retained experts to conduct a review of this work arising out of the Increasing Institutional Confidence/President's Strategy Committee report. The proposed Bylaws revisions that were posted for comment in 2009 were based upon the work of those experts. While the outcomes of that work can be useful in the work called for in this Recommendation, the expert review needs to be redone. Not only was there a lack of transparency in the work performed by Twomey's selected experts; the community then rejected the expert recommendations through the public comment process.

New experts should be retained. This will be a costly and timely endeavor, through scoping the RFP, expert selection, and supporting the work of the experts.

****Privileged and Confidential Advice Set Forth Below****

Privileged and Confidential

****Privileged and Confidential Advice Set Forth Above****

The experts' recommendations will need to be posted for public comment prior to Board action. The costs of implementation of the recommendations (such as the formation of standing independent panels, etc.) will have to be considered and budgeted. Upon implementation, Bylaws revisions will need to be made, as well as changes to the Accountability and Transparency Framework.

Preliminary Plan for Implementation:

Task 1: Staff to draft RFP for team of independent experts and post according to the ICANN Procurement Guidelines

Task 2: Complete expert selection and complete contract negotiation

Task 3: Experts design and perform research to reach recommendations

****Privileged and Confidential Advice Set Forth Below****

Privileged and Confidential

****Privileged and Confidential Advice Set Forth Above****

Task 5: Expert report posted for public comment

Task 6: Board action on expert report, taking public comment into consideration

Task 7: Required Bylaws changes drafted (to the extent not included within the expert report) to implement Board action

Task 8: Upon approval of Bylaws changes, modify other publications/postings within ICANN to reflect new accountability mechanisms

Task 9: Implementation work to roll out new/revised accountability mechanisms

Proposed Timeline:

By June 2011: RFP drafted and posted and vendor selection process underway

The scope and time required for the independent experts may be one item for consideration in reviewing responses to RFPs. It is anticipated that this work could be complete and a final report provided within 6 months of the initiation of work, but that timeline may require modification. Given the import of the work of the experts to ICANN's future accountability, a focus on quality of review should be emphasized over a quick turnaround.

The time to ultimate implementation of the expert recommendations cannot be estimated without identification of what those recommendations entail.

Proposed Resources:

The expert work is anticipated to be performed within FY 2012. The cost for retaining experts to perform this work is anticipated to cost anywhere between US\$200,000 - \$500,000.

Privileged and Confidential

****Privileged and Confidential Advice Set Forth Below****

The resources required for implementation of the recommendations will be assessed after the expert report is received.

Staff resources to initiate the RFP and to support the work of the experts will be significant. During the period of time that experts are preparing their report, it is estimated that at least one FTE from the Legal Department will need to dedicate approximately 10-15% percent of his or her time to support and coordination work.

Key Consultations:

Upon completion of the report, a public comment period will be required. There may be additional public comment periods on further outcomes from this work, including Bylaws revisions.

It is anticipated that the experts will consult with many parts of the ICANN structure in performing research, particularly as it relates to the inclusion of the community in accountability mechanisms.

The Board as a whole will also need to be consulted during the research and implementation phases.

While the experts will design their own workplan, it can be anticipated that they will consult with external sources such as Ombudsman organizations, the ICDR (provider for the current Independent Review Panel) and others.

ATRT Implementation Project, Recommendation 24

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

24. Assess Ombudsman operations and relationship between Board & Ombudsman, and if needed, bring into compliance with internationally recognized standards for Ombudsman function and Board supporting the function

ATRT proposed project deadline: ASAP but no later than March 2011

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends the Board adopt this recommendation with modification to the timeline to allow for the new Ombudsman to be active in the review of the Ombudsman/Board relationship.

ICANN is currently conducting a search for a new Ombudsman. The inaugural ICANN Ombudsman left ICANN on 31 January 2011.

The transition to a new Ombudsman will assist in the assessment of how the role can mature within ICANN. Within the active search to fill the Ombudsman position, adherence to internationally recognized standards for Ombudsman function is an important qualification.

After the new Ombudsman is retained, a joint review of the Ombudsman Framework – a review between the Ombudsman and the Board (through a committee designated by the Board) – will be a first step in evolving the Ombudsman role as called for within this Recommendation. The review should focus on enhancing the independence of the Ombudsman role within ICANN as well as the Board-Ombudsman relationship, and adherence to internationally-recognized standards. A more in-depth review of the Ombudsman role is called for within Recommendation 23, therefore it would not be prudent to engage outside resources to review the operations of the Ombudsman role in response to this Recommendation while planning for the broader review is underway.

As part of the review, Board should consider making public the metrics for the Ombudsman's bonus compensation.

Preliminary Plan for Implementation:

Task 1: Complete selection process for new Ombudsman

Task 2: Upon selection, the Board (through a designated committee) to undertake a review of the Ombudsman Framework, in consultation with the newly-selected Ombudsman, to review the Ombudsman role and relationship with the Board

Task 3: Board approval of Ombudsman Framework (for public posting)

Task 4: To the extent permitted under relevant privacy and employment-related laws, publication of metrics used to assess the Ombudsman's eligibility for bonus compensation

Proposed Timeline:

Upon hiring of the new Ombudsman, the process for reviewing the Ombudsman relationship should begin immediately. Achieving Board approval of a revision to the Ombudsman Framework is dependent upon the scheduling of Board meetings and as well as the meetings of any committee designated by the Board to perform the review. Any improvements in the function of the role or the Board/Ombudsman relationship should be put into practice as soon as possible without awaiting formal approval of the Framework.

Proposed Resources:

Much of the required resource to complete this review will come from the Ombudsman.

A small amount of staff time will be required to support the Board in the fulfillment of this review.

Key Consultations:

The Board (through a designated committee) will be a key consultation for this review. No additional outside consultations are anticipated.

ATRT Implementation Project, Recommendation 25 & 26

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

25. Clarify standard for Reconsideration requests with respect to how it is applied & whether the standard covers all appropriate grounds for using the Reconsideration mechanism.

26. Board should adopt a standard timeline and format for Reconsideration Requests & Board reconsideration outcomes that clearly identifies the status of deliberations and then, once decisions are made, articulates the rationale used to form those decisions.

ATRT proposed project deadline: As soon as possible, but no later than October 2011

Project's Lead Department: Legal

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends the Board adopt Recommendation 25 as part of its acceptance of Recommendation 23. Staff recommends the Board adopt Recommendation 26, with a note that the improvements anticipated through the implementation of Recommendation 26 will provide some of the clarification of application called for within Recommendation 25.

Recommendation 25 is inherently linked to the independent expert review called for in Recommendation 23; a determination of whether the standard for Reconsideration covers "all appropriate grounds" and the application of the Reconsideration mechanism should not be separated from a broader review of ICANN's accountability mechanisms.

Pending the outcome of the independent expert's review of the Accountability processes, including the Reconsideration process, actions can be taken to enhance the information provided surrounding the Reconsideration process. Staff has already started work on some of these enhancements.

First, the Reconsideration Request page on the ICANN site can be modified to serve as a better source of information regarding Reconsideration Requests. Potential improvements include noting the status of each Reconsideration Request (such as: submitted and under consideration; dismissed; or acted upon) along with the publicly posted documents for each Request. Another improvement is to provide a link to the Board action arising out of each Reconsideration Request. Since the time that Staff responded to the ATRT's questions, staff

has already started to include active links to Board Actions for more recent Reconsideration Requests (See Reconsideration Requests 10-1, 10-2, and 10-3) to make this information easier to find. Staff will continue this improvement work to provide active links for more historical requests, as well as any follow-up action required for implementation of the Board decision. Improvements in the provision of information will not only improve the historical record on individual Reconsideration Requests, but will also provide a real-time status on any pending Requests.

Second, a clear depiction of the Bylaws-mandated timeline for consideration of Reconsideration Requests can be produced and placed on the Reconsideration Request page. This will provide a common understanding of the timing of the Reconsideration process. As recently seen with the .JOBS Charter Coalition Request, the timeline is not always predictable; the Requester waived strict adherence to some of the times set in the Bylaws.

Third, the committee responsible for hearing Reconsideration Requests (currently the BGC) can incorporate the new form of a Rationale Statement – as included with Board decisions as of 25 January 2011 – into its recommendations. Particularly in recent years, the committee recommendations on Reconsideration Requests are drafted to address the inputs received within the Reconsideration Process, often citing directly to source documentation within the public record and how the inputs were considered in reaching the recommendation. The inclusion of the Rationale Statements will also provide the assessment of impact, and will add additional rigor to the recommendation/decision process. The committee’s recommendation and rationale will both be made available to the Board for consideration in any decision on the committee’s recommendation, as the recommendations are made available today.

Fourth, a template for the submission of Reconsideration Requests will be created and made available within the ATRT’s suggested timeframe.

Preliminary Plan for Implementation:

Implementation of Recommendation 25 will follow the implementation plan for Recommendation 23.

To implement Recommendation 26:

Task 1: Modify the Reconsideration Request page to include status indicators for all Requests

Task 2: For all Requests, the Reconsideration Request page will be modified to provide information on Board action arising out of the committee recommendations, as well as related links to further implementation efforts, if any

Task 3: A graphic timeline documenting the Reconsideration Process as set forth in the Bylaws will be created and posted

Task 4: A suggested template for the submission of the Reconsideration Process will be posted for public use

Task 5: Future committee recommendations arising out of the Reconsideration Request process will include rationale statements

Proposed Timeline:

The template, timeline, and improvements to the Reconsideration Request page will be completed by the end of June 2011, in advance of the ATRT's suggested deadline

Proposed Resources:

The improvements to the Reconsideration Request page and creation of the template will require approximately 20 hours of one Legal FTE's time, and will require support from the Communications and Marketing Team in implementing the website improvements.

Key Consultations:

The BGC, as the committee that is responsible for hearing Reconsideration Requests, will be consulted on the scope of rationale included. The remainder of consultations will take place in fulfillment of the work required to implement Recommendation 23.

ATRT Implementation Project, Recommendation 27

The purpose of this page is to 1) collect staff advice for the Board on ATRT recommendations, 2) define the preliminary plan for implementing each ATRT recommendation (project), 3) propose a timeline for completion of the project, 4) provide a cost estimate (budget), and estimates of staff and resources needed to complete the project (including identifying staff team members, if needed), and 5) identify key entities to be consulted about and/or involved in the implementation (including stakeholder communities).

Project Information:

27. Board should regularly evaluate progress against these recommendations & the accountability & transparency commitments in the AoC, & in general analyze the accountability & transparency performance of the whole organization to annually report to the community on progress made & to prepare for the next ATRT review; all evaluation should be overseen by Board.

ATRT proposed project deadline: One year after Board action on ATRT recommendations implementation.

Project's Lead Department: CEO's Office

Project Manager: TBD

Project Team Members: TBD

Project Manager/Team Advice:

Staff recommends that the Board adopt this recommendation.

Preliminary Plan for Implementation:

- Task 1: As part of the ATRT report implementation, Staff will propose metrics for each ATRT recommendation and additional benchmarks and metrics as appropriate to track ICANN's broader accountability and transparency commitments.
- Task 2: An "Accountability & Transparency Dashboard" will be developed and regularly updated for public review of ICANN's performance in this area.
- Task 3: Each year staff will conduct an organization-wide assessment of ICANN's performance against the accountability and transparency commitments in the Affirmation of Commitments and the ATRT recommendations. The assessment will be posted for public comment and submitted to the Board each January.

Proposed Timeline:

- Task 1: By March 2011 metrics will be proposed for each ATRT recommendation; additional benchmarks and metrics will be provided by June 2011

- Task 2: By March 2011 staff will issue an initial "dashboard" which will be expanded upon and regularly updated; all relevant ATRT recommendations will be represented in the dashboard by June 2011.
- Task 3: November - December 2011 performance data will be collected; assessment will be posted in January 2012.

Proposed Resources:

Current FTEs will be used and an estimated US\$25,000 will be needed for research and consulting services.

Key Consultations:

Staff, Board, community via public comment process.

**2011-03-18-12 Annex Exhibit C Board Paper ATRT
Report 28 Feb 2011 -
ATRTFinalRecommendations123110**

FINAL RECOMMENDATIONS OF THE ACCOUNTABILITY AND TRANSPARENCY REVIEW TEAM

Executive Summary

Pursuant to the Affirmation of Commitments (AoC), the Accountability and Transparency Review Team (ATRT) submits these Final Recommendations and an accompanying Report to the Internet Corporation for Assigned Names and Numbers (ICANN) Board of Directors. The final recommendations were developed consistent with the provisions of the AoC and with a specific focus on paragraph 9.1.

A more detailed overview of the process followed by the ATRT as well as the ATRT's "observations" concerning this first review under the AoC can be found in Appendix A and Appendix B, respectively. The Report of the Independent Expert, the Berkman Center for Internet and Society can be found in Appendix C.

The Final Recommendations have been arrived at after extensive interaction with the ICANN Board, the ICANN staff, Advisory Committees, Supporting Organizations and the community both on line and in face to face meetings in Brussels and Cartagena and after a review of public comments filed in response to the draft proposed recommendations. Given this level of interaction, the ATRT expects that the recommendations will be adopted and implemented by the ICANN Board. However, should the ICANN Board determine that the implementation of a recommendation would impose unreasonable costs or impose prohibitive resource constraints on ICANN, the Board should provide a thorough and detailed explanation of why the recommendation will not be implemented

The ATRT is aware that paragraph 9.1 of the AoC provides that the Board "will take action within six months of receipt of the recommendations" and that this could be interpreted as giving the Board up to six months to take action on the recommendations. However, the AoC has been in effect since September 30, 2009 and ICANN should be, and in some cases already is, executing on its commitments. Certain recommendations reflect processes that, in the view of the ATRT, should have already been undertaken by ICANN and in those cases the ATRT has recommended immediate implementation

For other recommendations, the ATRT has suggested specific start and/or completion dates. Those deemed to be of a priority nature have been assigned a start and/or completion date prior to June 2011. In addition to the start and/or

completing dates provided by the ATRT, and for avoidance of confusion, the ATRT views Recommendations 7, 9, 10, 11, 15, 16, 17 and 23 to be of high priority.

The ATRT asks the Board to provide a status report on all the recommendations at the March 2011 ICANN meeting in San Francisco. The Board should also provide a more formal report at the June 2011 ICANN meeting in Amman detailing:

- 1) Which recommendation(s) have been fully implemented;
- 2) The status and schedule for implementing the remaining recommendations;
and
- 3) The recommendations which the Board has concluded it cannot implement including a detailed explanation as to why the recommendation(s) cannot be implemented.

The ATRT created four Working Groups to organize its work with each group focusing its work on sub elements of paragraph 9.1. The Working Groups developed final recommendations that were reviewed and approved by the entire ATRT. The Working Groups addressed the following subjects, respectively:

Working Group #1 - ICANN Board of Directors (Board) governance, performance and composition;

Working Group #2 - The role and effectiveness of the GAC and its interaction with the Board;

Working Group #3 - Public input processes and the policy development process; and

Working Group #4 - Review mechanism(s) for Board decisions.

The following summary of the recommendations is provided for the reader's ease of reference. However, the ATRT strongly suggests that the recommendations be read in the body of the Report as this provides the fact-finding and analysis undertaken by the ATRT and the Independent Expert as well as the public input that helped to shape the final recommendations. The background and context provided by the Report are integral to understanding the intent of the ATRT and the purpose of the recommendations.

Final Recommendations

A. ICANN Board of Directors governance, performance and composition

1. Recognizing the work of the Board Governance committee on Board training and skills building, pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, the Board should establish (in time to enable the

integration of these recommendations into the Nominating Committee process commencing in late 2011) formal mechanisms for identifying the collective skill-set required by the ICANN Board including such skills as public policy, finance, strategic planning, corporate governance, negotiation, and dispute resolution. Emphasis should be placed upon ensuring the Board has the skills and experience to effectively provide oversight of ICANN operations consistent with the global public interest and deliver best practice in corporate governance. This should build upon the initial work undertaken in the independent reviews and involve:

- a. Benchmarking Board skill-sets against similar corporate and other governance structures;
- b. Tailoring the required skills to suit ICANN's unique structure and mission, through an open consultation process, including direct consultation with the leadership of the SOs and ACs;
- c. Reviewing these requirements annually, delivering a formalised starting point for the NomCom each year; and
- d. From the Nominating Committee process commencing in late 2011, publishing the outcomes and requirements as part of the Nominating Committee's call-for-nominations.

2. The Board should reinforce and review on a regular basis, (but no less than every 3 years) the training and skills building programmes established pursuant to Recommendation #1.

3. The Board and Nominating Committee should, subject to the caveat that all deliberations and decisions about candidates must remain confidential, as soon as possible but no later than the Nominating Committee process commencing in late 2011 increase the transparency of the Nominating Committee's deliberations and decision making process by doing such things as clearly articulating the timeline and skill-set criteria at the earliest stage possible before the process starts and, once the process is complete, explain the choices made.

4. Building on the work of the Board Governance Committee, the Board should continue to enhance Board performance and work practices.

5. The Board should expeditiously implement the compensation scheme for voting Directors as recommended by the Boston Consulting Group adjusted as necessary to address international payment issues, if any.

6. The Board should clarify, as soon as possible but no later than June 2011 the distinction between issues that are properly subject to ICANN's policy development processes and those matters that are properly within the executive functions performed by the ICANN staff and Board and, as soon as practicable, develop

complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level.

7. In accordance with the Affirmation of Commitments:

7.1 Commencing immediately, the Board should promptly publish all appropriate materials related to decision making processes – including preliminary announcements, briefing materials provided by staff and others, detailed Minutes, and where submitted, individual Directors’ statements relating to significant decisions. The redaction of materials should be kept to a minimum, limited to discussion of existing or threatened litigation, and staff issues such as appointments.

7.2 Commencing immediately, the Board should publish “a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.” ICANN should also articulate that rationale for accepting or rejecting input received from public comments and the ICANN community, including Supporting Organizations and Advisory Committees.

8. As soon as possible but no later than the start of the March 2011 ICANN meeting the Board should have a document produced and published that clearly defines the limited set of circumstances where materials may be redacted and that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board, General Counsel and staff when assessing whether material should be redacted and cited when such a decision is taken.

B. The role and effectiveness of the GAC and its interaction with the Board

9. The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy “advice” under the Bylaws.

10. Having established what constitutes “advice,” the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or data base in which each request to the GAC and advice received from the GAC is documented along with the Board’s consideration of and response to each advice.

11. The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board

joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner, to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

12. The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.

13. The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.

14. The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.

C. Public input processes and the policy development process

15. The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.

16. Public notice and comment processes should provide for both a distinct “Comment” cycle and a “Reply Comment” cycle that allows community respondents to address and rebut arguments raised in opposing parties’ comments.

17. As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

18. The Board should ensure that access to and documentation within the policy development processes and the public input processes are, to the maximum extent feasible, provided in multi-lingual manner.

19. Within 21 days of taking a decision, the ICANN Board should publish its translations (including the required rationale as outlined in other ATRT recommendations) in the languages called for in the ICANN Translation Policy.

20. The Board should ensure that all necessary inputs that have been received in policy making processes are accounted for and included for consideration by the Board. To assist in this, the Board should as soon as possible adopt and make available to the community a mechanism such as a checklist or template to accompany documentation for Board decisions that certifies what inputs have been received and are included for consideration by the Board.

21. The Board should request ICANN staff to work on a process for developing an annual work plan that forecasts matters that will require public input so as to facilitate timely and effective public input.

22. The Board should ensure that ICANN's senior staffing arrangements are appropriately multi-lingual, delivering optimal levels of transparency and accountability to the community.

D. Review mechanism(s) for Board decisions

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

24. As soon as possible, but no later than the March 2011 ICANN meeting, the operations of the Office of Ombudsman and the relationship between the Office of the Ombudsman and the Board of Directors should be assessed and, to the extent they are not, should be brought into compliance with the relevant aspects of internationally recognized standards for: a) an Ombudsman function; and b) a Board supporting such a function under the Standards of Practice of the International Ombudsman Association.

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

26. As soon as possible, but no later than October 2011 the ICANN Board, to improve transparency, should adopt a standard timeline and format for Reconsideration Requests and Board reconsideration outcomes that clearly identifies the status of deliberations and then, once decisions are made, articulates the rationale used to form those decisions.

Overarching Recommendation

27. The Board should regularly evaluate progress against these recommendations and the accountability and transparency commitments in the AoC, and in general analyze the accountability and transparency performance of the whole organization so as to once a year report to the community on progress made and to prepare for the next ATRT review. All evaluations should be overseen by the Board.

Background, Structure and Methodology of the Review

The ATRT was established pursuant to the Affirmation of Commitments (AoC).¹ Paragraph 9.1 states that a review of ICANN's execution of its commitments will be performed by "volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts."² The membership of this ATRT was

¹ <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>

² <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>, para. 9.1.

selected by the Chair of the ICANN Board and the Chair of the GAC³ and initiated its review on April 12, 2010.⁴

Under paragraph 9.1 of the AoC, ICANN committed to “maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by:

- a. Continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;
- b. Assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;
- c. Continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- d. Continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and
- e. Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.”⁵

To organize its review, the ATRT established four (4) Working Groups comprised of ATRT members that were tasked with reviewing specific elements of paragraph 9.1 of the AoC.⁶ The Working Groups have reviewed material relevant to their respective areas of review (e.g. ICANN bylaws, policies, procedures, review mechanisms, etc.), analyzed public comment and input from the community, conducted interviews, and analyzed other relevant data to draft Proposed Recommendations.

³ <http://www.icann.org/en/reviews/affirmation/composition-1-en.htm>

⁴ <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>

⁵ <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>, para. 9.1.

⁶ <http://www.icann.org/en/reviews/affirmation/proposed-wg-structure-atrt-19jul10-en.pdf>

The ATRT also developed the following principles to guide its review:

- Recommendations will be fact-based, far from impressions or personal opinions.
- The team will be guided by a selected number of case-studies involving review of relevant events for each case study through 17 June 2010 (the day prior to the start date of the ICANN Brussels meeting).
- The case-studies are based on cases which were suggested by the community during the ATRT meetings in Brussels, namely new gTLDs, .xxx (not including the application process) and DNS-CERT
- The case studies will be used to identify processes and decision making that demonstrated ICANN’s accountability and transparency, as well as processes and decision making that could be modified to enhance ICANN’s accountability and transparency.
- Recommendations would be future looking and would hence suggest improvements to the current process; recommendations are not for the purpose of altering any past decisions or influencing any ongoing processes.
- Merits/Reasons behind each recommendation would be also made public.

The ATRT selected the Berkman Center for Internet & Society at Harvard Law School (Berkman) to act as the Independent Expert for the review.⁷ The Berkman Center was asked by the ATRT to conduct the case studies referenced above and to conduct research that addresses the areas of review under paragraph 9.1 of the AoC consistent with the above principles. Berkman commenced its work on August 5, 2010 and has provided the ATRT with a Final Report that includes case studies and consultation that support the draft proposed recommendations.⁸

The Berkman team has combined a number of qualitative research methodologies. These efforts include, among other things, primary research including various structured (questionnaire-based) interviews with experts and stakeholder representatives, and secondary research of extensive Web and database searches, an exploratory literature review (English language), and the drafting of case studies. The case studies have played a particularly important role in the Berkman team’s work, given its mandate according to the services agreement. The following methods have been applied in this specific context:

- Review of materials: Following the multi-step methodological approach outlined in the services agreement, the draft case studies are structured as

⁷ <http://www.icann.org/en/announcements/announcement-10aug10-en.htm>;
<http://www.icann.org/en/announcements/announcement-16aug10-en.htm>

⁸ See Appendix C, “Accountability and Transparency at ICANN, An Independent Review,” The Berkman Center for Internet & Society, October 20, 2010.

qualitative, exploratory case studies and based on an extensive review of a diverse range of publicly available materials, including public comments, ICANN documents, academic studies, media reports, and expert opinions. The review started with a mapping of public submissions from January 2008 to June 17, 2010 and included, among other things, extensive Web and database searches aimed at identifying case-specific materials from various sources, including ICANN's website. Each case study provides detailed references to such specific materials in the footnotes.

- Interviews: In addition to publicly available sources, the draft case studies are informed by observations by a selected, diverse group of stakeholders and experts who have been interviewed in the course of developing the case examples. These interviews provide an important supplementary factual basis because they convey observations regarding the perception and interpretation of ICANN decisions by the broader community. The statements of interviewees do not reflect the opinions or conclusions of the Berkman team. The interviews were conducted on the condition of confidentiality; in case of the questionnaires to GAC members, respondents were asked to specify whether they wished their answers to remain confidential. All ICANN staff interviews have been ICANN-internally coordinated and the responses to the questionnaires aggregated by ICANN's Advisor to the President, Denise Michel. ICANN's General Counsel, John Jeffrey, upon his request has attended the phone interviews with ICANN staff members.

The review of publicly available materials, case study analysis, and interviews have been supplemented by a series of internal memorandums written by faculty members looking into public participation mechanisms, transparency issues, Corporate Governance aspects and the Independent Review Panel mechanism. All materials (except the confidential interviews) have been collected on a wiki that will be made publicly available as a resource as of December 31, 2010 to support and encourage future research efforts in the field.

Report of Working Group 1

Statement of Purpose

WG 1 focused on analyzing ICANN’s efforts to meet its commitments, set out *inter alia* in paragraph 9.1 (a) of the AoC, to continually assess and improve ICANN Board of Directors (Board) governance including an ongoing evaluation of Board performance, the Board selection process and the extent to which the Board’s composition meets ICANN’s present and future needs.

The purpose of ICANN committing to 9.1.(a) is set out in the opening to 9.1 which states “ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency ...to ensure the outcomes of its decision making will reflect the public interest and be accountable to all stakeholders...”⁹

WG1 took stock of community feedback received as part of the ATRT process to-date – most notably input from consultations at the ICANN Brussels meeting and responses from the public comments period opened on 9 July, and concluded that its purpose was best served by focusing its deliberations on two broad areas:

1. The composition of the Board, skill-set requirements for the Board and the roles of the SOs and ACs and the Nominating Committee in respect to Board composition and skill-set requirements (Area 1).
2. The transparency of the Board’s decision making process and the explanation of its decision to the ICANN community (Area 2).

Area 1

Background research undertaken:

Relevant bylaws:

1. Article VI (<http://www.icann.org/en/general/bylaws.htm#VI>) deals with the composition of the Board. Sections 2 and 3 are relevant:
 - a. Section 2 requires the Nominating Committee to seek to ensure that the ICANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria in Section 3.
 - b. Section 3 sets out the criteria for the selection of Directors (by Supporting Organisations and Advisory Committees as well as the Nominating Committee). Those criteria are:
 - i. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open

⁹ <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>, para. 9.1.

minds, and a demonstrated capacity for thoughtful group decision making;

- ii. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;
 - iii. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria in Section 3;
 - iv. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
 - v. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses;
 - vi. Persons who are able to work and communicate in written and spoken English.
2. Article VII (<http://www.icann.org/en/general/bylaws.htm#VII>) establishes the Nominating Committee and deals with its structure. The only sections of Article VII relevant to its work in selecting Board members are Sections 5 and 7:
- a. Section 5 refers to the geographic diversity requirement expressed in Article I Section 2 Core Value 4 (<http://www.icann.org/en/general/bylaws.htm#I-2>) and somewhat confusingly, in the context of Board selection, also refers to the Section 4 of Article VII which actually deals with the selection of Nominating Committee members.
 - b. Section 7 simply states that the Nominating Committee shall adopt such operating procedures as it deems necessary

There do not appear to be any other relevant bylaws.

Relevant Published Policies:

There do not appear to be any relevant published policies.

Relevant Published Procedures:

The Nominating Committee commenced in 2003 and each year its documents are archived on the ICANN web site.

The relevant document is generally referred to as “Nominating Committee Procedures”.

1. The 2003 Nominating Committee Procedures (<http://nomcom.icann.org/procedures-10apr03.htm#B>) contain 2 sections of relevance:
 - a. Section B 1 deals with the committee’s role and objectives stating that “the objective of ICANNs new nominating process is to balance the Supporting Organization-based and constituency-based selection of Directors and individuals for other positions to ensure that ICANN can benefit from participants of the highest integrity and capability who place the public interest ahead of any particular interests, but who are nevertheless knowledgeable about the environment in which ICANN operates.”
 - b. Section C 8 deals with selection criteria and states inter alia:
 - i. the NomCom will apply the criteria for selection and terms of eligibility, defined in the applicable ICANN Bylaws, to identify a pool of qualified Candidates;
 - ii. To select from this pool of qualified Candidates, NomCom will take into account additional considerations, related to the roles to be filled, that it finds important as progress in the selection process is made.
2. The 2004 Nominating Committee Procedures (<http://nomcom.icann.org/procedures-18jun04.htm>):
 - a. Section B 1 now reads

“NomCom is responsible for the selection of portions of the members of the ICANN Board of Directors, GNSO Council, Interim ALAC, and ccNSO Council, filling these leadership positions in a way that complements the selections made for such positions by the Supporting Organizations and Interim ALAC.

The central rationale for using a nominating committee to select a portion of the ICANN leadership bodies is to balance those who can represent particular areas of knowledge and interests with those who place the broad public interest of the global Internet community ahead of any particular interests. NomCom’s role is to select

individuals of the highest integrity and capability who place the broad public interest of the global Internet community ahead of any particular interests, and who are nevertheless knowledgeable about ICANN's mission and environment".

b. Section C 8 has not materially changed.

3. The 2008 Nominating Committee Procedures (<http://nomcom.icann.org/procedures-2008.html>) are the most up to date available as the 2009 and 2010 procedures, although referred to on the relevant pages, are not linked:

a. Section B 1 has not changed.

b. Section B 8 has changed slightly and now states, inter alia (emphasis added):

- i. the NomCom will apply the criteria for selection and terms of eligibility, defined in the applicable ICANN Bylaws, to identify a strong pool of qualified Candidates;
- ii. To select from this pool of qualified Candidates, NomCom will take into account relevant and additional considerations, related to the roles to be filled, as the selection process progresses.

Initial Community feedback to the ATRT: The ATRT received a large number of comments concerning the composition and skills of the Board. They can be grouped in three categories:

- a. Some comments raise concerns about the relative weight of the stakeholder groups in the Board, i.e. "broader business expertise is essential for the ICANN Board in meeting current and future challenges"¹⁰; "business interests (in particular the trademark and domain name industries) are over-represented at ICANN"¹¹;
- b. Some criticize the NomCom for lack of transparency¹² and some suggest it to be suppressed¹³;
- c. Some comments raise concerns about the skill set of the Board, suggesting that it "continue to work towards ensuring expertise, independence and diversity on the board of directors"¹⁴; others suggest

¹⁰ Comments of International Chamber of Commerce

¹¹ Comments of IP Justice

¹² Comments of CNNIC and Milton Mueller

¹³ Comments of LFFS

¹⁴ Comments of CIRA

that "more consideration be given to identifying and recruiting highly competent people"¹⁵

ICANN activities already underway that help to meet the AoC objectives:

Staff has provided the ATRT with a matrix entitled Affirmation of Responsibilities Tracking and Brainstorming (ARTB).¹⁶

In respect to the Board selection process, the ARTB states that the ongoing implementation of the NomCom and Board review are activities underway to meet AoC objectives.

In respect to the extent to which Board composition meets ICANN's present and future needs, the ARTB states that all multi-stakeholders groups being involved in Board elections and NomCom delegate selections helps to meet the AoC objectives.

Other Input

The Nominating Committee Review:

1. In 2007, Interisle Consulting Group conducted an independent review of the Nominating Committee. Their Final Report was published on 23 October 2007 (the Report) (<http://www.icann.org/en/reviews/nomcom/report-23oct07.pdf>). It made a number of findings and recommendations that are relevant to the work of WG1.
 - a. Findings:
 - i. Finding 1 - The central purpose of the NomCom is to find genuinely independent and unaffiliated Board....members (page 15 of the Report);
 - ii. Finding 25 - The NomCom lacks specific requirements for its annual Board...appointments and it is not clear how those requirements should be established (or by whom) (page 28 of the Report).
 - b. Recommendations:
 - i. Recommendation 3 – Recruit and select based on requirements. The Report suggests that a formal procedure is developed for discovering and understanding the requirements of the Board (page 36 of the Report);

¹⁵ Comments of Internet Society

¹⁶ <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>; the document can be found at "Documents submitted to the ATRT." At the time of publication, the link to these documents was not working so a direct hyperlink was not available.

2. After a number of public and Board committee processes, the final report of the NomCom Review Finalisation Working Group was released in January 2010 (<http://www.icann.org/en/reviews/nomcom/nomcom-review-finalization-wg-final-report-29jan10-en.pdf>). In respect to Recommendation 3 the working group states:

“The WG remarks that similar recommendations are also contained in the report issued by the external reviewers of the Board of Directors which is presently under consideration by the Board Review WG. Even if not explicitly required by Bylaws, the most recent NomComs adopted the practice to consult informally with Members of the Board and Chairs of SO/ACs on skill gaps to be filled.

Regarding the communication between the NomCom and the Board, the NomCom review finalization WG supports the recommendation of the Board review WG for a formal dialogue between the Nominating Committee and the Board about gaps and needs that have been identified in the Board’s skill-set. That dialogue could consist in a regular consultation between the respective chairs.”¹⁷

The Board Review

1. In 2008 Boston Consulting Group/Colin Carter & Associates conducted an independent review of the Board. Their Final Report was published in November 2008 (the Report) (<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>). The main finding of relevance to WG1 is Section C 4 ‘Broaden the Skills of the Board’ commencing on page 37 of the Report and the recommendation which states *inter alia*:
- a. Formally define the skill and experience and independence mix required for the board to operate effectively – in the short and longer terms;
 - b. Form a view about the main gaps in skills that should be met;
 - c. Formally define the participation of the ICANN chairman and the chairman of the Governance Committee as part of the Nominating Committee’s process for choosing new board directors;
 - d. Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required.¹⁸

¹⁷ Review of the ICANN Nominating Committee, Final Report of the NomCom Review Finalization Working Group, p. 6.

¹⁸ Independent Review of the Board of ICANN, Main Report, November 2008, p. 44.

2. After a number of public and Board committee processes, the final report of the Board review Working Group was released in January 2010 (<http://www.icann.org/en/reviews/board/board-review-final-26jan10-en.pdf>). In respect to the relevant parts of recommendation 4 the working group states:

“This recommendation, and in particular the options 4a and 4b, is also being considered by the Board Governance Committee. With regard to 4c, the WG is of the view that it is appropriate and useful for the Chairman of the Board to have a formal meeting with the Chairman of the Nominating Committee to discuss the skill needs of the Board, and notes that informal contact already occurs.”¹⁹

A formal discussion between the Chairs should take place after a full Board discussion about necessary Board skills, and the Chairman of the Board should represent the Board position on this. If this process is followed, there is no need for the Chairman of the Board Governance Committee to meet with the Chair of the Nominating Committee. With regard to 4d, the WG recognizes the value in having input from the SOs and ACs into the Nominating Committee process. However, the WG sees little value in creating an extra formal process to capture this input. SOs and ACs are encouraged to develop proposals for ways in which their input might most effectively be incorporated into the considerations of the Nominating Committee. Any such proposals should be submitted to the BGC for consideration.”

Public Comment on the Draft Recommendations:

During the Cartagena meeting, the ATRT met separately with the Board and with the GAC and held an open session to receive input from the ICANN community. In addition, a number of comments were posted as part of the public comment period.

Overall, there was strong consensus in favor of draft recommendations 1 to 4 of Working Group 1. A number of those who commented stressed the importance of the independence of the Nominating Committee and candidate confidentiality. The ATRT believes these critical issues are made clear in the Final Recommendations.

Recommendation 5 was also widely supported but this has been slightly reworded to take into account comment received both from Board members and the community.

¹⁹ ICANN Board Working Group, Final Report, January 2010, p. 14.

Questions for Review

Do current mechanisms for determining ICANN Board composition ensure that, collectively, the Board possesses an appropriate, diverse set of skills and experience?

- Would changes in selection, composition and compensation improve results?
- Are the desired skills, background and experience adequately defined?
 - For representing constituency interests
 - For reflecting the public interest
 - For overseeing ICANN’s mission and operations
 - For best practice in governance
- Could the collective skill-set of directors be improved?

Are Board selection mechanisms sufficiently transparent and accessible to stakeholders?

Findings

Article VI of ICANN’s Bylaws²⁰ provides for the selection of a Board of Directors that is both representative of the organisation’s stakeholder community – the Advisory Committees and Supporting Organisations – and diverse in geography, culture, skills, experience, and perspective.

The Nominating Committee mechanism, initiated in 2003, was intended to further facilitate the diversification of the ICANN Board, to deliver additional transparency and accountability in the Board selection process and fill a majority of Board seats with Directors who are independent with respect to the interests and agendas of specific ICANN constituency groups.

On the whole, the 2007 independent review found that there was merit in the NomCom process, that it had contributed positively to the composition of the ICANN Board, and that it had a relevant, continuing purpose in the ICANN structure. Wholesale changes, in the form of alternative selection models, were presented, considered and largely dismissed in favour of retaining current NomCom arrangements, with most of the review’s recommendations relating to refinements to the NomCom’s operations to allow it to more effectively execute its responsibilities.

However, of greatest relevance to the current ATRT review process, was the independent recommendation for ICANN to recruit and select based upon clear skill-

²⁰ <http://www.icann.org/en/general/bylaws.htm#VI>

set requirements. This included the establishment of a formal procedure by which the NomCom would discover and understand the requirements of each body to which it makes appointments.

This view was shared by the reviewers tasked with undertaking an independent assessment of the ICANN Board in 2008, who once again recommended the formalisation of mechanisms to define, and consult about, the collective skill-sets required by the Board.

In short, two independent processes - one addressing improvements to the ICANN Board and the other the mechanisms for selecting a majority of the Board – made clear recommendations about improving Board skills.

However, to date, there appears not to have been active adoption of the recommendations by the ICANN Board and staff, and this is reflected in the ongoing concerns expressed by community members in response to ATRT consultations. Despite receiving general support from the NomCom Review Finalization Working Group, the recommendation for clarification of Board skill-set requirements was largely deferred to the Board Governance Committee by the Board Review Working Group.

Consecutive review processes have failed to find significant, structural failings with the way in which the ICANN Board is selected and the resultant composition of the Board. However, both noted that current mechanisms for identifying and responding to collective skill-set needs remain relatively informal and potentially unclear. As such, codifying the processes for identifying, defining and reviewing these skills requirements, as well as the mechanisms by which stakeholders are consulted, could assist in improving the Board's overall performance.

Compensation of directors is an issue closely associated with the theme of developing the ICANN Boards' experience and collective skill-set and has been the subject of independent review, Board Governance Committee discussion and ongoing Board consideration. To date, only compensation for the Board Chair has been decided. In order to help guide and structure the future process for improving the Board's operations, it is critical that the matter of remuneration be resolved promptly.

On the issue of Board structure, it is important to note that a reduction in the ICANN Board's size was a key recommendation of the 2008 Board Review process. However, this was rejected by the Board Review Working Group, citing the workload of the current Board, and the need for representational diversity. Furthermore, the Working Group recommended further consideration of Board restructure be deferred for three years. The size and structure of the Board is a key element in the consideration of all related issues – decision making effectiveness, representation

and collective skill-set. The current ICANN Board and staff should resist the tendency to maintain structural arrangements and should accept the need for significant Board structure changes, should these be proven to deliver significantly improved performance.

Recommendations

1. Recognizing the work of the Board Governance committee on Board training and skills building, pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, the Board should establish (in time to enable the integration of these recommendations into the Nominating Committee process commencing in late 2011) formal mechanisms for identifying the collective skill-set required by the ICANN Board including such skills as public policy, finance, strategic planning, corporate governance, negotiation, and dispute resolution. Emphasis should be placed upon ensuring the Board has the skills and experience to effectively provide oversight of ICANN operations consistent with the global public interest and deliver best practice in corporate governance. This should build upon the initial work undertaken in the independent reviews and involve:

- a. Benchmarking Board skill-sets against similar corporate and other governance structures;
- b. Tailoring the required skills to suit ICANN's unique structure and mission, through an open consultation process, including direct consultation with the leadership of the SOs and ACs;
- c. Reviewing these requirements annually, delivering a formalised starting point for the NomCom each year; and
- d. From the Nominating Committee process commencing in late 2011, publishing the outcomes and requirements as part of the Nominating Committee's call-for-nominations.

2. Reinforce and review on a regular basis, (but no less than every 3 years) the training and skills building programmes established pursuant to Recommendation #1.

3. The Board and the Nominating Committee should, subject to the caveat that all deliberations and decisions about candidates must remain confidential, as soon as possible but no later than the Nominating Committee process commencing in late 2011, increase the transparency of the Nominating Committee's deliberations and decision making process by doing such things as clearly articulating the timeline and skill-set criteria at the earliest stage possible before the process starts and, once the process is complete, explain the choices made.

4. Building on the work of the Board Governance Committee, the Board should continue to enhance Board performance and work practices.
5. The Board should expeditiously implement the compensation scheme for voting Directors as recommended by the Boston Consulting Group adjusted as necessary to address international payment issues, if any.

Area 2

Background research undertaken:

Relevant bylaws:

1. Article I, Section 2 (<http://www.icann.org/en/general/bylaws.htm#I>) enshrines decision making transparency within a number of ICANN's core values, with a focus on the informed participation of stakeholders:

In performing its mission, the following core values should guide the decisions and actions of ICANN:

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision making.
 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
 9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision making process, obtaining informed input from those entities most affected.
 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.²¹
2. Article III (<http://www.icann.org/en/general/bylaws.htm#III>) is dedicated to transparency and Section 6 specifically outlines mechanisms for solicitation of notice and comment on policy actions.
 1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

²¹ <http://www.icann.org/en/general/bylaws.htm#I>

- a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
 - b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and
 - c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.
2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.
3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.²²

There do not appear to be any other relevant bylaws.

Relevant Published Policies:

The ICANN Board's Code of Conduct (<http://www.icann.org/en/committees/board-governance/bod-code-of-conduct-01oct08-en.pdf>) makes a broad reference to public reporting:

B. Integrity of Records and Public Reporting

Board members should promote the accurate and reliable preparation and maintenance of ICANN's financial and other records. Diligence in accurately preparing and maintaining ICANN's records allows ICANN to fulfil its reporting obligations and to provide stakeholders, governmental authorities and the general public with full, fair, accurate, timely, understandable, open and transparent disclosure.²³

There do not appear to be any other relevant published policies.

²² <http://www.icann.org/en/general/bylaws.htm#III>

²³ Board of Directors' Code of Conduct, Internet Corporation for Assigned Names and Numbers, p. 3.

Relevant Published Procedures:

According to its Charter (<http://www.icann.org/en/committees/board-governance/charter.htm>), ICANN’s Board Governance Committee is responsible for, among other things:

- A. Assisting the Board to enhance its performance;
- H. Recommending to the Board corporate governance guidelines applicable to ICANN as a global, private sector corporation serving in the public interest.²⁴

Within its Scope of Responsibilities, the BGC can assist the Board to enhance its performance by encouraging the development of effective tools, strategies, and styles for the Board's discussions. The BGC will also review the existing corporate governance guidelines developed by ICANN staff, be attentive to developments in corporate governance in the global context, and bring ideas and recommendations for adjustments in these guidelines to the Board for its consideration.

However, none of the publicly available Minutes of BGC meetings, dating back to 2008, record any discussion or decision regarding potential improvements to the transparency of Board decision making processes.

Initial Community Feedback to the ATRT:

The ATRT received a large number of comments concerning the decision making of the Board and the explanation of its decisions to the community.

Most of these comments consider that “Board’s decisions should be better justified and explained to the community.”²⁵ They consider that “ICANN could improve the process of analyzing the input it has received from the community and explaining the reasoning behind its decision making²⁶”:

- a. Some comments raise concerns about the summary of public comments and the briefings produced by the staff: they suggest making transparent how the community inputs received are considered and publishing all briefing materials; some noted that “[o]n a few occasions when those reports have become known, they appeared to contain false statements”²⁷.

²⁴ Board Governance Committee Charter, approved 6 March 2009.

²⁵ Comments of International Chamber of Commerce

²⁶ Comments of ATT

²⁷ Comments of Avri Doria

- b. Examples of occasions where the explanation of decisions was judged insufficient are the EOI process²⁸ and re-delegation decisions²⁹;
- c. Some ask for more transparency of the Board meetings: they suggest all meetings should be public³⁰ or that transcripts and recordings be made available to the community³¹;
- d. Some recommend a more formalised decision making process and explanation of decisions: “ICANN should institutionalise transparency by establishing clear written guidelines for conducting its business.... These guidelines should include full ‘Administrative Procedure Act’ notice and comment procedures for public consultation and decision making³²”; and the Board “should provide an analytical component of its decisions that clearly explains how stakeholders, staff, and experts’ comments were taken into consideration, and how and why such inputs were or were not followed in a final decision”³³.

ICANN activities already underway that help to meet the AoC objectives:

Staff has provided the ATRT with a matrix entitled Affirmation of Responsibilities Tracking and Brainstorming (ARTB).³⁴

One of the core commitments (Section 3.a.) in the AoC is to transparency and openness of decision making:

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent;

The ARTB document advises that changes to Board processes are being explored by the Board Governance Committee, however BGC meeting Minutes from 2010 do not record specific discussions or decisions on transparency of Board decision making.

Some of the preliminary ideas being considered by staff include:

- Provide Board statements with each vote on reasons for decisions and address

²⁸ Comments made at the Brussels meeting with the Commercial Stakeholder Group of the GNSO

²⁹ Comments made at the Brussels meeting with the ccNSO

³⁰ Comments of Kieran McCarthy

³¹ Comments of CADNA and LFFS

³² Comments of ATT

³³ Comments of Network Solutions

³⁴ <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>; the document can be found at “Documents submitted to the ATRT.” At the time of publication, the link to those documents was not working so a direct hyperlink was not available.

concerns raised by community.

- Create metrics to track impact of Board & SO decisions on the public interest.

Paragraph 4 of the AoC states:

“To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.”³⁵

The ARTB document advises that only two of the ideas being considered by staff could broadly relate to Board decision making transparency:

- Enhance public comment periods and translations on all PDPs and Board actions.
- Provide statement of impact before and after Board decisions.

In Paragraph 7 of the AoC ICANN commits to adhere to:

“responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration. . . In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.”³⁶

The ARTB document advises that efforts underway include:

- All Board, SO and AC statements and decisions are publicly posted.
- Background currently is provided publicly on all decisions; several new gTLD processes considered a model by the community.
- Background currently is provided publicly on all decisions.

Ideas under consideration by staff include:

- Consider publicly posting recordings of Board meetings.
- Provide Board members with template explanation to complete for each decision, collate and publicly post.
- Improvements to the web site to provide better access to posted information
- Consider development of template or matrix on how comments have been considered and where / how these have influenced the final outcome.

³⁵ <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>, para. 4.

³⁶ Id., para. 7.

- Ensure comments are summarized in a timely fashion and note which influenced the development of a policy and how.
- Consider Board statements to accompany each vote.
- Develop indicators of success in each area that are qualitative, rather than quantitative, and publish evaluation regularly
- Develop more metrics to track against bylaws, responsibilities, strategic and operating plans.

In Paragraph 9.1 of the AoC ICANN commits:

“to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision making will reflect the public interest and be accountable to all stakeholders.”³⁷

The ARTB document advises that efforts underway include:

- Conducting bottom-up policy, planning, and budget efforts, and carrying out management actions with extensive public input and visibility.
- Ongoing BGC work, with second Board performance assessment underway

Other Input

The Board Review:

3. In 2008 Boston Consulting Group/Colin Carter & Associates conducted an independent review of the Board. Their Final Report was published in November 2008 (the Report) (<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>). Despite the fact Recommendation #8 related to clarifying the Board’s accountability, no mention was made of procedures for transparency in decision making.
4. Building upon this independent advice, the Board Review Working Group released its own report in January 2010 (<http://www.icann.org/en/reviews/board/board-review-final-26jan10-en.pdf>). This document also does not address transparency of decision making.
5. However, one of the submissions to the BRWG, from the International Chamber of Commerce, addressed accountability procedures for the Board and specifically commented upon the need for methodical decision making processes:

³⁷ Id., para. 9.1.

The Board must continue efforts to enhance the transparency of its deliberations. These should include:

- Transparency of the agendas and comprehensive minutes of the Board are important for the community. The comprehensive minutes should be maintained.
- Board decisions should be based on methodical decision making processes in order to promote a sense of due process and fairness in Board actions. They should include an analytical component of decisions that explains how stakeholders', staff's, and experts' comments were taken into consideration and how and why such inputs were or were not followed in a final decision.
- The Board input documents [except for those dealing with personnel matters] should routinely be posted to the fuller ICANN community, including staff briefing materials.
- Outputs and delegation of work or authority to different constituencies or groups in the community are essential.
- Further discussion is needed in the context of the Improving Institutional Confidence consultation process on this matter as well.

ICC urges ICANN to substantiate its commitment to transparency by incorporating all relevant changes within its Bylaws.

Public Comment on the Draft Recommendations:

During the Cartagena meeting, the ATRT met separately with the Board and with the GAC and held an open session to receive input from the ICANN community. In addition, a number of comments were posted as part of the public comment period.

Overall, there was strong consensus in favor of draft recommendations 6 to 10 of Working Group 1.

Feedback was received from a number of Board members that draft recommendations 6 and 7 lacked clarity and these have now been redrafted to form Final Recommendation 6.

Draft recommendations 8 and 10 were positively endorsed by many. In discussions with the community it became clear that these could usefully be re-drafted for clarity and merged. They now form Final Recommendation 7.

Draft recommendation 9 has become Final Recommendation 8.

Questions for Review

Do current ICANN processes deliver transparency and accountability with regard to:

- How issues are chosen for Board consideration;
- How decisions are taken, and on what grounds; and
- How these decisions are communicated to stakeholders?

Could stakeholder engagement and support be improved by the introduction of codified mechanisms for taking and communicating Board decisions such as:

- The timely release of relevant, detailed Board materials: briefing documents, preparatory materials and transcripts of decisions;
- Explanation of how community inputs are received and considered;
- Published rationale for Board decisions, including the advice on which the decisions was based;
- Formalised mechanisms (a section of the ICANN website, direct letters to relevant SOs/ACs, public announcements, public sessions at ICANN meetings) to communicate decisions and reasons to stakeholders.

Findings

As the peak decision making entity within ICANN, ultimate responsibility for ensuring the highest possible levels of transparency and accountability must necessarily reside with the Board. Not only must it set an example through its own consultation and decision making, but the Board must also ensure transparency is maintained throughout all parts of the organisation, including SOs and ACs, Board sub-committees, independent reviews and staff.

ICANN's Bylaws emphasise the need for transparency in the Board's processes, stipulating the informed participation of stakeholders, neutrality, objectivity, responsiveness and evidence-based decision making. Similarly, the need for transparency and openness in the way the ICANN Board takes decisions is re-stated prominently in the Affirmation of Commitments.

However, the Bylaws provide only broad guidance about the mechanisms ICANN must use in notifying stakeholders of pending policy actions and gathering subsequent feedback. These include the 21-day notice rule, the need to provide "reasonable" opportunity for comment and a requirement for due consideration of GAC advice on matters of public policy.

With only a few exceptions, the vast majority of the Board's deliberations are based upon organisational conventions. Significant policy issues are identified and

determined based upon the practices established over time, not according to codified procedures or requirements.

Perhaps as a direct result, a large proportion of comments received as part of the ATRT's consultation process related to the way in which issues were identified for Board consideration, how and why particular decisions were taken and how these outcomes were conveyed to stakeholders. These comments reflect a sense of concern from across the breadth of ICANN's stakeholder community. The absence of clear, codified guidelines, procedures or processes relating to Board decisions only serves to escalate stakeholders' concerns and could lead to disenfranchisement and disengagement.

Despite this sentiment, the recently-concluded independent review of the ICANN Board, and subsequent Board Review Working Group, did not address the issue of transparency in decision making.

ICANN staff has indicated that, in response to the AoC, a large number of projects, related to improved decision making, are being considered. These include:

- The provision of Board statements on each vote taken;
- Statements-of-impact before and after decisions;
- Improvements to how announcements are made and decisions promoted on the ICANN website; and
- The development of a template to explain how community input has been factored and considered.

These proposed improvements are an appropriate first step, though constitute only one part of a significant exercise in refining organisational practices. As such, this work should be coordinated under the auspices of dedicated actions, involving all stakeholders, with the single aim of delivering clear, published guidelines for ICANN's decision making processes.

Recommendations

6. The Board should clarify, as soon as possible but no later than June 2011, the distinction between issues that are properly subject to ICANN's policy development processes and those matters that are properly within the executive functions performed by the ICANN staff and Board and, as soon as practicable, develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level.

7. In accordance with the Affirmation of Commitments:

7.1 Commencing immediately, the Board should promptly publish all appropriate materials related to decision making processes – including preliminary announcements, briefing materials provided by staff and others, detailed Minutes, and where submitted, individual Directors’ statements relating to significant decisions. The redaction of materials should be kept to a minimum, limited to discussion of existing or threatened litigation, and staff issues such as appointments.

7.2 Commencing immediately, the Board should publish “a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.” ICANN should also articulate that rationale for accepting or rejecting input received from public comments and the ICANN community, including Supporting Organizations and Advisory Committees.

8. As soon as possible but no later than the start of the March 2011 ICANN meeting the Board should have a document produced and published that clearly defines the limited set of circumstances where materials may be redacted and that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board, General Counsel and staff when assessing whether material should be redacted and cited when such a decision is taken.

Report of Working Group 2

Statement of Purpose

Working Group 2 (WG2) evaluated whether ICANN (i) is adequately assessing the role and effectiveness of the Governmental Advisory Committee (GAC) and its interaction with the Board and (ii) is “making recommendations for improvements to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS.”³⁸ As part of this evaluation, WG2 conducted an independent evaluation of the interaction between the GAC and the Board

Background Statement

Relevant Provisions of the Bylaws. Article XI, Section 2 of the ICANN bylaws establish the Governmental Advisory Committee whose role is to “consider and provide advice on the activities of ICANN as they relate to the concerns of governments, particularly matters where there may be an interaction between ICANN’s policies

³⁸ Affirmation of Commitments, paragraph 9.1 (b).

and various laws and international agreements or where they may affect public policy issues.”³⁹ Membership in the GAC is open to all national governments. Each member country appoints one accredited representative to the GAC who must hold a formal official position in the member’s government.

The GAC may “put issues to the Board, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.”⁴⁰ However, ICANN shall “request the opinion⁴¹ of the GAC” in any case where a policy action “affects public policy concerns.”⁴² In such cases, ICANN shall “take duly into account any advice timely presented by the GAC on its own initiative or at the Board’s request.”⁴³ The notification is to be made by the Board to the Chair of the GAC “in a timely manner.”⁴⁴ Specifically, if the ICANN Board determines to take an action that is not consistent with the GAC advice “it shall so inform the Committee and state the reasons why it decided not to follow that advice.”⁴⁵ At that point, the GAC and the Board are obligated to “try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”⁴⁶ If no such solution can be found, the ICANN Board “will state in its final decision the reasons why the GAC advice was not followed.”⁴⁷

The Bylaws do not provide any definition or direction as to what is “advice” from the GAC. In practice, “GAC members have worked on the basis that any explicit advice, in any written form, constitutes the kind of advice foreseen in the bylaws.”⁴⁸ The GAC adopts a communiqué when it meets in conjunction with the three yearly regular meetings of the ICANN Board. Intersessionally, the GAC Chair sends letters to the Board and/or ICANN staff, as needed.

While the Board initiates periodic reviews of the Supporting Organizations, Advisory Committees and other ICANN structures, the Bylaws expressly exclude the Board from reviewing the performance and operation of the GAC. Instead, the GAC “shall provide its own review mechanisms.”⁴⁹

³⁹ ICANN Bylaws, Article XI, Section 2 (1) (a).

⁴⁰ ICANN Bylaws, Article XI, Section 2 (1) (i).

⁴¹ ICANN Bylaws, Article III, Section 6 (1) (c). The Bylaws use the terms “opinion” and “advice” in referring to input from the GAC. For purposes of this report, the term “advice” will be used to refer to either advice or opinions submitted by the GAC which triggers the obligations on the Board set forth in Articles III and XI.

⁴² ICANN Bylaws, Article XI, Section 2 (1) (h).

⁴³ ICANN Bylaws, Article III, Section 6 (1) (c).

⁴⁴ ICANN Bylaws, Article XI, Section 2 (1) (h).

⁴⁵ ICANN Bylaws, Article XI, Section 2 (1) (j).

⁴⁶ ICANN Bylaws, Article XI, Section 2 (1) (j).

⁴⁷ ICANN Bylaws, Article XI, Section 2 (1) (k).

⁴⁸ ICANN/GAC JWG Draft Report, Objective 1

⁴⁹ ICANN Bylaws, Article IV, Section 3 (2)

GAC Operating Principles: The GAC has a set of Operating Principles which it periodically updates. The last amendment was made at the GAC Nairobi meeting in March 2010. At the GAC Brussels meeting in June 2010, the GAC established an *ad hoc* working group to review the Operating Principles.

The Operating Principles do little to provide additional clarity or definition on the Bylaw provisions and in fact, seem to expand the concept of “advice” to a very broad concept. For example, the Principles do not require that GAC advice represent a consensus, stating that “where consensus is not possible, the Chair shall convey the full range of view[s] expressed by Members to the ICANN Board.”⁵⁰ Nor do the Principles limit what constitutes advice as they indicate that the “GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative.”⁵¹ The Operating Principles do, however, stipulate that a quorum (defined as one third of the representatives of the current membership) is necessary for a meeting at which a decision (s) is made.⁵²

Summary of GAC Activities: To date, the GAC has adopted 39 communiqués and has submitted 20 letters to the Board. In addition, the GAC has also adopted the following principles: GAC Principles Regarding gTLD Whois Services; GAC Principles Regarding new gTLDs; Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains; and GAC Operating Principles. Principles and letters generally represent consensus while the form and structure of the communiqués allow for differing GAC member view points, to the extent they exist, to be presented. There are instances where the GAC also adopts issues documents including interim issues documents.⁵³ It is not uncommon for the GAC to offer advice in stages for the purpose of clarifying, revising or reiterating views as an ICANN policy development process unfolds.⁵⁴

Summary of ICANN Outreach to GAC: ICANN, in the form of the Board Chair, management or staff, has to date sent 25 letters to the GAC on various topics. In only three specific instances has ICANN proactively, via correspondence, sought input from GAC related to the public policy aspects of an issue. The first instance, on December 1, 2004, sought GAC input on a multitude of issues and the second, on May 4, 2006, requested advice regarding the .xxx stld application. A third instance was on March 17, 2009 when ICANN staff sent a letter to the GAC identifying implementation issues associated with GAC advice related to the treatment of geographic names at the top-level. In addition, 13 other Board resolutions include

⁵⁰ GAC Operating Principles, Principle 47

⁵¹ GAC Operating Principles, Principle 48

⁵² GAC Operating Principles, Principle 40

⁵³ See [Annex A of Nairobi Communiqué 'GAC Interim Principles on IDN ccTLDs'](#)

⁵⁴ ICANN/GAC JWG Draft Report, Objective 1

references to GAC input but generally in the context of GAC and other supporting organizations and advisory committees.

Relevant Information from the Berkman Case Studies: The GAC plays a prominent role in two of the case studies undertaken by the Berkman Center: the expansion of generic top-level domain names (gTLDs) and the review of the .xxx top-level domain.⁵⁵

In the new gTLD case study, Berkman lists multiple instances of advice provided by the GAC on this issue, including the 2007 GAC Principles on new gTLDs, the various letters the GAC sent to the Board as well as the multiple references in GAC communiqués. The GAC provided specific advice on the need to conduct appropriate economic studies; stability and security (i.e., root scaling); vertical integration; the expression of interest (EOI) proposal; trademark protection; and public order and morality. The case study also highlights the challenges the GAC has in providing timely advice on a topic given that each successive version of the draft applicant guidebook (DAG) was often released three weeks prior to a meeting, making it nearly impossible for GAC members to consult in advance and come with clear and approved positions. The cumulative result of this process has been that the GAC often attempts to provide comments intersessionally and/or is one cycle behind the rest of the ICANN community in discussions. The Berkman case study also points out the apparent failure of the ICANN Board and staff to respond to GAC advice, starting with the 2007 GAC Principles on new gTLDs.

The .xxx case study developed by Berkman also provides insights into the GAC – Board relationship. It highlights the lack of timeliness on the part of the GAC at the outset in providing advice to the Board as the original request for input in December 2004 was not answered until April 2005. In addition, a number of governments sent letters directly to ICANN raising concerns with the ICM Registry application. While the Bylaws require the Board to explain why it does not accept the advice of the GAC, no such requirement exists for input or advice from individual governments or intergovernmental organizations.

Board Action to Assess GAC Role and Effectiveness: On June 26, 2009, at the request of the GAC, the Board established a joint GAC-Board working group and directed it to perform the following activities:

- Review the GAC’s role within ICANN;
- Consider measures to enhance support of the GAC’s works, including interpretation of meetings, translation of documents, extension of travel

⁵⁵ See Appendix C, “Accountability and Transparency at ICANN, An Independent Review,” The Berkman Center for Internet & Society, October 20, 2010, pp. 128-156 and 157-189.

support for GAC members from the Least Developed Countries, and remote participation at GAC meetings; and,

- Propose better ways for governments to be informed about ICANN and for enhanced opportunities for the GAC to meet with the ICANN Board and community.

The working group is co-chaired by the GAC chair and by a Board member selected by the Board Governance Committee. The joint working group has met during all ICANN meetings, namely Seoul, Nairobi, Brussels and Cartagena since its formation and expects to conclude its work by the San Francisco meeting with the submission of its report to the Board. The JWG aims to finalize the report in San Francisco and further JWG discussion is anticipated on ways that the Bylaws could formally acknowledge methods for the ICANN constituencies, including the GAC, to provide inputs into the policy development process at an early stage and as the process develops.⁵⁶

Initial Public Input to the ATRT on the GAC-Board Relationship

During the Brussels meeting, the ATRT met with the GAC-Board working group as well as separately with the GAC and with the Board. The following issues were raised in these discussions:

- The bylaws do not define what constitutes GAC “advice.” GAC submits a variety of documents to the ICANN Board, including communiqués and letters from the GAC chair. GAC believes all of these materials are “advice” triggering the Board’s obligation to adopt it or explain to the GAC why it does not accept the advice, but it is not clear that the Board agrees with this broad notion of what constitutes “advice.”
- GAC first seeks to develop a consensus view of a particular issue. If it cannot do so, it will present the full ranges of views to the Board. GAC members are concerned that requiring a consensus view for all advice will impair its ability to provide advice in a timely manner, but Board members are equally concerned that the Board cannot follow “advice” that may be a compendium of competing and conflicting views of GAC members.
- Although the bylaws require ICANN to request the advice of the GAC whenever the Board is considering an action for adoption that affects public policy concerns, there is no formal mechanism by which such requests are made or recorded. The GAC chair attends Board meetings as a non-voting liaison and it appears that the Board views that as putting the GAC on notice

⁵⁶ <http://gac.icann.org/system/files/Brussels-communication.pdf>

of every action the Board is considering whether or not it formally requests an opinion.⁵⁷

- GAC members expressed concern that the Board is not providing feedback to the GAC on the advice it does provide to the Board. One GAC member commented that the GAC regularly has to repeat its advice in subsequent communiqués because the Board does not supply any response to the GAC that it is taking the GAC advice into account in its decision making.
- The bylaws set forth a formal process for the GAC to provide its input only at the Board level. However, given that policy frameworks are formulated at the level of the supporting organizations long before a matter reaches the Board for decision, some participants suggested that ICANN should make provision, including changing the bylaws, if necessary, to allow for GAC input at earlier stages of the policy development process.

In the public comment process, the ATRT posed two questions to the public regarding the role of the GAC and the GAC-Board relationship:

- What is your assessment of the role of the GAC and its interaction with the Board?
- Are additional steps needed to ensure effective coordination by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS?

About ten of the comments submitted in the public input process responded to these questions. One commenter noted that the GAC “has consistently produced some of the best advice and input into ICANN processes.”⁵⁸ However, others commented that the Board has not paid enough attention to the suggestions of the GAC and that there was no oversight mechanism to ensure the ICANN Board follows the GAC recommendations.⁵⁹ Most commenters agreed that the GAC has a fundamental⁶⁰ and important⁶¹ role to play on issues related to the public interest, but others opined that the GAC was not the “sole representative of the public interest”⁶² and that “all constituencies should have a role in representing the public interest.”⁶³

⁵⁷ Transcript from ATRT meeting with GAC in Brussels. See: <http://brussels38.icann.org/node/12437>

⁵⁸ Comments of Kieran McCarthy.

⁵⁹ Comments of CNNIC. Comments of the Coalition Against Domain Name Abuse (CADNA).

⁶⁰ Comments of the European Telecommunications Network Operators Association (ETNO).

⁶¹ Comments of Leap of Faith Financial Services.

⁶² Comments of AT&T; Comments of ETNO.

⁶³ Comments of the International Chamber of Commerce (ICC).

Few commenters offered concrete suggestions as to additional steps that could be taken to improve effective coordination of GAC input by the Board. AT&T suggested that the “focus should be on improving coordination within the current advisory process as opposed to fundamentally changing the role or structure of the GAC.”⁶⁴

Public Comment on the Draft Recommendations

During the Cartagena meeting, the ATRT met separately with the Board and with the GAC. In addition, several parties filed comments on the draft recommendations.

Overall, there was strong consensus that there is a compelling need to improve the relationship between the Board and the GAC and the process by which the Board received and considered public policy advice from the GAC. For example, Norway stated that it was “of the firm opinion that the present practice of communication between the GAC and the ICANN Board handling the GAC advice is not very good” and that there was an “urgent need for improvements.”⁶⁵

On the specific question of the form by which the GAC should submit advice in recommendation 10, there was a lot of concern expressed about the recommendation that GAC advice should be “consensus” in order to trigger the Bylaw provisions obligating the Board to respond. GAC members indicated that it is the practice of the GAC to operate in consensus as reflected in its operating principles.⁶⁶ Other commenters raised concerns that the ATRT was suggesting a new way of determining consensus, such as requiring unanimity or a majority vote.⁶⁷ It was not the ATRT’s intent to suggest a change in the way the GAC reaches consensus on public policy issues. Accordingly, in response to these comments, we have dropped the language that the GAC “agree that only a ‘consensus’ view of its members constitutes an opinion that triggers [Board obligations].” Instead it was agreed that this would be automatically taken care of as soon as the GAC and the Board agree on what constitutes GAC Advice (Recommendation 10 of Final Recommendations). This change is consistent with public comments that the GAC should “determine when input they file is advice [and is] input the Board must act on according to the [Bylaws].”⁶⁸ France indicated its support for the idea that it should be “mandatory” for the Board to follow consensus GAC advice.⁶⁹ To be clear, the Bylaws do not currently require the Board to follow the GAC advice without question and it is not the ATRT’s recommendation that it be mandatory for the Board to follow consensus GAC advice.

⁶⁴ Comments of AT&T.

⁶⁵ Comments of Norway; see also Comments of AT&T, CADNA, ETNO and ICC.

⁶⁶ GAC Operating Principles, Principle 47

⁶⁷ Comments of ICC; see also Comments of CADNA.

⁶⁸ Comments of ICC; see also Comments of Gunnarson.

⁶⁹ Comments of France.

There was widespread support for recommendation 14 that urges the Board to “increase the level of support and commitment of governments to the GAC process.” Denmark noted that it is “paramount for ICANN’s global legitimacy as a public interest organization that ICANN seek to increase the level of support and commitment of governments to the GAC.”⁷⁰ Some members of the GAC raised concerns that the draft proposal for ICANN to work more closely with senior government officials might interfere with the ongoing work of the GAC. To resolve any confusion, the ATRT has rewritten recommendation 14 to make clear that any engagement of ICANN with senior officials should be complementary of the existing GAC process and should not replace or interfere with the existing work of the GAC.

Questions for Review

Is ICANN adequately assessing the role and effectiveness of the GAC?

Do the activities of the JWG constitute an adequate assessment of the role and effectiveness of the GAC on the part of ICANN?

Is ICANN adequately making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS?

Would effective consideration of the public policy aspects of ICANN issues be improved by:

- Defining more specifically what constitutes a GAC advice under the bylaws? Issues to be considered include what form such advice must take to trigger Board obligations to follow it or engage in mediation process whether to require a consensus, what obligations the Board has, if any, with respect to other forms of GAC “advice.”
- Defining more specifically the process by which the Board seeks advice from the GAC on public policy issues? Issues to be considered include what form of notice the Board should give, whether the process is one-time or iterative, how the Board should track this process, either through a database or otherwise.
- Defining more specifically how the Board considers and responds to GAC advice.
- Facilitating the GAC, through bylaw changes or otherwise, to engage with supporting organizations and other constituencies early in the process to

⁷⁰ Comments of Denmark; see also Comments of AT&T and ICC.

ensure that public policy input is provided and considered in a manner to help shape the formulation of ICANN policies.

- Having ICANN provide more support to the GAC. Issues to be considered include preserving the independence of the GAC and ensuring that ICANN policy staff is fully aware of GAC issues and concerns.
- Enabling the GAC to work intersessionally in order to more quickly respond to public policy changes proposed by ICANN?

Findings

The current Board-GAC relationship is dysfunctional and has been so for several years. While the Bylaws limit the Board’s ability to evaluate the performance and operation of the GAC, the Board should have acted long before now to engage the GAC to resolve the ambiguities in the Bylaws and to build a more productive working relationship with the GAC. The joint GAC-Board working group established in 2009 offers an appropriate vehicle for these issues to be considered and recommendations developed. But for this process to produce a result that demonstrates that ICANN is adequately assessing the GAC, the Review Team strongly recommends that the following issues be resolved by the conclusion of the working group effort.

First, both the Board and the GAC, need to clarify what constitutes GAC “advice” under the Bylaws and the Board needs to exercise more discipline in asking for GAC advice on public policy issues. The GAC notion that any communication it has with the Board constitutes GAC advice has proven to be unworkable as there has likely been confusion as to which pieces of Board input have triggered the Board’s obligations to follow GAC advice. Similarly, the Board position that it does not need to formally request a GAC opinion because the GAC is “on notice” as to all matters before the Board has also confused the process envisioned in the Bylaws by which the Board more formally solicits GAC advice.

Second, both the Board and the GAC need to work together to have the GAC advice provided and considered on a more timely basis. Instituting a more formal process for requesting opinions should help in this regard by making it clearer when the Board is seeking a GAC opinion but given that the GAC meets face-to-face only three times a year, it will need to establish other mechanisms for preparing and reaching agreement on consensus opinions in a more timely manner.

Third, the Board, working with the GAC, needs to develop and implement a process to engage the GAC earlier in the policy development process. All parties would benefit if the supporting organizations and other constituencies could receive public policy input as early in the policy development process as possible. Such a process

would also reduce the delay associated with requesting GAC input only after an issue has been submitted to the Board for its consideration and approval and should reduce the back-and-forth between the Board and the GAC that has not served either party well in the specific cases of .xxx and gTLDs. As a related matter, the Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns

Fourth, the Board should endeavor to increase the level of support and commitment of governments to the GAC process.

Recommendations

9. The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy “advice” under the Bylaws.

10. Having established what constitutes “advice,” the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or data base in which each request to the GAC and advice received from the GAC is documented along with the Board’s consideration of and response to each advice.

11. The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice.

This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner, to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

12. The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.

13. The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC and whether the Board and the GAC would benefit from more frequent joint meetings.

14. The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.

Report of Working Group 3

Statement of Purpose

Working Group 3 evaluated the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; the policy development process to facilitate enhanced cross community deliberations and effective and timely policy development.

Background Statement

Relevant Provisions of the Bylaws. Article III, Section 6 of the ICANN bylaws requires ICANN to provide Notice and Comment “with respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges.”⁷¹ The bylaws also state that, “[a]s appropriate and to the extent provided in the ICANN budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.”⁷² Article III also contains provisions calling for the maintenance of a website by ICANN, a Manager of Public Participation, Meeting Notices and Agendas and Minutes and Preliminary Minutes of the meetings of the Board, Supporting Organizations and Councils thereof.⁷³

The GNSO Policy Development Process (PDP) procedures (including Public Comment) are addressed in Annex A of the bylaws.⁷⁴ The ccNSO Policy Development Process (PDP) procedures (including Public Comment) are addressed in Annex B of the bylaws.⁷⁵

Recent Public Comment Periods and Policy Development Processes

The Berkman Center conducted research on 3 separate Public Comment opportunities conducted by ICANN. Berkman reviewed, within the context of the newTLD round, Public Comment processes concerning the DAG, the Expression of Interest and the IRT. Berkman also reviewed the Public Comment process conducted by the ATRT.

Board action to assess the process by which ICANN seeks to improve public participation and the manner in which it receives public input, including adequate explanation of decisions taken and the rationale thereof.

- Board Public Participation Committee – much activity has taken place within and at the initiation of the Board Public Participation Committee (PPC). The PPC has developed a web page as well as short and long-term reports to improve public participation in ICANN and the conduct of ICANN meetings on a number of fronts. The PPC recommended the implementation of the requirement to post documents 15 days prior to ICANN meetings. The PPC asks ICANN Staff for 6 month and 12 month draft working plans to prepare for public participation needs. The PPC also solicits feedback from the ICANN community concerning

⁷¹ ICANN Bylaws, Article III, Section 6.

⁷² ICANN Bylaws, Article III, Section 7.

⁷³ ICANN Bylaws, Article III, Sections 2, 3, 4 and 5.

⁷⁴ ICANN Bylaws, Annex A.

⁷⁵ ICANN Bylaws, Annex B.

the organization of ICANN meetings to propose better, more efficient, more friendly, safer and more conversational meetings. The PPC introduced linguistic services and general policy for interpretation as well as expanded remote participation.⁷⁶

Community action to improve the processes by which Policy Development Processes are conducted within ICANN.

- New GNSO Policy Development Process - The PDP Work Team issued an Initial Report on May 31, 2010 with 45 recommendations and a number of considerations that are put forward to enhance community confidence in the new PDP processes.⁷⁷
- Cross Community Deliberation – Recent examples of cross community deliberations that are contributory but not limited to formal PDP's within ICANN SO's are the Cross Community WG formed to discuss and make recommendations on the ccTLD IDN Fast Track process; the Recommendation 6 Cross Community Work Group that explored implementation recommendations regarding aspects of the new gTLD Application Guidelines; and the Joint DNS Security and Stability Analysis Working Group (DSSA-WG). In general, such cross community deliberations are Work Groups (or similar structures) that address matters of common interest to the participating Supporting Organisations (SOs), Advisory Committees (ACs), and others.

Initial Public Comment to the ATRT on public input, the public and Internet community embrace of ICANN decisions, policy development process and cross community deliberations

“There are at least three fundamental problems with ICANN’s public comment process. The first is the sheer volume of the comment periods. As of July 7, there were 20 open public comment periods. Public comment deadlines for eight of these were bunched between July 18 and July 27.... Second, there have been several instances in the past year in which ICANN has done no more than go through the motions of seeking public comment on issues on which it had already decided upon at least the next step in a course of action. Three of these instances were summarized in a comment filed by COA on February 9, 2010.”

<http://forum.icann.org/lists/affrev-draft-processes/msg00016.html> “Third, as ATRT members heard from the participants in the Commercial Stakeholders Group (CSG) meeting in Brussels last month, it is common for public comments received by ICANN to be digested by it in an incomplete and sometimes misleading fashion. It seems very likely that no one at ICANN, other than a very restricted number of staff

⁷⁶ <http://www.icann.org/en/committees/participation/>; interview with Jean Jacques Subrenat.

⁷⁷ <http://forum.icann.org/lists/gnso-ppsc-wg/pdfUwIxdLnA8H.pdf>.

charged with reviewing and summarizing public comments, ever reads more than a handful – if that many – of the actual comments submitted. Everyone else depends on the staff-generated summary to learn what the public had to say about a particular issue. This includes senior ICANN staff and Board members, to the extent that they are aware of the contents of submitted public comments at all, and most members of the public. Thus, concerns about problems with these summaries must be taken seriously.”

Coalition for Online Accountability

“ICC members are concerned that transparency in some cases is equated with the posting of voluminous materials and information. ICANN has made significant progress in transparency in decision making, and future strengthening efforts should focus on the link between information-posting transparency and how the community can be truly informed about decision making. First, in addition to the initial act of soliciting comments, it is critical to ensure an adequate amount of time for stakeholders to reply (30 or 60 days, depending on the complexity of the topic). Second, it is critical at the end of a consultation to summarize the range of substantive positions submitted and to provide the ICANN rationale for why certain views from constituencies were either accepted or rejected in determining ICANN’s decision. Third, it is also essential that an adequate range of input is in fact received from the community, which in several instances has not been the case, most likely because of the volume of parallel processes and work items.” *International Chamber of Commerce*

“It’s undeniable that ICANN has made a great deal more information available online in recent years, But (sic) one of the recurring criticisms leveled by community members is the opacity of how ICANN staff digests community comments and comes up with policy implementation plans. It is now impossible for stakeholders to learn whether and how their working group reports and comments were factored into staff reports and board decisions. In a bottom-up consensus body, the ability of stakeholders to track their promised impact on the process is critical. At the time of the JPA midterm review, this answer was not possible to know. Today, ICANN has yet to establish a mechanism to address this oft-voiced concern.” *Net Choice*

“The ASO Policy Development Process is indeed complex, as a global policy must be submitted to all Regional Internet Registries and discussed at regional level, respecting all different PDPs. The process requires the proposer to attend all regional meetings worldwide. The proposed policy must be approved in the same terms by all regional bodies, before it can be endorsed by the ASO council, and then approved by the ICANN Board, after a public comment period at ICANN level. ETNO believes that the absence of a forum for discussion of such issues at ICANN level and the absence of cross community open discussion at that level lacks transparency and makes the process even more complex. While respecting the necessity to discuss

such issues at regional level, ETNO believes that some improvement is needed as regards cross-community deliberations." *ETNO*

Public Comment on the Draft Recommendations

During its interactions at the Cartagena, Colombia ICANN meeting with the public, the GAC and the ICANN Board, and through the public comments filed, the ATRT received generally positive and supportive feedback on the proposed recommendations developed under Working Group 3. The Government of Denmark noted the importance of “clarification and prioritization of issues, publication of work programs and agendas along with clear timelines that provides the community adequate time for meaningful engagement.”⁷⁸

Commenters also supported the recommendations that called for the availability of multilingual texts of ICANN’s PDP and public input documentation. ICC raised the issue of having one versus multiple texts that are “binding.”⁷⁹ This issue should be addressed by ICANN as part of its implementation. Commenters supported the recommendation that ICANN’s senior staffing arrangements are appropriately multilingual, delivering optimal levels of transparency and accountability to the community.⁸⁰

Questions for Review

Is ICANN support for the policy development process adequate to ensure effective and timely policy development?

Does the existing policy development process adequately facilitate enhanced cross community deliberations?

Are the Policy Process Steering Committee-Policy Development Process and the Policy Process Steering Committee-Working Group efforts adequately addressing timely and effective policy development?

⁷⁸ Comments of the Danish Ministry of Science, Technology and Innovation, November 23, 2010; see also Comments of ETNO, December 3, 2010; Comments of AT&T, December 3, 2010; Comments of the Coalition for Online Transparency, December 3, 2010; see also Comments of the At-Large Advisory Committee, December 6, 2010. At-Large Advisory Committee called for clearly defined channels for transmission of advice between all ACs and the Board as well as mechanisms to alert ICANN to issues of serious concern that have the ability to seriously affect government and public confidence in ICANN .

⁷⁹ Comments of International Chamber of Commerce (ICC), November 18, 2010.

⁸⁰ Comments of the French Ministry of Foreign and European Affairs, December 3, 2010.

Does the level of multilingualism in the policy development process and Board decision making offer sufficient access and opportunity to participate for the global ICANN Community?

Would public input be improved if ICANN’s Notice and Comment process had stratified categories? (e.g. Notice of Inquiry, Notice of Proposed Policy Making)

Would cross community deliberations be improved through the establishment of procedures for cross community deliberations (e.g. normal and “fast track”) and the establishment of explicit mechanisms to trigger cross community deliberations?

Would public and Internet community embrace of ICANN Board resolutions be improved if the resolutions articulated the rationale for the decision taken including the reasons various public input was accepted or rejected in reaching the decision?

Findings

The timeliness and effectiveness of policy making is a serious concern among participants in ICANN processes. The numerous changes in projected completion dates for newTLD round preparatory work were a source of concern that led to a specific proposal (i.e. the Expression of Interest) from some members in the community. An often cited concern is the sheer volume of open public comments. The ATRT takes into account the fact that the volume of open proceedings is affected by the actions of constituent bodies within ICANN and is not uniquely influenced by ICANN Staff or the Board. While efforts to prioritize policy making are underway and could assist in addressing some concerns, it appears that significant improvements could be made in both the nature and structure of the public input and policy making processes within ICANN.

Article III, Section 6 of the Bylaws provides, in part, that ICANN should provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board. Presently, the comment cycles are not structured to provide unique “reply” comment” cycles that could add efficiencies and value to the receipt of community input.

Recommendations

15. The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.

16. Public notice and comment processes should provide for both a distinct “Comment” cycle and a “Reply Comment” cycle that allows community respondents to address and rebut arguments raised in opposing parties’ comments.

17. As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

18. The Board should ensure that access to and documentation within the policy development processes and the public input processes are, to the maximum extent feasible, provided in multi-lingual manner.

19. Within 21 days of taking a decision, the ICANN Board should publish its translations (including the required rationale as outlined in other ATRT recommendations) in the languages called for in the ICANN Translation Policy.

20. The Board should ensure that all necessary inputs that have been received in policy making processes are accounted for and included for consideration by the Board. To assist in this, the Board should as soon as possible adopt and make available to the community a mechanism such as a checklist or template to accompany documentation for Board decisions that certifies what inputs have been received and are included for consideration by the Board.

21. The Board should request ICANN staff to work on a process for developing an annual work plan that forecasts matters that will require public input so as to facilitate timely and effective public input.

22. The Board should ensure that ICANN’s senior staffing arrangements are appropriately multi-lingual, delivering optimal levels of transparency and accountability to the community.

Report of Working Group 4

Statement of Purpose

Working Group 4 evaluated one element of Board Governance, specifically undertaking “the consideration of an appeal mechanism for Board decisions;”⁸¹

Background Statement

⁸¹ Affirmation of Commitments, Sec. 9.1(a): <http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>

Relevant Provisions of the Bylaws: The ICANN Bylaws provide for three mechanisms that provide for the appeal of Board decisions. These are described in the bylaws as “creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN’s structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms.”⁸² The three mechanisms are:

1. **Office of the Ombudsman:** The Office of the Ombudsman acts as “a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board, or an ICANN constituent body has treated them unfairly.”⁸³
2. **Reconsideration:** Reconsideration provides “a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.”⁸⁴
3. **Independent Review of Board Actions:** The Independent Review of Board Actions (IRP) provides “a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.”⁸⁵

Uses of the Review Mechanisms: Each review mechanism has been employed at least once by members of the ICANN community to appeal Board decisions or actions. Some have been more frequently employed than others. The Independent Review mechanism has been invoked on only one occasion.

Office of Ombudsman - The Office of the Ombudsman has been used frequently receiving over 2,000 complaints over the previous 5 years. A vast majority of those complaints were rejected on jurisdiction and the remainder were addressed through a variety of means including, but not limited to, resolution, referral, system improvement or self-help.

⁸² ICANN Bylaws, Article IV, Section 1: <http://www.icann.org/en/general/bylaws.htm#IV>

⁸³ ICANN Bylaws, Article V, Section 2: <http://www.icann.org/en/general/bylaws.htm#V>

⁸⁴ ICANN Bylaws, Article IV, Section 2.1: <http://www.icann.org/en/general/bylaws.htm#IV>

⁸⁵ ICANN Bylaws, Article IV, Section 3.1: <http://www.icann.org/en/general/bylaws.htm#IV>

Reconsideration - Since 1999, there have been 44 requests for Reconsideration raised to the BGC and its predecessor committee. Of these, 32 (72.7%) were rejected or denied, or recommended that the Board take no action. In two cases, the complainant withdrew the request, and one case was declared to be groundless. Nine cases (20.4%) were approved by the BGC and adopted by the Board. One request is currently pending.

Several Reconsideration requests looked at by WG4 did not include sufficient published documentation for WG4 to determine whether or not the Board reconsidered them, requiring further investigation by ICANN Staff.

IRP - The IRP has been used once by ICM Registry in the .xxx decision review. At the end of the process the Panel declared that “[f]irst, the panel determined that the holdings of the IRP are advisory in nature and, thus, do not constitute binding arbitral awards. Second, the IRP panel determined that ‘the actions and decisions of the ICANN Board are not entitled to deference whether by application of the “business judgment rule” or otherwise; they are to be appraised not deferentially but objectively.’ Finally, the IRP Panel also determined that ‘the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .xxx TLD met the required sponsorship criteria.’ The IRP noted that although there ‘is a measure of ambiguity in the pertinent provisions of the Bylaws,’ the use of the phrase ‘to declare whether an action or inaction of the Board was inconsistent’ supported an interpretation that IRP decisions were intended to be advisory, and not binding on the ICANN Board. In particular, the IRP likened this to a recommendation rather than a binding order.”⁸⁶

Initial Community Feedback on Review Mechanisms

The ATRT received numerous comments from the community during the Public Comment period and during the June 2010 ICANN meeting in Brussels.⁸⁷ Many comments expressed concerns about the lack of an accountability mechanism that was sufficiently independent of the ICANN Board and that could issue binding decisions:

“Establish a Board of Review with authority to adjudicate disputed decisions of the board of directors and to reverse them if repugnant to the charter or bylaws.” [S. Gunnerson] <http://forum.icann.org/lists/atrt-questions-2010/msg00001.html>

⁸⁶ See Appendix C, “Accountability and Transparency at ICANN, An Independent Review, The Berkman Center for Internet & Society, October 20, 2010, p. 188.

⁸⁷ Community Feedback for the AoC/ATRT: <http://forum.icann.org/lists/atrt-questions-2010/>

“It [External Accountability] consists of an oversight or appeals process conducted by an independent entity with the authority to reverse the organization’s decisions or impose sanctions on it for failure to comply with agreed rules.” [M. Mueller] <http://forum.icann.org/lists/atrt-questions-2010/msg00002.html>

“ICANN’s current accountability mechanisms, including the Ombudsman, Board reconsideration procedure, and the Independent Review Panel provide some level of accountability within ICANN and are each important tools. However, all are merely advisory and ICC believes that ICANN needs strengthened and independent accountability mechanisms.” [ICC] <http://forum.icann.org/lists/atrt-questions-2010/msg00004.html>

“...it is advised that ICANN set up a permanent establishment, which should be independent in ICANN and in collaboration with all present accountability mechanisms, to inspect the major works from all levels and to establish a comprehensive accountability framework.” [CNNIC] <http://forum.icann.org/lists/atrt-questions-2010/msg00005.html>

“ICANN should give serious consideration to adopting review mechanisms that occur prior to final decisions being taken, and should improve its organizational structure to adequately represent the interest of the public within its governance model.” [IPC] <http://forum.icann.org/lists/atrt-questions-2010/msg00019.html>

“The business community, in particular, requested that ICANN establish new mechanisms for redress where an ICANN Board decision adversely affected a company or industry. While ICANN has implemented and expanded some review processes, none of those processes provide any potential for relief outside of the Board deciding to reverse its own decision.” [NetChoice] <http://forum.icann.org/lists/atrt-questions-2010/msg00020.html>

Community Feedback on the Draft Recommendations

The issue of independent review continued to draw significant attention from the Community. R. Shawn Gunnarson provided comments and a brief on the question of California law challenging ICANN staff’s interpretation citing the possibility of the creation of “members” and the possibility of arbitration with respect to registry contracts.⁸⁸ The ICC urged that the assessment called for in the recommendations

⁸⁸ Comments of R. Shawn Gunnarson, December 3, 2010.

“should investigate the extent to which the IRP may have binding authority to overturn Board decisions in order to help ensure independence.”⁸⁹

The Berkman Center Case Study of the IRP

The Berkman Center undertook a case study of the IRP review of the .xxx matter. The case study observations concerning the IRP included the following:

“Given the cost and lengthiness of the IRP proceedings, several interviewees questioned whether the IRP provides an accessible and widely applicable means for reviewing the ICANN Board’s decisions. Some interviewees stated that the high cost of the proceedings meant that it offers a venue for only the wealthiest of participants and is not a viable option for the vast majority of ICANN stakeholders. Others asserted that the cost, risk, and duration of the IRP will mean that no others will be likely to appeal ICANN decisions via this mechanism, even among those with the financial resources to do so.

In addition to the questions raised about limits of the IRP as an accountability mechanism, others questioned how ICANN’s interpretation of the process reflects on ICANN’s commitment to accountability. Some interviewees expressed the belief that ICANN’s interpretation of the IRP—that the process should not entail live testimony, that ICANN should be offered deference under the business judgment rule, and that the IRP’s decision should not be binding on the ICANN Board—was inconsistent with an organization with a mandate to ensure that it is accountable to its stakeholders.

Perceptions also varied with regard to the ultimate effectiveness of the IRP as an accountability mechanism in this specific case. Some asserted that this process demonstrated accountability, given that an applicant for a new TLD was able to initiate the review process and argue their case on the merits before independent arbitrators, and in doing so compelled ICANN to defend the basis of its actions. Moreover, IRP’s decision appears to have convinced ICANN to reverse its decision. Other interviewees expressed the opinion that the absence [sic] of a binding resolution from the IRP is indicative of the fundamental lack of accountability at ICANN.”⁹⁰

⁸⁹ Comments of the International Chamber of Commerce, November 18, 2010; see also Comments of AT&T, December 3, 2010..

⁹⁰ See Appendix C, “Accountability and Transparency at ICANN, An Independent Review, The Berkman Center for Internet & Society, October 20, 2010, p. 189.

Relevant Efforts to Address Independent Review

ICANN's President's Strategic Committee (PSC) was formed in 2005 to provide observations and recommendations concerning strategic issues facing ICANN, and contributing to ICANN's strategic planning process, which occurs in consultation with the community.⁹¹

The Improving Institutional Confidence (IIC) consultation was announced by ICANN's Chairman, Peter Dengate Thrush, on Thursday 28 February 2008 at the U.S. Government's Department of Commerce Midterm Review of the Joint Project Agreement (JPA) between it and ICANN. The Chairman asked the PSC to outline a plan for developing a transition framework. On 27 February 2009, the PSC published its draft Implementation Plan for Improving Institutional Confidence, which had gone through three public comment periods, to the global Internet community for information and discussion during ICANN's Mexico City meeting.

Among the recommendations in the IIC draft Implementation Plan were the following:

“Recommendation 2.7: Seek advice from a committee of independent experts on the restructuring of the review mechanisms to provide a set of mechanisms that will provide for improved accountability in relation to individual rights and having regard to the two proposed further mechanisms in RECOMMENDATIONS 2.8 and 2.9 immediately below.

Recommendation 2.8: Establish an additional mechanism for the community to require the Board to re-examine a Board decision, invoked by a two-thirds majority vote of two thirds of the Councils of all the Supporting Organizations and two-thirds of members of all the Advisory Committees. For the Governmental Advisory Committee, a consensus statement from all the members present at a physical meeting shall suffice.

Recommendation 2.9: Establish an extraordinary mechanism for the community to remove and replace the Board in special circumstances.”⁹²

ATRT Request for Information (RFI) to ICANN Staff

WG4 sent a request for information to ICANN staff concerning the IIC recommendations. The RFI stated the following:

⁹¹ <http://www.icann.org/en/psc/>

⁹² Draft Implementation Plan for Improving Institutional Confidence, p.7.
<http://www.icann.org/en/jpa/iic/draft-iic-implementation-26feb09-en.pdf>

“The 2009 report entitled ‘Improving Institutional Confidence: The Way Forward’ proposed two new methods of accountability for the ICANN Board. These include a Community Re-Examination Vote and the formation of a standing Independent Review Body. The ATRT requests that ICANN provide an update on the status of these recommendations, including:

- (a) Were the recommendations adopted?
- (b) If so, were they adopted in the state proposed in the report, or were modifications made?
- (c) If adopted, what is the procedure and time frame to implement these recommendations?
- (d) If adopted, how will ICANN communicate these changes to the larger community?
- (e) If the recommendations were not adopted, what is the reasoning that led to ICANN disregarding these recommendations?”

ICANN Staff replied to the WG4 RFI as follows:

“In July 2009, ICANN posted for public comment proposed Bylaws amendments setting out the Community Re-Examination Vote and the modification of the Independent Review Process to create a standing Independent Review Body. See <http://www.icann.org/en/public-comment/public-comment-200909.html#iic-bylaws>. Both of these Bylaws changes were proposed through the Improving Institutional Confidence (IIC) report. To allow for community input on the formation of the recommendations, the public comment period remained open for four months.

ICANN’s Summary of Comments received is available at <http://forum.icann.org/lists/iic-proposed-bylaws/msg00020.html>. Most commenters were opposed to ICANN proceeding with the implementation of the new accountability mechanisms as drafted. There were various concerns raised, including a consensus that alterations of the current Independent Review Process would be premature prior to the resolution of the then-pending ICM Independent Review Proceeding, and an opportunity to evaluate the lessons to be learned from the inaugural use of the Independent Review mechanism. For the Community Re-Examination Vote, commenters raised multiple concerns, such as the binding nature of the process as well as the required thresholds for calls for Re-Examination. As noted in the Summary, no commenters were in support of the adoption of the proposed Bylaws as written.

Because of the strong community opposition to the proposals as drafted, staff recommended that no further implementation action be taken on the two accountability mechanisms until the recommendations and the processes to reach

those recommendations could be revised. One of the intervening events – the action based on the Independent Review Panel’s Declaration in the ICM IRP – is still ongoing. Further, since the July 2009 posting of the proposed Bylaws, the Affirmation of Commitments was signed, and this review team was empanelled to review community engagement and inputs, among other topics. In light of the ATRT’s work, this review team may assist in identifying what additions or modifications to accountability mechanisms may be most beneficial and appropriate for the community.

ICANN strived for accountability to the community in *not* implementing the mechanisms that were clearly identified as deficient and lacking in transparency in process. ICANN has not ‘disregarded’ the recommendations, but is instead listening to the community in terms of the proper consideration of these new accountability mechanisms.”⁹³

Overarching Issue – Binding Appeal as the Standard for Accountability

In addressing the question regarding the possibility that independent review mechanism of ICANN Board decisions could issue binding decisions, WG4 queried ICANN about California law governing ICANN and any implications for a possible recommendation from the ATRT. ICANN staff provided the following response:

“Limitations on Third Party Review of Corporate Board Actions under California Law

- California law requires that the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board of directors. See Cal. Corp. Code § 5210.
- The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that all corporate powers shall be exercised under the ultimate direction of the board. *Id.*
- Although the board is broadly empowered to delegate certain management functions to officers, employees, committees and other third parties, the board cannot empower any entity to overturn decisions or actions of the board because that would result in that entity indirectly controlling the activities and affairs of the corporation and thus usurping the legal duties of the board.

⁹³ <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>; the document can be found at “Documents submitted to the ATRT.” At the time of publication, the link to those documents was not working so a direct hyperlink was not available.

- In order to exercise its fiduciary duties to the corporation under California law, the board may not abdicate its ultimate authority to exercise all corporate powers.
- Entering into binding arbitration clauses for certain actions within contractual agreements would be acceptable, but cannot be used as a catch-all waiver of a California corporation board's legal rights and obligations to have final responsibility for actions of the organization."⁹⁴

Questions for Review

Are the three existing accountability review mechanisms in ICANN (i.e. Office of the Ombudsman, Reconsideration, and the IRP) and their inter-relationship, in some cases, clear and well understood?

Are the processes and decisions (or recommended actions) of the three existing accountability review mechanisms adequately publicized?

Has ICANN sufficiently reviewed and assessed the three existing accountability review mechanisms and potentially new accountability review mechanisms as called for in the IIC draft Implementation Report?

Would the Office of the Ombudsman be improved if its framework were reviewed vis-à-vis internationally accepted standards?

Would the Reconsideration mechanism be improved by reviewing publication practices of the Reconsideration process?

Findings

While there was concern from the Community and, in part, from the Berkman Case Studies, over the fact that none of the three accountability mechanisms can review and potentially reverse ICANN Board decisions with binding authority, the ATRT did not reach consensus on whether binding authority was the standard upon which to judge ICANN's accountability. The ATRT also discussed the possible scope and application of California law and focused on the nature of the various decisions that the ICANN Board is obligated to make under the law. The ATRT discussed both the question of desirability of a binding third-party review and ICANN's recitation of

⁹⁴ ICANN Memorandum: "Limitations on Third-Party Review of Corporate Board Actions under California Law," <http://icann.org/en/reviews/affirmation/third-party-review-of-board-actions-31aug10-en.pdf>

California law with the Berkman Center during its face-to-face meetings in Boston, in order to better understand the merits and demerits of such an approach, its scope and possible application in the context of a possible independent review mechanism. It has taken into account the respective considerations and recommendations as summarized in the Berkman final report.

In the course of broad consultations, ATRT received feedback to the effect that ICANN could enter into agreements with parties that called for binding arbitration without running afoul of California law. While this latitude could apply in a contractual context, it is less clear and deserves further legal analysis as to what extent and through what mechanisms ICANN could agree to enter into binding arbitration more generally. To the extent that this might limit the availability of such a mechanism to contracting parties, the ATRT recognized the possibility that such a mechanism could have limited utility from a community point-of-view.

In summary, while some members of the ATRT believe that having a binding appeals process is critical to ensure accountability to the community and the long term viability of the multi-stakeholder ICANN model, other members of the ATRT raised concerns that such a standard would create a new set of accountability and transparency issues by assigning to some new, unnamed set of individuals the power to overturn Board decisions. The ATRT did agree, however, that ensuring existing review mechanisms were either sufficiently independent of the Board or adequately structured was critical to ensuring accountability.

The ATRT noted that work by ICANN and the community to address recommendations of the IIC was underway. Public Comment had been received on proposed bylaw changes, but implementation work did not advance for reasons stated in ICANN staff's response to WG4's Request for Information. The ATRT recognizes that exploration by ICANN staff and the community of revised, new mechanisms under Recommendation 2.8 and Recommendation 2.9 of the IIC, may continue. With respect to the AoC review, the ATRT identified specific issues with respect to the three existing review mechanisms that should be addressed by ICANN in conjunction with a committee of independent experts.

With regard to the Office of the Ombudsman, the ATRT received community feedback regarding the effectiveness of the Office of the Ombudsman, and conducted two interviews with the Ombudsman. The Ombudsman is not perceived by the community to be a fully independent accountability mechanism for accountability of the ICANN Board. Questions have been raised about inconsistencies between the structure and operation of ICANN's Office of the Ombudsman and internationally accepted standards for Ombudsman. The ATRT also asks the ICANN Board to explain the metrics used to determine the Ombudsman's bonus and to consider this as well as broader compensation issues in context of the review of the Office of the Ombudsman under recommendation 24.

The ICANN bylaws charge the Board Governance Committee (BGC) with the management of Reconsideration requests. Because the BGC is comprised exclusively of existing Board members, it is therefore not independent.

With regard to Reconsideration requests, the grounds that must be satisfied to sustain a Reconsideration request is seen by some as constraining the ability of the community to use this process. Additionally, the history of Reconsideration request resolution and the publication of the proceedings and decisions do not reflect sufficient clarity and consistency to satisfy transparency expectations.

Last, the IRP is viewed as potentially costly and too long in duration to provide a broad based and timely review mechanism for the broader ICANN community. Some members of the ATRT concluded that the IRP was inaccessible to most segments of the community and is not necessarily an attractive alternative to courts as a review mechanism.

Recommendations

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

24. As soon as possible but no later than the March 2011 ICANN meeting, the operations of the Office of Ombudsman and the relationship between the Office of the Ombudsman and the Board of Directors should be assessed and, to the extent they are not, should be brought into compliance with the relevant aspects of internationally recognized standards for: a) an Ombudsman function; and b) a Board supporting such a function under the Standards of Practice of the International Ombudsman Association.

25. As soon as possible, but no later than October 2011, the standard for Reconsideration requests should be clarified with respect to how it is applied and

whether the standard covers all appropriate grounds for using the Reconsideration mechanism.

26. As soon as possible, but no later than October 2011 the ICANN Board, to improve transparency, should adopt a standard timeline and format for Reconsideration Requests and Board reconsideration outcomes that clearly identifies the status of deliberations and then, once decisions are made, articulates the rationale used to form those decisions.

Overarching Recommendation

27. The Board should regularly evaluate the progress: against these recommendations; against the accountability and transparency commitments under the AoC; and in general analyze the accountability and transparency performance of the whole organization so as to report to the annually to the community on progress made and to prepare for the next ATRT review. All evaluations should be overseen by the Board.

APPENDIX A

OVERVIEW OF THE ACCOUNTABILITY AND TRANSPARENCY REVIEW TEAM PROCESS

The ATRT held its initial meeting on April 12, 2010 and conducted its work through a series of conference calls and face-to-face meetings. The ATRT initiated two requests for public comment and engaged in direct interaction with ICANN, the ICANN Board, the Government Advisory Committee (GAC), the Advisory Committees (ACs), Supporting Organizations (SOs) and the public over the course of the review.

Review Team Meetings

The ATRT conducted a total of 16 conference calls and five face-to-face meetings. All calls and meetings were designated as “open” unless a party to the meeting (including an ATRT member) requested that the meeting be closed for confidentiality reasons.

The ATRT’s five face-to-face meetings over the course of 6 months were held in Marina del Rey, California; Brussels, Belgium; Beijing, China; Boston, Massachusetts and Cartagena, Colombia. The face-to-face meetings were important to progress the ATRT’s work and facilitated information exchanges with all the entities mentioned above including the Independent Expert, the Berkman Center for Internet and Society. The ATRT originally planned to conduct face-to-face meetings on all continents and to engage in proactive interaction with the local community at the meeting sites. In short, at the outset, the ATRT adopted the ICANN model for meetings as its model for planning ATRT meetings.

The ATRT quickly realized that the ICANN meeting model was not necessary to undertake the work of the ATRT. The ATRT was also conscious of the costs associated with conducting meetings around the globe strictly for the purpose of geographic balance. The ATRT also noted little interaction with the local Internet community and so abandoned the earlier approach for one which would best facilitate the management and completion of the ATRT’s work. Thus, the ATRT held two meetings in North America: one for the purpose of interacting directly with ICANN staff and one for the purpose of interacting directly with the Berkman Center during the drafting of proposed recommendations. The meetings were still designated as “open” and both conference call and online participation platforms were made available for members of the public to follow the work of the ATRT in detail. The ATRT received criticism that it did not interact with the local communities at face-to-face meetings effectively and, in the case of the Boston meeting, had not adequately published the street address of the meeting. The ATRT

notes that community interaction is critical to the effective work of a review team but that an approach to face-to-face meetings that places this value above the value of effectively progressing the work of the review team is not optimal.

In order to facilitate open access to the ATRT's work and public participation, the ICANN staff provided the following support:

ATRT Meetings (open)

Streaming for public observers

Recording

Transcripts

Adobe room + chat

Remote participation

Support for Chatham house rule meetings (rarely invoked)

Conference Calls (open)

Streaming for public observers

Recording

Transcripts

Preliminary notes

Adobe room + chat

Support for Chatham house rule meetings (never invoked)

Web site support (located within the ICANN website) (open)

Maintenance of AoC site on ICANN web page

Wiki site

Interactions with the public

ATRT question to the community

Requests for public comment (draft proposed recommendations)

Email input mechanism for inputs outside of the public comment periods (public list + private list)

Interviews

Interaction with constituencies and community Members during ICANN Meetings

AoC website postings:

Working documents

Adobe chats

Agendas

Email archives

Meeting notes

Transcripts

Conference call schedule

Selection of an Independent Expert

The AoC allows for the use of Independent Experts by review teams. The ATRT determined that the participation of an Independent Expert would provide important substantive inputs to the review process. The ATRT developed a scope of work for the Independent Expert which included case studies of specific ICANN processes. The ATRT developed a Request for Proposal (RFP), published the RFP, selected a group of candidates and heard proposals from the candidates. The ATRT developed a scoring system, ranked candidates, selected a winner and engaged in contract negotiations with the winner.

The ATRT wishes to thank Urs Gasser and all the members of the Berkman Center for Internet and Society, as well as members of the Harvard faculty, who provided invaluable assistance as an Independent Expert to the ATRT. The ATRT commends the Berkman Center for the significant amount of research and analysis that it undertook and completed in a very limited time frame.

Creation of Working Groups

The ATRT recognized that the creation of Working Groups that addressed different subject matter areas in paragraph 9.1 of the AoC would be the most efficient way to conduct the review. Four Working Groups were established; each focused on a specific subject matter, and was open to volunteers from the ATRT. Each Working Group conducted its own conference calls as well as fact finding, interviews and analysis. Each Working Group produced a report that was reviewed by the entire ATRT and integrated into a single report of the ATRT.

Management of Requests for Public Comment

The ATRT conducted two calls for public comment: one call for public comment seeking feedback from the community to “Initial Questions from the ATRT” that opened on May 18, 2010 and closed on July 14, 2010.; and a second call for public comment with respect to the ATRT’s draft proposed recommendations that opened on November 3, 2010 and closed on December 3, 2010. The ATRT endeavored to consider all the public comments received (as well as the public inputs received through a static email address that was accessible during most of the review process).

To manage the intake and integration of public comment into its analysis and work product, the ATRT did the following:

- Created a “grid” of public comments received that organized each of the comments in relation to the subject matter of the four ATRT Working

Groups. The grid allowed Working Group members to read the public comments that were specific to their respective subject matter;

- Used public comment “summaries” prepared by ICANN staff that provided key points raised in each of the public comments;
- Read all the public comments submitted in response to the ATRT request for public comment;
- Maintained a public input mechanism (an email link on the ATRT site) to allow the public to provide input to the ATRT outside the confines of the public comment processes. The ATRT also provided the opportunity to provide anonymous input;
- Cited specific public comment in its draft proposed recommendations that supported the proposed recommendations; and,
- Identified certain public comments that the ATRT did not act on or integrate into its Final Recommendations and articulated the rationale for rejecting the proposals of certain public comments .

The ATRT endeavored in its Final Recommendations and Report to attribute public comment that supported the ATRT conclusions and to identify public comment with which the ATRT disagreed and to explain the reasons for its disagreement. The ATRT does not view its efforts in this regard as a “model” for the recommendation to the ICANN Board under Working Group 3. During its meetings in Boston, the ATRT reviewed the text of a decision from the United States Federal Communications Commission (FCC) as providing a model for explaining the basis for adopting a rule and for identifying public comment and explaining in sufficient details the rationale for accepting or rejecting public comment in the rulemaking proceeding.

Interaction w/ACs & SOs and the public

The ATRT met with the ACs and SOs and held a public comment sessions at the Brussels, Belgium ICANN meeting from June 20, 2010 to June 25, 2010. The ATRT met with the GAC, at the request of the GAC, and held a public session at the Cartagena, Colombia meeting from December 5, 2010 to December 10, 2010. The ATRT believed that direct interaction with the ACs/SOs and the public was critical to its data collection exercise and to provide an open information exchange between the ATRT and those entities.

The ATRT established mailing lists to facilitate its work. The main discussion list was open for subscription by the ATRT members, support staff of the ATRT members,

ICANN support staff, and the Independent Expert team members. Many members of the ATRT understood early in the process that, for our own accountability and transparency, our mailing list archive should be made publicly readable, and that this should be done while our work is ongoing rather than at its conclusion. We finalized our agreement in this matter at our first face-to-face meeting, and made the appropriate configuration changes shortly thereafter. We believe that this can be improved upon with respect to accountability and transparency. The ATRT suggests that future RT lists that are to be publicly readable are made open to anyone who wishes to subscribe to them. Subscribers who are not RT members, RT support staff, ICANN support staff, nor contracted independent experts would be automatically moderated. In this way, transparency is promoted for members of the public who wish to follow the email discussion in real-time. However, these observers must be notified (e.g., via the list welcome message) that contribution from observers should be sent via means established by each RT.

Interaction with ICANN Staff

The ATRT interacted with ICANN staff at its first face-to-face meeting in Marina del Rey for the purpose of explaining to ICANN staff the ATRT's scope of work and work methodology. ICANN's CEO appointed Denise Michel the Advisor to the CEO for Accountability and Transparency as the main point-of-contact between the ATRT and ICANN staff. Doug Brent and Marco Lorenzoni provided early inputs to the ATRT and the ATRT along with the Berkman Center interacted with ICANN General Counsel to address issues surrounding the Berkman Center's data gathering and proposed interviews with ICANN staff. The ATRT was also supported in its day-to-day activities by Alice Jansen, Olof Nordling. Cory Schruth provided primary technical support for ATRT meetings. ICANN staff did a commendable job in supporting the work of the ATRT. The ATRT wishes to pay particular thanks to Ms. Jansen who provided extraordinary support in coordinating the activities of the ATRT.

Interaction with ICANN Board

The ATRT interacted with the ICANN Board at the meetings in Brussels, Belgium and in Cartagena, Colombia. The ATRT Working Groups conducted interviews with certain Directors whose responsibilities and/or experience corresponded with the Working Groups' respective subject matter areas. Off the record interviews were conducted and the ATRT is grateful to the Directors for their cooperation and candor. The ATRT thanks the Directors for their open, public exchanges with the ATRT and, in particular, their feedback on the draft proposed recommendations.

Replacement of ATRT members

On two occasions, ATRT members stepped down from their positions on the ATRT. The AoC did not provide specific instruction on how the replacement of ATRT members should be managed. The selection of original ATRT members was conducted according to the requirements of the AoC. In this selection process, the ACs and SOs put forward candidates for consideration of the Chairman of the Board of ICANN and the Chairman of the GAC who were charged by the AoC with the responsibility of selecting the ATRT members. In some instances, ACs and SOs put forward a slate of more than one candidate from their respective organizations. When the ATRT was confronted with the need to replace a member, the ATRT determined that the ACs and SOs should be afforded the latitude to replace the ATRT member at their discretion in lieu of having the Chairman of ICANN and the Chairman of the GAC selecting from the original slate of candidates. The ATRT believed that this approach provided the ACs and SOs the greatest autonomy with respect to the review team member selection process.

Definition of “Public Interest”

The ATRT did not establish a definition of “public interest” in conducting its review. The ATRT did not view itself, as a body, to have the requisite skills or subject matter expertise to establish a definition of “public interest” that should govern ICANN’s decision making and policy development processes. The ATRT did address public interest in the context of establishing a framework for “accountability” and offered a process framework wherein the public interest can be served:

“The RT also believes that the public interest is served, ultimately, by creating an environment in which all stakeholders can be assured that the rules will be (i) debated; (ii) refined to reflect relevant input from the community, including the community of governments participating in the ICANN process; and (iii) honored.”
ATRT Terms of Reference and Methodology, p. 2.

Commenters noted that the ATRT did not establish a definition of public interest and cited the AoC which states: “[t]o ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.”⁹⁵ NetChoice noted that “by allowing ‘public interest’ to mean anything and everything to anyone, it has become a catch phrase that means nothing at all.”⁹⁶ NetChoice

⁹⁵ Affirmation of Commitments, para. 4

⁹⁶ NetChoice comments, December 3, 2010.

offered that a definition of “public interest” could focus on the elements of “availability” and “integrity” of the DNS.⁹⁷

Paragraph 4 of the AoC focuses on process issues that, if adequately addressed by ICANN, can operate to ensure that the public interest of all stakeholders is being served. The ATRT made specific recommendations with respect to the process elements articulated in paragraph 4 of the AoC that are designed to improve ICANN’s management of the processes. The ATRT notes that “public interest” is a concept that is strongly associated with governments whose direct responsibility in their respective jurisdictions is to serve and protect the public interest. Hence, public interest is a concept that varies depending on the respective juridical, cultural and social norms of a given country. The ATRT notes that the AoC does not use the term “global public interest,” a term for which there does not appear to be a commonly agreed definition for that term. It is clear that ICANN is expected to act in, or at a minimum, consistent with the public interest for all stakeholders in its role as the technical coordinator for the DNS. For ICANN, a not-for-profit U.S. based private corporation, to establish a definition of “public interest” that would be commonly agreed would require the broad engagement of all stakeholders and an exercise that is far beyond the ken of the ATRT. That being said, the ATRT believes that continued discussion of this issue, or perhaps an appropriately structured undertaking to develop such a definition (regardless of the ultimate outcome), could have positive impacts on ICANN’s execution of its commitments under the AoC.

Metrics

The ATRT has not recommended specific metrics that ICANN should adopt to provide measurable results in its decision making and policy-making processes. The ATRT did not believe that it should select the specific metrics for ICANN as an organization to apply to its operations and processes. However, the ATRT discussed the importance of performance indicators and identified examples of widely accepted metrics that should be considered by ICANN and the community. For example:

“SMART Metrics” - Elements of Performance indicators that are defined as:

Specific
 Measurable
 Achievable
 Relevant
 Time-Bound

⁹⁷ NetChoice comments, January 13, 2010.

SMART metrics are one example of performance indicators that can be applied in both quantitative and qualitative contexts. In its initial exchange, the ATRT asked ICANN about the use of metrics by the organization and ICANN staff identified its “Dashboard” for performance indicators as an example of ICANN applying metrics to its operations and processes.

Commenters stated that the ATRT did not go far enough in recommending specific metric for ICANN to adopt as a critical component of improving ICANN’s accountability and transparency to all stakeholders. The Association for Competitive Technology (ACT) stated that ICANN will never “be truly accountable or transparent without established, public performance metric for its various initiatives and departments.”⁹⁸ ACT’s comments went on to state that “[w]hile it makes sense that ICANN staff proposes actual target values for various metrics, it seems completely appropriate that the ATRT suggest a framework of measurable objectives. A good start might be the ATRT recommendations themselves. An initial metric might be a timeline for the implementation of recommendations.”⁹⁹

The ATRT included in a number of its recommendations, dates by which ICANN is expected to start and/or complete specific tasks under those recommendations. At a minimum, the subsequent Accountability and Transparency Review Team, as called for by the AoC, will need to be able to measure ICANN’s progress and execution of the ATRT’s recommendations as part of its review and the dates should provide a form of measurement. The ATRT believes that quantitative and qualitative measurement is important to improving accountability and transparency in ICANN and encourages ICANN and the community to agree on operational and process metrics that will advance that goal.

⁹⁸ Association for Competitive Technology comments, December 4, 2010.

⁹⁹ Association for Competitive Technology comments, December 4, 2010.

APPENDIX B

Observations of the ATRT on the Review Process

The ATRT provides these observations concerning the ATRT Review Process to the ICANN Board with a view toward improving the administration and operation of subsequent review teams under the Affirmation of Commitments (AoC). The AoC calls for review teams that are composed of volunteer community members from the Advisory Committees and Supporting Organizations. The AoC allows for the participation of Independent Experts in the case of the ATRT, the SSR and CCTCT review teams and for privacy and law enforcement experts in the WHOIS Review Team.

The Importance of Autonomy and Objectivity

Volunteers who come from the ACs/SOs represent diverse and specific interest groups in the ICANN community. The participation of representatives from ACs/SOs raises a question about whether those participants can pursue the objectives of the AoC review and sublimate, as necessary, the distinct interests of their respective AC/SO. The Chairman of the Board and CEO of ICANN represent the interests of ICANN. The participation of the ICANN Chair (in the case of the ATRT) and CEO (in the case of the other review teams) raises questions about whether they can participate in an objective fashion and whether the review team can be sufficiently autonomous from the organization it is tasked to review.

The ability of the review teams to operate with sufficient autonomy and objectivity is critical in order to produce recommendations that can be viewed by the community, the ICANN Staff and the ICANN Board as the product of objective, reasoned and “independent” analysis. Review teams need to explicitly recognize this inherent tension and use of mechanisms designed to lessen the risk that the review process will be “captured” by either community member self-interests, on the one hand, or ICANN’s self-interest on the other. In this regard, a conflict-of-interest policy should be adopted and adhered to by the review team throughout the review. Additionally, the review team should maintain an active awareness of these risk factors as it conducts its work. In this respect, the transparency of the review team’s activities is critical to allow the community, the Staff and the Board the ability to likewise monitor these risks. Thus, a policy and *modus operandi* of maximum transparency of the review team is recommended. A default policy of “open” meetings, unless a closed meeting is necessary, is also recommended. The AoC allows the use of Independent Experts and the ATRT believes that Independent Experts play an important role in ensuring the overall quality of recommendations. The ability of the review teams to determine for themselves whether to obtain the services of an Independent Expert and to procure the services

of an Independent Expert is important. The ATRT notes that the Independent Expert for the SSR and WHOIS review team was selected prior to the establishment of that review team. The SSR and WHOIS review teams apparently did not have the opportunity to select for itself the expert(s) supporting its work. This could raise questions concerning the autonomy of the SSR and WHOIS review teams.

The ATRT Review Process – Areas of Concern

- ICANN staff created a proposal for Affirmation reviews suggesting approaches to implementation of reviews under the AoC. The proposal covered a number of topics including review methodology, budget identification, timelines, draft terms of reference etc. The ATRT reviewed the proposal and determined that, in order to operate under maximum autonomy and independence, it would develop its own framework for conducting its review and did not adopt elements of the proposal by ICANN staff.
- Even though the AoC was signed on September 30, 2009, the ATRT was not selected by the Chairman of the Government Advisory Committee (GAC) and the Chairman of the ICANN Board until April 2, 2010. The ATRT conducted its first telephonic conference on April 12, 2010.
- The ATRT lost 101 working days at the beginning of 2010 due to the late start of the Review Process. The ATRT had less than 9 months to complete its work. Given the scope of the ATRT's review and a deadline to deliver recommendations by December 31, 2010, ICANN created unnecessary time constraints and pressure on the ATRT's work. Given the fact that the ATRT was the first review called for under the AoC, and the fact that the AoC represented an enhanced commitment to accountability and transparency by ICANN to the global Internet community, the delay in establishing the review process created a sense in the ATRT that the review process was not a priority for ICANN. In this regard, ICANN was not accountable in its oversight and administration of this important process.
- The ATRT was initially informed by ICANN's CEO that he would not join the first face-to-face meeting of the ATRT in Marina del Rey, California which had been arranged to facilitate an interaction between the ATRT and ICANN staff at the outset of the review process. While the ICANN CEO changed his plans and did join the ATRT/ICANN staff meeting, his initial response raised concerns in the ATRT about the seriousness with which ICANN's senior staff was taking the review process.
- At the ICANN meeting in Brussels, after selecting the Berkman Center for Internet & Society to act as an independent expert, the ATRT received

private feedback from ICANN staff noting their concerns about the ATRT's selection of Berkman.

- On June 21, 2010, at the ICANN meeting in Brussels, the ICANN CEO made public remarks with respect to the objectivity of the ATRT which members of the ATRT consider were disparaging. The ICANN CEO's remarks necessitated a public response from the ATRT noting the ATRT's concern about having the objectivity of its work being questioned even as it was just beginning its substantive work.
- The three previously referenced events reinforced the sense of the ATRT that the ICANN staff was laboring under an attitude of inordinate defensiveness and distrust of the review team and the review process.
- The ATRT presented its proposed budget, including the Berkman Center's costs, to the ICANN Board on July 11, 2010. An *ad hoc* committee of Board members reviewed the proposed budget and held a conference call with the ATRT Chair. In the course of the budget review call, Directors suggested that the ATRT had not properly scoped its work and offered an alternative scope of work for the ATRT to consider. This suggestion was made despite the fact that the ATRT had scoped its work through a deliberative, iterative process that included the participation of a signatory to the AoC and the Chairman of the Board of the other signatory to the AoC. Directors also asked if the Berkman budget or Berkman resources could be reduced. While the ATRT appreciates the Board's responsibility to administer the review process and to manage costs, there did not appear to be sensitivity by Directors to the implications of attempting to narrow the scope of work and to reduce the budget of the ATRT. The ATRT Chair stated that the ATRT was comfortable with its established scope of the work and requested approval of the budget, as presented.
- 18 days after presentation of the ATRT budget, the Board approved the ATRT budget. A contract between ICANN and the Berkman Center was executed 7 days later. (The ATRT wishes to commend Amy Stathos of ICANN legal staff for her work in executing the contract with Berkman with all due speed.)
- Due to the time taken for review and approval of the ATRT budget, the Berkman Center did not commence its work until August 5, 2010. As a result, and compounded by the late commencement of the ATRT review itself, the Berkman Center had roughly two months time to conduct its exhaustive independent research.

- The ATRT posted proposed draft recommendations to the public for comment on November 3, 2010 after receipt of the Independent Experts Final Report and a face-to-face meeting on October 11-13, 2010. The ATRT allowed 30 days for public comment period which ended just prior to the ICANN Annual General meeting in order to provide sufficient time for the ATRT to consider public comments received and to integrate them into final recommendations. This time frame was less than ideal to allow the public an opportunity to provide meaningful comment on the proposed recommendations and this shortcoming was a direct result of the compressed time frame that the ATRT had to work within.

APPENDIX C

Accountability and Transparency at ICANN An Independent Review

Final Report
October 20, 2010



Berkman

The Berkman Center for Internet & Society
at Harvard University

Executive Summary

1. Problem Statement

In recent years, ICANN has taken important actions—ranging from significant policy changes to formal reviews—to improve its accountability, transparency, and the quality of its decision making. Despite considerable efforts and acknowledged improvements, ICANN continues to struggle with making decisions that the global Internet community can support.

The manifold challenges for ICANN, often summarized under the conceptual umbrella of accountability, derive in large part from its grounding in a variety of diverse institutional models.

Functionally, ICANN performs many different roles, including technical coordination roles, some of which are analogous to those of a standards body, and in domain name allocation, a quasi-regulatory role. ICANN is charged with taking a fiduciary role that is responsive and responsible to a broad range of stakeholders, including private sector actors and global Internet users. It also receives input, advice and sometimes pressure from governments. ICANN has a mandate to follow a bottom-up, consensus-based model. It is also a nonprofit corporation governed by California law. Hence, ICANN is not supported by, nor does it lend itself to, a single traditional theory of accountability. ICANN’s current liability- or sanction-based accountability mechanisms, for instance, are weak; there are no binding appeal mechanisms and no direct mechanisms for replacing leadership. In lieu of stronger liability-based mechanisms, ICANN relies heavily on transparency and public participation to foster accountability.

2. Independent Review of Transparency and Accountability at ICANN

As part of a larger independent review process, faculty and researchers from the Berkman Center for Internet & Society have taken on the challenge of researching ICANN’s current efforts to improve accountability via mechanisms of transparency, public participation and corporate governance, and of analyzing key problems and issues across these areas.

ICANN has committed in its Affirmation of Commitments (AoC) with the United States Department of Commerce to “maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision making will reflect the public interest and be accountable to all stakeholders” and to undergo regular review by an independent Accountability and Transparency Review Team (ATRT). This research report informs the work of the ATRT, which is charged with assessing ICANN’s execution of its commitments under the AoC.

The report reflects two months of research and is comprised of three detailed case studies (gTLDs, .xxx, DNS-CERT), interviews, and a review of a wide variety of secondary materials including ICANN documents and prior academic work.

We note that ICANN’s present approach to accountability is the subject of considerable criticism. The scope of this report does not provide a comprehensive survey of the ways in

which ICANN’s current accountability scheme would compare with possible future alternatives. Instead, this report, within the scope defined by the AoC and ATRT, offers an analysis and assessment of three pillars of ICANN’s current accountability approach—transparency, public participation and Board governance—and provides recommendations designed to improve accountability through these three mechanisms.

3. Findings and Assessment

In-depth research into the three focus areas of this report reveals a highly complex picture with many interacting variables that make fact-finding challenging and also render simple solutions impossible. With this complexity in mind, and referring to the main text of the report for a more granular analysis, the findings and assessments of this report can be condensed as follows.

ICANN’s performance regarding transparency is currently not meeting its potential across all areas reviewed and shows deficits along a number of dimensions. It calls for clearly defined improvements at the level of policy, information design, and decision making.

Although ICANN is highly transparent in some facets of the organization, a review of ICANN’s transparency policies and practices reveals deficits related to active transparency (the mechanisms that are used to deliver structured information), passive transparency (the means by which stakeholders can request information from ICANN), and participatory transparency (the approaches that encourage active involvement and dialogue with ICANN). Transparency issues stem from the ways in which a massive amount of information is presented; the lack of clear information about methods to obtain unpublished information; overly broad transparency exemptions regarding document requests; and the lack of a transparency audit.

ICANN has made significant progress in improving its public participation mechanisms and gets high marks regarding its overall trajectory in this regard. Remaining concerns about the practical impact of public participation on Board decisions are best addressed by increasing visibility and traceability of individual inputs, in order to clarify how these inputs ultimately factor into ICANN decision-making processes.

This report recognizes ICANN’s previous and ongoing efforts to improve public participation mechanisms. Our review also shows a pervasive perception among various stakeholders that they are not “being heard” by the ICANN Board despite increasingly sophisticated mechanisms and tools of participation. This report’s analysis identifies the potential for improvement in soliciting public input; summarizing, aggregating and acknowledging public contributions; clarifying how public input is reflected in Board decision making; and enhancing the structure and timing of cross-community interactions.

ICANN’s greatest challenge ahead, despite significant recent efforts, remains corporate and Board governance. Proposed measures identified in this report aim to increase efficiency, transparency and accountability within the current context and in the absence of standard accountability mechanisms.

Echoing the concerns of stakeholders and scholars, this report identifies several issues that fall under the rubric of corporate governance. Board governance in particular is a principal instrument in ICANN’s toolbox to strengthen its accountability, with strong implications for organizational culture and values. This report’s review of a broad range of issues raised by the community has led to the identification of key issues and shortcomings in areas such as Board composition; Board-staff interaction; the Board’s interaction with constituent bodies; transparency of decision making; and the processes by which Board decisions can be challenged and reviewed.

4. Recommendations

There is no straightforward way to address the various challenges ICANN faces. The approach underlying this report’s recommendations takes an evolutionary rather than revolutionary perspective. This approach is aimed at continually improving ICANN’s accountability step by step, based on lessons learned, through a series of measured interventions, reinforced by monitoring and subsequent re-evaluation.

For each of the three focal areas covered in this report and for each of the key issues addressed, this report suggests ways in which the status quo can be improved. Some of these recommendations can be implemented quickly, others require policy changes, and still others call for more in-depth research, consultation and deliberation among the involved stakeholders.

This report’s recommendations vary in kind and orientation. They encourage the adoption of best practices where available and experimentation with approaches and tools where feasible. Several of the recommendations are aimed at improving information processing, creation, distribution, and responsiveness at different levels of the organization.

Building upon findings from both the private and public sectors, the recommendations propose various tools, techniques, and actions to further strengthen ICANN’s transparency, public participation, and governance mechanisms. The spectrum ranges from an overhaul of ICANN’s approach to information design to an adjustment of Board selection criteria and the reconsideration of the scope of the Independent Review Panel (IRP) process. Several of the recommendations address ICANN in its capacity as an information-handling entity. Proposed improvements in this category involve disclosure policies and document handling practices; recommendations about baseline standards for the structure and timing of public comment periods; the request for more explicit and detailed information regarding the rationale for decisions by the Board; transparency regarding Board-staff interactions; and improvements of the communication between Board and the Governmental Advisory Committee (GAC).

Following the proposed evolutionary approach, future ICANN reviews should assess the extent to which these recommendations—if implemented—have improved the status quo, and whether or not more radical measures that are currently outside the scope of this report need to be considered, such as the introduction of a sanction-based accountability mechanism (e.g., a binding third-party review process). Finally, even the best procedures for transparency and governance rely on a commitment by Board and staff alike to put these

measures into practice. Ensuring a culture of openness is a necessary complement to the structural steps recommended in this report.

Contributors

This report, written on a complex subject and on an aggressive timeline, required a coordinated team effort. Contributions to the substance of the research came from all corners and layers of the Berkman Center and our extended network, including project advisors and researchers, Berkman Center staff and summer interns, researchers from partner institutions, and peers from academia and beyond. We are deeply grateful for all of the thoughtful inputs we received and for the hard work and support of everyone involved.

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Reader's Guide

This report begins with an introductory section that articulates both the problem statement and the background of the project, and the motivation and role of the Berkman Center. Section II introduces and frames the basic concepts that are the focal point of our inquiry—accountability, transparency, public participation and corporate governance—and describes the key theoretical frameworks and questions for each as they apply to ICANN. This section also includes the articulation of our central research questions and a description of our study methodology (additional information regarding the Berkman teams's workplan and approach are detailed in Appendices A and B).

Section III offers a summary of the approach used to identify issues for later analysis. This is followed by short summaries of the three case studies: the Introduction of New gTLDs, the .xxx Domain Case and the DNS-CERT Proposal. These case studies play a central role in establishing the factual basis for the report's analysis and recommendations. The full case studies are in Appendices C, D, and E.

The body of the report, Section IV, presents our analysis of the issues and associated recommendations in three subsections: transparency, public participation, and corporate governance. Each subsection introduces the issues, summarizes the factual observations used in the analysis, and discusses the areas deserving further attention, then provides a concise articulation of the recommendations. The Board Governance section includes analysis, discussion and recommendations related to independent review and the role of the Governmental Advisory Committee (GAC).

I. Introduction

A. Problem Statement and Background

In recent years, ICANN has taken important actions—ranging from significant policy changes to formal reviews—to improve its accountability and transparency, and the quality of its decision making. Despite considerable efforts and acknowledged improvements, ICANN continues to have problems making decisions that the global Internet community supports. The critiques cover a broad range of issues, including internal factors (how ICANN’s decision-making mechanisms have developed in response to its own internal processes and external feedback) and external factors (how stakeholders communicate with ICANN and respond to subsequent decisions), all of which occur within the context of ICANN’s unique institutional structure.

Against this backdrop, ICANN has committed in the September 30, 2009 Affirmation of Commitments (AoC) by and between the United States Department of Commerce and ICANN to “maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision making will reflect the public interest and be accountable to all stakeholders.”ⁱ Pursuant to the AoC, the Accountability and Transparency Review Team (ATRT) was selected by the Chair of the ICANN Board and the Chair of the GAC in order to perform a review of ICANN’s execution of its commitments.^{ii, iii}

The ATRT initiated its review on April 12, 2010^{iv} and selected faculty and researchers at the Berkman Center for Internet & Society at Harvard University (referred to as the “Berkman team”) to act as independent experts.^v The Berkman team was asked by the ATRT to provide its own analysis focusing on the provisions of paragraph 9.1 of the AoC, based on primary and secondary research, including a series of case studies and interviews, and to submit an independent set of recommendations to the ATRT in accordance with the Services Agreement of August 5, 2010 between the Berkman Center and ICANN.^{vi} In addition, the Berkman team provided *ad hoc* inputs to the ATRT on specific research issues as further specified in Appendix A.

B. Motivation and Role of the Berkman Center

The Berkman Center was founded to explore cyberspace, share in its study, and help pioneer its development. It is committed to producing research with impact. In keeping with this mission statement, faculty, fellows, and staff members at the Berkman Center have studied ICANN and its important public policy functions since its foundation. The work under the Services Agreement is motivated by and builds upon this tradition of research and engagement, which has lasted over a decade and resulted in a series of scholarly articles, congressional testimony, and teaching materials, among other things.^{vii}

C. Disclosures

The Berkman Center has received USD 265,692.00 from ICANN to conduct this study, based on the budget and the terms set forth in the Services Agreement.^{viii} The budget consists largely of salaries of faculty and staff researchers, including research assistants, workshop expenses, and travel costs.

The individuals involved in the research efforts are listed in the acknowledgment page of this report. In this context, please note the following disclosures:

Professor Jonathan Zittrain, Berkman Center Faculty Co-Director and Co-Principal Investigator of this review, is on the Board of Directors of the Internet Society (ISOC). The DNS-CERT case study produced by the Berkman team refers to a letter from Lynn St. Amour, President and CEO of ISOC, in establishing the factual basis of the case study.

Professor Jack Goldsmith, Henry L. Shattuck Professor of Law, Berkman Center Faculty Co-Director and member of the Berkman team, has submitted testimony for ICM in the .xxx case. He provided comments on the scope and structure of an earlier version of the .xxx case study.

Berkman Center Fellowship Advisory Board Member and Senior Researcher Wendy Seltzer is a representative of the Non-Commercial Users Constituency to the GNSO Council. She provided comments on the scope and structure of the three case studies and inputs regarding specific factual questions by the Berkman case study team.

The Berkman Center previously worked with ICANN and its founding members to provide a venue for early meetings and—prior to the formation of ICANN itself, in 1998, and after its founding—to provide webcast and other public participation support. The Berkman Center’s formal involvement in this respect with ICANN ended after the November 2001 ICANN meeting in Marina del Rey.

II. Task Structure, Basic Concepts, Research Questions and Methodology

A. Task Structure

The Services Agreement as interpreted by the ATRT includes two related, but analytically distinct workstreams:

- (1) Between August 5, 2010 and October 13, 2010, the Berkman team served as a “sounding Board” for the work of the ATRT and its working groups and provided *ad hoc* inputs on specific research issues, especially in relation to the three case studies that the Berkman team conducted (see below).
- (2) In parallel, the Services Agreement required the Berkman team to provide its own analysis based on primary and secondary research and to submit an independent set of recommendations to the ATRT.

Appendix A outlines the Berkman team’s workplan and provides a detailed overview of the various activities and outputs associated with the respective workstreams. This report is the key deliverable and provides the Berkman team’s independent analysis and assessment within the scope of AoC 9.1 and the Services Agreement, respectively.

B. Basic Concepts: Accountability, Transparency, Public Participation, and Corporate Governance

Paragraph 9.1 of the AoC is aimed at ensuring “accountability, transparency and the interests of global Internet users” and sets the frame of reference for this report. While the areas of review are further specified in paragraph 9.1 (a–d) of the AoC, no comprehensive definitions of the key concepts *accountability* and *transparency* are provided. Any review of ICANN’s performance in these areas has to start with at least a clarification of the underlying understanding of these basic concepts as well as interacting notions such as *public participation* and *corporate governance* that play an equally prominent role in the AoC.

1. Accountability

For this report, several theories of accountability have been reviewed and their possible application to ICANN explored. The result of this effort, in summary, is that ICANN is not supported by, nor does it lend itself to, a single theory of accountability. This stems from both the lack of clarity at the conceptual level and ICANN’s hybrid institutional grounding. Despite the importance accorded to considerations of accountability for ICANN, there is neither a standard working definition of accountability nor agreement on metrics to monitor and measure progress.

ICANN’s legal documents and policies do not offer a consistent and holistic accountability framework, although several documents—including the Bylaws, Annual Reports, and internal strategy papers—make reference to accountability.^{ix} For instance, ICANN’s Accountability and Transparency Frameworks and Principles refer to accountability and transparency as the foundations that support the corporation’s operating model, and define three types of accountability:^x

Public sphere accountability, which deals with mechanisms for assuring stakeholders that ICANN has behaved responsibly;

Corporate and legal accountability, which covers the obligations that ICANN has through the legal system and under its bylaws; and

Participating community accountability, which ensures that the Board and executive perform functions in line with the wishes and expectations of the ICANN community.

Across these areas, ICANN has developed and implemented three key mechanisms aimed at implementing the accountability principles: public participation mechanisms, transparency practices, and the independent review of Board decisions.

In parallel to ICANN’s interpretation of accountability, a review of academic literature and other background materials offers several other frameworks for accountability, providing additional, complementary, and sometimes competing perspectives.^{xi} Building upon earlier analyses, the various dimensions of accountability as applied to ICANN can be summarized as follows:^{xii}

Transparency as a fundamental dimension of accountability and an instrument for assessing ICANN’s performance;

Responsibility as pertaining to following externally and/or internally established rules, standards, and best practices;

Responsiveness as an outward-looking aspect of accountability that measures the extent to which ICANN meets the demands and needs of the constituencies it serves; and,

Liability in the sense of consequences that may stem from inappropriate actions by ICANN staff and Board, e.g., third-party review, sanctions, or mechanisms to replace leadership.

The first three procedural mechanisms are well-established elements of ICANN’s activities and operations and contribute to its accountability. They may act in complementary ways. For example, transparency may both serve as a check on inappropriate activities and enhance the evaluation of responsibility-based and responsiveness-based accountability. Public participation contributes to the responsiveness measure as it offers a view of community preferences.

ICANN’s approach to accountability has been contested, however, particularly regarding the weakness of standard liability-based mechanisms in ICANN’s current governance model.

Some scholars suggest that the continuous proliferation of "new opportunities for public comment, public review, and public participation" may create a perception of accountability that is in actuality a poor substitute for more direct forms of recourse to ICANN's decision-making processes.^{xiii} Furthermore, some argue that ICANN's current accountability mechanisms are not well-suited to its needs and goals, and that it is fundamentally disconnected from most of the standard accountability mechanisms that usually govern a company.^{xiv} Others have suggested that the current mechanism for independent review of Board decisions is inadequate. They argue that it does not lead to binding decisions or sanctions, is overly broad in scope, but too narrow as far as eligibility or standing is concerned (these issues are further addressed in Section IV C.2.4 of this report).^{xv} While acknowledging the competing theories of accountability, this report does not develop a holistic theory or normative view of ICANN's accountability. The frameworks outlined above serve as reference points to build and test working hypotheses without prioritizing among the different notions and interpretations of accountability. Given the assignment and methods as specified in the AoC and the Services Agreement, this report analyzes accountability mechanisms as defined by ICANN itself and seeks to analyze and assess whether ICANN has lived up to its own commitments. The Berkman team acknowledges that taking other notions of accountability as a starting point and frame for review may lead to different and equally legitimate questions that are not addressed in this report. This report's pragmatic approach is not an implicit endorsement of one concept of accountability over the other, but is based on the specifics of the task assignment and takes into account the conditions under which this review has been performed, including significant time constraints.

2. Transparency

In this report, the Berkman team has taken a similar approach to the topic of transparency. After a review of the relevant literature on transparency concepts in the ICANN context and beyond,^{xvi} the Berkman team has focused on the analysis and evaluation of ICANN's overall transparency structure as set forth in various policies and outlined in its Accountability & Transparency Frameworks and Principles.^{xvii}

Remaining aware of the hybrid institutional character of ICANN, the Berkman team borrowed from conceptual models and approaches used mainly to analyze public sector institutions in order to frame and discuss ICANN's transparency mechanisms. Though freedom of information laws and other public sector transparency models do not apply to ICANN in the same legal manner as they apply to public or governmental entities, various observers have agreed that the public sector provides useful models for evaluating ICANN's information policies.

In addressing the corporate elements in ICANN's structure, the Berkman team also took into account developments in the corporate field, where the transfer of public-sector functions to the private sector is often accompanied by imposing reporting and other transparency obligations, as well as consumer-oriented information requirements. While these and other information requirements primarily lead to information flows between corporations and regulatory bodies, in many fields corporations have developed active information policies to ensure direct communication with stakeholder constituencies.

Building upon this analytical framework, three types of transparency mechanisms can be distinguished:

- *Active transparency*: ICANN actively makes information and documents publicly available on its website.
- *Passive transparency*: ICANN provides documents upon request from members of the general public.
- *Participatory transparency*: ICANN involves the stakeholders and the general public in its decision-making processes by eliciting comments and inviting consultation, and thus shares and receives information.

Based upon the case studies and interviews, the Berkman team identified the functional role of transparency as an additional dimension for the analysis of transparency obligations as discussed later in this report. These transparency functions include:

- *Institutional transparency*: transparency regarding the processes and structures of ICANN, how various organizational elements interact, and what their respective responsibilities are.
- *Topical transparency*: the agenda, how the agenda is defined, and what falls within the scope of ICANN activities.
- *Decision-making transparency*: how decisions at ICANN are made.
- *Evidentiary transparency*: what is the evidentiary basis for decisions and how is this established.
- *Consultative transparency*: how outside input and the perspectives of constituent bodies and interested parties are incorporated into ICANN decision-making processes.

All of these transparency functions bear on the framing and performance of active transparency. Effective and clear communication about what ICANN is and does should be included among ICANN's responsibilities. These functions also bear on the performance of passive transparency. ICANN's ability to clearly answer these questions is an important measure of its openness and responsiveness. Additionally, making these processes and structures transparent and thereby accessible is an essential prerequisite for effective public participation.

3. Public Participation

The processes by which ICANN invites, summarizes, and ultimately internalizes, reflects, or rejects public input are intimately connected to the dimensions of transparency outlined in the previous section, with a particular focus on participatory transparency. Furthermore, the efficacy, timeliness, and demonstrable impact of such inputs on Board decision-making processes are undergirded by mechanisms of institutional transparency, as described above.

As enshrined in ICANN’s founding documents and reiterated by the AoC, effective public participation is a foundational dimension of accountability, as it ensures that the Board and senior staff perform functions in line with the wishes and expectations of the ICANN community.

A review of the literature, case studies, and public inputs suggests significant advances in public participation processes in recent years and a number of promising initiatives to further enhance the traceability and visibility of inputs in ICANN activities and decisions. However, as numerous scholars have noted, public participation cannot be ICANN’s “chief legitimizing principle,” and may not adequately compensate for the absence of more direct or “harder” forms of accountability.^{xviii} Others argue that the correlation between decision-making accountability and public participation could be vastly improved via capacity-building and enhancing the ability of the public to meaningfully and effectively engage in technical policy decisions. As an accountability measure, public participation processes must therefore support the ability of civil society to: “(i) understand and critique technical issues, (ii) (gain) sufficient knowledge on the given structures and potentials, and (iii) (develop) sufficient skills to negotiate with more powerful actors.”^{xix}

Public participation theories also raise questions regarding the ultimate goals of such processes, and the appropriate balance between a theory of participation that is focused on soliciting an ever-broadening and diverse set of public inputs and a strategy that is focused on garnering and utilizing the most useful set of those inputs.^{xx} ICANN’s particular definition and approach to public participation—the efficacy of which is closely linked to transparency—also raises tensions. Are public input processes intended to enable stakeholders to observe, in a timely, transparent, and easily accessible way, the details and processes that factor into a decision? Or is the goal better defined as facilitating the capacity to “affect, in a meaningful fashion” that decision?^{xxi}

This review is not intended to resolve those competing theories, nor to determine where they are truly at odds and what mechanisms might facilitate their coming together at different stages of the public input process. Rather, the analysis is focused on the visibility and traceability of an individual input from “end to end” (from initial input to relevant Board decision or ICANN activity), whether directly, as an individual’s input to public comments or forums, or indirectly, via the channels offered by the different bodies that feed into the Board’s decision-making processes. Confronting perceptions of community members that they are not actually “being heard” is fundamental to the legitimacy of public participation processes and to their intersection with effective transparency and accountability.

4. Corporate Governance

Paragraph 9.1 of the AoC makes several references that are best subsumed under the umbrella term “corporate governance.” Governance of ICANN activities spans a complex and diverse set of functional activities, ranging from strictly technical activities to the ambitious international effort to seek consensus on policy questions of global relevance. If considered separately, each of the activities undertaken at ICANN may be best supported by its own distinct model of corporate governance. Yet ICANN must reconcile all of these activities and their governance under one framework and address the associated tradeoffs.

Decisions and structures at ICANN must not only take into account the efficiency and timeliness of decisions and be responsive to ICANN stakeholders but also achieve the highest standards of transparency and accountability, while operating within the legal restrictions associated with ICANN's status as a nonprofit corporation in the state of California. Given its legal status, the Board bears ultimate responsibility over the actions of ICANN and is at the center of questions related to corporate governance, including the composition and skill set of the Board, the selection of Board members, the allocation of responsibilities and relationship between the Board and the staff, and the level of transparency associated with Board and staff activities, communication and deliberation. Perhaps the most contentious of the ICANN's activities is making policy decisions related to the allocation of new domain names. These decisions inevitably result in winners and losers, and the benefits and costs are not easily compared. In such cases, the ICANN Board is charged with weighing these disparate benefits and costs, which map disproportionately across different stakeholder groups. When successful at bridging and reconciling the needs of a diverse set of stakeholders, ICANN succeeds by playing an effective conflict resolution role. Lack of success may often have more to do with the structure of the dispute rather than the effectiveness of ICANN as an arbitrator. Because of the contentious nature of many ICANN decisions, the losers often level charges against the decision-making process, while the winners are not apt to point out any procedural shortcomings or factual gaps. For ICANN, both perception and substance weigh on the legitimacy of its decisions, and the governance challenge must address both.

While structure and procedures are important, so too is a culture of good governance. The success of the measures suggested in this report depend on the buy-in of the staff and Board of ICANN. A number of the suggestions presented later in this report relate to improving the abilities of the staff and Board to implement governance principles in their daily practice.

C. Research Questions

With this conceptual framing in mind, the research questions that this report seeks to answer are as follows:

Based on case study analysis and a review of a diverse set of materials—including public comments, ICANN documents, academic studies, media reports, expert opinions, and interviews—what key issues emerge related to ICANN's mechanisms for public input, accountability, and transparency?

Which of these issues have been or can be addressed, and by what means, in order to improve the mechanisms for public input, accountability, and transparency within the framework of the AoC?

D. Research Methodology

In accordance with the methodological principles outlined in the Services Agreement, which makes explicit reference to the case study method and requires any recommendations to be based on facts, the Berkman team has combined a number of qualitative research methodologies. These efforts include, among other things, primary research including various structured (questionnaire-based) interviews with experts and stakeholder representatives, secondary research of extensive Web and database searches, an exploratory English-language literature review, and the drafting of case studies. The case studies have played a particularly important role in the Berkman team's work, given its mandate described in the Services Agreement. The following methods have been applied in this specific context:

- **Review of materials:** Following the multi-step methodological approach outlined in the Services Agreement, the draft case studies are structured as qualitative, exploratory case studies and based on an extensive review of a diverse range of publicly available materials, including public comments, ICANN documents, academic studies, media reports, and expert opinions. The review started with a mapping of public submissions from January 2008 to June 17, 2010 and included, among other things, extensive Web and database searches aimed at identifying case-specific materials from various sources, including ICANN's website. Each case study provides detailed references to such specific materials in the footnotes.
- **Interviews:** In addition to publicly available sources, the draft case studies are informed by observations of the selected group of stakeholders and experts who were interviewed in the course of developing the case examples. These interviews provide an important supplementary factual basis for this report because they convey observations regarding the perception and interpretation of ICANN decisions by the broader community. The statements of interviewees do not reflect the opinions or conclusions of the Berkman team. The interviews were conducted on the condition of confidentiality; in the case of the questionnaires to GAC members, respondents were asked to specify whether they wished their answers to remain confidential. All ICANN staff interviews were coordinated internally within ICANN and the responses to the questionnaires were aggregated by ICANN's Advisor to the President, Denise Michel. ICANN's General Counsel, John Jeffrey attended the phone interviews with ICANN staff members at his own request. For more details, see Appendix B.

The review of publicly available materials, case studies, and interviews have been supplemented by a series of internal memoranda written by faculty members looking into public participation mechanisms, transparency issues, corporate governance issues, and the Independent Review Panel mechanism. All materials (except the confidential interviews) have been collected and will be made publicly available in January 2011 in order to support and encourage future research efforts.

III. Issues Identification and Issue Clusters

A. Approach

The mandate mentioned above, which requires the Berkman team to provide recommendations that are exclusively fact-based, is interpreted in the context of this final report such that:

issue identification must be based on facts and observations;

issue analysis must take into account the current context in which ICANN operates, including ICANN's institutional framework (e.g., applicable provisions in the Bylaws and policies); and that

considerations and recommendations are supported by these observations, and also take into account ICANN's previous efforts aimed at addressing the respective issues.

The case studies summarized in the following section play a key role within this multi-pronged fact-based approach.^{xxii} They have guided the identification of key issues, including challenges and opportunities, as well as the discussion of possible improvements. In addition to the case studies, we have identified and analyzed issues put forward based on a review of publicly available materials, interviews, and the internal policy-oriented memoranda.^{xxiii}

B. Summaries of Case Studies

1. The Introduction of New gTLDs

In June of 2008, the ICANN Board unanimously adopted the GNSO's policy recommendations for the introduction of new generic top-level domain names (gTLDs) and resolved to begin work on the implementation of a new gTLD application process. The new program, initially scheduled to launch in September 2009, is still under development. The proposed process has been fraught with controversy, including criticisms over its delays, whether ICANN's method of publishing and incorporating public comments is sufficiently transparent and responsive, and whether new gTLDs should even exist. Critics have also raised a number of specific substantive issues, including the Expression of Interest proposal, trademark protection, the role of the Governmental Advisory Committee, the proposed morality and public order standard for objections to new gTLDs, and vertical integration.

2. The .xxx Domain Case and ICANN Decision-Making Processes

In 2000, ICANN initiated a “proof of concept” stage to begin the adoption of new generic TLDs. ICM Registry unsuccessfully proposed .xxx and .kids. In 2003, after some exchanges with ICANN regarding its first proposal, ICM submitted a revised bid for the creation of .xxx for ICANN’s call for sponsored TLD proposals. The ICANN Board adopted a resolution to begin negotiating the commercial and technical terms of a registry agreement with ICM in June 2005; however, under pressure from a variety of constituencies, ICANN reversed its decision and denied ICM’s proposal in 2007. ICM filed a request for Independent Review in 2008—the first such request to be heard before the Independent Review Panel (IRP) in ICANN’s history. In 2010, a three-person panel of arbiters (which comprised the IRP) decided in favor of ICM.

This case study outlines the key events surrounding the .xxx proposals from 2000 to June 17, 2010, without re-examining the merits of the application itself. This chronology is designed to examine two specific dimensions of the .xxx process: (1) the role of the Independent Review Panel (IRP), and (2) the interaction between the Governmental Advisory Committee (GAC) and the ICANN Board during ICANN’s evaluation of the ICM .xxx proposal, registry agreement negotiations with ICM, and ultimate rejection of ICM’s application.

3. The DNS-CERT Proposal

ICANN’s DNS-CERT proposal advocates the creation of an organization to analyze, assess, and respond to global DNS security threats. This case study begins with an overview of ICANN’s DNS security mandate as described in its Memorandum of Understanding with the United States Department of Commerce, its Bylaws, and its 2009 AoC. A summary of the DNS-CERT proposal follows, based on ICANN’s “Proposed Strategic Initiatives for DNS Security, Stability, and Resiliency” and its “DNS-CERT Business Case.” The study then traces the origins of the controversy surrounding the DNS-CERT proposal, beginning with ICANN’s publication of the proposal and the remarks made in Nairobi by its CEO, Rod Beckstrom, and the controversy’s development through public comments, correspondence, and material gathered in interviews with the DNS community.

The review of these materials suggests three key issues underlying the controversy: (1) the merits and clarity of ICANN’s assessment of the current state of DNS security and its proposal for the creation of a centralized CERT; (2) varying interpretations of ICANN’s DNS security mandate; and (3) procedural issues related to openness, transparency, public input, and stakeholder participation.

C. Issue Clusters

The analysis of the three case studies and additional case examples, together with an in-depth review of various other materials (including ICANN’s policies), suggests a diverse range of issues that, to varying degrees, are associated with ICANN’s mechanisms for accountability, transparency, public participation, and corporate governance. Some of these issues are structural, while other concerns are related to the substance of ICANN’s work; still others relate to the ways in which decisions are made or information flows. The following typology provides one way to cluster such issues. Admittedly, categories are

made, not found—thus, several different ways exist to map the issues that have been identified in the review of the above-mentioned materials. The following three categories can be distinguished:

- *Structural issues*: Structural issues are related to what one might describe as the “DNA” of ICANN as it manifests itself today. This category includes not only ICANN’s legal structures as a California-based nonprofit corporation and its mission statement, but also its basic organizational structure: the different bodies, such as the Board of Directors, Ombudsman, Independent Review Panel, and Supporting Organizations, as well as the ways in which the Bylaws define the interfaces among these bodies.
- *Procedural issues*: Analytically distinct from structural issues are issues related to procedures within a given institutional framework. Issues in this category include concerns about the ways in which decisions are made within a given structure (e.g., clarity, timeliness, or predictability of decisions) and when and how information flows, and at what quality, between the different ICANN constituencies and bodies. The interaction between the GAC and the Board is one example in this category; the question of (active) disclosure of information or the ways in which exceptions are administered in the context of disclosure requests is another.
- *Substantive issues*: A third category of issues concerns the substance of ICANN activities and decisions. Typically, such issues concern the outcomes and merits of ICANN’s decisions. An example is the disagreement about the ways in which the ICANN Board evaluates certain risks (e.g., in the context of the current state of DNS security).

These three clusters are analytically distinct but may interact with each other in multiple ways. The structural framework (how ICANN is set up), for instance, shapes the need for and character of procedures, which in turn have an important impact on the outcomes of decisions. The case studies and the review of the other materials suggest that the three types of issues are almost inextricably linked. The critique of a particular decision by the ICANN Board, for instance, may be rooted in a different take on the substance, but then expressed by way of claims about process deficiencies (e.g., lack of consideration of public input) or with reference to ICANN’s foundation (e.g., its hybrid nature).

Although the clusters interact in multiple ways, it is important to separate them in order to identify, analyze, and address the underlying challenges. This report focuses primarily on procedural issues, although it also addresses selected structural issues. Substantive issues are flagged in the context of the case studies but excluded from further analysis since these fall outside of the scope of the Services Agreement. It is important to note that issues identified across the three clusters include contested issues as well as issues of perception. To the extent that such issues have crystallized and are expressed in the materials the Berkman team has reviewed, they need to be addressed in appropriate ways, for example,

by balancing information asymmetries in case of “mere” perception issues, regardless of their substantive merits.

D. Selection and Overview of Key Issues

Within each cluster, the Berkman team has selected a set of key issues. Such a reduction of complexity requires qualitative judgments. For this report, the criteria for these judgments (or “filters”) are derived from paragraph 9.1 of the AoC. With these qualitative guidelines in mind, the identification and selection of issues has been informed by the interviews conducted by the Berkman team and has been shaped, but not determined, by helpful interactions with ATRT.

Based on these interactions, and looking at the issues mentioned in the previous section through the lens of paragraph 9.1 of the AoC, the following cluster matrix emerges:

	Structural	Procedural	Substantive
Transparency (cross-sectional): AoC 9.1	Transparency audits	Information requests Exemptions Information design (active transparency)	OUTSIDE OF SCOPE OF REVIEW
Public Participation, including public input mechanisms (cross-sectional): AoC 9.1 and 9.1(c)	<ul style="list-style-type: none"> • Incorporating public input into ICANN decisions • Need for enhanced cross-community dialogue 	<ul style="list-style-type: none"> • Eliciting Public Input • Aggregating and Responding to Public Input 	
Board Governance, including the IRP and selected GAC aspects: AoC 9.1, 9.1(a–b)	<ul style="list-style-type: none"> • Board composition • Independent review of Board decisions 	<ul style="list-style-type: none"> • Transparency of Board decision making • Board-Staff interaction • Definition of GAC advice • Board-GAC interaction 	

The following section addresses all of these key issues, starting with the cross-sectional thematic areas as set forth in paragraph 9.1 of the AoC—transparency and public participation (including public input mechanisms)—followed by more specific issues related to Board governance and role of the GAC as specified in 9.1 (a–b) of the AoC.

IV. Key Issues Analysis and Discussion

The exploration of the key issues mapped above adopts the following scheme: in a first step, each cluster of issues is put into context by providing some general considerations, which may address conceptual questions or introduce bigger picture observations and definitional elements. In a second step, individual issues within each cluster will be explored one by one. The exploration starts with a concise definition of the issue, supported by factual observations and followed by a discussion section, which feed into concise recommendations.

It is important to understand that this issue analysis and discussion is the summary of a much larger, in-depth research effort which includes several hundred pages of case studies, case examples, memoranda, a literature review, charts of public submissions, and many other documents. Some of these materials are included in the Appendices; others will be made available online in the future.

A. Transparency

1. General Considerations

ICANN's heavy reliance on transparency for establishing and maintaining accountability is an issue that came up repeatedly in our research and interviews and is central to all of the observations and recommendations in this report. This is partially a reflection of ICANN's unusual institutional standing and the associated limits to the application of alternative accountability mechanisms.^{xxiv} It is also a reflection of ICANN's international fiduciary obligations and its public interest orientation to serve the demands and needs of the international Internet community.

This reliance on transparency also derives from the necessity of balancing the needs and interests of a diverse set of stakeholders. ICANN's decisions, by design, often disproportionately favor and disfavor different segments of ICANN's constituency. The issue of transparency-based accountability is most salient when considering difficult decisions made at the Board level, which often requires balancing a complex set of incommensurable facts and is frequently accompanied by substantial uncertainty. This key dynamic is introduced in this section and carried through to the sections on participation and corporate governance; distinct but related recommendations are offered in all three sections. From a longer-term perspective and beyond the specific review framework of the AoC, the Berkman team suggests working towards a comprehensive concept of transparency grounded in a transparency- and participation-oriented management approach to information and document creation, processing and communication, and ultimately integrating these different facets of transparency into a comprehensive adjusted institutional communication concept.

Transparency is a cross-sectional issue that plays a specific role in accountability, public participation, corporate governance and decision making. The following section addresses ICANN's transparency policies and practices. The particular relationship of transparency to

public participation is addressed in a latter section; the influence of transparency in decision making is taken up separately in the corporate governance section.

2. Issue-Specific Observations and Recommendations

2.1 Information Design

(a) Issues

ICANN publishes a great amount of information on its website. Comments suggest, however, that this is not a sufficient approach to active transparency. Several observers have pointed out that the information available is not always structured in ways that are helpful to the community and in some instances may even cause “information overload.”

(b) Observations

ICANN proactively publishes certain categories of information considered to be of key importance for the ICANN process on its website. Over 20 different categories of publicly available information are listed in the Documentary Information Disclosure Policy (DIDP).^{xxv} Interviewees expressed concerns that ICANN publishes an avalanche of details but fails to make information public at a higher level, for example by failing to state clearly its goals and priorities and the rationale behind major Board decisions. Interviewees suggested that clear, regular progress reports stating what decisions have been made and why, what the upcoming priorities are, and what ICANN hopes to accomplish, would help improve transparency.

ICANN has taken action to address some of the community’s concerns. In July 2006, ICANN announced it would be revamping its website to increase accessibility and better meet users’ needs.^{xxvi} Several changes have since been introduced, including search functionality and RSS feeds and a redesign of the site’s front page. In June 2009, ICANN conducted a usability survey to determine what additional changes needed to be made.^{xxvii} In October 2009, ICANN revealed plans for a full redesign on its blog, including screenshots, results from the survey, and an independent site audit.^{xxviii} This redesign has not yet been implemented, but is still a priority item on the ICANN staff agenda, according to interviewees. In addition, ICANN staff have experimented with a wiki format that includes “searchable wiki pages to provide the public with easy-to-access information on every substantive resolution approved by the Board of Directors.”^{xxix} According to interviewees, this process will soon be completed. The wiki currently presents Board resolutions from 2009 by category (e.g., gTLDs or Administration & Budget), though it is not editable or interactive, contrary to what one might expect from a wiki (the wiki references an “Add Comment” box that appears to be missing).

(c) Discussion

The review of policies and practices demonstrates that ICANN’s active transparency approach has been largely based on providing documents as lists of links on its website, with navigation tools such as topical clusters, keywords, and search. Such information design choices have an impact on transparency. The effective accessibility of the material to the interested public at large as well as occasional and new users—as opposed to

specialized and experienced ICANN professionals—needs improvement in order to better perform the various information functions identified above.

ICANN can further improve its information and document handling by adopting procedures and best practices from the public and corporate sectors. For example, incoming and internally generated documents could be tagged to denote their level of public accessibility (classification). These tags would then be regularly reviewed within the life cycle of each document. This would help to build an experience-based disclosure policy and facilitate the flow and accessibility of information in the context of active, passive, and participatory transparency.

Furthermore, ICANN would benefit from an upgrade and redesign of its website in a way that takes into account all the previously described dimensions of transparency. Other tools and design elements may include: document tagging techniques; a clear inventory of documents provided upon ICANN's initiative; documents that are structured in a user-friendly manner; clarifying and better communicating the procedures for requesting and obtaining unpublished information, such as a flowchart-like description of the conditions and procedures, including review procedures; a diagrammatic *general description* of participatory procedures related to decision making; and a specific flow chart with an up-to-date map of the participatory procedures that are currently underway. Upgrading the website is not only a question of aesthetics; it is a precondition to effective transparency.

(d) Recommendations

Improve information and document handling by adopting procedures and best practices from the public and corporate sectors.

Redesign ICANN's website to promote, facilitate, and leverage the active, passive, and participatory aspects of transparency.

2.2 DIDP Requests (information/document requests from ICANN by members of the general public)

(a) Issues

While ICANN's transparency framework includes the possibility to request information that is not made publicly available, the conditions and procedures of passive transparency are not clearly communicated to the community. Furthermore, the limitations set forth in the procedures for reviewing decisions to deny information requests may have a negative impact on transparency and accountability.

(b) Observations

Any member of the public may request information that is not made publicly available (passive transparency). These requests are embedded in a special procedure set forth in ICANN's Documentary Information Disclosure Policy (DIDP). According to the DIDP, ICANN is not required to compile information summaries or respond to requests for information that

is already publicly available. Both the DIDP and the ICANN Bylaws state that translations of documents may be possible.^{xxx}

Comprehensive statistics and other information—as part of a transparency audit—about the quality, frequency, and responses to information requests are not publicly available. According to interviews and a review of various materials, only a small number of *formal* DIDP requests have been filed since the mechanism has been introduced, despite anecdotal evidence that suggests a larger number of *informal* requests for more information. It might also suggest that the current mechanism for communicating the availability of this information request facility is insufficient. The responses to such requests are made available on ICANN’s website; of 13 formal requests that have received responses, 7 have been fully or partially denied based on various exemptions listed in the DIDP.^{xxxi}

(c) Discussion

A review of ICANN’s passive transparency policies identifies two main problem areas that deserve further investigation. First, the ways in which the conditions and procedures of passive transparency are communicated; and second, the limitations set forth in the review procedures for information requests that are not approved.

In particular, ICANN’s website does not provide clear information on this alternative method of obtaining information from ICANN. A clear description of the conditions and procedures to access information that ICANN has not otherwise published or made available would make an important contribution to passive transparency. Regarding the second aspect, if a public request for information is refused by ICANN, the DIDP states that a requestor may appeal the denial through the Reconsideration Request procedures or Independent Review procedures *to the extent applicable*. However, contrary to public-sector practices where the mere refusal of access is sufficient to request a review by either a court or another mechanism, both the Reconsideration Request and Independent Review appeal procedures are only available to persons who have been “materially affected” by an adverse decision. (This reference leads to a problem in interpreting what is meant by “materially affected,” especially in the light of Article IV Section 2.1 of the Bylaws versus Section 2.2, which states more generally that those who “have been adversely affected by” an ICANN action or inaction may request a review.)

(d) Recommendations

Provide clear and easily accessible information about the terms and procedures to obtain information from ICANN that has not already been made publicly available.

Develop less restrictive and more independent mechanisms for the review of cases where information requests are refused.

2.3 Exemptions

(a) Issues

ICANN's transparency commitment is subject to a significant set of exemptions that apply to active, passive, and participatory transparency. Due to the lack of a transparency audit, it is difficult to assess the use of the exemptions. However, the review of the exemption policies leads to several concerns, including concerns related to specific exemptions and the broadness of a "catch-all" transparency exemption.

(b) Observations

The set of transparency exemptions is listed in the DIDP under the title "Defined Conditions for Non-Disclosure." According to these rules there is no or only limited transparency where ICANN has "identified . . . conditions for the nondisclosure of information."^{xxxii} Such conditions comprise about a dozen categories of information, including information that has been exchanged with governments or international organizations under the expectation of confidentiality; internal information and information exchanged with entities with which ICANN is cooperating that would compromise or would be likely to compromise ICANN's internal decision-making procedures; confidential business information and/or internal policies and procedures; and drafts.

ICANN may override these exemptions "under the particular circumstances [in which] the public interest in disclosing the information outweighs the harm that may be caused by such disclosure."^{xxxiii} For areas outside the exemptions listed in the above-mentioned document, ICANN installs an additional "catch-all" exemption: "ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information."^{xxxiv}

(c) Discussion

Although ICANN's hybrid organizational structure differentiates it from public entities, ICANN's practices and procedures for deciding which information to actively share with the public or for denying information requests can still be compared to other transparency regimes, including a set of representative freedom of information laws. This is not meant to imply that such laws apply in the same legal manner as they would apply to public or governmental entities. Rather, ICANN, the GAC, and external observers have agreed that the public sector provides a useful model for evaluating ICANN's information policies. An in-depth comparison of ICANN's transparency exemptions with a set of selected international freedom of information regimes leads to the conclusion that ICANN's list of exemptions is fairly comprehensive, while each of the exemptions is described in rather general terms. This observation particularly applies to exemptions protecting drafts and internal decision-making processes.

Some of ICANN's exemptions stand out as singular in their broadness, such as protecting internal policies and procedures, the exclusion of frivolous use, and financial information not publicly disclosed, and seem to be driven by a defensive approach towards transparency. At least some of these exemptions, in particular the protection of internal

deliberation processes and the role of drafts, should be narrowed in order to strengthen ICANN’s transparency, especially where decision making is concerned.

The overall “public interest override,” which is itself quite general, may provide an opportunity to counterbalance the broadness of the exemptions, if used properly. There is no information to evaluate the use of this override due to the lack of a transparency audit. The “harms test” override, however, with which ICANN gives itself authority to withhold information even when none of the exemptions apply, may obviate the purpose of formulating exemption policies altogether.

(d) Recommendation

Narrow transparency exemptions regarding internal decision-making processes and drafts. Eliminate the catch-all transparency exemption in the DIDP.

2.4 Transparency Audit

(a) Issues

The lack of a comprehensive audit of ICANN’s information activities makes it difficult to assess its practices across active, passive, and participatory transparency.

(b) Observations

The 2007 One World Trust review describes an ICANN initiative “to conduct an annual audit of standards of accountability and transparency, including an audit of the commitments made in these Management Operating Principles . . . by an external party” with the results of the audit “published in the Annual Report.”^{xxxv} The last annual report does not contain such an audit.

(c) Discussion

ICANN currently lacks an up-to-date, publicly available transparency audit. This makes it difficult to make substantive assessments of ICANN’s practices as they relate to active, passive, and participatory transparency. The lack of empirical material (e.g., on the time delays in the publication of documents) currently forces reviewers to look for conceptual, structural, and procedural deficiencies in order to identify if, where, and how there are inconsistencies between guiding policies and practices. A comprehensive audit, in contrast, would allow for periodic, facts-based, internal and external reviewing and benchmarking; ICANN could greatly benefit from this when further improving its information policies. Such a transparency audit needs to be governed by clear policies and processes, which set forth the categories of information pertinent to such an audit, among other things. Following an earlier recommendation by the One World Trust review, the transparency audit should be published in the Annual Report. In addition, the Berkman team suggests that the underlying data be released as part of the Dashboard/ICANN Performance Metrics.^{xxxvi}

(d) Recommendation

Create and implement policies and processes for conducting and communicating regular transparency audits.

B. Public Participation***1. General Considerations***

Public participation is central to ICANN’s identity. The participatory ethos of the early Internet, exemplified by democratic and consensus-driven technical bodies, is embedded in ICANN’s DNA, from its organizational structure and early history to its stated principles.^{xxxvii} An ambitious “experiment in democratic governance on a global scale,” ICANN seeks to include the public—the global Internet user community, the private sector, governments, and other stakeholders—in its decision-making processes.^{xxxviii}

ICANN’s commitment to public participation is clearly stated in its Bylaws: the fourth of its core values is “seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision making.”^{xxxix} Article III requires ICANN to provide notice and allow for public comment on any policies under Board consideration “that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges.”^{xl} These basic commitments are implemented and further specified in ICANN’s Accountability and Transparency Framework & Principles^{xli} and Document Publication Operational Policy.^{xlii} In the AoC, ICANN has committed to “maintain and improve robust mechanisms for public input . . . to ensure that the outcomes of its decision-making process will reflect the public interest and be accountable to all stakeholders.”^{xliii} In recent years, ICANN has embarked on a number of projects and initiatives aimed at improving relevant opportunities and mechanisms. The following actions, among others, are noteworthy:

ICANN’s “New Bylaws,” approved on December 15, 2002, introduced a staff position responsible for “coordinating the various aspects of public participation in ICANN, including the website and various other means of communicating with and receiving input from the general community of Internet users.”^{xliv}

The Board Public Participation Committee, created in November 2008, enshrines ICANN’s commitment to effective public input at the Board level. In 2010 it contributed to the development of a more standardized approach to remote participation in the ICANN meeting in Nairobi^{xlv} and held two online information sessions on ICANN’s plans for public participation. The committee’s next goals along similar lines are outlined in its plan for 2010–2011.^{xlvi}

Another ongoing process includes the work of the Policy Development Process Work Team (PDP-WT), initiated in 2008 as part of the GNSO Improvements process. The team’s Initial Report, published in May 2010, contains proposals regarding

operating principles, rules and procedures for a new policy development process. The anticipated next step for the PDP-WT will focus on an implementation and transition plan for their recommendations.

Also within the GNSO, the Communication and Coordination Team (CCT)—chartered in March 2009—is tasked with improving the GNSO’s website and its ability to solicit meaningful public input, among other things.^{xlvii} In June 2010, the GNSO Council approved the CCT’s final report and directed GNSO staff to begin implementing its recommendations.^{xlviii}

Despite these marked and generally acknowledged process advances, however, stakeholders and scholars alike suggest that the practical impact of public participation on actual Board decisions remains limited. While ICANN gets high marks regarding the overall trajectory of its public participation processes, increased visibility and traceability of an individual input from “end to end” (from initial input to relevant Board decision or ICANN activity) may help to confront pervasive perceptions of not actually “being heard.” Early engagement with relevant constituencies and clearer timelines for inputs may also facilitate this process.

Continued experimentation with new methods and channels for soliciting, summarizing and reflecting public input, can also present new opportunities for broader and more efficient public participation processes. ICANN’s use of a survey tool as part of its consultation process for the development of its July 2010–June 2013 Strategic Plan is a particularly salient example, as is the trial approach to inputs into the Draft Applicant Guidebook.^{xlix} Emerging models from other organizations, such as the EU Rulemaking and Wikimedia Open Strategic Planning, may also provide useful analogs to draw upon.^l Open innovation literature and principles also provide useful frameworks; while there are both benefits and trade-offs associated with public participation, effective participation practices can confer legitimacy on and support for decision-making processes and results, if participants feel they have been fairly heard.^{li}

Many of our key findings from both the case studies and the interviews focus on direct mechanisms for community representation, such as input to public comments and public forums. However, these recommendations also have relevance for “indirect representation”—an individual’s input via the various supporting and advisory bodies—and in particular, through stakeholder groups in the GNSO Council. Findings related to the visibility and traceability of an individual input must also apply to these channels. Against this backdrop, the following issues analysis focuses largely on public participation in terms of individuals and entities providing comments, with a smaller focus on representation by, or direct involvement in, various supporting organization and advisory committee activities. The Berkman team’s analysis centers on the primary steps that channel an individual’s contribution: 1) eliciting input; 2) aggregating and responding to it; and 3) incorporating it into Board decisions. In the final recommendation, we focus on early engagement with various constituencies via cross-community dialogue.

2. Issue-Specific Observations and Recommendations

2.1 Eliciting Public Input

(a) Issues

Issues related to the volume, structure, and timing of ICANN’s forums for public input can be a barrier to effective and meaningful participation. Lack of consistency regarding the accessibility (in both language and clarity) and structure (ease of navigation) of participation mechanisms can also prevent public input.

(b) Observations

As noted above, ICANN has made a number of improvements in the opportunities it offers for public input. Interviewees indicated that the new gTLD process has been significantly more consultative than previous ICANN policy decisions. ICANN has also begun offering distance learning regarding key ICANN policy initiatives; its fellows program is a noted outreach priority of the CEO.^{lii} Considerable progress has been made to improve remote participation options for both public forums and other meetings via chat rooms and live audio feeds.^{liii}

Despite these advances, interviewees expressed concerns that ICANN’s public meetings are less inclusive than they should be—locations are announced too late to allow attendees and organizers to plan ahead, and participants operate in “silos” without sufficient cross-community discussion. Interviewees also expressed concerns that ICANN does not allow for “casual involvement”: those who may be interested in one aspect of ICANN but are unable to commit substantial amounts of time to the process may be too overwhelmed by the complexity of ICANN’s policy decisions and public participation processes to get involved. In reflecting on his term as ICANN’s General Manager of Public Participation, Kieren McCarthy noted on his blog that he wished he had recommended that ICANN develop “a range of simpler input mechanisms—such as polls—that are not reliant on people reading whole reports and responding to specific wording” in order to encourage increased public participation.^{liv}

(c) Discussion

Additional improvements in public participation processes must focus on lowering the barriers for constructive contributions to ICANN. Concerns regarding timing of comment forums, the number of substantive issues that are posted simultaneously, and how widely these forums are publicized among diverse community members may be addressed by establishing standards for timing, structure, and outreach. These need not be exhaustive. Rather, they would present some sense of a consistent baseline (overarching timeframe for the process; channels of distribution; protocols for comment summarization; availability of translations) and some menu of options (e.g., possible tools, perhaps tailored to the type and urgency of the decision). The conditions or different categories of policy decisions that might warrant public input might also be differentiated.^{lv}

While ICANN staff noted that they are investigating innovative new tools for public participation, including various social media and survey documents, to date they have not

been widely tested. Multiple interviewees commented on the potential of threaded strains of dialogue, which would allow conversations in the comment forums to be easily tracked and observed by participants. One possible new mechanism might be allowing community members to add threaded comments directly to specific sections of a document or proposal. Multi-round comments periods, where commentators are explicitly asked to comment on prior comments, would also encourage members of the public to engage with each others' arguments and positions.

(d) Recommendations

Establish and observe baseline standards for the structure and timing of public comment periods. Differentiate between the public input requirements for different types of ICANN activities and decisions (e.g., requests for information, policy-making proposals, draft documents) and create standards accordingly.

Ensure that there is adequate coordination by ICANN staff and constituent bodies of the different comment periods to better address the volume and timing of public comment periods.

Solicit public input and structure comment periods with tools that better foster dialogue among stakeholders and with the ICANN staff; explore, evaluate and implement such mechanisms in order to develop conversations between individuals, their constituencies, the staff, and ultimately the Board.

Continue to improve opportunities to participate in ICANN meetings by announcing the specific locations of these meeting further in advance.

Continue to improve the quality and timely publication of translations of relevant materials and comments. Explore methods of engaging stakeholders and volunteers in translation.

2.2 Aggregating and Responding to Public Input

(a) Issues

ICANN staff members are tasked with interpreting, processing and organizing comments, but there appears to be no consistent practice, methodology, or timetable for this process. Standards that do exist are not evident to external participants. Feedback on public participation is weak; it is difficult, if not impossible, for contributors to know how and when comments have been aggregated, summarized and incorporated into decisions.

(b) Observations

The summarization and analysis of community inputs vary across different decisions and forums. Multiple challenges exist regarding the "right process" for accurately analyzing public comments. First, it is difficult to gauge public sentiment based on public comments. This is complicated by letter-writing campaigns or particularly zealous contributors.

Individual comments may be more useful or implementable than common viewpoints. Second, the volume, length and quality of public comments vary wildly. Furthermore, some comments are submitted to the incorrect forum; comments that would better suit topic-specific forums (for example, string contention procedures in the new gTLD program) are submitted to general forums (for example, the comment forum for the entire Draft Applicant Guidebook).

While acknowledging the difficulty of accurately analyzing the range of public inputs, interviewees and submissions to the ATRT expressed concerns that many current summaries omit certain comments, and that comments are unfairly weighted (for example, a form letter signed by several trademark organizations may count as multiple individual comments, while a form letter signed by multiple individuals may only count as a single comment). Some interviewees believe analyses of public comments were oversimplified.

Despite these difficulties, several of those interviewed pointed to the marked improvements in incorporating public input and communicating ICANN’s response back to the community in the more recent rounds of revisions to the new gTLD Draft Applicant Guidebook (DAG).

(c) Discussion

Although there can be no exact science for the summarization of public comments, developing and communicating baseline standards for the process can help strengthen the legitimacy of the final analysis. Guidelines, more defined templates, and explicit channels for public input can help community members to be clear on the flow of their contributions.

ICANN’s practice of providing a summary/analysis along with a full archive of public comments is an important means of showing that comments have been received and considered. However, opportunities to track one’s comments along the lifecycle of a decision-making process could be improved. Engaging the “crowd”—with well defined rules for participation in order to prevent abuse—to help to categorize, filter, interpret and aggregate comments, point to redundancies, and guide participants to resources or answers may ease the burden on ICANN staff and enhance the perception that public inputs are being considered.^{lvi}

The use of new processes to bring public input to bear on key policy decisions is an opportunity to advance the efficacy of public participation. For example, in the context of the new gTLD program, a new public comment analysis model was trialed in which summary/analysis documents are structured by categories related to the different proposals, in order to develop amendments to the DAG. Sections of the DAG that have been changed in response to comments are noted in the footnotes. Similar options could be tailored according the particular objectives of the policy development process in question.

(d) Recommendations

Develop and communicate baseline procedures and guidelines for summarizing and analyzing public comments. Continue to provide support and training for staff in their use.

Continue to experiment with different public input response mechanisms; explore, evaluate, and establish mechanisms to improve the ability of stakeholders to track the life-cycle of their input into ICANN policy-making and decision-making processes. Such efforts should be undertaken with clear goals in mind, towards enhancing the efficiency of existing processes, or addressing key gaps or improvements, under well-defined and well-communicated conditions.

Explore opportunities and tools to engage community members in the summarization and analysis of comments.

2.3 Incorporating Public Input into ICANN decisions

(a) Issues

Despite the multiple opportunities for public input regarding policy decisions, community members have expressed concerns that it is difficult for them to know how and when their comments have been incorporated and reflected in Board decisions. Additional issues related to the transparency of Board decision making are outlined in Section IV C.2.3.

(b) Observations

The ATRT received a large number of comments concerning the decision making of the Board; most expressed the opinion that the “Board’s decisions should be better justified and explained to the community.”^{vii} Interviewees expressed concerns that Board decisions that seemed to contradict public comments were not sufficiently explained. One example mentioned was the Expression of Interest proposal, which many commentators supported either fully or conditionally but was ultimately rejected by the Board. According to comments to the ATRT, another occasion where the explanation of Board decisions was judged insufficient is redelegation decisions.

According to interviews, staff ideas currently under discussion for improving the Board’s communication of its decisions to the public include creating an explanation template for the Board to complete and publish after each decision and developing a matrix to explain how comments have been considered and where and how these have influenced decisions.

(c) Discussion

A lack of clarity regarding how public input is reflected in Board decision making, particularly in cases when Board decisions may appear to deviate from the opinions expressed by the majority of those who have submitted public input, can be detrimental to ICANN’s legitimacy. Community members who believe their input is being undervalued or disregarded may be less likely to contribute in the future. They may also be less likely to trust the ICANN Board to make decisions in the public interest or elect to take their complaints to other, external forums, such as the courts or national governments. Empirical studies in fields that involve adversarial processes and dispute resolution have shown that when community members are able to recognize that their interests have been thoughtfully considered, they are generally more satisfied, regardless of the ultimate outcome.^{viii}

(d) Recommendations

Provide more explicit and detailed information regarding the rationale for decisions by the Board, including the reasons why community input may have been rejected or incorporated in the final outcome.

2.4 Need for Enhanced Cross-Community Dialogue**(a) Issues**

ICANN has committed itself to “assessing the policy development process to facilitate enhanced cross community deliberations.”^{lix} Anecdotal evidence suggests that improvements in the existing channels and mechanisms for cross community deliberations, both formal and informal, are still needed at early stages of decision-making processes.

(b) Observations

The need for better cross-community dialogue at early stages of decision making arose multiple times in the interviews. Interviewees suggested that policy development delays often stem from cases where different groups within the ICANN community speak up on issues too late, after these issues have been nearly finalized. In the view of these interviewees, early interaction between these groups leads to more efficient policy development and is more conducive to consensus and broader inclusion.

Some interviewees expressed concerns that groups within the ICANN community currently operate separately from one another: a single group publishes a document, other groups comment on it, and then the staff and Board decide what steps to take next. These interviewees advocated for more community-wide discussion before documents are published, in order to prevent this later “ping-pong” effect.

In some instances, ICANN has implemented cross-community working groups to address specific issues. One example is the working group on recommendation 6 of the new gTLD program (which addresses “morality and public order”).^{lx} This group contains representatives from the ALAC, the GNSO, and the GAC. Interviewees pointed to this group as a positive example of dialogue between various groups within the ICANN community; however, they also expressed the opinion that this group came too late in the process, i.e., that it was established to solve a problem caused by a lack of sufficient cross-community dialogue earlier in the development of the new gTLD program.

(c) Discussion

A lack of sufficient cross-community deliberation at early stages of policy discussions may cause delays by preventing various stakeholders within the ICANN community from contributing to the identification of major issues related to a specific policy. For example, more cross-community dialogue before the publication of the first version of the Draft

Applicant Guidebook for the new gTLD program may have helped identify the “overarching issues” and other controversial issues that subsequently arose.

The establishment of working groups containing representatives from multiple Advisory Committees (ACs) and Supporting Organizations (SOs) before the finalization of policy recommendations may help identify and resolve “hot button” issues. Increasing opportunities for cross-community interaction at ICANN meetings may help provide clear channels for discussion among various ICANN constituent bodies.

We recognize that enhancing cross-community dialogue will not preclude dissatisfied participants from looking for additional venues to express their dissent, e.g., by lobbying Board members to address their concerns or reopen aspects of the policy-making policy. Nor do we believe that such actions are inappropriate in all instances.

Seeking additional opportunities for cross-community dialogue, both formally and informally, is intended to be judiciously applied as a complement to the various other established mechanisms for building consensus and collective deliberation.

(d) Recommendation

- Encourage ICANN’s various constituent bodies to engage in cross-community interactions in early stages of policy initiatives, discussions, and deliberations.
- Explore explicit policies and procedures for triggering cross-community deliberation among ICANN’s various constituent bodies.

C. Board Governance—Corporate Governance and Board Activities

1. General Considerations

ICANN faces a number of challenges at the nexus of transparency, accountability, and governance. These challenges reflect its unique position straddling the public-private divide, the many constituencies and stakeholder groups involved, the global nature of its charge, the desire to retain the consensual basis of its governance, and the tensions and mission conflicts inherent within ICANN itself. Corporate governance policies are central to transparency and accountability at ICANN. Any reforms designed to improve transparency and accountability must also take into account the need to make sound decisions in an efficient and timely manner.

At the heart of its corporate governance challenge is the fact that ICANN represents an overlay of multiple institutional models. ICANN was established to act as a bottom-up consensus-based organization representative of global interests. ICANN is also a California nonprofit corporation. These two models are currently reconciled with the understanding that the Board is ultimately responsible for the actions of the organization—stemming from California law—and must therefore, in keeping with its global responsibilities, properly oversee and implement the bottom-up consensual model. This implies that the Board must be in the position to fully understand, interpret, and act in accordance with the interests

and preferences of the ICANN community and broader set of stakeholders. This applies not only when there is consensus but also when consensus is not reached. When operating within the current accountability model constructed on transparency, participation and procedure, ensuring that the Board has the capacity and resources to properly evaluate and interpret the needs and input of the community is critical.

Given ICANN's unique set of responsibilities and diverse functional roles, the lessons and best practices from the field of corporate governance cannot be directly applied to ICANN without taking into account its specific institutional context.

The various notions of accountability, as described in Section II B.1 , relate both to ICANN's legal foundations under California law and also its broader responsibility to Internet users around the globe. The Board plays a central role in both. This extends to the composition of the Board, the relationship of the Board with the staff and the interaction with constituent bodies, for example the GAC. It also extends to alternatives models for independent review of ICANN decisions.

Corporate governance includes not only structure, rules and procedures but also the cultural values and norms of the organization and the manner in which they are expressed in day-to-day activities and interactions with stakeholders. Both aspects play a complementary and essential role in the transparency, accountability and effectiveness of the organization.

ICANN should continue to be a leader in applying transparency and public participation to improve governance. The Internet and other digital means of interaction and information sharing are creating new opportunities to improve on older models, but much of this terrain is uncharted. ICANN can and should be experimenting with different conceptions of transparency and accountability and assessing the results regularly. Using these experiments to improve ICANN's overall practice will involve careful design, ongoing monitoring, and a willingness to accept that some of the experimental measures tried will be unsuccessful.

2. Issue-Specific Observations and Recommendations

2.1 Board composition

(a) Issues

In interviews and in various public submissions, concerns have been expressed regarding the composition of the ICANN Board. There are two key aspects related to ICANN's Board composition: the expertise and skill sets represented on the Board and adequate representation of the various stakeholders, including representation of different geographic regions and commercial and non-commercial interests.

(b) Observations

Concerns were expressed in interviews whether the proper range of skills were adequately represented on the Board. Submissions to the ATRT expressed the desire for "broader

business expertise and gender diversity” in the Board. Public submissions to the ATRT indicate that some community members feel that at least certain aspects of the Board selection process, for instance with regard to selection criteria used, are not transparent enough; interviewees expressed concerns that the activities and decisions of the Nominating Committee are not as effective as they could be.

ICANN’s Bylaws contain rather detailed rules about the selection of the total 15 Board members by the Nominating Committee, the Address Supporting Organization, the Country-Code Names Supporting Organization, and the Generic Names Supporting Organization.^{lxi} For each category of seats, the Bylaws stipulate a diverse set of Board membership criteria. Importantly, the Nominating Committee “shall seek to ensure that the ICANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective” by applying a rich set of selection criteria, which include “inward-looking” (e.g., integrity, intelligence) and more “outward facing” selection criteria (e.g., cultural and geographic diversity).^{lxii}

Board selection processes and composition issues, respectively, have been subject to extensive internal and external reviews. Both the Nominating Committee and the Board have undergone an independent review by external experts, which resulted in a series of overlapping recommendations. According to interviews, several of the recommendations—especially with regard to definition of skills, experience, and independence—are currently being implemented.

(c) Discussion

Since the implementation of the recommendations of previous independent reviews is still ongoing, it is too early to provide a final assessment of the measures underway that are intended to resolve the issues identified in this section or to determine whether additional remedies have to be considered. In addition to other skill sets being considered for the Board, we believe that there should be more emphasis in Board selection on corporate governance, collective decision-making, negotiation, and dispute resolution skills to help the Board deal more effectively with conflicting values and interests in the ICANN community. We concur with prior recommendations that suggest compensating Board members and recruiting professional directors to fill specific skill needs. Overall, the efforts underway demonstrate ICANN’s commitment to assess and improve ICANN’s Board selection mechanism as required by paragraph 9.1(a) of the AoC.

The review of materials suggests a current focus on Board selection issues in order to ensure that the ICANN Board is composed of members that have the appropriate skills and represent the various stakeholders. However, looking at the demanding and in some instances potentially conflicting goals of ICANN, one might consider shifting the emphasis over time from Board *selection* to Board *development* processes, especially in light of changing needs regarding skill sets as ICANN’s economic and technological context evolves. For similar purposes, major nonprofit organizations (e.g., the United States Girl Scouts and the American Red Cross) have established Board development committees. According to interviewees, ICANN has already taken first steps into this direction (e.g., with special training sessions on particular issues for Board members based on survey-based self evaluation).

(d) Recommendations

Implement the recommendations of prior studies to focus more attention on Board composition and skills, including the recommendation regarding the establishment of a mechanism for identifying the collective skill-set required by the ICANN Board and for consulting with stakeholders on this issue. Periodically evaluate progress on these issues.

Provide more emphasis in Board selection on corporate governance, collective decision-making, negotiation, and dispute resolution skills.

Consider recruiting professional directors to fill specific skill needs.

Increase the transparency of the work of the Nominating Committee as far as selection criteria and selection mechanisms are concerned; the deliberations over individual candidates, however, should remain confidential.

Building upon current efforts, consider the expansion of Board selection processes to include Board *development* activities by establishing a Board development committee.

2.2 Board-Staff relationship**(a) Issues**

Concerns have been expressed in some interviews and in a number of public submissions that the relationship between ICANN staff members and the Board is not structured in a way that is conducive to ensuring that the Board effectively incorporates and responds to the full range of community inputs. There is a widespread perception that the staff plays an overly dominant role in setting the agenda and shaping the informational basis of Board decisions.

The broad scope and complexity of ICANN activities results in a demanding workload for ICANN Board members, which in turn raises questions regarding their ability to devote sufficient time to proactively oversee the activities of the staff and guide the strategic direction of the organization.

(b) Observations

The perception that was voiced repeatedly in the interviews was that the staff are taking too many unilateral decisions and are inappropriately filtering community input, weakening the bottom-up consultative and policy-making processes. One recent example put forth was the inclusion in the DAG of connections to terrorist organizations as a new criterion for denying applications for new gTLDs; this provision was reported to be not the product of the bottom-up policy-making process but inserted by the staff. Interviewees and public submissions to the ATRT indicated a community perception that the ICANN staff dismisses issues of concern to the community with which the staff does not agree; interviewees expressed ongoing frustration with this perceived situation.

In contrast, some interviewees consider the gTLD case an example of recent improvements in the flow of information from the community to staff to Board, particularly with respect to how public comments on the gTLD process are summarized and passed to the ICANN Board by staff (e.g., comments are attributed to specific people and links to original sources are provided).

Continued evolution of the Board Committee model may also provide channels to identify and engage with organizational priorities, encourage Board interaction with analogous efforts occurring at both the community and staff level, and help make the Board’s work more efficient. A proactive approach is evident in the establishment of New Board Committees in 2008, and the dissolution of certain existing Board committees in order to serve “the best interests of ICANN.”^{lxiii} New Board committees include the IANA Committee, the Public Participation Committee, the Risk Committee, and the Structural Improvements Committee.^{lxiv}

Prior reports and interview responses have highlighted the issues associated with a demanding work load for the Board along with the challenges of setting priorities among many disparate activities.^{lxv}

(c) Discussion

The issue addressed in this section focuses on the distribution of agenda-setting and decision-making responsibility between ICANN staff and Board and the question of how the interactions between staff and Board may be structured in order to ensure that community inputs are best understood and taken into account in decision-making processes. The question of the appropriate relationship—and effective interaction—between staff and Board is a question that challenges many organizations. In most corporations of any size, the staff has an important, and often predominant, role both in the day-to-day management of the organization and in setting its larger agenda. In the for-profit sphere, this increased power of the executive staff has become accepted, to the extent that the *American Law Institute Principles of Corporate Governance*, applicable to public companies, states: “The management of the business of a publicly held corporation should be conducted by or under the supervision of such principal senior executives as are designated by the Board of directors.”^{lxvi}

The trend in nonprofits is broadly similar. As one text on nonprofit organizations states:

Management of nonprofit organizations normally is vested in its senior employees. A basic function of the Board is to select these executives and to oversee their performance. . . . It has been suggested that a Board’s most important judgment is the content of its agenda, that is, the decision as to what it will tend to and how it will allocate the limited resources and time available. . . . Usually management rather than the Board sets the agenda for Board consideration. Thus, the Board is more often reactive than initiatory. The larger the nonprofit organization, the more complex and diverse will be its activities and the less likely a Board will become involved in a particular decision.^{lxvii}

There are competing theories related to the strength and level of engagement of Boards. Operational aspects of organizations are normally delegated to staff along with ample latitude to make operational decisions backed up by strategic guidance from the Board. For ICANN, the extensive operational aspects of the organization appears suited to such a model. However, the decisions made by ICANN, for which the Board is ultimately responsible, particularly related to the competing use of scarce resources and competing interests within the community, suggests the need for stronger Board involvement compared to other organizations.

Increasing the capacity of the Board to effectively incorporate and respond to the full range of inputs generated in the bottom-up processes of ICANN will likely require increasing both the amount and the effectiveness of time spent by Board members on ICANN's affairs while relying less on the staff to gauge the sentiments of the community and to properly interpret their input and advice. This implies not an expanded role for the Board but deeper involvement in its current activities. A well-informed Board is entirely consistent with the bottom-up nature of the organization; the Board must be in a position to speak accurately and effectively to all the perspectives of the ICANN community. Making even better use of Board committees can help increase the effectiveness of the Board. One countervailing concern is the need to be sure that committees are adequately representative across stakeholder groups.

Increased transparency related to the staff-Board relationship is likely to both support the appropriate division of labor and respective levels of responsibility and control between staff and Board, and address the perception issues expressed by parts of the ICANN community.

(d) Recommendations

Continue to strengthen the capacity of the Board to proactively and visibly steer ICANN activities.

Address concerns regarding the amount and effectiveness of time spent by Board members on relevant fact-finding, deliberation, decision-making and oversight activities.

Increase the level of transparency in staff-Board interactions to further increase performance and address perception issues regarding potential staff capture.

2.3 Transparency of decision making

(a) Issues

Some stakeholders have expressed concerns that Board decisions are made without properly taking into account their input and therefore without considering the full set of relevant facts. Multiple opportunities for input and participation have not resolved the perceptions that stakeholders are not being fairly represented.

(b) Observations

Despite recent steps taken to increase transparency about Board processes, many interviewees reported that the Board decision-making process is opaque and the rationale for decisions not fully articulated. While the minutes of Board meeting are published on the ICANN website, some interview respondents report that the minutes neither capture the full basis for decisions nor provide sufficient detail. Submissions to the ATRT expressed concerns that Board decisions are not transparent: “decisions are made without anyone being aware of the logic used to arrive at them and explanations of decisions, if any, are inadequate.”^{lxviii}

The Board recently decided to publish the non-confidential sections of Board briefing materials prepared by the staff.^{lxix} Critics have expressed skepticism about the transparency effect, however, since a significant amount of information has been redacted.^{lxx}

A recently launched ICANN project is focused on creating a wiki that will provide “the public with easy-to-access information on every substantive resolution approved by the Board of Directors” along with basic information regarding the status of these resolutions.^{lxxi}

According to interviewees, this process will soon be completed; one interviewee stated that the database of resolutions is likely to be linked over time to implementation measures taken at the staff level. The wiki currently presents Board resolutions from 2009. It is not editable or interactive at this stage (the wiki references an “Add Comment” box that appears to be missing), though one would expect these features in a wiki.

(c) Discussion

ICANN relies more on transparency for accountability and legitimacy than other organizations and therefore should arguably offer greater transparency in its decision-making processes. However, the issues around transparency in decision making are complex and involve conflicting goals and needs. In some instances, such as policy making by the Federal Reserve and decision making by juries and judicial panels, there is a tradition for keeping deliberations intentionally private. In other instances, such as legislation, so-called “sunshine laws” adopted by many states are intended to give openness to many policy-making processes. The lessons of corporate governance do not clearly establish positive impact of greater transparency in the deliberative stages of decision making. Transparency in decision-making processes should be considered carefully, so as to preserve the ability of the Board to discuss matters candidly and to make consensus decisions where appropriate. In contexts such as personnel decisions or the candid policy-setting deliberations, there may be benefits to some measure of opacity.

In the information-gathering phase of a decision, transparency on materials submitted, generated, and consulted is desirable. Making such materials public can help to provoke the provision of further materials that might otherwise be overlooked. Fact-gathering hearings in legislative and other policy contexts are typically open to the public.

There are contending arguments about the benefits of transparency in the deliberations themselves, and the comparative practices in organizations such as the World Bank and the Asia Development Bank show deliberate and broad exceptions for decision-making and deliberative processes from more generally applicable transparency standards and commitments. In a context where representatives for contending constituencies are trying

to forge an outcome for the common good, for instance, transparency can lead to constituency pressure to harden positions and thus make positive outcomes less likely to occur. On the other hand, constituencies may be suspicious that they have been “sold out” in a compromise that occurs in an opaque fashion. This suspicion can be lessened by the clear enunciation of reasons for a decision post facto and by sufficient transparency and engagement by the Board in the up-front process, so that there is an assurance that the losing arguments and information were in fact heard and meaningfully considered. Unlike many other organizations, ICANN does not have the luxury of relying predominantly on outcome-based measures of efficacy to maintain the confidence of its participants and stakeholders. Process and perception are important. While noting that it is impossible for ICANN to satisfy all of its stakeholders and critics, the perception of any impropriety, whether justified or not, reduces the legitimacy of this consensus-based organization. While greater transparency will not resolve all of these questions, it is an important step and a worthwhile effort.

Improving the transparency of decisions extends beyond Board decisions. ICANN should continue to codify and clarify internal working procedures as they contribute to better corporate governance. Models from EU and US administrative laws—for instance, regarding consultation or rulemaking processes—and their equivalents in many countries may serve as starting points, although less complex procedures will probably suit the needs of ICANN. Periodic evaluations of internal compliance with established procedures by a dedicated staff member are an essential step.

ICANN is part of an exploration of new ways in which the Internet and other digitized avenues can improve on traditional governance forms. ICANN should engage with the larger community exploring e-rulemaking and e-governance at various levels and conduct explicit experiments within ICANN’s procedures.

(d) Recommendations

Better delineate areas of high, medium, and limited disclosure of Board inputs, deliberations, and decisions, and the rationale for each.

Provide detailed explanations of the reasons for taking various decisions, including the manner in which expert opinion and community input are factored into these decisions. Respectfully recapitulating the losing arguments may be useful.

2.4 Independent Review

General Considerations

ICANN provides three avenues for review of Board and staff decisions: the Ombudsman, Reconsideration Requests, and the Independent Review Panel (IRP).^{lxxii} To varying degrees, each mechanism is aimed at increasing ICANN’s accountability. According to the Bylaws, Reconsideration Requests and the IRP “are intended to reinforce the various accountability mechanisms otherwise set forth.”^{lxxiii} The Ombudsman “shall serve as an advocate for fairness” in cases in which the Reconsideration Request and IRP procedures have not been

invoked.^{lxxiv} These mechanisms do not follow a specific hierarchy or sequence of activation; in practice, however, they interact with each other and may be interpreted as an “escalation model.”

The IRP process in particular was explicitly introduced to increase ICANN’s accountability. In scholarship and interviews, different views have been expressed as to what the underlying rationale of the IRP process is and what kind of accountability it provides to whom. The disagreement about the particular role that the IRP does or should play within different theories of accountability^{lxxv} has translated into practical issues that surfaced in the materials reviews, including the question of who should or should not have standing under the IRP rules, what the appropriate panel structure is, and whether the decision by the panel could or should be binding or not.

Alternative proposals for independent review processes have been put forth. One proposal would institute a community re-vote mechanism. Another proposal would create a binding arbitration regime with an independent standing panel that would serve as a mechanism to overturn Board decisions, including a provision that would offer third parties, such as registrants, standing.^{lxxvi} It is outside the scope of this report to explore in detail the merits and demerits of these respective proposals. Based on the detailed exploration of the .xxx case review process as requested in the Services Agreement, the Berkman team has focused on the review of the existing IRP process, with an eye towards the Ombudsman and the Reconsideration Request procedures as avenues for early-stage dispute prevention and resolution.

(a) Issues

The IRP process in the .xxx case—the first and, to date, only case in which the IRP has been employed—has raised concerns about the cost and accessibility of the process and its utility as an accountability mechanism.

(b) Observations

Several interviewees indicated that the IRP process can be considered a success, in that it prompted a reconsideration of the case, compelled ICANN to publicly defend the basis for its decision, and convinced the Board to begin a new round of contract negotiations for a .xxx registry agreement with ICM. Nonetheless, other observers have indicated that the .xxx case revealed a number of difficulties and limitations in the IRP, including its costliness, a lack of clear procedures, and the probable difficulty of employing the IRP by noncommercial interests. Interviewees have suggested that the cost, inaccessibility, and nonbinding nature of the rulings of the IRP significantly reduce the likelihood that disputants—even commercial disputants with adequate resources—will turn to the IRP as a means of resolving their disputes. Rather, interviewees have suggested that it would be preferable to proceed directly to litigation in California courts. It has been argued that this state of affairs further reduces the usefulness of the IRP as an accountability mechanism, places further burdens (in terms of time, resources, public image, and so forth) on all parties involved, and reduces the accessibility of appropriate dispute resolution processes to non-US stakeholders.

In light of the IRP’s finding in *ICM v. ICANN* that the IRP’s recommendations are non-binding on the ICANN Board, questions have been raised over the possibility of instituting a binding external review process. Independent experts have expressed strong doubts whether a binding version of the current review mechanism (which allows for review of any Board actions) would hold up under Californian corporate law, although alternative designs may well do so. This interpretation is supported by a recent ICANN memorandum on third-party review of Board actions.^{lxxvii} The memorandum explains that the California Corporate Code permits the Board of Directors to delegate certain management functions to employees, committees, and other third parties, so long as the corporate powers are exercised under the ultimate direction of the Board. However, according to the memorandum, the Board is prohibited from empowering any other entity with ability to overturn the Board’s actions or decisions, although the memorandum does recognize the validity of entering into binding arbitration that is more narrowly defined and based on contractual agreements.

(c) Discussion

Some of the dissatisfaction expressed in interviews and in reviewed materials regarding the .xxx case appears to be the inevitable byproduct of a difficult, contested issue. Matters related to sex and free speech are challenging to policy makers in almost any context and invoke strong, and not always coherent, political considerations in many countries and traditions. These substantive concerns are outside the scope of this review. However, the anecdotal evidence collected in the context of the .xxx case study confirms the concern expressed in parts of the community that the costs of the IRP process may be prohibitively high for certain stakeholders. Despite the fact that such an observation is currently based on only one application of the IRP process, it is advisable to clarify its scope and, if necessary, to consider a less burdensome and costly alternative.

Considering the design of the existing IRP process in general and the current (broad) scope of IRP review as set forth in the Bylaws in particular, the Berkman team concludes that it is not advisable to implement such a broad-reaching binding third-party review of any Board decisions and actions. First, and legal constraints notwithstanding, it is questionable from a normative policy and governance perspective whether a binding general third-party review mechanism applicable to all Board decisions and actions would improve the status quo. Second, it remains doubtful whether such a broad regime would hold under Californian corporate law. More promising, from both legal and normative perspectives, are proposals for binding arbitration-based review mechanisms that are narrower in terms of their scope of review; the detailed evaluation of such proposals, however, is outside the scope of this report. That being said, the non-binding review mechanisms within the current structure can be made more effective by having the Board make a cultural and procedural commitment to hearing it out and dealing with it seriously.

The legal and practical limitations on the IRP process highlight the importance of *ex ante* decision-making processes. Creating more robust and better-defined processes up front for policy and other decision making, along the lines discussed at Section IV C.2.3(c) above, will reduce the need for back-end review. Dispute avoidance is generally better than *ex post* dispute resolution. Where disputes emerge, it is advisable to address them at the earliest possible stage and to encourage alternative dispute resolution mechanisms—for instance, conciliation, negotiation, and mediation—to minimize the escalation of disputes to the

point where an IRP hearing would be needed. In this context, it is advisable to improve the public’s perception of the various dispute resolution mechanisms, to strengthen the Ombudsman’s role, and expand the grounds on which a disputant can initiate a Reconsideration Request.

(d) Recommendation

Better define the scope of the IRP processes, with an eye not only to better access and fairness, but also to cost containment and early identification of issues that should be fully argued and briefed and those that can be resolved at a more summary level.

2.5 Board and role of the GAC

General Considerations

The GAC plays an important but often unclear, uncertain, and occasionally contentious role in ICANN decision-making processes. This section focuses on the ways in which the Board interacts with the GAC and considers its inputs.

On several occasions, the Board and the GAC have expressed different views on what constitutes GAC advice and how GAC inputs to the Board should be handled. In particular, many believe that in certain instances, the ICANN Board has neither properly heeded the advice of the GAC nor offered the GAC the appropriate level of deference. The ambiguities surrounding the Board-GAC relationship raise issues related to transparency, and involve complex questions related to disparate organizational cultures, the challenges of aligning internal processes across multiple institutions, and complex cross-community communication mechanisms.

In June 2009, the Board established a joint Board-GAC working group to review the role of the GAC in ICANN, consider how to better support the GAC’s work, and develop proposals for how to improve communication among the Board, the GAC, individual governments, and the ICANN community. With this in mind, the following section focuses on two specific issues: the question of what constitutes GAC advice and how the Board can improve its interaction with the GAC within the current framework, processes, and respective roles and responsibilities.

2.5.1 Definition of “GAC advice”

(a) Issues

It is unclear what types of GAC inputs constitute advice or opinions and what are the appropriate channels of communication for submitting GAC input to the Board. The GAC and the Board do not have mutual definitions for these terms and do not agree on acceptable methods of communicating these inputs.

(b) Observations

According to the ICANN Bylaws, the role of the GAC is to “consider and provide advice on the activities of ICANN” which relate to the concerns of governments, “particularly where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.”^{lxxxviii} Furthermore, the GAC can submit advice “by putt[ing] issues to the Board directly, either by way of comment or prior advice” or by “specifically recommending action or new policy development or revision to existing policies.”^{lxxxix} However, the Bylaws inconsistently state that the Board is required to “request the *opinion*” of the GAC on any policy that “substantially affect[s] the operation of the Internet or third parties” or “public policy concerns.”^{lxxx}

The ICANN Bylaws do not specify how GAC advice or opinions should be communicated to the ICANN Board.^{lxxxix} Specifically, they do not designate an individual from the GAC who is responsible for communicating advice or opinion or a designated individual from the ICANN Board who is responsible for receiving the GAC advice or opinion. Additionally, the Bylaws do not circumscribe the permissible mediums of communication, that is, that communication of GAC input would *only* be acceptable through letters from the GAC Chair and adopted Communiqués.

According to interviews conducted by the Berkman team and public submissions to the ATRT, GAC members generally believe that advice or opinions can be submitted through a variety of means, including e-mail, letters, in-person briefings at public and private joint meetings, and Communiqués. For example, in the context of the gTLD case, the GAC stated its position on the use of geographic names as top-level domains in seven separate Communiqués and two letters to the Board between October 2007 and March 2010. Yet, other interviewees stated that some Board members believe that the GAC’s view of how advice and opinion can be communicated is overly expansive and that advice should only come from the GAC Chair in written form. Interviewees also noted that the Board is occasionally briefed by the GAC Liaison to the Board during meetings; however, it was unclear if such briefings were intended to serve as an official communication of advice or opinion.^{lxxxii}

Throughout 2004–2007, while the .xxx sTLD application was pending before the Board, several members of the GAC, including the GAC Chair, sent direct correspondence to the Board regarding the case.^{lxxxiii} Some letters expressed concerns related to the application and others intimated that the Board’s actions were inconsistent with prior GAC advice, Bylaws procedures, or had not yet been adequately addressed by the GAC, and requested explanation of actions.^{lxxxiv} Throughout this time period, the GAC issued multiple Communiqués that provided various forms of feedback to the Board on the .xxx application.^{lxxxv} Interviewees noted that the conflicting nature of the letters by the GAC is problematic, as the capacity of the writer was not clearly defined (i.e., whether it was written on behalf of the GAC or as an individual member of the GAC). Interviewees were uncertain how the Board viewed these interactions, and whether the Bylaws required an official Board response. In several cases, the GAC members were dissatisfied with responses received.

(c) Discussion

It is clear there are discrepancies between how the Board and the GAC interpret the ICANN Bylaws. In particular, both the definition of GAC advice and the appropriate method of communicating of that advice to the Board are contested. In addition to lacking a precise definition of the term “advice,” the Bylaws use “opinion” and “comment” in a manner that implies the terms are interchangeable. It is unclear whether these terms were intended to be identical and apply to an equal scope of subject matter.

The Bylaws do not describe the methods by which the GAC is permitted to submit its advice or opinion to the Board. It is also unclear which methods of communication trigger the Board’s obligations in the Bylaws to take the GAC’s advice into account, to provide notice and explanation to the GAC when the Board declines to follow GAC advice or opinion, and to work with the GAC to come to a mutually satisfactory compromise.^{lxxxvi}

Events documented in ICANN correspondence and GAC Communiqués during the .xxx application process indicate that the lack of discernable boundaries for channels of communication caused confusion when multiple GAC members submitted correspondence to the Board concurrently, often expressing conflicting views with prior advice or opinion. Some GAC members felt they had not been given adequate opportunity to discuss viewpoints with the Board and others felt their advice was not followed without explanation.

(d) Recommendation

- In close consultation with the GAC, clarify what constitutes GAC “advice” or “opinion” and clarify the most effective channels of communication for submitting GAC advice to the Board.

2.5.2 Board-GAC Interaction**(a) Issues**

Communication between the Board and the GAC is not always strong, timely, or efficient.

(b) Observations

The ICANN Bylaws require the Board to “notify the Chair of the [GAC] in a timely manner of any proposal raising public policy issues on which it or any of ICANN’s supporting organizations or advisory committees seeks public comment.”^{lxxxvii} The Board is also required “to request the opinion of the GAC” on “any policies that are being considered by the Board for adoption that substantially affect the operation of the internet or third parties” or “public policy concerns.”^{lxxxviii}

In cases where the GAC issues advice^{lxxxix} to the Board, regardless of whether such advice is requested, the advice must be “duly taken into account, both in the formulation and adoption of policies” by the Board.^{xc} If the Board “determines to take an action that is inconsistent with the [GAC’s] advice” the Board must “state the reasons why it decided not to follow that advice” and try to find a “mutually acceptable solution.”^{xci} If no solution is

found, the Board is required to state the reasons why the GAC advice was not followed in its final decision.^{xcii}

The GAC appoints a “non-voting liaison to the ICANN Board” annually.^{xciii} The GAC Liaison is entitled to attend Board meetings, participate in Board discussions and deliberations, and have access to certain related Board briefing materials.^{xciv} Liaisons to the Board are also permitted to “use any materials provided to them . . . for the purpose of consulting with their respective committee or organization.”^{xcv} Some interviewees noted that the GAC Liaison occasionally briefs the Board on issues of concern to GAC members and that there is a general expectation that the GAC Liaison briefs GAC members on pending issues before the Board, except in instances where confidentiality is required. The GAC has consistently appointed the GAC Chair as GAC Liaison to the Board.^{xcvi}

Interviewees made clear that the majority of Board members believe presence of the GAC Liaison during Board meetings is sufficient to put the GAC on “notice” of proposals that raise public policy issues as is required in the Bylaws.^{xcvii} However, other interviewees noted that GAC members have interpreted this Bylaw provision to require more specific notice in more formal correspondence to the GAC Chair, such as a written letter. Some GAC members have also expressed concerns that notice from the Board of proposed policy decisions is not always timely. In such cases, receiving a late notice adversely affected the GAC’s ability to effectively provide advice on pending issues in a timely manner. Additionally, GAC members have expressed concerns that the Board does not provide feedback on GAC advice that has already been submitted to the Board, including whether additional GAC advice would be helpful.

These observations are independently supported by ICANN documents. For instance, following the June 1, 2005 Board resolution to begin negotiating the terms of a registry agreement for the .xxx proposal, several GAC members expressed concerns that the .xxx proposal had “significant impacts in local concerns” and that the GAC had inadequate time to consider merits of the proposal.^{xcviii} Separately, throughout 2007–2010 the GAC issued seven Communiqués repeating its advice regarding the use of geographic top-level domains. Although the Bylaws specify that the Board “shall notify the Chair of the Governmental Advisory Committee . . . of any proposals raising public policy issues,”^{xcix} the Bylaws do not specify the level of detail required in the notification GAC Chair (i.e., whether the notification merely requires a general notice that the Board is considering a proposal, or whether the notification must describe specifics related to the proposal).

(c) Discussion

The lack of clear procedures for the timely acknowledgment of and response to the range of GAC inputs by the Board may impede the policy development process, as the GAC may feel compelled to restate its positions when it has not received a sufficient response. Receiving timely notice of pending proposals also appears to be an area needing procedural and substantive improvements. The GAC’s repeated Communiqués on the use of geographic names as top-level domains indicate it had not received a sufficient response from the Board on this issue.

The responsibilities of the GAC Liaison to the Board are ambiguous. The Bylaws do not specify the proactive responsibilities of the Liaisons beyond being “volunteers” with the ability to “attend Board meetings, participate in Board discussions and deliberations” and access “materials.”^c It seems likely that the Board and the GAC’s differing interpretations of Liaison responsibilities may underlie some of the communication problems identified above.

(d) Recommendation

- Revise and observe procedures for timely Board responses to GAC submissions. Determine whether the Board and GAC would benefit from more frequent joint meetings. Clarify roles and responsibilities in communicating Board requests for GAC advice, including the role of the GAC Liaison to the Board in this process.

ENDNOTES

Appendix A: Workplan

Project Phases

The Berkman team outlined a three phase process: Phase 1—problem identification: case studies; Phase 2—problem discussion and identification of potential solutions; and Phase 3—synthesis and recommendations.

- In Phase 1 the Berkman team initiated a multi-layered fact-finding process aimed at identifying key issues, challenges, and areas of disagreement related to recent decisions and actions by ICANN, with an emphasis on issues related to participation, transparency, and accountability.
- In Phase 2, the Berkman team conducted interviews with select experts, staff members, and stakeholders to discuss the problem areas identified in Phase 1 and to explore potential solutions. Phase 2 identified zones of convergence and divergence regarding both the perceived quality of ICANN's decisions along these various dimensions and potential solutions to deal with the underlying challenges.
- Based on a rich body of academic literature, Phase 3 of the study developed an exploratory model intended to help examine the various factors that shape the perceived legitimacy of ICANN and its decision-making processes and to make visible the interplay among these variables. The diagnostic model includes a taxonomy of issues and challenges identified in Phases 1 and 2, described in more depth in Section III C above.

Overview of Activities and Outputs

	Activities	Draft outputs	Consultation
Phase 1	<ul style="list-style-type: none"> • Rapid, initial review of public submissions from January 2008 to June 17, 2010 in order to identify main areas of concern expressed by various stakeholders and creation of a tentative issues map that informs the fact-finding process (e.g., the drafting of an interview questionnaire, see below). • Initial review of selected academic articles and scholarly works, plus the creation of an initial annotated bibliography that informs, both directly or indirectly, the team’s work as it relates to the review process. • Engaged in the collection of a representative sample of materials (including, for example, ICANN publications, independent reports and reviews, and public comments) that enable a bottom-up and problem-oriented analysis. • Drafted interview questionnaires related to the three case studies. 	<p>Aug. 27, 2010 Progress Report:</p> <ul style="list-style-type: none"> • Draft Interview Protocol and Questionnaires • Draft Public Input Memo • Draft Working Hypotheses • Preliminary Annotated Bibliography • Feedback on ATRT Survey to the Community 	<ul style="list-style-type: none"> • Aug. 16, 2010: ATRT meeting • Aug. 29, 30, 2010: ATRT Beijing workshop • Sept 6, 2010: ATRT meeting

	Activities	Draft outputs	Consultation
Phase 2	<ul style="list-style-type: none"> Revised the draft interview questionnaires for staff, related to the three case studies, in the light of the feedback received by ATRT in the context of the Beijing meeting. Designed a written questionnaire that is specifically geared towards GAC members. Creating customized questionnaires—based on specific areas of expertise or experience—for non-staff members. Distributed staff and GAC questionnaires. Developed criteria for interviewee nominations and shared a list of proposed interviewees with the ATRT. Conducted over 40 interviews. Reviewed and commented on the WG template developed by the ATRT. Reviewed and commented on the draft issues papers prepared by the ATRT’s WGs. Defined the interfaces between the Berkman team and the ATRT’s WGs within the feedback on the received WG draft issues papers (WG #1, 2, and 4). Prepared a memorandum on transparency issues. Prepared a draft case study on the introduction of new gTLDs. 	<p>Sept. 13, 2010: Midterm Report:</p> <ul style="list-style-type: none"> Feedback on the ATRT’s Working Group Template Feedback on Issues Reports by the ATRT’s Working Groups Draft List of Proposed Interviewees Revised Interview Protocol and Questionnaires for Staff and the GAC Draft Case Study on the Introduction of New gTLDs Draft Transparency Memorandum <p>Sept. 30, 2010: Draft Case studies:</p> <ul style="list-style-type: none"> The introduction of new gTLDs, specifically, the Expression of Interest proposal, the Implementation Recommendation Team, the role of the Governmental Advisory Committee (GAC), and vertical integration The .xxx top-level domain, specifically, the review process (Independent Review Panel) and interaction between the GAC and the Board The DNS-CERT proposal 	<ul style="list-style-type: none"> Sept. 14, 2010: ATRT meeting Sept 20, 2010: ATRT meeting Sept. 29, 2010: ATRT meeting

	Activities	Draft outputs	Consultation
Phase 3	<ul style="list-style-type: none"> • Draft recommendations. • Reviewed recommendations with ATRT. • Reviewed recommendations with subject matter experts. • Conducted interviews with Board members, CEO and General Counsel. 	<p>Oct. 8, 2010: Working document:</p> <ul style="list-style-type: none"> • Recommendations • Case studies <p>Oct. 20, 2010: Final report:</p> <ul style="list-style-type: none"> • Recommendations • Case studies • Methodologies 	<ul style="list-style-type: none"> • Oct. 6, 2010: Berkman meeting with ATRT chair • Oct 11-13, 2010: ATRT Boston meeting

Appendix B: Interview Methodology

In addition to publicly available sources, the case studies are informed by the observations of a selected, diverse group of stakeholders and experts who have been interviewed during the course of our analysis. These interviews provide an important supplemental source of information because they convey observations regarding the perception and interpretation of ICANN decisions by the broader community, in addition to confirming the facts of each case. The statements of interviewees do not reflect the opinions or conclusions of the Berkman team.

From September 10–October 16, 2010 the Berkman team conducted 45 interviews. Our interviewees included representatives from the GNSO constituencies, the GAC, ICANN staff, ccTLDs and many more. There were 32 interviewees who discussed the new gTLD process, 15 interviewees who discussed the DNS-CERT proposal, and 7 interviewees who discussed aspects of the .xxx process, with some interviewees addressing questions related to more than one case study. In addition, we received completed questionnaires from 6 GAC representatives.

While the Berkman team has made every effort to remove factual inaccuracies, it does not attest to the accuracy of the observations offered by interviewees.

Interview Protocol

Interviews were conducted by telephone by the Berkman team using questionnaires customized for the individual interviewee. Considerable latitude was offered to interviewees to allow them to explore topics and issues that they felt were relevant and important to the Berkman Center study. The interviews were conducted on the condition of confidentiality. Comprehensive notes were taken during the interviews and subsequently summarized for the research team. The names of the interviewees have been removed from the notes and summaries.

Thus far, ICANN staff interviews have taken place as a two-step process, with the opportunity to provide written responses to our customized questionnaires, followed by a phone call with the Berkman Center team, designed to clarify, where necessary, some of the written answers and to dig deeper into written responses. In the case of the GAC, the Berkman team took a broad-based approach by distributing a written questionnaire, with the aim of following up directly, where possible, with particular members who may have had more substantial involvement in the cases.

All ICANN staff interviews and written responses to questionnaires have been coordinated by ICANN's Advisor to the President, Denise Michel. The responses to the questionnaires were collected and aggregated by ICANN prior to submission to the Berkman team. ICANN's General Counsel, John Jeffrey, has attended the phone interviews with ICANN staff members at his request.

Interview Selection

For each case study, the Berkman team identified criteria by which to select interviewees (for further details, see the “Selection Criteria and Proposed Interviewees” memo in the Midterm Report to ATRT). The proposed interview candidates who met these criteria were then cycled with ATRT members as well as Denise Michel (ICANN staff) for additional nominations. The Berkman team contacted each of these 61 candidates, followed up to ensure we had interviewees who met each of the selection criteria.

Interviewee List

Donna Austin	David Maher
Rod Beckstrom	Frank March
Doug Brent	Kieren McCarthy
Eric Brunner-Williams	Steve Metalitz
Becky Burr	Denise Michel
Vint Cerf	Margie Milam
Edmon Chung	Keith Mitchell
Mason Cole	Ram Mohan
Lesley Cowley	Milton Mueller
Steve Crocker	Peter Nettlefold
Keith Davidson	Jon Nevelt
Avri Doria	Mike Palage
Zahid Jamil	Kurt Pritz
John Jeffrey	Greg Rattray
Rodney Joffe	Kristina Rosette
Dan Kaminsky	George Sadowsky
Kathy Kleiman	Suzanne Sene
John Kneuer	Werner Staub
Konstantinos Komaitis	Jean-Jacques Subrenat
Dirk Krischenowski	Bruce Tonkin
Bertrand de La Chapelle	Karla Valente
Stuart Lawley	Antony Van Couvering
Karen Lentz	

Appendix C: The Introduction of New gTLDs

Abstract

In June of 2008, the ICANN Board unanimously adopted the GNSO's policy recommendations for the introduction of new generic top-level domain names (gTLDs) and resolved to begin work on the implementation of a new gTLD application process. The new program, initially scheduled to launch in September 2009, is still under development.

The proposed process has been fraught with controversy, including criticisms over its delays, whether ICANN's method of publishing and incorporating public comments is sufficiently transparent and responsive, and whether new gTLDs should even exist. Critics have also raised a number of specific substantive issues, including the Expression of Interest proposal, trademark protection, the role of the Governmental Advisory Committee, the proposed morality and public order standard for objections to new gTLDs, and vertical integration.

Case Study Sources and Methodology

For more information on our sources and methodology, please see Appendix A.

This case study is based on publicly available materials, including public comments, ICANN documents, academic studies, media reports and expert opinions. It provides a summary of the facts regarding the introduction of new gTLDs. As per Exhibit B, section 1 of the Services Agreement between the Berkman Center and ICANN, its goal is to help identify key issues, challenges and areas of disagreement related to the new generic top-level domain name (gTLD) program. The observations below will contribute to the Berkman team's final report.

In addition to publicly available sources, this case study includes statements, opinions and perceptions of those we interviewed in the course of developing this case. These perceptions and opinions play an important role in the interpretation of ICANN decisions and their reception by the community. The statements of interviewees do not reflect the opinions or conclusions of the study team. While we have made every effort to remove factual inaccuracies, we do not attest to the accuracy of the opinions offered by interviewees. The interviews were conducted on the condition of confidentiality.

Note: As per the Services Agreement, this case study focuses on events prior to June 17, 2010. However, the new gTLD program is still evolving. As such, this study may not reflect the most recent developments in this case.

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1 Introduction

One of ICANN’s roles, as articulated in its Articles of Incorporation, is “performing and overseeing functions related to the coordination of the Internet domain name system (“DNS”), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system.”¹⁰⁰ Since the 1980s, the DNS has contained seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org), three of which—.com, .net, and .org—are open for public registration.¹⁰¹ In 2000, ICANN issued a call for proposals for new gTLDs. Between late 2000 and 2004, it introduced seven new gTLDs: .aero, .biz, .coop, .info, .museum, .name and .pro. In 2005, ICANN announced five more approved sponsored TLDs—.cat, .jobs, .mobi, .tel, and .travel—bringing the total number to twenty-one.¹⁰²

In October 2007 the Generic Names Supporting Organization (GNSO)¹⁰³ finalized a list of policy recommendations on the introduction of new gTLDs,¹⁰⁴ in line with ICANN’s stated commitment to “introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.”¹⁰⁵ The ICANN Board approved these recommendations in June 2008, and staff began work on a new Draft Applicant Guidebook (DAG) four months later.

The DAG is currently in its fourth iteration, published on May 31, 2010. The timeline on the New gTLD Program section of ICANN’s website estimates that the final Applicant Guidebook will be published some time in 2010 and lists the date of program launch as “to be determined.”¹⁰⁶

2 Proposed Application Process

According to the current (fourth) version of the DAG, applicants for new gTLDs must complete the following steps:

1. Register for the TLD Application System.
2. Submit a partial deposit of \$5000 for each gTLD desired.

¹⁰⁰ ICANN, “Articles of Incorporation,” revised November 21, 1998, <http://www.icann.org/en/general/articles.htm>; United States Department of Commerce, Statement of Policy on the Management of Internet Names and Addresses, June 5, 1998, <http://www.icann.org/en/general/white-paper-05jun98.htm>.

¹⁰¹ A specialized TLD, .arpa, is reserved for “technical infrastructure purposes.” Over 250 country code TLDs (e.g., .uk or .ru) also exist. ICANN, “Top-Level Domains (gTLDs),” <http://www.icann.org/en/tlds/>.

¹⁰² On December 11, 2009, ICANN entered into a TLD sponsorship agreement with the Universal Postal Union (UPU), under which the UPU sponsors the .post gTLD. The domain has not yet been added to the root. ICANN, “.POST Sponsored TLD Agreement,” December 11, 2009, <http://www.icann.org/en/tlds/agreements/post/>.

¹⁰³ The GNSO is one of three Supporting Organizations (the others being the Address Supporting Organization and the Country Code Names Supporting Organization) that develop and recommend policies to the ICANN Board. Each Supporting Organization also appoints two voting members to the Board.

¹⁰⁴ GNSO, “Final Report - Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

¹⁰⁵ ICANN, “Bylaws for Internet Corporation for Assigned Names and Numbers,” amended June 25, 2010, <http://www.icann.org/en/general/bylaws.htm>.

¹⁰⁶ ICANN, “New gTLD Program: New to the Program? Start Here!,” <http://www.icann.org/en/topics/new-gtlds/program-en.htm>.

3. Complete the full gTLD application and submit the remainder of the evaluation fee (\$180,000, for a total cost of \$185,000).
4. Pass evaluations including:
 - evaluation of the requested string (to determine that it “is not likely to cause security or stability problems in the DNS”);
 - screening for string similarity, including problems caused by “similarity to existing TLDs or reserved names”;
 - screening of the applicant (to determine “whether the applicant has the requisite technical, operational and financial capabilities to operate a registry”); and
 - a background check for the operator and key members.
5. If applicable, sufficiently address any objections made on the grounds of “string confusion, legal rights, morality and public order and/or community.”
6. Undergo a 45-day public comment period.
7. Pass a secondary Extended Evaluation if the application does not meet the criteria for the initial evaluation.
8. Transition to delegation: Complete a registry agreement with ICANN and pass a series of technical tests.¹⁰⁷

Not all of these steps are necessary for all applicants, and all of these steps are subject to change before the process is finalized and the gTLD program is formally launched. The fourth version of the DAG illustrates the process as follows:

¹⁰⁷ ICANN, “Draft Applicant Guidebook, Version 4,” May 31, 2010, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf>.

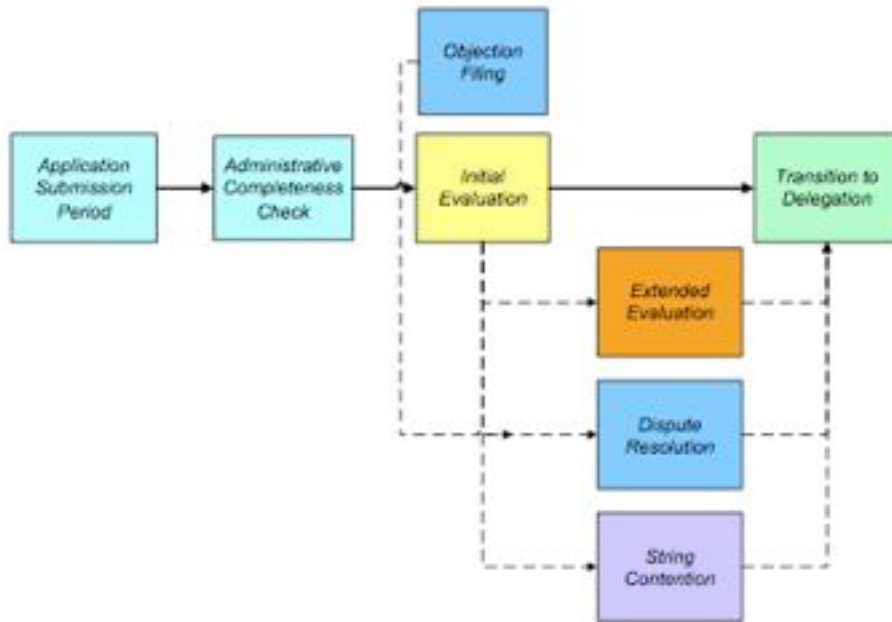


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

3 Major Issues

ICANN’s decision to begin work on a new gTLD application process met with opposition from some in the global business community, including trademark holders and members of the financial sector, as well as a number of governments.¹⁰⁸ Opponents argued that a gTLD expansion would “create morality, trademark and geographic problems at the top-level,” confusing consumers and placing a great financial burden on business owners who would be forced to defensively register both TLDs and second level domains in new TLDs to protect their brands.¹⁰⁹ Other concerns included fears that increasing the number of gTLDs would threaten the stability of the DNS, that the expected benefit to consumers through greater competition would not outweigh the costs associated with such an expansion, and that the new program may invite an increase in criminal conduct such as phishing, malware and botnets. Others, by contrast, complained of ICANN’s slowness to commence this proposed expansion, arguing that ongoing restriction of the DNS name space is anti-competitive or that the process is being held up by a few powerful voices that do not represent the wider ICANN community.¹¹⁰

¹⁰⁸ Michael Palage, “ICANN’s gTLD Proposal Hits a Wall: Now What?,” *The Progress & Freedom Foundation PFF Blog*, December 22, 2008, http://blog.pff.org/archives/2008/12/icanns_gtld_pro.html.

¹⁰⁹ Richard J Tindal, “Switching on the Light: Expression of Interest for New TLDs,” *Circle ID*, February 25, 2010, http://www.circleid.com/posts/switching_on_the_light_expression_of_interest_tlds/.

¹¹⁰ Andrew Alleman, “New gTLD Timeline Slips, Frustration Boils Over in Seoul,” *Domain Name Wire*, October 26, 2009, <http://domainnamewire.com/2009/10/26/new-gtld-timeline-slips-frustration-boils-over-in-seoul/>.

3.1 Timeline

ICANN's timeline for the launch of the new gTLD program has been pushed back repeatedly. In June 2008, ICANN estimated that the Applicant Guidebook would be finalized by November 2008 and that the program would launch by early 2009.¹¹¹ In response to comments on the first draft of the guidebook indicating that the proposed timeline was too aggressive, in February 2009, ICANN extended the launch date to December 2009. Three months later, ICANN revised the timeline again, pledging to begin accepting applications in early 2010.¹¹²

At the October 2009 ICANN meeting in Seoul, ICANN faced criticism from potential applicants who claimed, "the timetable hasn't slipped, but has been abandoned" and implored ICANN to "just pick a date." "We're losing faith in this process as we see delay after delay after delay," said one.¹¹³ Interviewees suggested that these delays may be due to the influence of powerful stakeholders who are fundamentally opposed to the widespread expansion of the domain name space. Some interviewees pointed to the ongoing discussion of trademark protection in new gTLDs as an example of an issue where a specific interest group, in this case trademark holders represented in the GNSO Intellectual Property Constituency (IPC), delayed the progress of the new gTLD program. This debate began with the GNSO Working Group on Protecting the Rights of Others in May 2007 and moved through the Implementation Recommendation Team and the GNSO Special Trademark Issues Working Group, which submitted its final report in February 2010.¹¹⁴ Trademark holders have stated their opposition to the widespread expansion of gTLDs; the IPC has urged the limitation of this expansion.¹¹⁵ In its June 2009 Communiqué to the Board, the GAC also stressed "the need for more effective protection for intellectual property rights" while stating its support for the introduction of new gTLDs.¹¹⁶

Other interviewees felt the delays may be due to the over-consideration of public input or to the Board's indecisiveness when faced by a lack of public consensus. These commentators described frustration at seeing issues that had been perceived or even explicitly marked as closed subsequently reopened. Such issues include the morality and public order standard for governmental objections to new gTLDs, which was debated within the GNSO, inserted into the first version of the DAG, and later altered in response to public comments (these alterations and the initial reasoning behind the standard are described in two explanatory memoranda published by ICANN in October 2008 and May 2009¹¹⁷).¹¹⁸ In the introduction to

¹¹¹ ICANN, "New gTLD Program: What kind of internet do you want?," June 23, 2008, http://par.icann.org/files/paris/BAA_Intro_NewGTLDs_Paris_23Jun08.pdf.

¹¹² ICANN, "New gTLD Program Update," May 31, 2009, <http://www.icann.org/en/announcements/announcement-07may09-en.htm>.

¹¹³ ICANN, "New gTLD Overview: ICANN Meeting, Seoul, Korea," October 26, 2009, <http://sel.icann.org/meetings/seoul2009/transcript-new-gtlds-program-overview-26oct09-en.txt>.

¹¹⁴ Interviews, September 2010.

¹¹⁵ International Trademark Association, "Creation of New gTLDs and Trademark Protection," July 8, 2009, http://www.inta.org/index.php?option=com_content&task=view&id=2005&Itemid=153&getcontent=.

¹¹⁶ GAC, "GAC Communiqué—Sydney," June 24, 2009, <http://gac.icann.org/system/files/Sydney%20Communique.pdf>.

¹¹⁷ ICANN, "New gTLD Program Explanatory Memorandum: Morality and Public Order Objection Considerations in New gTLDs," October 29, 2008, <http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>; ICANN, "New gTLD Program Explanatory Memorandum: Standards for Morality and Public Order Research," May 30, 2009, <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>.

¹¹⁸ Interviews, September 2010.

the third version of the DAG, published in October 2009, ICANN President Rod Beckstrom lists “evaluation criteria, dispute resolution standards and procedures, and contention resolution procedures” as being among the areas “where the process of continuous iteration and community feedback is essentially complete.”¹¹⁹ However, in its March 2010 Communiqués to the Board, the Governmental Advisory Committee (GAC) stated that it “believe[d] this item should not be listed on the ‘closed items’ list with respect to the new gTLD process,” argued that the standard was inappropriate, and requested more detail from ICANN staff on how the standard would be implemented.¹²⁰

Other interviewees expressed concerns that by proceeding with implementation of the GNSO recommendations before thoroughly responding to community concerns over the necessity for a gTLD expansion—which would include a thorough economic analysis and demonstrating the capability of the root to scale successfully—ICANN has created controversies that could have been avoided.¹²¹

In other interviews, it was suggested that the delays are a necessary part of the bottom-up, multi-stakeholder approach to which ICANN is committed.¹²²

3.2 “Overarching Issues”

Based on public comments on the first version of the Draft Applicant Guidebook, ICANN identified four “Overarching Issues” related to the introduction of new gTLDs: 1) Trademark Protection; 2) Potential for Malicious Conduct; 3) Security and Stability/Root Zone Scaling; and 4) TLD Demand and Economic Analysis.¹²³

3.2.1 Trademark Protection

In response to trademark-related concerns raised in public comments on the first draft of the DAG, ICANN pledged to discuss trademark issues stemming from the introduction of new gTLDs “with all relevant parties” and with Intellectual Property organizations around the world. On March 6, 2009, the ICANN Board resolved to direct the GNSO’s Intellectual Property Constituency, in conjunction with ICANN staff, to form an Implementation Recommendation Team (IRT) to address trademark concerns.¹²⁴ For additional information on the IRT, please see section 3.3 of this report.

3.2.2 Potential for Malicious Conduct

In February 2009, ICANN promised to “actively solicit[] feedback” on the potential for malicious conduct (specifically criminal conduct: phishing, pharming, malware, botnets) in

¹¹⁹ ICANN, “Draft Applicant Guidebook, Version 3,” October 4, 2009, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf>.

¹²⁰ “GAC Communiqué—Nairobi,” March 10, 2010, http://gac.icann.org/system/files/Nairobi_Communique.pdf.

¹²¹ Interviews, September 2010.

¹²² Interviews, September 2010.

¹²³ ICANN, “New gTLD Draft Applicant Guidebook: Analysis of Public Comment,” February 18, 2009, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.

¹²⁴ ICANN, “Adopted Board Resolutions — Mexico,” March 6, 2009, <http://www.icann.org/en/minutes/resolutions-06mar09.htm>.

the new DNS namespace.¹²⁵ ICANN set up a wiki to address all four “overarching issues” in April 2009; as of mid-August 2010 only two comments had been posted directly to the wiki.¹²⁶ In December 2009, ICANN staff announced that it would establish two temporary groups of experts to address these issues.¹²⁷ These two groups, the Zone File Access (ZFA) Advisory Group and the High Security op-Level Domain Advisory Group (HSTLD), published a set of documents on malicious conduct within new gTLDs and held two workshops at the March 2010 ICANN meeting in Nairobi.¹²⁸

3.2.3 Security and Stability/Root Zone Scaling

The ICANN Board delegated work on the security and stability issue to the Security and Stability Advisory Committee and the Root Server System Advisory Committee, which jointly conducted a study analyzing the impact of the proposed gTLD expansion on security and stability within the DNS root server system. A report on root scaling was published on August 31, 2009; a study on root zone augmentation and impact analysis followed on September 17, 2009.¹²⁹

3.2.4 TLD Demand and Economic Analysis

In October 2006, the ICANN Board resolved to direct the President of ICANN to:

commission an independent study by a reputable economic consulting firm or organization to deliver findings on economic questions relating to the domain registration market, such as:

- *whether the domain registration market is one market or whether each TLD functions as a separate market,*
- *whether registrations in different TLDs are substitutable,*
- *what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another,*
- *what is the effect of the market structure and pricing on new TLD entrants, and*
- *whether there are other markets with similar issues, and if so how are these issues addressed and by who?¹³⁰*

In its resolution, the Board stated that its decision to call for an independent study was motivated by public comments “concerning competition-related issues such as differential

¹²⁵ ICANN, “New gTLD Draft Applicant Guidebook: Analysis of Public Comment,” February 18, 2009, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.

¹²⁶ ICANN, “New gTLD Overarching Issues,” http://st.icann.org/new-gtld-overarching-issues/index.cgi?new_gtld_overarching_issues.

¹²⁷ ICANN, “Temporary Expert Advisory Groups Formed on New gTLD Malicious Conduct Initiatives,” December 3, 2009, <http://www.icann.org/en/announcements/announcement-03dec09-en.htm>.

¹²⁸ ICANN, “Mitigating Malicious Conduct in New gTLD—Zone File Access and High Security Zone TLD,” February 22, 2010, <http://www.icann.org/en/announcements/announcement-22feb10-en.htm>.

¹²⁹ ICANN, “Security and Stability: Root Zone Scaling,” https://st.icann.org/new-gtld-overarching-issues/index.cgi?security_and_stability_root_zone_scaling.

¹³⁰ ICANN, “Adopted Resolutions from ICANN Board Meeting,” October 18, 2006, <http://www.icann.org/en/minutes/resolutions-18oct06.htm>.

pricing” with respect to proposed new registry agreements between ICANN and the operators of the .biz, .info and .org registries, which had been posted for comment in July 2006.¹³¹

In a December 18, 2008 letter to ICANN’s CEO and Board Chairman, the United States Department of Commerce, on behalf of the US government, expressed concerns that the publication of the first draft of the DAG had preceded the completion of this study.¹³² Several other groups, including the National Association of Manufacturers,¹³³ AT&T,¹³⁴ and the Internet Commerce Coalition¹³⁵ also expressed concerns that ICANN had not yet filled its obligation to conduct a thorough economic study prior to releasing the DAG.¹³⁶

Some interviewees also expressed concerns that this analysis still remains to be satisfactorily conducted, while others believed the economic studies ICANN has commissioned have been helpful in informing the debate over vertical integration between registries and registrars (for more information on this debate, see “Vertical Integration” below).¹³⁷

In March 2009, ICANN released two studies by University of Chicago economist Dennis Carlton, one on the impact of gTLDs on consumer welfare and one on the possibility of price caps on the prices charged by new gTLD registries for second level domains. In these studies, Carlton concluded that the introduction of new gTLDs would “improve consumer welfare by facilitating entry and creating new competition.... The likely effect of ICANN’s proposal is to increase output, lower price and increase innovation.” He also stated that price caps on new TLDs were “unnecessary” and that imposing price caps may harm the marketplace by placing limits on the pricing flexibility of new registries without providing many benefits to registrants.¹³⁸

After publishing the reports, ICANN opened a 45-day public comment forum, in which they were widely criticized.¹³⁹ Andrew Alleman of the Domain Name Wire blog accused ICANN of “whitewash[ing]” its own positions on new gTLDs and pointed out that Carlton contradicted himself in the reports by saying new gTLDs would benefit consumers by creating competition but that they would not be successful enough to pose a threat to trademark holders.¹⁴⁰ University of Miami law professor and long-time ICANN watcher Michael

¹³¹ ICANN, “Proposed .BIZ, .INFO and .ORG gTLD Registry Agreements,” July 28, 2006, <http://www.icann.org/en/announcements/announcement-2-28jul06.htm>.

¹³² Meredith A. Baker, United States Department of Commerce, “Letter to Chairman Dengate-Thrush,” December 18, 2008, <http://www.icann.org/correspondence/baker-to-dengate-thrush-18dec08-en.pdf>.

¹³³ National Association of Manufacturers, “Industry Comments to the New GTLD Program and Process,” December 15, 2009, <http://forum.icann.org/lists/gtld-guide/pdf7xgwqYBTl6.pdf>.

¹³⁴ AT&T, “AT&T Comments on New gTLD Guidebook,” December 15, 2008, <http://forum.icann.org/lists/gtld-guide/docvN9GJ3ZMcd.doc>.

¹³⁵ Internet Commerce Coalition, “Comments on the New gTLD Program and Process,” December 15, 2008, <http://forum.icann.org/lists/gtld-guide/pdfwiBzRRbU1A.pdf>.

¹³⁶ Michael Palage, “ICANN’s Economic Reports: Finding the Missing Pieces to the Puzzle,” *Progress Snapshot* 5.4, April 2009, http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1494671_code759757.pdf?abstractid=1494671&mirid=1.

¹³⁷ Interviews, September 2010.

¹³⁸ ICANN, “New gTLDs—Preliminary Reports on Competition and Pricing,” March 4, 2009, <http://www.icann.org/en/announcements/announcement-04mar09-en.htm>.

¹³⁹ ICANN, “[competition-pricing-prelim] Chronological Index,” <http://forum.icann.org/lists/competition-pricing-prelim/>.

¹⁴⁰ Andrew Allemann, “ICANN Releases Two ‘Whitewash’ Reports to Defend its Positions on new gTLDs,” *Domain Name Wire*, March 5, 2009, <http://domainnamewire.com/2009/03/05/icann-releases-two-whitewash-reports-to-defend-its-positions-on-new-gtlds/>.

Froomkin called the studies “naïve” and challenged Carlton’s credibility, pointing out that the studies included very little quantitative data to back up their conclusions.¹⁴¹

In June 2009, ICANN commissioned Carlton to write two new papers responding to these criticisms. Reactions were mixed, with those who criticized the original papers unmoved and others—including several potential gTLD applicants—supporting the papers.¹⁴² Between June 2009 and March 2010, the GAC emphasized the “lack of comprehensive analysis of economic and competition impacts” of the new gTLD program in three Communiqués to the Board and a separate letter to Peter Dengate-Thrush. In July 2009, the International Trademark Association Board of Directors passed a resolution stating that “ICANN has yet to commission the independent, comprehensive economic study of the domain name registration market called for by its Board of Directors in 2006” and that, “accordingly, ICANN has demonstrated no adequate economic or public policy justification for the introduction of new gTLDs.”¹⁴³

In September 2009, Larry Smith and Howard Coble, both members of the United States House of Representatives’ Judiciary Committee, sent a letter to Rod Beckstrom stating that “the only economic justification put forth thus far has been an ICANN-commissioned report that has been widely criticized for failing to include empirical data or analysis” and asking whether ICANN intended to follow through on its commitment to carry out an economic study.¹⁴⁴ Beckstrom responded by pointing to the two reports by Carlton and an October 2008 study on vertical integration by CRA International. He stated that “Even with what appears to be the compelling benefits of competition, ICANN’s commitment to open and transparent processes requires further action on ICANN’s part” and declared that ICANN would “retain economists to review and summarize work to date regarding the costs and benefits of new gTLDs...and then evaluate whether additional study is required.”¹⁴⁵

3.3 Expression of Interest Proposal

The concept of an Expression of Interest (EOI) model, in which prospective applicants could express “interest” in top-level domain strings before filing complete formal applications, was advanced at the October 2009 ICANN meeting in Seoul by various participants, primarily prospective applicants frustrated at the delays and uncertainty surrounding the gTLD program and concerned that the process, which was becoming increasingly expensive, may be put off indefinitely.¹⁴⁶ An EOI model would serve as a sign of progress, helping to move the process forward. At the meeting, the ICANN Board resolved to direct ICANN staff to “study the potential impact of a call for formal ‘expressions of interest,’” and to submit a

¹⁴¹ Michael Froomkin, “Deeply, deeply flawed economic report and analysis,” *ICANN Watch*, March 4, 2009, <http://www.icannwatch.org/article.pl?sid=09/03/05/0248231>.

¹⁴² ICANN, “[competition-pricing-prelim] Chronological Index,” <http://forum.icann.org/lists/competition-pricing-prelim/>.

¹⁴³ International Trademark Association, “Creation of New gTLDs and Trademark Protection,” July 8, 2009, http://www.inta.org/index.php?option=com_content&task=view&id=2005&Itemid=153&getcontent=.

¹⁴⁴ Lamar Smith and Howard Coble, Letter to Rod Beckstrom, September 15, 2009, <http://www.icann.org/correspondence/smith-coble-to-beckstrom-15sep09-en.pdf>.

¹⁴⁵ Rod Beckstrom, Letter to Lamar Smith and Howard Coble, September 22, 2009, <http://www.domainamenews.com/wp-content/uploads/2009/09/2009-09-22-letter-from-rod-beckstrom.pdf>.

¹⁴⁶ ICANN, “New gTLD Overview: ICANN Meeting, Seoul, Korea,” October 26, 2009, <http://sel.icann.org/meetings/seoul2009/transcript-new-gtlds-program-overview-26oct09-en.txt>. A sample comment from potential applicant Bret Fausett is indicative of this concern: “There are people who are burning money trying to build businesses on this ICANN platform, and it’s very difficult when you don’t know what the target is.”

draft proposal for Board consideration at the December 2009 Board meeting.¹⁴⁷ The Board noted that the model “could assist the resolution of the remaining issues and assist ICANN in planning for the coming new gTLD round” and “will likely contribute to a better understanding of: 1) the economic demand for new gTLDs; 2) the number of gTLDs that are likely to be applied for; and, 3) relevant industry data.”¹⁴⁸

On November 11, 2009, ICANN announced it was considering soliciting expressions of interest in new gTLDs.¹⁴⁹ ICANN opened a month-long public comment period between November 11 and December 11, 2009 and asked for input on the form an EOI model might take. (Note: in this announcement, ICANN stated that those who wanted to have their comments considered by the ICANN Board during its December meeting should submit comments no later than November 27.)¹⁵⁰

In this round of public comments, supporters of an EOI model included a number of Internet marketing companies, TLD consulting firms, self-identified potential gTLD applicants (including business and civil society organizations), and GoDaddy. They argued it would kick-start the application process and ensure that only serious applicants were involved. Potential gTLD applicant Stephen Ruskowski’s comment is typical of the sentiments expressed by EOI proponents:

*I welcome the transparency and approve of any screen that helps ensure all applicants are serious, viable, and well-intentioned. Restricting the round to those who have participated in the formal EOI (with attendant fees, toward the full application fee) would establish a minimum level of commitment and go a long way toward ensuring the integrity, order, and manageability of the application process. Also, making these EOIs public would promote early conflict resolution and perhaps help some groups and individuals avoid more serious risk as they become aware of better-positioned, more experienced competition.*¹⁵¹

On December 18, 2009, ICANN published a draft EOI model, which would require prospective applicants to submit information about themselves and the requested TLD, as well as a \$55,000 deposit, in order to participate in the first round of gTLD applications. Those who did not participate in the EOI would not be eligible to submit a gTLD application until later rounds.¹⁵² ICANN opened a second public comment period on this model through January 27, 2010. Arguments against the proposed model clustered around four main

¹⁴⁷ ICANN, “Adopted Board Resolutions — Seoul,” October 30, 2009, <http://www.icann.org/en/minutes/resolutions-30oct09-en.htm>.

¹⁴⁸ ICANN, “Adopted Board Resolutions — Seoul,” October 30, 2009, <http://www.icann.org/en/minutes/resolutions-30oct09-en.htm>.

¹⁴⁹ ICANN, “Expressions of Interest in new gTLDs: ICANN seeks input and advice,” November 11, 2009, <http://www.icann.org/en/announcements/announcement-11nov09-en.htm>.

¹⁵⁰ ICANN, “Expressions of Interest in New gTLDs,” <http://www.icann.org/en/public-comment/public-comment-200912.htm#eoi-new-gtlds>; ICANN, “[eoi-new-gtlds] Chronological Index,” <http://forum.icann.org/lists/eoi-new-gtlds/>; ICANN, “Expressions of Interest in New gTLDs: Summary of Comments (11 November to 11 December 2009),” January 4, 2010, <http://www.icann.org/en/topics/new-gtlds/summary-analysis-eoi-04jan10-en.pdf>.

¹⁵¹ Stephen Ruskowski, “EOI,” November 17, 2009, <http://forum.icann.org/lists/eoi-new-gtlds/msg00009.html>.

¹⁵² ICANN, “New gTLD Program: Aspects of an Expressions of Interest and Pre-Registration Model,” December 18, 2009, <http://www.icann.org/en/topics/new-gtlds/eoi-model-18dec09-en.pdf>.

points: effectiveness, cost, possible favoritism toward ICANN insiders, and its potential to create a secondary market for TLD slots.¹⁵³

1. **Effectiveness:** In its announcement of the EOI draft proposal, ICANN stated that the goal of the EOI was to gather information about the potential number of applications it would eventually receive. Opponents argued that many serious applicants would stay out of the EOI process to avoid revealing their ideas for a string, preventing unwanted competition (the proposed EOI applied only to the first round of applicants; later rounds were open to anyone). Others believed the EOI model was premature given that draft status of the Applicant Guidebook and that would further delay the application process while pulling attention away from the other, more serious “overarching issues.”

Supporters argued the EOI model would “illuminate” the gTLD landscape, providing a better picture of the prospective applicants, helping avoid conflicting applications and better informing potential applicants of any serious threats to their applications.

2. **Cost:** For many, the \$55,000 EOI fee stood out in sharp contrast to the lack of a similar fee during the EOI phase of first round of gTLD proposals in 2000.¹⁵⁴ Opponents of the fee worried that non-profits, applicants from the developing world, or those who had been affected by the economic crisis would be effectively priced out of applying. One comment stated that the program “should not be used as a revenue raising tool for ICANN.”

Supporters of the fee, which included many self-identified potential applicants, believed it would effectively prevent non-serious proposals. They also noted that the \$55,000 EOI fee would be applied to the \$185,000 evaluation fee required for any TLD application and that the total cost of entering a new TLD into the root is around \$500,000, making the EOI fee a relatively small part of the process. Those who cannot afford the EOI fee likely cannot afford to apply for or manage a TLD, they argued.

3. **Possible favoritism toward ICANN insiders:** Opponents to the EOI proposal feared that it would give those who tend to be more involved in ICANN an unfair advantage over general Internet users in applying for new gTLDs. Eric Brunner-Williams, the Chief Technology Officer of Core Internet Council of Registrars, specifically voiced this concern, claiming the EOI idea “raises profound anti-competitive and institutional confidence issues from ICANN itself gaming the rules to benefit a group of participants that engage in ICANN’s processes to a greater extent than Internet users generally.”¹⁵⁵

Proponents, including Richard Tindal (Senior Vice President of domain name registrar eNOM), pointed out that the rules for obtaining a new gTLD were the same

¹⁵³ ICANN, “Expressions of Interest (EOI) in New gTLDs: Public Comments Summary and Analysis (11 Nov. to 11 Dec. 2009 and 18 Dec. 2009 to 27 Jan. 2010),” <http://www.icann.org/en/topics/new-gtlds/summary-analysis-eoi-15feb10-en.pdf>.

¹⁵⁴ In 2000, interested parties were instructed to submit a brief (no more than ten pages) description of their proposal indicating how likely they were to formally apply. No fee was assessed until an applicant officially applied. ICANN, “ICANN Yokohama Meeting Topic: Introduction of New Top-Level Domains,” June 13, 2000, <http://www.icann.org/en/meetings/yokohama/new-tld-topic.htm#V>.

¹⁵⁵ ICANN, “Expressions of Interest in New gTLDs: Summary of Comments (11 November to 11 December 2009),” January 4, 2010, <http://www.icann.org/en/topics/new-gtlds/summary-analysis-eoi-04jan10-en.pdf>.

no matter who was applying and that a well-executed communications campaign would ensure that all who might want to submit an EOI would be able to do so.¹⁵⁶

In its analysis of the public comments, ICANN noted that if the Board were to approve the EOI proposal, it would need to organize a widespread information campaign to ensure that all potential applicants were aware of the program.¹⁵⁷

- 4. Potential to create a secondary TLD market:** Some opponents, including Microsoft and Time Warner, expressed concern that applicants would try to “game the system” by first submitting multiple EOIs and then turning around and selling the resulting TLDs to those with real interest in maintaining them and the ability to pay more than the original cost. Those in favor of the EOI system, including Richard Tindal, noted that each EOI costs \$55,000 and provides no guarantee that the desired TLD will actually be obtained, so the likelihood that someone will decide the possible advantages outweigh the financial risks is quite small.¹⁵⁸

ICANN received nearly 400 public comments during its two open forums on the EOI proposal. In its analysis of these comments, ICANN staff noted that while “many responses expressing opposition actually state the EOI is acceptable if conducted in a certain way,” there was a “general consensus that certain other overarching issues should be addressed prior to the launch of the EOI or gTLD program.”¹⁵⁹

ICANN held a public discussion on the EOI proposal during the March 2010 meeting in Nairobi, during which there was very little consensus.¹⁶⁰ The GAC also held a discussion of the EOI and submitted a Communiqué to the Board in which it “question[ed] the benefits of pursuing further a separate EOI process, which could distract attention and resources from finalizing the new gTLD program.”¹⁶¹ At that meeting, the ICANN Board voted against implementing an EOI model, claiming it would cause unnecessary confusion and delay and that it would take resources away from other critical issues.¹⁶² ICANN CEO and president Rod Beckstrom said that the EOI proposal, if enacted, would have “added another step, another process, another set of community discussions and debate” to the gTLD process.¹⁶³ Some interviewees who had submitted public comments expressed concerns that this explanation for the Board’s decision was not adequate, given the fact that many of the submissions did

¹⁵⁶ Richard J Tindal, “Switching on the Light: Expression of Interest for New TLDs,” *Circle ID*, February 25, 2010, http://www.circleid.com/posts/switching_on_the_light_expression_of_interest_tlds/.

¹⁵⁷ ICANN, “Expressions of Interest (EOI) in New gTLDs: Public Comments Summary and Analysis (11 Nov. to 11 Dec. 2009 and 18 Dec. 2009 to 27 Jan. 2010),” <http://www.icann.org/en/topics/new-gtlds/summary-analysis-eoi-15feb10-en.pdf>.

¹⁵⁸ Richard J Tindal, “Switching on the Light: Expression of Interest for New TLDs,” *Circle ID*, February 25, 2010, http://www.circleid.com/posts/switching_on_the_light_expression_of_interest_tlds/.

¹⁵⁹ ICANN, “Expressions of Interest (EOI) in New gTLDs: Public Comments Summary and Analysis (11 Nov. to 11 Dec. 2009 and 18 Dec. 2009 to 27 Jan. 2010),” <http://www.icann.org/en/topics/new-gtlds/summary-analysis-eoi-15feb10-en.pdf>.

¹⁶⁰ ICANN, “New gTLD Update and EOI Panel Discussion,” March 8, 2010, <http://nbo.icann.org/node/8877>.

¹⁶¹ GAC, “GAC Communiqué—Nairobi,” March 11, 2010, http://gac.icann.org/system/files/Nairobi_Communique.pdf.

¹⁶² ICANN, “Adopted Board Resolutions — Nairobi,” March 12, 2010, <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>; Elisa Cooper, “EI, EI — NO!,” *Circle ID*, March 12, 2010, http://www.circleid.com/posts/20100312_icann_expression_of_interest_ei_ei_no/.

¹⁶³ Ascio, “Highlights from the ICANN Meeting 7-12 March—Nairobi, Kenya,” March 25, 2010, <http://www.ascio.com/NewsContent.aspx?id=296>.

in fact express support for the EOI.¹⁶⁴

3.4 Trademark Issues and the Implementation Recommendation Team

Of the four “overarching issues” identified by ICANN staff via the comments on the first version of the DAG, issues related to trademark protection have elicited the most public attention.

For many trademark holders, the introduction of new gTLDs raises concerns about trademark protection. ICANN is taking these concerns seriously; of the twenty principles laid out in the GNSO recommendations, the need to protect existing trademarks is listed third, above the need to prevent technical instability within the DNS and the need to comply with international human rights norms.¹⁶⁵

The GNSO recommendations also include the need to prevent TLDs that are “confusingly similar” to existing top-level domains or Reserved Names; this recommendation is listed second. While this recommendation does not specifically reference trademarks, the accompanying notes largely concern trademark law. In a comment on the recommendation, Avri Doria, then Chair of the GNSO Council, expressed her concern with the language, noting:

*By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.*¹⁶⁶

Within trademark law, the concept of “confusingly similar” holds a different legal standard than the concept of “likelihood of confusion.” Two names—Acme Hardware and Acme Realty—may be “confusingly similar,” but, as they are used for dissimilar goods and services, are unlikely to cause confusion and therefore do not infringe on one another’s trademark. American University law professor Christine Farley explains that in domain name policy, where only the requested string is being considered, “confusingly similar” is the only standard that can be applied because domain names lack the real-world context necessary to determine “likelihood of confusion.” The GNSO recommendation “equates domain names with trademarks as legally protectable properties,” she writes, pointing out that under the proposed standards American University, which currently owns american.edu, would theoretically be able to prevent anyone else from registering .american. Furthermore, she notes, trademarks are largely regionally and market-based, whereas domain names are global; a “one-size-fits-all approach would leave consumers confused in one place, while unjustifiably denying speech rights in another.”¹⁶⁷

¹⁶⁴ Interviews, September 2010.

¹⁶⁵ GNSO, “Final Report - Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

¹⁶⁶ GNSO, “Final Report - Introduction of New Generic Top-Level Domains,” footnote 39, August 8, 2007, http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_ftn39.

¹⁶⁷ Christine Haight Farley, “Convergence and Incongruence: Trademark Law and ICANN’s Introduction of New Generic Top-Level Domains,” Washington College of Law Research Paper No. 2009-22, <http://ssrn.com/abstract=1400304>.

On the other side of the debate are trademark holders, who fear that the introduction of new gTLDs will worsen existing problems with trademark infringement and cybersquatting. They fear they will be required to “defensively register” their trademarks as gTLDs—a costly process at \$185,000 per gTLD—as well as purchase second level domains in each new TLD to protect their brands. Monitoring and enforcing their trademarks across a broad new swath of domain registries will be overwhelming, they argue.¹⁶⁸ (Not all agree with these assertions. Using ten years of data from cases decided according to the Uniform Dispute Resolution Policy, Fred Kreuger and Antony Van Couvering of Minds + Machines estimate that the total annual cost to trademark holders resulting from new gTLDs may be as little as \$0.10 per trademark worldwide.¹⁶⁹)

At the March 2009 ICANN meeting in Mexico City, the Board resolved to request that the GNSO’s Intellectual Property Constituency form an Implementation Recommendation Team (IRT) to “develop and propose solutions to the overarching issue of trademark protection in connection with the introduction of new gTLDs.”¹⁷⁰ This resolution was in response to a proposal by “members of the community with knowledge and expertise in this area.”¹⁷¹ These community members were identified in interviews as members of the GNSO’s Intellectual Property Constituency (IPC).¹⁷² The IRT was organized by the IPC in consultation with the ICANN staff. According to the Board resolution, the team should be “comprised of an internationally diverse group of persons with knowledge, expertise, and experience in the fields of trademark, consumer protection, or competition law, and the interplay of trademarks and the domain name system.” The resolution also directed the IRT to “solicit input from the interested constituencies prior to its first session to ensure broad community input at the outset of its work.”¹⁷³

The IRT was criticized by the domain name industry and the ALAC for containing only trademark industry representatives and excluding consumers, Internet users and domain name registrants. In a statement regarding the IRT’s final report, ALAC said, “We are aware of a number of qualified individuals who expressed interest in participating in the IRT but were summarily refused without reason.”¹⁷⁴ These sentiments were echoed in several interviews. Interviewees also raised questions about the process behind the creation of the IRT, particularly focusing on whether the creation of a team of experts selected from a subset of the GNSO constituency was consistent with ICANN’s commitment to a bottom-up, multi-stakeholder approach to policy making.¹⁷⁵

¹⁶⁸ Joshua S. Jarvis, “New gTLDs Still On Track Despite Trademark Concerns,” *Trademark and Copyright Law Blog*, April 2, 2010, <http://www.trademarkandcopyrightlawblog.com/2010/04/articles/domain-names/new-gtlds-still-on-track-despite-trademark-concerns/>.

¹⁶⁹ Fred Kreuger and Antony Van Couvering, “A Quantitative Analysis of Trademark Infringement and Cost to Trademark Holders in New gTLDs,” *Minds + Machines Working Paper 2010-1*, February 10, 2010, <http://www.mindsandmachines.com/wp-content/uploads/M+M-Quantitative-Analysis-of-Cost-of-New-TLDs-to-Trademarks.pdf>.

¹⁷⁰ ICANN, “Adopted Board Resolutions — Mexico,” March 6, 2009, <http://www.icann.org/en/minutes/resolutions-06mar09.htm>.

¹⁷¹ *Ibid.*

¹⁷² Interviews, September 2010.

¹⁷³ *Ibid.*

¹⁷⁴ ALAC, “Statement of the Committee to the Public Consultation on the Implementation Recommendation Team (IRT) Final Report of 29th May 2009,” July 7, 2009, <https://www.atlarge.icann.org/files/atlarge/correspondence-07jul09-en.pdf>.

¹⁷⁵ Interviews, September 2010.

The IRT met via teleconference and held two in-person sessions (one in Washington, D.C. and one in San Francisco, both supported by ICANN staff) between March 25, 2009 and the submission of its final report to the ICANN Board on May 6, 2009. Its draft report, published on April 24, 2009, was open for public comment from April 24–May 24, 2009. The final report was made available for comment from May 29–June 29, 2009; this period was later extended to July 6, 2009. Some interviewees raised concerns over ICANN’s response to the IRT final report. They noted that though the ICANN Board had commissioned a report from the IRT “for consideration by the ICANN community at the [June 2009] Sydney meeting,”¹⁷⁶ the IRT was not given a chance to meet with the Board directly at this meeting.¹⁷⁷ (The IRT recommendations were, however, discussed at a consultation session on trademark protection and malicious behavior.¹⁷⁸)

The IRT’s May 2009 final report proposed the following mechanisms for trademark protection:

- IP Clearinghouse, Globally Protected Marks List and associated Rights Protection Mechanisms, and standardized pre-launch rights protection mechanisms;
- Uniform Rapid Suspension System;
- Post delegation dispute resolution mechanisms (PDDRP);
- Whois requirements for new TLDs; and
- Use of algorithm in string confusion review during initial evaluation.¹⁷⁹

These recommendations have raised multiple objections, as described in the ICANN staff analysis of public comments on the IRT final report.¹⁸⁰ Among them:

1. The International Trademark Association generally praised the IRT recommendations but expressed concerns that they “may not be adequate to address the potential problems associated with an unlimited expansion of NTLDs [new gTLDs].”¹⁸¹
2. Some have raised the concern that the IP Clearinghouse, which would act as a repository of trademark rights (including family names, trade names, unregistered marks and globally protected marks), may “represent a step towards a wholly new global registered trademark system,” the creation of which “is outside ICANN’s scope and authority.” Comments submitted by the NCUC and ALAC express concerns that the creation of this clearinghouse “could effectively derail ICANN.”

¹⁷⁶ ICANN, “Adopted Board Resolutions — Mexico,” March 6, 2009, <http://www.icann.org/en/minutes/resolutions-06mar09.htm>.

¹⁷⁷ Interviews, September 2010.

¹⁷⁸ ICANN, “New gTLD Program—Consultation Session on Trademark Protection and Malicious Behavior,” June 24, 2009, <http://syd.icann.org/node/3788>.

¹⁷⁹ ICANN, “Final Report on Trademark Protection in New gTLDs,” May 29, 2009, <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>.

¹⁸⁰ ICANN, “Summary Analysis of IRT Final Report Comments (Post-delegation Process and other Comments),” October 2009, https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20091006224010-0-1875/original/summary-analysis-irt-final-report-04oct09-en.pdf.

¹⁸¹ Anthony J. Biller and Jennifer Bisk, “Who is Going to Own DotAmazon? The Pending Domain Name Land Grab,” *Landslide 2* (2009).

3. A Globally Protected Marks List (GPML) would prevent the registration of gTLDs and second level domain names matching any of the marks it contains. The list would contain only those marks registered in countries in each of the five global regions defined by ICANN. Opponents argue that registering a trademark in each region in order to include it in the GPML would constitute a major burden on trademark holders while providing relatively little protection. The current version of the DAG makes no mention of a GPML.
4. A comment submitted by George Kirikos calls the Uniform Rapid Suspension System (URS) an “extremist view of trademark rights favoring IP interests in comparison with the UDRP” [ICANN’s existing Uniform Domain-Name Dispute-Resolution Policy] that “goes beyond what is protected by law and due process.” Opponents to the URS fear it could become “an easy, cheap tool for Reverse Domain Name Hijacking.”
5. Privacy advocates worry that the Whois requirement may pose a threat to free speech. In a statement delivered at the Sydney ICANN meeting in June 2009, the At-Large Community, the At-Large Advisory Committee and the Non-Commercial Users Constituency noted that the Whois requirement did not take into account international privacy standards or national laws protecting privacy.¹⁸²

The report was criticized as heavily weighted in favor of existing IP interests and overstepping both the bounds of existing copyright and trademark law and ICANN’s own mandate by asking that ICANN take responsibility for policing instances of trademarked terms in second and third level domains. In their joint statement in June 2009, the At-Large Advisory Committee and Non-Commercial Users Constituency claimed that “in the case of the IRT Report, we had neither transparency nor openness” and announced their formal opposition to the GPML, Uniform Rapid Suspension System and thick Whois proposals.¹⁸³

Following the IRT report, the Board sent a letter on October 12, 2009 to the GNSO Council for rapid review, saying it would implement several IRT recommendations unless the GNSO Council voted otherwise.¹⁸⁴ On October 28, 2009, the GNSO called for participants from all stakeholder groups to form a broad “Special Trademark Issues” working group (STI). The STI worked to produce a consensus representing tradeoffs and compromises among positions. Its December 11, 2009 report¹⁸⁵ was approved by the GNSO Council, which “resolve[d] that the STI proposal to create a Trademark Clearinghouse and a Uniform Rapid Suspension procedure as described in the STI Report are more effective and implementable solutions than the corresponding staff implementation models that were described in memoranda accompanying the Draft Applicant Guidebook Version 3.”¹⁸⁶ The GNSO posted the STI report for public comment between its December 2009 meeting and January 26, 2010.

¹⁸² ICANN, “Joint Statement from ALAC/At-Large and NCUC made at Sydney Meeting re IRT Report,” June 25, 2009, http://st.icann.org/gns0-liaison/index.cgi?at_large_irt_process_working_group.

¹⁸³ ICANN, “Joint Statement from ALAC/At-Large and NCUC made at Sydney Meeting re IRT Report,” June 25, 2009, http://st.icann.org/gns0-liaison/index.cgi?at_large_irt_process_working_group.

¹⁸⁴ GNSO, “Letter from Rod Beckstrom & Peter Dengate Thrush to GNSO Council,” October 12, 2009, <http://gns0.icann.org/correspondence/beckstrom-to-gns0-council-12oct09-en.pdf>.

¹⁸⁵ GNSO, “Special Trademark Issues Review Team Recommendations,” Special Trademark Issues Work Team, December 11, 2009, <http://gns0.icann.org/issues/sti/sti-wt-recommendations-11dec09-en.pdf>.

¹⁸⁶ GNSO, “GNSO Council Minutes,” December 17, 2009, <http://gns0.icann.org/meetings/minutes-council-17dec09-en.htm>.

ICANN revised the IP clearinghouse and Uniform Rapid Suspension System proposals in the DAG to reflect the STI recommendations and posted these new proposals for public comment on February 15, 2010. At the March 2010 meeting, the Board voted to analyze public comments on the new proposals and to create guidelines accordingly to add to the Draft Applicant Guidebook for new gTLD applicants. The Board also resolved to analyze public comment on the PDDRP and to “synthesize those comments, as appropriate,” in the DAG.¹⁸⁷

In the opinion of some interviewees, the STI working group was an example of the bottom-up, multi-stakeholder model of policy development to which ICANN is committed. Some expressed the view that ICANN should have formed the STI working group in response to initial concerns over trademark protection, rather than delegating these issues to the IRT. This view was generally tied to the belief that, although the IRT was officially tasked with developing recommendations relating to the implementation of the trademark protection policies developed by the GNSO, in reality, its work also included policy development. As the GNSO is the body responsible for “developing and recommending to the ICANN Board substantive policies relating to generic top-level domains,”¹⁸⁸ some interviewees felt that trademark issues should have been referred to the GNSO once substantial concerns had been raised by the community.¹⁸⁹ Other interviewees felt ICANN was right to consult experts for advice on implementing the GNSO’s policy recommendation that “strings must not infringe the existing legal rights of others.”¹⁹⁰

The current version of the DAG states that requested gTLDs will be reviewed for similarity with existing TLDs, reserved names (a list of 34 strings such as “example,” “test” and “tld”), applied-for gTLDs and strings requested as Internationalized Domain Name country code TLDs. Second level domains will not be included in the string similarity review process. Trademark holders may file objections to gTLD applications in accordance with the draft WIPO Rules for New gTLD Dispute Resolution.

3.5 The Role of the Governmental Advisory Committee

In March 2007, the GAC submitted a list of principles relating to new gTLDs to the ICANN Board.¹⁹¹ The preamble to this list emphasizes the “sovereign right of States” over “international Internet-related public policy issues” as laid out in the 2003 World Summit on the Information Society Declaration. It also points to ICANN’s own Bylaws, which commit the organization to “seeking and supporting broad, informed participation reflecting the functional, geographic and cultural diversity of the Internet at all levels of policy development and decision making” and “recognizing that governments and public authorities are responsible for public policy and duly taking into account governments’ or

¹⁸⁷ ICANN, “Adopted Board Resolutions — Nairobi,” March 12, 2010, <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>.

¹⁸⁸ ICANN, “Bylaws for Internet Corporation for Assigned Names and Numbers”, amended June 25, 2010, <http://www.icann.org/en/general/bylaws.htm>.

¹⁸⁹ Interviews, September 2010.

¹⁹⁰ Interviews, September 2010; GNSO, “Final Report - Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

¹⁹¹ GAC, “GAC Principles Regarding new gTLDs,” March 28, 2007, http://gac.icann.org/system/files/gTLD_principles_0.pdf.

public authorities' recommendations." Following the preamble is a list of principles that the GAC states "need to be respected."¹⁹²

The final section of the document states that, in line with ICANN's Bylaws, "ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the implementation of these principles" and that "if any individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them."¹⁹³

Throughout the development of the new gTLD program, the GAC has submitted inputs to the ICANN Board via a number of different channels, including the March 2007 GAC principles document, Communiqués published after each of its meetings, and direct letters.

The interviews highlighted tensions among various stakeholders as to the specific role of the GAC in the development of the new gTLD program. Specific issues included the timeliness of GAC advice to the Board, the lack of staff and Board responsiveness to GAC advice, and the role of the GAC in ICANN's policy development process.¹⁹⁴

- **Timeliness of GAC advice:** Some interviewees expressed concerns that the GAC was delaying the progress of the new gTLD program by providing its advice too late in the process; for example, by raising concerns about the morality and public order standard (see section 3.1) or by communicating its views on one version of the DAG as the subsequent version was published. Some questioned why, when individual GAC members attended working group meetings, the GAC as a whole appeared uninformed about the issues discussed in these meetings, responding to specific issues months or in some cases years after they were first introduced. Other interviewees noted that the GAC typically attempts to develop consensus before providing advice to the Board and that this process involves time-consuming consultation with national governments. Interviewees stated that this process is often complicated by the fact that the GAC receives lengthy documents to discuss just a few weeks prior to its meetings, making it difficult to read through these documents and discuss them with national governments in time to come to a consensus.
- **Staff and Board responsiveness to GAC advice:** Some interviewees expressed concerns that, because the Board primarily receives its information from briefing materials prepared by the staff and because these briefing materials are not made public, it is unclear whether the Board is adequately informed of GAC advice. Some interviewees expressed concerns that GAC advice has been largely ignored by the Board. This would be at odds with ICANN's Bylaws, which require the Board to take

¹⁹² GAC, "GAC Principles Regarding new gTLDs," March 28, 2007, http://gac.icann.org/system/files/gTLD_principles_0.pdf.

¹⁹³ Ibid.

¹⁹⁴ Interviews, September 2010.

GAC advice into account in the “formulation and adoption of policies” and to explain any decision it makes that contradicts GAC advice.

- GAC role in policy development:** As noted above, some interviewees expressed concerns that GAC advice has not been considered in a timely manner during the development of the new gTLD program. One example is the GAC’s position on the use of geographic names as top-level domains: seven official Communiqués and two letters from the GAC between October 2007 and August 2009 expressed the GAC’s opposition to the unlimited use of geographic names without government approval and requested more stringent provisions on this issue in the DAG. Other interviewees expressed concerns that the GAC is overstepping its bounds in the advice it has contributed to the gTLD process by attempting to make or influence policy independently while ignoring the policy recommendations of the GNSO. Interviewees also had differing views on the meaning of the GAC’s advisory role: some felt the GAC is rightfully given more weight than other advisory committees, while others felt that the GAC should play a weaker role. Other interviewees felt that GAC advice is less helpful than it could be, expressing concerns that the GAC often states certain principles (for example, their views on the use of geographic names as top-level domains) without proposing solutions for how to carry out these principles in practice.

3.5.1 *Geographic Names*

The GAC principles on new gTLDs state that ICANN should “avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities” and that applicant registries should pledge to block “at no cost and upon demand of governments...names with national or geographic significance at the second level of any new gTLD.”¹⁹⁵

According to Internet governance scholar and Non-Commercial Users Constituency co-founder Milton Mueller, the GAC has long been concerned with the use of the names of countries, regions, languages or peoples as domain names. He writes that as early as 1998, the GAC “demanded...that ICANN abstain” from assigning these names.¹⁹⁶ Mueller states that after the first TLD expansion in 2000, the director-general of the European Commission reportedly wrote to ICANN’s President and asked that governments have the first shot at registering ISO country codes in the new TLDs (example: uk.biz and gbr.biz). In 2001, the GAC requested—and ICANN approved this request—that all country names be reserved in the .info TLD for government use. Mueller points out that the Domain Name Supporting Organization (the precursor to the GNSO) was not involved in this decision, despite being responsible for suggesting policy related to TLDs.

¹⁹⁵ GAC, “GAC Principles Regarding new gTLDs,” March 28, 2007, http://gac.icann.org/system/files/gTLD_principles_0.pdf.

¹⁹⁶ Milton Mueller, “Governments and Country Names: ICANN’s Transformation into an Intergovernmental Regime,” <http://istweb.syr.edu/~mueller/gacnames.pdf>.

In its October 2007 Communiqué, the GAC expressed concerns that the GNSO recommendations for new gTLDs did not “properly take into account” the GAC principles regarding the use of country names in new gTLDs.¹⁹⁷ The GAC expressed this concern again in its June 2008,¹⁹⁸ November 2008,¹⁹⁹ March 2009,²⁰⁰ June 2009,²⁰¹ October 2009²⁰² and March 2010²⁰³ Communiqués, as well as in letters on April 24²⁰⁴ and August 18, 2009.²⁰⁵

The second version of the DAG, published on February 19, 2009, required “evidence of support, or non-objection from the relevant government of public authority” for applicants for geographic name-based gTLDs.²⁰⁶ In communications to the Board after the publication of this draft of the DAG, the GAC acknowledged that it was an improvement on the first version but that it did not yet fully represent the GAC’s views.²⁰⁷ In response, representatives of the Internet Commerce Association demanded to know why ICANN had chosen the recommendations of the GAC over those of the GNSO, in which geographic names were given less protection.²⁰⁸

Some interviewees supported government’s rights to object to geographic name TLDs, deferring to government sovereignty. Some supported a limit exercise of these rights, for example with respect to city TLDs, where government sovereignty is clearly defined, but not with respect to regional or other TLDs, where sovereignty is less clear. Others expressed concerns that governmental approval will be too challenging for some TLD applicants to obtain (particularly in the developing world), or that giving governments the right to refuse to permit geographic name TLDs goes beyond governments’ current rights to object to the use of geographic names in other areas, such as commercial ventures.²⁰⁹

3.5.2 Expression of Interest Proposal

The ICANN Board introduced the concept of an EOI after the GAC’s October 2009 meeting; after receiving a draft EOI proposal from ICANN staff at its December 2009 meeting, the Board resolved to direct the staff to prepare a final model for Board approval at its February

¹⁹⁷ GAC, “GAC Communiqué—Los Angeles,” October 31, 2007, http://gac.icann.org/system/files/GAC_30_Los_Angeles_Communique.pdf.

¹⁹⁸ GAC, “GAC Communiqué—Paris,” June 26, 2008, http://gac.icann.org/system/files/GAC_32_Paris_Communique.pdf.

¹⁹⁹ GAC, “GAC Communiqué—Cairo,” November 5, 2008, http://gac.icann.org/system/files/GAC_33_Cairo_Communique.pdf.

²⁰⁰ GAC, “GAC Communiqué—Mexico City,” March 5, 2009, http://gac.icann.org/system/files/GAC_34_Mexico_City_Communique_English.pdf.

²⁰¹ GAC, “GAC Communiqué—Sydney,” June 24, 2009, <http://gac.icann.org/system/files/Sydney%20Communique.pdf>.

²⁰² GAC, “GAC Communiqué—Seoul,” October 8, 2009, http://gac.icann.org/system/files/Seoul_communique.pdf.

²⁰³ GAC, “GAC Communiqué—Nairobi,” March 10, 2010, http://gac.icann.org/system/files/Nairobi_Communique.pdf.

²⁰⁴ Letter from Janis Karklins to Paul Twomey, April 24, 2009, <http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>.

²⁰⁵ Letter from Janis Karklins, the Chairman of the Governmental Advisory Committee, Ambassador of Latvia to France to Peter Dengate Thrush, the Chairman of the Board, August 18, 2009, <http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>.

²⁰⁶ ICANN, “Draft Applicant Guidebook, version 2,” February 19, 2009, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>.

²⁰⁷ Letter from Janis Karklins, the Chairman of the Governmental Advisory Committee, Ambassador of Latvia to France to Peter Dengate Thrush, the Chairman of the Board, August 18, 2009, <http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>.

²⁰⁸ ICANN, “Public Comment Analysis Report: Draft Applicant Guidebook, version 2,” May 31, 2009, <http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>.

²⁰⁹ Interviews, September 2010.

2010 meeting.²¹⁰ This vote would have taken place before the next in-person GAC meeting. A public comment submitted by GAC member Bertrand de la Chapelle on behalf of the French government stated that France hoped that “no premature decision will be taken by the Board in February.”²¹¹

Michael Palage has noted that Article III, Section 6 of ICANN’s Bylaws requires ICANN to consult the GAC “in those cases where the policy action affects public policy concerns.” Palage points to the potential creation of a secondary market for TLD slots and the potential EOI fee as examples of public policy issues raised in the EOI. In January 2010, Palage wrote that if the ICANN Board were to vote on the EOI proposal during its February 2010 meeting, as it had originally proposed, it would be violating these Bylaws. The Board ultimately postponed its decision on the EOI until its March 2010 meeting.

3.5.3 Overarching Issues

The GAC has also expressed concerns related to the four “overarching issues” identified by ICANN staff in February 2009. In an August 2009 letter, the GAC stressed the importance of a “controlled and prudent expansion” and a “more measured rollout,” worried that the potential benefits to consumers might not outweigh the potential harms of such an expansion, and expressed concerns that new gTLDs might confuse consumers and lead to “a multitude of monopolies, rather than increasing competition.”²¹²

3.6 The Morality and Public Order Standard

The March 2007 GAC principles state that new gTLDs should respect national, cultural, geographic and religious sensitivities.²¹³ The current approach to handling governmental objections to nationally, culturally and religiously sensitive gTLD applications is based on the Paris Convention for the Protection of Industrial Property, a 19th century trademark treaty that allowed national governments to refuse to recognize a trademark on the grounds that it conflicted with their local definition of “morality and public order.”²¹⁴ The morality and public order standard first appeared in the GNSO final report on new gTLDs; the report’s sixth recommendation stated that “strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.” In its notes on this recommendation, the GNSO Committee on New TLDs explained that it had “examined the approach taken in a wide variety of jurisdictions to issues of morality and public order” and had “sought to be consistent with, for example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94.” The Committee

²¹⁰ ICANN, “Preliminary Report of Special Board Meeting,” December 9, 2009, <http://www.icann.org/en/minutes/prelim-report-09dec09-en.htm>.

²¹¹ Bertrand de la Chapelle, “From Black and White to Shades of Blue – Comments by France,” January 28, 2010, <http://forum.icann.org/lists/draft-eoi-model/msg00256.html>.

²¹² Janis Karklins, Chairman of the Governmental Advisory Committee, Letter to Peter Dengate Thrush, Chairman of the Board, ICANN, August 18, 2009, <http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>.

²¹³ GAC, “GAC Principles Regarding new gTLDs,” March 28, 2007, http://gac.icann.org/system/files/gTLD_principles_0.pdf.

²¹⁴ Paris Convention for the Protection of Industrial Property, March 20, 1883 (amended September 28, 1979), http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html.

also stated that the reference to morality and public order “remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.”²¹⁵

However, the standard has met with objections from both civil society and the GAC. Opponents point out that there are no globally applicable standards of “morality and public order” and argue that the policy could be used to violate free expression rights.²¹⁶ Former GNSO Council Chair Avri Doria submitted a formal comment on the GNSO recommendations that typifies these objections:

*By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN’s mission, I do not believe it includes the definition of a system of morality.*²¹⁷

In October 2008, ICANN published an explanatory memorandum on the morality and public standard. The document stated that ICANN would likely restrict morality and public order objections to three areas: incitement to violent lawless action; incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin; and incitement to or promotion of child pornography or other sexual abuse of children.²¹⁸ A follow-up document released in May 2009 added “a determination that an applied-for gTLD string would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law” to the acceptable list of morality and public order objections.²¹⁹ This definition is currently part of the DAG, though ICANN has not yet responded to calls from the NCUC and others that it disclose the legal analysis by which it concludes that there are such “generally accepted legal norms.”

²¹⁵ GNSO, “Final Report—Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

²¹⁶ Milton Mueller, “ICANN and GAC discuss censorship,” *Internet Governance Project*, June 23, 2010, http://blog.internetgovernance.org/blog/_archives/2010/6/23/4560694.html.

²¹⁷ GNSO, “Final Report—Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

²¹⁸ ICANN, “New gTLD Program Explanatory Memorandum: Morality and Public Order Objection Considerations in New gTLDs,” October 29, 2008, <http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>.

²¹⁹ ICANN, “New gTLD Program Explanatory Memorandum: Standards for Morality and Public Order Research,” May 30, 2009, <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>.

As early as October 2009, the GAC expressed concerns about the morality and public order standard as the method of handling governmental objections to proposed TLDs.²²⁰ In its March 2010 Communiqué to the ICANN Board, the GAC stated:

*The GAC questions the appropriateness of the phrase “morality and public order” and is unclear how the proposed mechanism would work in practice. The GAC believes this item should not be listed on the “closed items” list with respect to the new gTLD process and requests a more detailed briefing from the ICANN staff on the anticipated practical implementation of the approach.*²²¹

In interviews, some questioned why the GAC had not expressed objections to the morality and public order standard when it was first proposed in the October 2007 GNSO recommendations.²²²

3.7 Vertical Integration

A further question facing ICANN in conjunction with the introduction of new gTLDs is whether registries and registrars should be forced to remain separate. Current ICANN agreements (since 2001) with gTLD registries prohibit registries from owning more than 15 percent of a registrar. This policy was established in response to the previous monopoly position of Network Solutions, which provided both registry and registrar functions for .com, .net and .org. In 1999, Network Solutions agreed to separate its registry and registrar functions.²²³ In 2003, VeriSign (which had acquired Network Solutions in 2000) sold Network Solutions, which continued to operate solely as a registrar. VeriSign retained the registry business; it also retained a 15 percent stake in Network Solutions.²²⁴

Some stakeholders recommend a clear policy preventing registry operators from acting as registrar for their own gTLDs. Opponents of vertical integration argue that ICANN’s current policy “eliminated the conflict of interest inherent in the system and resulted in robust, competitive markets for both registrars and registries, significantly lower consumer prices, and dramatic DNS growth—without jeopardizing stability or security.”²²⁵ They argue that allowing registries to act as registrars gives them the opportunity to misuse data regarding consumer demand. In public comments on the issue, the Public Interest Registry has referenced a study by Jonathan A. K. Cave that states that cross-ownership between registries and registrars may give those registrars an unfair advantage in negotiating with other registries. Cave also argues that commercial registries that own registrars may have an unfair advantage over non-commercial registries that do not.²²⁶

²²⁰ GAC, “GAC Communiqué—Seoul,” October 8, 2009, http://gac.icann.org/system/files/Seoul_communique.pdf.

²²¹ “GAC Communiqué—Nairobi,” March 10, 2010, http://gac.icann.org/system/files/Nairobi_Communique.pdf.

²²² Interviews, September 2010.

²²³ ICANN, “Approved Agreements among ICANN, the US Department of Commerce, and Network Solutions, Inc.,” November 10, 1999, <http://www.icann.org/en/nsi/nsi-agreements.htm>.

²²⁴ Matt Hines, “VeriSign sells off domain registrar,” *CNet News*, October 16, 2003, http://news.cnet.com/VeriSign-sells-off-domain-registrar/2100-1025_3-5092316.html.

²²⁵ Supporting True Intra-Registry Separation to Help Prevent Insider Trading, “Open Letter to ICANN in favor of True Registry-Registrar Separation,” <http://intraidregistryregistrarseparation.org/>.

²²⁶ ICANN, “New gTLD Program Explanatory Memorandum: Registry-Registrar Separation,” February 18, 2009, <http://www.icann.org/en/topics/new-gtlds/registry-regr-separation-18feb09-en.pdf>.

Supporters of vertical integration argue the forced separation between registries and registrars is outdated.²²⁷ Vertical integration, they believe, could in fact lower prices and increase quality of service by allowing new registries to gain a foothold in the market and by fostering innovation in product development.²²⁸

ICANN has commissioned two independent studies on vertical integration. The first, a report by Charles River Associates International (CRAI), was made available for public comment on October 24, 2008.²²⁹ It contained two primary recommendations: 1) that “single organization” TLDs be permitted to operate both the registry and the registrar selling domains within that TLD; and 2) that a registry may own a registrar, provided that the registrar does not sell domains within the TLDs operated by the registry. ICANN received 32 comments on this report between October 24 and December 23, 2008.²³⁰

ICANN’s February 2009 explanatory memorandum on vertical integration contained an ICANN staff summary of public comments on the CRAI report. Some comments were in favor of continued prohibitions against cross-ownership, others supported a limited cross-ownership model, and others were in favor of complete vertical integration. The staff summary of comments described several possible options:²³¹

1. **Cross-Ownership—Finite Threshold Model:** In this model, registries and registrars would remain largely separate. Registries would be permitted to sell domain names through an affiliated ICANN accredited registrar up to a certain limit (somewhere between 20,000 and 100,000 names). This model would support small new registries and enable them to become competitive in the domain name market. A variation of the model would allow registries to sell domain names directly, without going through a registrar, up to a certain limit (50,000 names was suggested).
2. **Cross-Ownership—Unlimited Threshold Model:** In this model, suggested by Demand Media, no ownership separation between registries and registrars would be required. Registrars would be able to own and sell domain names through a registry. Supporters of the model, including GoDaddy, stated that “if cross-ownership works for the first 50,000 names, there is no sound reason to limit it there.”
3. **Cross-Ownership—Zero Threshold:** This model, suggested by NeuStar, recommends that registries be allowed to own registrars, as long as the registrars do not sell domain names within the TLD owned by the registry.

²²⁷ Tony Kirsch, “Registry/Registrar Separation: Clarifying the Mess!,” *AusRegistry*, February 17, 2010, <http://www.ausregistry.com/blog/?p=300>.

²²⁸ Steven C. Salop and Joshua D. Wright, “Registry-Registrar Separation: Vertical Integration Options,” January 28, 2010, <http://www.icann.org/en/topics/new-gtlds/registry-registrar-separation-vertical-integration-options-salop-wright-28jan10-en.pdf>.

²²⁹ ICANN, “Public Comment: CRAI Report on gTLD Registries and Registrars,” October 24, 2008, <http://www.icann.org/en/announcements/announcement-24oct08-en.htm>.

²³⁰ ICANN, “CRA Report: Revisiting Vertical Separation of Registries and Registrars — Summary & Analysis of Comments,” January 12, 2009, <http://forum.icann.org/lists/crai-report/pdfMQnSWwlenD.pdf>.

²³¹ ICANN, “New gTLD Program Explanatory Memorandum: Registry-Registrar Separation,” February 18, 2009, <http://www.icann.org/en/topics/new-gtlds/registry-registrar-separation-18feb09-en.pdf>.

- 4. Maintenance of Registry-Registrar Separation:** ICANN’s Intellectual Property Constituency (IPC) expressed worries that the relaxation of this requirement may force ICANN to adopt a more active role in monitoring and enforcing compliance. The Public Interest Registry also objected to vertical integration on the grounds that “public interest in supporting competition does not favor a breakdown of the current separation of registry and registrar ownership.”

ICANN staff considered these options and proposed a model that would slightly relax cross-ownership restrictions. Under the staff model, gTLD registries would be required to use ICANN-accredited registrars and to avoid discriminating between registrars. Registries would also be required to provide six months’ notice before changing prices for domain name renewals. Registrars would be allowed to sell domains in an affiliated registry, with a limit of 100,000 domain names. This model was included in the second version of the Draft Applicant Guidebook, published on February 18, 2009, as part of the proposed draft registry agreement.²³²

At the June 2009 ICANN meeting in Sydney, two economic consultants—Steven Salop, Professor of Economics and Law at Georgetown University, and Joshua Wright, Assistant Professor of Law and Economics at George Mason University—gave a presentation on vertical integration and participated in a question and answer session on the implications of registry-registrar cross-ownership.²³³ Salop and Wright were later commissioned by ICANN to produce a review of vertical integration options in advance of ICANN’s February 2010 Board meeting. The paper was made available to the public in March in order to “inform the public debate on the topic.”²³⁴ The review recommends that ICANN adopt vertical separation rules regulating when a registry or registrar may acquire ownership interest in an entity at the opposite level and that these rules be based on market share. It further recommends that ICANN, rather than automatically prohibiting registries and registrars from acquiring this interest when they are above a certain market share threshold, instead notify the appropriate government authorities and make the ultimate decision to allow or disallow the acquisition based on their response.

At the March 2010 ICANN meeting in Nairobi—less than a week after the paper was made public—the ICANN Board resolved that “within the context of the new gTLD process, there will be strict separation of entities offering registry services and those acting as registrars. No co-ownership will be allowed.” The Board cited the desire to avoid conflicts with the possible development of a new GNSO policy on vertical integration as well as the need to move forward with the gTLD process as major factors in its decision; it stated that if a GNSO policy is developed and approved by the Board prior to the launch of new gTLDs, that policy will be incorporated into the new gTLD program.²³⁵ In the interviews, it was suggested that this resolution, rather than a final decision by the Board, was a measure intended move the

²³² ICANN, “New gTLD Agreement: Proposed Draft (v2),” February 18, 2009, <http://www.icann.org/en/topics/new-gtlds/draft-agreement-clean-18feb09-en.pdf>.

²³³ Steve Salop and Joshua Wright, “Vertical Integration Between Registries and Registrars—The Economic Pros and Cons,” June 22, 2009, <http://syd.icann.org/files/meetings/sydney2009/presentation-vertical-separation-22jun09-en.pdf>.

²³⁴ John Jeffrey, “Vertical Integration Options Report Available to Community,” *ICANN Blog*, March 8, 2010, <http://blog.icann.org/2010/03/vertical-integration-options-report-available-to-community/>.

²³⁵ ICANN, “Adopted Board Resolutions — Nairobi,” March 12, 2010, <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>.

gTLD process forward while forcing stakeholders to work within the GNSO working group to develop a consensus.²³⁶

The GNSO had previously requested that ICANN staff prepare an issues report on vertical integration for submission to the GNSO Council. This request was prompted by a request from the Noncommercial Users Constituency (NCUC). The NCUC request, made in September 2009, referred to an August 27, 2009 statement by the NCUC that read in part:

*Vertical separation of registries and registrars is a policy issue—one of the most fundamental policies underlying ICANN’s regulation of the domain name industry. And yet this important policy change is being handled as if it were an “implementation” decision that can be inserted into new gTLD contracts.*²³⁷

In the GNSO issues report, published on December 11, 2009, ICANN staff recommended that the GNSO “delay a PDP [policy development process] on vertical integration, and instead...provide focused timely input through the implementation process that is currently underway for the New gTLD Program.”²³⁸ The staff also stated that “since the GNSO’s approval is not required, resolving the vertical integration issue through the implementation processes that are currently underway instead of through a PDP would be consistent with the ICANN Bylaws.” In a blog post on the Internet Governance Project, Milton Mueller criticized this description of how vertical integration should be handled within ICANN, writing:

*In this new theory of ICANN, the GNSO has no specific policy making role. Its status as the “home” or starting point of all policies related to generic names is not enshrined in the bylaws; its participation “is not required” either to initiate or to ratify policies pertaining to generic names. What this means, for those of you not steeped in ICANN arcana, is that there is no such thing as a bottom up process in ICANN.*²³⁹

The GNSO formed a vertical integration working group via a GNSO Council resolution on March 10, 2010. Between March 12 and March 31, 2010, it issued a call for participants.²⁴⁰ On March 29, 2010, the GNSO Council announced that the Vertical Integration PDP Working Group was seeking comments “on any aspect related to the topic of vertical integration between registries and registrars that [commenters] think should be taken into account by the Working Group as part of its deliberations.”²⁴¹ The GNSO encouraged comments on the

²³⁶ Interviews, September 2010.

²³⁷ NCUC, “Noncommercial Users Constituency statement on vertical separation of registries and registrars,” August 27, 2009, http://listserv.syr.edu/scripts/wa.exe?A3=ind0908&L=NCSG-NCUC-DISCUSS&E=base64&P=4946980&B=-_002_75822E125BCB994F8446858C4B19F0D78FFC6D85SUEX07MBX04adsy_&T=application%2Fpdf;%20name=%22NCUC-Ry-Rr-vertical.pdf%22&N=NCUC-Ry-Rr-vertical.pdf&attachment=q.

²³⁸ GNSO, “GNSO Issues Report on Vertical Integration Between Registries and Registrars,” December 11, 2009, <http://gns0.icann.org/issues/vertical-integration/report-04dec09-en.pdf>.

²³⁹ Milton Mueller, “ICANN Staff finally admits it: There is no bottom up process and no difference between ‘policy’ and ‘implementation,’” *Internet Governance Project Blog*, December 11, 2009, http://blog.internetgovernance.org/blog/_archives/2009/12/11/4402569.html.

²⁴⁰ GNSO, “Call for Participation on the Vertical Integration Policy Development Process (PDP) Working Group,” March 12, 2010, <http://gns0.icann.org/announcement/announcement-12mar10-en.htm>.

²⁴¹ ICANN, “Public Comment: GNSO Policy Development Process on Vertical Integration Between Registries and Registrars,” March 29, 2010, <http://www.icann.org/en/announcements/announcement-3-29mar10-en.htm>.

CRAI report published in October 2008, on the study published by Salop and Wright, and on the March 2010 Board resolution. The public comment period was open until April 18, 2010.

The ICANN staff summary of these comments was published on April 22, 2010. Six comments were received. The summary noted that the working group had requested that constituencies and stakeholder groups submit their statements by May 6, 2010.²⁴²

The GNSO's work on vertical integration is still underway. A summary of vertical integration proposals currently being considered by the GNSO working group can be found on the ICANN wiki.²⁴³ Additional GNSO documents on vertical integration can be found on the GNSO site.²⁴⁴

3.8 Internationalized Domain Names

Internationalized domain names (IDNs) have existed at the second level, in TLDs such as .cn and .tw, since 2000. At the March 2003 ICANN meeting, ICANN's IDN Registry Implementation Committee submitted a set of guidelines for IDNs. At that meeting, the ICANN Board resolved to endorse the draft, to authorize the President to implement the guidelines it contained, and to allow ICANN to proceed with the registration of IDNs in registries that made agreements with ICANN based on the guidelines.²⁴⁵ The guidelines were formally published on June 20, 2003.²⁴⁶ Many TLDs—including .museum and .info—began accepting second level IDNs in 2004.²⁴⁷

In September 2007, the ccNSO approved the launch of a policy development process on IDN ccTLDs.²⁴⁸ The GNSO recommendations for new top-level domains, approved by the GNSO Council the same month, also stated that “some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.”²⁴⁹ The current (fourth) version of the DAG allows the submission of applications for IDN gTLDs.²⁵⁰

Previously, in December 2006, the ICANN Board had resolved to request the ccNSO and the GAC to produce an issues paper on the introduction of IDN ccTLDs associated with ISO 3166 two-letter country codes (these codes are currently used in ccTLDs, for example .us or

²⁴² ICANN, “Summary of Public Comment on the Initiation of the GNSO Policy Development Process,” April 22, 2010, <http://forum.icann.org/lists/pdp-vertical-integration/pdf/UjS7ytxAJ.pdf>.

²⁴³ ICANN, “Vertical Integration PDP,” https://st.icann.org/vert-integration-pdp/index.cgi?https_st_icann_org_vert_integration_pdp_index_cgi_vi_resources.

²⁴⁴ GNSO, “Issues,” <http://gnso.icann.org/issues/>.

²⁴⁵ ICANN, “Minutes,” March 27, 2003, <http://www.icann.org/en/minutes/minutes-27mar03.htm#InternationalizedDomainNames>.

²⁴⁶ ICANN, “Guidelines for the Implementation of Internationalized Domain Names,” June 20, 2003, <http://www.icann.org/en/general/idn-guidelines-20jun03.htm>.

²⁴⁷ Chuck Gomes, “The Why & How of IDN Generic Domain Names,” May 13, 2010, http://russia2010.intgov.net/files/Gomes2_RIGF2010.ppt.

²⁴⁸ ccNSO, “ccNSO Council Minutes,” September 7, 2007, <http://ccnso.icann.org/about/minutes/ccnso-minutes-12sep07.pdf>.

²⁴⁹ GNSO, “Final Report - Introduction of New Generic Top-Level Domains,” August 8, 2007, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>.

²⁵⁰ ICANN, “Draft Applicant Guidebook, Version 4,” May 31, 2010, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf>.

.uk).²⁵¹ In June 2007, after the ccNSO and the GAC submitted a list of questions to the Board to be considered before the introduction of IDN ccTLDs, the Board “respectfully request[ed] that the ICANN community including the GNSO, ccNSO, GAC, and ALAC continue to work collaboratively, taking the technical limitations and requirements into consideration, to explore both an interim and an overall approach to IDN ccTLDs associated with the ISO 3166-1 two-letter codes and recommend a course of action to the Board in a timely manner.”²⁵²

On October 30, 2009, the ICANN Board approved the IDN Fast Track Process, which allows nations and territories to register top-level domains reflecting their name or country code in their national languages.²⁵³ The process formally launched on November 16, 2009, and the first four IDN ccTLDs—for Egypt, the Russian Federation, Saudi Arabia and the United Arab Emirates—were added to the root in May 2010.²⁵⁴

The announcement of the IDN ccTLD Fast Track Process prompted concerns that IDN gTLDs were being left behind. Some attendees at the public forum held during the October 2009 ICANN meeting expressed worries that, by putting ccTLDs first, ICANN was essentially forcing applicants to submit their domain name applications to governments.²⁵⁵ Others noted that businesses who wanted to make their web content accessible via IDNs would be required to register multiple domains—one in each ccTLD—rather than registering a single domain in an IDN gTLD.²⁵⁶

Some interviewees supported ICANN’s decision to separate the progress of IDN ccTLDs from IDN gTLDs in order to avoid unnecessarily delaying ccTLDs and expressed appreciation for the speed at which the IDN ccTLD Fast Track Process was developed. In interviews, it was suggested that the development of the Fast Track Process was a good example of cross-community collaboration between the ccNSO and the GAC. Some interviewees expressed concerns that policy development for IDNs had preceeded the thorough setting and evaluation of technical standards for IDNs.²⁵⁷

²⁵¹ ICANN, “Adopted Resolutions from ICANN Board Meeting,” December 8, 2006, http://www.icann.org/en/minutes/resolutions-08dec06.htm#_Toc27198296.

²⁵² ICANN, “Adopted Board Resolutions—San Juan, Puerto Rico,” June 29, 2007, <http://www.icann.org/en/minutes/resolutions-29jun07.htm#m>.

²⁵³ ICANN, “ICANN Bringing the Languages of the World to the Global Internet,” October 30, 2009, <http://www.icann.org/en/announcements/announcement-30oct09-en.htm>.

²⁵⁴ Tina Dam, “IDN ccTLDs—The First Four,” *ICANN Blog*, May 13, 2010, <http://blog.icann.org/2010/05/idn-ccTlds-%E2%80%93-the-first-four/>.

²⁵⁵ Evan Ramstad, “Sparks Fly at Icann Meeting in Seoul,” *Wall Street Journal*, October 29, 2009, <http://blogs.wsj.com/digits/2009/10/29/sparks-fly-at-icann-meeting-in-seoul/>.

²⁵⁶ ICANN, “Transcript: Public Forum,” October 29, 2009, <http://sel.icann.org/meetings/seoul2009/transcript-public-forum-29oct09-en.txt>.

²⁵⁷ Interviews, September 2010.

Appendix D: The .xxx Domain Case and ICANN Decision-Making Processes

Abstract

In 2000, ICANN initiated a “proof of concept” stage to begin the adoption of new generic TLDs. ICM Registry unsuccessfully proposed .xxx and .kids. In 2003, after some exchanges with ICANN regarding its first proposal, ICM submitted a revised bid for the creation of .xxx for ICANN’s call for sponsored TLD proposals. The ICANN Board adopted a resolution to begin negotiating the commercial and technical terms of a registry agreement with ICM in June 2005; however, under pressure from a variety of constituencies, ICANN reversed its decision and denied ICM’s proposal in 2007. ICM filed a request for Independent Review in 2008—the first such request to be heard before the Independent Review Panel (IRP) in ICANN’s history. In 2010, a three-person panel of arbiters (which comprised the IRP) decided in favor of ICM.

This case study outlines the key events surrounding the .xxx proposals from 2000 to June 17, 2010, without re-examining the merits of the application itself. This chronology is designed to examine two specific dimensions of the .xxx process: (1) the role of the Independent Review Panel (IRP), and (2) the interaction between the Governmental Advisory Committee (GAC) and the ICANN Board during ICANN’s evaluation of the ICM .xxx proposal, registry agreement negotiations with ICM and, ultimate rejection of ICM’s application.

Case Study Sources and Methodology

For more information on our sources and methodology, please see Appendix A.

This case study is based on publicly available materials, including public comments, ICANN documents, academic studies, media reports, and expert opinions. It provides a summary of the facts regarding the .xxx domain process, with a specific focus on two aspects of the case: the Independent Review Panel (IRP), including ICM’s request for Independent Review, and the role of the Governmental Advisory Committee (GAC) throughout the Board’s review of the .xxx proposals, including its interaction with the Board. As per Exhibit B, Section 1 of the Services Agreement between the Berkman Center and ICANN, its goal is to help identify key issues, challenges and areas of disagreement related to the .xxx application process. The observations below will contribute to the Berkman team’s final report.

In addition to publicly available sources, this case study includes statements, opinions and perceptions of those we interviewed in the course of developing this case. These perceptions and opinions play an important role in the interpretation of ICANN decisions and their reception by the community. The statements of interviewees do not reflect the opinions or conclusions of the study team. While we have made every effort to remove factual inaccuracies, we do not attest to the accuracy of the opinions offered by interviewees. The interviews were conducted on the condition of confidentiality.

Note: As per the Services Agreement, this case study focuses on events prior to June 17, 2010. However, aspects of the .xxx case are still evolving. As such, this study may not reflect the most recent developments in this case.

Disclosure: Professor Jack Goldsmith, Henry L. Shattuck Professor of Law, Berkman Center Faculty Co-Director and member of the Berkman team, has submitted testimony for ICM in the .xxx case. In the context of the Berkman-internal peer review process, he provided comments on the scope and structure of an earlier draft of this case study.

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1 ICM's Proposal for the .xxx sTLD

1.1 ICANN's Call for New gTLDs in 2000

1.1.1 Overview of the "Proof of Concept" Round

The core of ICANN's mission is "to coordinate, at the overall level, the global Internet's system of unique identifiers," a mandate that includes responsibility for the allocation of domain names and management of the Domain Name System (DNS).²⁵⁸ Since the 1980s, seven top-level domains (TLDs) have been in the DNS (.com, .edu, .gov, .int, .mil, .net, and .org), only three of which were available for public registration without restriction (.com, .net, and .org).²⁵⁹ From the outset, one of ICANN's primary tasks was to develop a set of policies and best practices for the solicitation, creation, and management of new generic TLDs (gTLDs).²⁶⁰

The Domain Name Supporting Organization (DNSO), one of ICANN's original three supporting organizations (which was replaced by the Generic Names Supporting Organization (GNSO) in December 2002),²⁶¹ was responsible for making recommendations on the "operation, assignment, and management of the domain name system and other related subjects."²⁶² In 1999, the DNSO tasked a set of working groups with studying whether the creation of new gTLDs would be desirable, in light of intellectual property rights and other issues.²⁶³ On April 19, 2000, the DNSO recommended that the ICANN Board develop a set of policies to guide the introduction of a "limited number" of new gTLDs.²⁶⁴ The ICANN Board adopted this recommendation on July 16, 2000²⁶⁵ and began accepting TLD applications on September 5, 2000, with the goal of completing registry negotiations by the end of the year.²⁶⁶ Applicants were permitted to submit proposals for either a "sponsored TLD" (sTLD) or an "unsponsored TLD"²⁶⁷ and each application was required to satisfy nine criteria:

²⁵⁸ ICANN Bylaws, Article I, Section 1, September 30, 2009, <http://www.icann.org/en/general/archive-bylaws/bylaws-30sep09-en.htm>.

²⁵⁹ ICANN, "Top-Level Domains (gTLDs)," May 6, 2009, <http://www.icann.org/en/tlds>. One other specialized TLD had also been implemented: .arpa, which is reserved to support the Internet Architecture Board's technical infrastructure projects (see <http://www.iana.org/domains/arpa/>). More than 250 country-code TLDs (ccTLDs) also exist, a handful of which are written in non-Latin characters and are categorized as Internationalized Domain Names (IDNs).

²⁶⁰ See ICANN, "Top-Level Domains (gTLDs)," May 6, 2009, <http://www.icann.org/en/tlds>.

²⁶¹ The DNSO was eventually succeeded by the Generic Names Supporting Organizations (GNSO) in 2003. See DNSO, <http://www.dnso.org/>

²⁶² ICANN Bylaws, Article VII, Section 3(a), November 6, 1998, <http://www.icann.org/en/general/archive-bylaws/bylaws-06nov98.htm>.

²⁶³ A 1999 WIPO report stated that new gTLDs could be introduced slowly if intellectual property rights received adequate protection; see ICANN, "The Management of Internet Names and Addresses: Intellectual Property Issues," April 30, 1999, http://www.icann.org/en/wipo/FinalReport_1.html. The DNSO's Working Groups B and C were established to address the WIPO report and other intellectual property concerns; see DNSO, "Meeting of the Names Council in San Jose on 25 June 1999," June 25, 1999, <http://www.dnso.org/dns/notes/19990625.NCsj-admin.html>.

²⁶⁴ DNSO, "DNSO Names Council Statement on new gTLDs," April 19, 2000, <http://www.dnso.org/dns/notes/20000419.NCgtds-statement.html>.

²⁶⁵ ICANN, "Resolutions of the ICANN Board on New TLDs," July 16, 2000, <http://www.icann.org/en/tlds/new-tld-resolutions-16jul00.htm>.

²⁶⁶ ICANN, "New TLD Application Process Overview," August 3, 2000, <http://www.icann.org/en/tlds/application-process-03aug00.htm>.

²⁶⁷ Sponsored TLDs (sTLDs) are intended to represent the needs of a particular "sponsored community," and are required the support of a "sponsoring organization" to be responsible for a defined level of policy formulation for operation of the

1. The need to maintain the Internet’s stability.
2. The extent to which selection of the proposal would lead to an effective “proof of concept” concerning the introduction of TLDs in the future.
3. The enhancement of competition for registration services.
4. The enhancement of the utility of the DNS.
5. The extent to which the proposal would meet previously unmet types of needs.
6. The extent to which the proposal would enhance the diversity of the DNS and of registration services generally.
7. The evaluation of delegation of policy-formulation functions for special-purpose TLDs to appropriate organizations.
8. Appropriate protections of rights of others in connection with the operation of the TLD.
9. The completeness of the proposals submitted and the extent to which they demonstrate realistic business, financial, technical, and operational plans and sound analysis of market needs.²⁶⁸

“General-Purpose” TLD proposals were grouped into four categories: “General” (for nonspecific proposals, including .biz and .info), “Personal” (for personal content, including .name and .san), “Restricted Content” (for specific types of content, including .xxx and .kids), and “Restricted Commercial” (including .law and .travel).²⁶⁹

1.1.2 ICM’s Proposal for .xxx and .kids

ICANN received 47 applications with proposals for new sponsored and unsponsored TLDs.²⁷⁰ Three organizations submitted proposals for .xxx,²⁷¹ including ICM Registry, Inc. (ICM), which applied to create .xxx and .kids, arguing that, together, the pair of new TLDs would enhance online child safety by clearly delineating child-friendly and adult-only content areas.²⁷² ICM also contended that both the adult industry and child-friendly content producers would comply with ICM’s policies voluntarily, claiming that “adult content leaders fully back the

domain. Unsponsored domains do not carry either of these requirements. See ICANN, “New TLD Application Process Overview,” August 3, 2000, <http://www.icann.org/en/tlds/application-process-03aug00.htm>.

²⁶⁸ ICANN, “Criteria for Assessing TLD Proposals,” August 15, 2000, <http://www.icann.org/en/tlds/tld-criteria-15aug00.htm>.

²⁶⁹ ICANN, “Report on New TLD Applications,” November 9, 2000, <http://www.icann.org/en/tlds/report/>. In addition to “General-Purpose TLDs,” ICANN also grouped proposals as “Special-Purpose” (synonymous with “sponsored”) and “New Services” (which was intended for technical services not currently supported by the existing DNS, including telephony, message routing, LDAP services, and “georeferenced information.”

²⁷⁰ ICANN, “TLD Applications Lodged,” October 10, 2000, <http://www.icann.org/en/tlds/tld-applications-lodged-02oct00.htm>.

²⁷¹ ICANN, “TLD Applications Lodged,” October 10, 2000, <http://www.icann.org/en/tlds/tld-applications-lodged-02oct00.htm>.

²⁷² ICANN, “Registry Operator’s Proposal to ICANN,” September 18, 2000, <http://www.icann.org/en/tlds/kids3/Default.htm>. ICM’s application also hypothesized that the adult oriented content on other domains (e.g., affiliated sites) could be easily filtered by IP addresses and proprietary DNS listings in addition to filtering the .xxx content. *Ibid.*

establishment of these TLDs” and that “eminent children’s entertainment and educational organizations are promising extensive investments in the child-friendly domain.”²⁷³ Out of these 47 applications, ICANN selected seven during the exploratory phase: four unsponsored TLDs (.biz, .info, .name, .pro) and three sponsored (.aero, .coop, .museum).²⁷⁴ In applying the evaluation criteria to ICM’s .xxx application, ICANN determined that ICM’s proposal for a .kids TLD did meet unmet needs but was unlikely to succeed from a business standpoint.²⁷⁵ ICANN also found that ICM did not propose “any business or technical methods to effectively restrict content for a .kids TLD.”²⁷⁶ Regarding .xxx, ICANN stated: “[It] does not appear to meet unmet needs. Adult content is readily available on the Internet. To the extent that some believe that an .xxx TLD would segregate adult content, no mechanism (technical or non-technical) exists to require adult content to migrate from existing TLDs to an .xxx TLD.” ICANN also noted that the controversial nature of a sex-centric TLD made it ill-suited to the goals of the “proof of concept” phase: “the evaluation team concluded that at this early ‘proof of concept’ stage with a limited number of new TLDs contemplated, other proposed TLDs without the controversy of an adult TLD would better serve the goals of this initial introduction of new TLDs.”²⁷⁷

Ultimately, ICANN decided to not accept ICM’s proposals for .xxx and .kids, providing the following justification:

*Because of the inadequacies in the proposed technical and business measures to actually promote kid-friendly content, the evaluation team does not recommend selecting a .kids domain in the current phase of the TLD program. In addition, because of the controversy surrounding, and poor definition of the hoped-for benefits of, .xxx, we also recommend against its selection at this time.*²⁷⁸

In response, ICM filed a Reconsideration Request on December 15, 2000, requesting “clarification from the Board with respect to inaccurate statements made involving [the .xxx] registry proposal.”²⁷⁹ Primarily, ICM took issue with the ICANN Board’s claim that the majority of the adult community did not support the creation of .xxx, and argued that “most” adult content providers supported the domain. ICM also maintained that it proposed to operate the .kids registry “only in the event that there was no other credible submission for a .kids registry.”²⁸⁰ Finally, ICM disagreed with the TLD evaluators’ conclusion that .xxx

²⁷³ ICANN, “Registry Operator’s Proposal to ICANN: Volume 2,” September 18, 2000, http://www.icann.org/en/tlds/kids3/HTML/Volume_2.html.

²⁷⁴ ICANN, “Second Annual Meeting of the Board Minutes,” November 16, 2000, <http://www.icann.org/en/minutes/minutes-annual-meeting-16nov00.htm>.

²⁷⁵ ICANN, “Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group,” November 9, 2000, <http://www.icann.org/en/tlds/report/report-iiib1c-09nov00.htm>.

²⁷⁶ ICANN, “Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group,” November 9, 2000, <http://www.icann.org/en/tlds/report/report-iiib1c-09nov00.htm>.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ ICANN, “Reconsideration Request 00-15,” December 16, 2000, <http://www.icann.org/en/committees/reconsideration/icm-request-16dec00.htm>. ICANN’s Reconsideration Policy (which has since been superseded) had been established to implement Article III, Section 4(a) of the original Bylaws. ICANN, “Reconsideration Policy,” March 4, 1999, <http://www.icann.org/en/committees/reconsideration/recon-policy-04mar99.htm>.

²⁸⁰ See “Reconsideration Request,” Ibid.

did not meet an “unmet need,” arguing that the proliferation of online adult material necessitated the creation of the kind of domain policies ICM had proposed. The Reconsideration Committee decided to take no action, stating, “ICM Registry’s reconsideration request does not seek reconsideration of the Board’s November 16, 2000 decision . . . accordingly, there is no action for the Board to take with respect to the Board’s actual decision at this time.”²⁸¹ It noted that “no new TLD proposal has been rejected by ICANN”; rather, a small set of potentially successful applicants had been selected with the aim of testing a diversity of approaches to the creation of new TLDs. The Committee also noted that “the fact that a new TLD proposal was not selected under those circumstances should not be interpreted as a negative reflection on the proposal or its sponsor.”²⁸²

1.2 ICANN’s Request for Proposals for New sTLDs in 2003

1.2.1 Overview of the RFP

On October 18, 2002, ICANN President Stuart Lynn issued a report titled “A Plan for Action Regarding New TLDs,” which advocated extending the “proof of concept” phase by allowing applicants who had participated in the 2000 round to resubmit their TLD proposals.²⁸³ On December 15, 2002, in response to the “Plan for Action,” the ICANN Board directed ICANN staff to develop a strategy for soliciting further TLD applications.²⁸⁴ This resulted in a draft Request for Proposals (RFP) for the creation of new sponsored TLDs, posted publicly on June 24, 2003.²⁸⁵

The 2003 RFP differed from the 2000 “proof of concept” solicitation in two important ways. First, it was restricted to proposals for *sponsored* TLDs. Applicants were required to demonstrate that the sTLD served the needs of a well-defined “sponsored community,” and the proposal was required to carry the support of a “sponsoring organization,” which would assume certain responsibilities in developing policies for the TLD. Second, the ICANN Board would not evaluate applications directly. Rather, applications were to be evaluated by several panels of independent evaluators who would submit reports on each proposal to the ICANN Board; the reports, while nonbinding, were intended to play a significant role in shaping the Board’s decisions.²⁸⁶

On June 25, 2003—the day after the draft RFP was posted for public comment—ICANN held a public discussion on the draft materials during a Public Forum in Montréal. Some commenters argued that a single day was inadequate for public review, particularly given

²⁸¹ Although unclear in the Recommendation, it appears the Reconsideration Committee’s mandate is only to *reconsider* decisions and issue recommendations, rather than clarify Board decisions. See ICANN, “Reconsideration Request 00-15: Recommendation of the Committee (Revised),” September 7, 2001, <http://www.icann.org/en/committees/reconsideration/rc00-15-1.htm>.

²⁸² *Ibid.*

²⁸³ ICANN, “A Plan for Action Regarding New TLDs,” October 18, 2002, <http://www.icann.org/en/committees/ntepptf/new-gtld-action-plan-18oct02.htm>.

²⁸⁴ ICANN, “ICANN 2002 Annual Meeting in Amsterdam,” December 14–15, 2002, <http://www.icann.org/en/meetings/amsterdam>.

²⁸⁵ ICANN, “Establishment of new sTLDs: Request for Proposals (Draft for public comment),” June 24, 2003, <http://www.icann.org/en/tlds/new-stld-rfp/new-stld-rfp-24jun03.htm>.

²⁸⁶ *Ibid.* See also ICANN, “Independent Evaluators of sTLD Proposals,” <http://www.icann.org/en/tlds/new-stld-rfp/panel.htm>.

the controversy that persisted around the proposed TLD policies.²⁸⁷ On the following day, the ICANN Board resolved to extend the public comment period for two months, through August 25, 2003.²⁸⁸

ICANN received more than 70 responses by email, which it posted publicly during the comment period.²⁸⁹ The At-Large Advisory Committee (ALAC) also submitted a formal response, recommending substantive changes to make the RFP more equitable and proposing a set of principles to guide the introduction of future gTLDs.²⁹⁰

On October 13, 2003, the ICANN Board decided it would temporarily shelve the sTLD application process, citing the constraints of the recent amendments to the Memorandum of Understanding with the United States Department of Commerce—particularly the requirement that ICANN quickly “commence a full scale review of policy in this area.”²⁹¹ The Generic Names Supporting Organization (GNSO)²⁹² strongly objected, however, and on October 31, 2003, the ICANN Board reversed its decision and resolved to move forward with the sTLD RFP. Additionally, the Board resolved to revise the terms of the RFP based on commentary from the ALAC, the GNSO, and the public at large. Specifically, it resolved that the RFP would not be limited to applicants who had submitted proposals during the 2000 “proof of concept” round and that eligible sponsoring organizations need not be not-for-profit entities. Finally, it resolved that a final version of the RFP would be posted on December 15, 2003, including an application timeline, the details of the selection criteria, and an explanation of the evaluation process.²⁹³

1.2.2 ICM’s Proposal for .xxx

ICM submitted its .xxx sTLD proposal on March 16, 2004. ICM named the “online adult-entertainment community” as the sponsoring community, defining this community as “those individuals, businesses, and entities that provide sexually-oriented information, services, or products intended for consenting adults or for the community itself.”²⁹⁴ ICM named the International Foundation for Online Responsibility (IFFOR) as its sponsoring organization.²⁹⁵ The role of IFFOR, a Canadian non-profit, would be to protect child safety, guard the safety and privacy of users, and promote responsible business practices in the adult industry.

²⁸⁷ See Edward Hasbrouck, “Sponsored TLD RFP,” June 26, 2003, <http://hasbrouck.org/icann/montreal.html>.

²⁸⁸ ICANN, “Preliminary Report: Regular Meeting of the Board - Montréal,” June 26, 2003, <http://www.icann.org/en/minutes/prelim-report-26jun03.htm>.

²⁸⁹ ICANN, “Submissions to the stld-rfp-comments forum,” <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/threads.html> (no date).

²⁹⁰ ICANN, “ALAC Response to the Proposed sTLD RFP and Suggested Principles for New TLD Processes,” October 9, 2003, <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/msg00067.html>.

²⁹¹ ICANN, “Preliminary Report: Special Meeting of the Board,” October 13, 2003, <http://www.icann.org/en/minutes/prelim-report-13oct03.htm>.

²⁹² As of 2003, the GNSO became the successor to the DNSO. See DNSO website, <http://www.dnsso.org>.

²⁹³ ICANN, “ICANN Board Resolutions in Carthage, Tunisia,” October 31, 2003, <http://www.icann.org/en/announcements/advisory-31oct03.htm>. The final version of the sTLD RFP is available at ICANN, “New sTLD Application,” December 15, 2003, <http://www.icann.org/en/tlds/new-stld-rfp/new-stld-application-part-15dec03.htm>.

²⁹⁴ ICANN, “New sTLD RFP Application: .xxx,” March 16, 2004, <http://www.icann.org/en/tlds/stld-apps-19mar04/xxx.htm>.

²⁹⁵ ICANN, “New sTLD RFP Application: .xxx,” March 16, 2004, <http://www.icann.org/en/tlds/stld-apps-19mar04/xxx.htm>.

According to the proposal, ICM intended to donate a certain portion of each domain registration fee to promote IFFOR’s policymaking and advocacy efforts.²⁹⁶

1.2.3 ICANN’s Review and Initial Approval

On March 19, 2004, ICANN publicly announced that it had received ten sTLD applications in response to its RFP: .asia, .cat, .jobs, .mail, .mobi, .post, .tel (NetNumber, Inc), .tel (Telnic Ltd.), .travel, and .xxx. This announcement included invitations to post comments on specific proposals, in addition to a solicitation for general public comments. It also noted that the public comment period would be open during the month of April 2004 and that applications would be reviewed by independent evaluators beginning in May of that year.²⁹⁷

In mid-July 2004, the independent evaluators sent reports on the ten applications to ICANN indicating that only .cat and .post satisfied the full range of evaluation criteria.²⁹⁸ The report declared that ICM’s proposal satisfied the technical, business, and financial criteria, but fell short of meeting the sponsorship criteria.²⁹⁹ In particular, the report stated that “the difficulty of establishing a clean definition of adult content makes it equally difficult to establish the contours of the adult community. They determined, moreover, that ICM “hypothesizes a set of interests on behalf of a community . . . but little testimony from that community has been provided in support of either its common interests or its cohesiveness.”³⁰⁰ Finally, the evaluators note that although there was significant support for the proposal from the North American community, “virtually no support was available from the rest of the world.”³⁰¹

ICANN announced that it would allow sTLD applicants to provide supplemental material in response to the independent evaluators’ concerns.³⁰² From October through November 2004, ICM submitted a range of supplemental application material, primarily addressing the .xxx proposal’s deficiencies regarding sponsorship criteria.³⁰³

²⁹⁶ Ibid.

²⁹⁷ ICANN, “Progress in Process for Introducing New Sponsored Top-Level Domains,” March 19, 2004, <http://www.icann.org/en/announcements/announcement-19mar04.htm>. See also, ICANN, “Public Comments for Proposed Sponsored Top-Level Domains,” March 31, 2004, <http://www.icann.org/en/tlds/stld-apps-19mar04/stld-public-comments.htm>.

²⁹⁸ See ICANN, “Status Report on the sTLD Application Process,” December 3, 2005, <http://www.icann.org/en/tlds/stld-apps-19mar04/stld-status-report.pdf>.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid., 24–25.

³⁰² ICANN, “ICANN Meetings in Kuala Lumpur,” July 23, 2004, <http://www.icann.org/en/meetings/kualalumpur/captioning-public-forum-23jul04.htm>.

³⁰³ ICANN, “Appendix E – Supplemental/Follow-up Materials,” November 30, 2005, <http://www.icann.org/en/tlds/stld-apps-19mar04/AppE-30nov05.pdf>.

2 Involvement of the GAC in the .xxx Process

2.1 The Role of the GAC in ICANN

According to the ICANN Bylaws,³⁰⁴ one of the primary purposes of the Governmental Advisory Committee (GAC) is to “consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws, and international agreements or where they may affect public policy issues.”³⁰⁵

The GAC may submit “issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.”³⁰⁶ Apart from receiving unsolicited advice or comment, the Board is required to “notify the Chair of the GAC in a timely manner of any proposal raising public policy issues on which it or any of ICANN’s supporting organizations seeks public comment.”³⁰⁷ Separately, the Board is required to “request the opinion” of the GAC in cases where “policy action affects public policy concerns” and the policy being considered for adoption “substantially affect[s] the operation of the Internet or third parties.”³⁰⁸ Regardless of whether solicited or not, any GAC advice “on public policy matters” triggers a Bylaw provision whereby the Board is required to take such advice into account “both in the formulation and adoption of policies.”³⁰⁹ If the Board decides not to follow this advice, the Board is then required to notify the GAC and “state the reasons why it decided not to do so” and “try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”³¹⁰ If no solution is reached between the Board and the GAC, the Board is required to “state in its final decision the reasons why” the advice was not followed.

The ICANN Bylaws also permit the GAC to “appoint one non-voting liaison to the ICANN Board of Directors.”³¹¹ The GAC Liaison to the Board is “entitled to attend Board Meetings, participate in Board discussions and deliberations.” The Liaison has “access (under conditions established by the Board) to materials provided to Directors for use in Board discussions” and may “use any materials provided to them pursuant to this Section for the

³⁰⁴ ICANN Bylaws, August 5, 2010, <http://www.icann.org/en/general/bylaws.htm>. ICANN’s Bylaws have been amended 26 times from the original Bylaws. Archives of previous versions are available on the ICANN website at <http://www.icann.org/en/general/archive-bylaws>.

³⁰⁵ Ibid., Article XI, Section 2.1(a). ICANN’s original Bylaws did not include the phrase “where they may affect public policy issues,” which was appended to the original in 2002. ICANN Bylaws, Article XI, Section 2.1(a), November 6, 1998, <http://www.icann.org/en/general/archive-bylaws/bylaws-06nov98.htm>.

³⁰⁶ Ibid., Article XI, Section 2.1(i). It is unclear whether the terms “comment” and “advice” are distinct concepts and are intended to have different meaning.

³⁰⁷ Ibid., Article XI, Section 2.1(h).

³⁰⁸ Ibid., Article III, Section 6.1(c). Although this provision does use the term “advice,” which by itself is consistent with the use in Article XI, Section 2.1; “advice” appears to be used interchangeably with “opinion.” Consequently, the precise scope of this provision is unclear, especially with regard to how it interplays with Article XI, Section 2.1.

³⁰⁹ Ibid., Article XI, Section 2.1(j). Unlike the other provisions in Article XI, this provision uses the term “advice of the Governmental Advisory Committee” explicitly. This appears to suggest that the circumstances where the Board’s requirement to give notice and explanation of actions inconsistent with advice is limited; however, it is somewhat unclear if that was the intended purpose of this provision.

³¹⁰ Ibid., Article XI, Section 2.1(j).

³¹¹ Ibid., Article VI, Section 9.1(a) and Article XI, Section 2.1(g).

purpose of consulting with their respective committee.”³¹² The individual elected as the GAC Chair has been consistently appointed to the position of GAC Liaison to the Board has consistently Although not described within the ICANN Bylaws or the GAC Operating Principles,³¹³ interviewees stated that the GAC Liaison to the Board is generally expected to brief the Board on issues of concern amongst GAC members.³¹⁴ In addition, interviewees indicated that the Board believes the presence of the GAC Chair at Board Meetings, even if in the capacity of a Liaison to the Board, satisfies the “notification” requirement for proposals raising public policy issues without additional communications.³¹⁵ Other interviewees questioned this practice and stated that this interpretation of the Bylaws was not shared by GAC members.³¹⁶

According to the GAC Operating Principles, the GAC advises the Board on matters relating to “governments, multinational government organizations and treaty organizations, and distinct economies as recognized in international fora.”³¹⁷ The Operating Principles reflect the GAC’s internal operating principles and procedures, however, the articulations within this document are not necessarily binding on the ICANN Board.³¹⁸ The Operating Principles specifically state that “advice from the GAC to the Board is communicated through the Chair.”³¹⁹ When the GAC is unable to reach a consensus, the Chair is required to “convey the full range of view expressed by Members to the Board.”³²⁰

2.2 The Role of the GAC in the .xxx Process: 2004

Between ICM’s submission of its .xxx proposal on March 19, 2004 and the submission of the independent evaluators’ report on July 13, 2004, there is little documented discussion of the sTLD applications during ICANN Board and GAC meetings.³²¹ Following receipt of this report, the Board determined that sTLD applicants would be permitted to submit supplemental information to address the evaluators’ concerns, beginning in August 2004. ICM began submitting supplemental materials in October 2004.³²²

³¹² Ibid., Article VI, Section 9.5.

³¹³ The ICANN Bylaws contain a provision which permits the GAC to adopt “its own charter and internal operating principles or procedures to guide its operations.” This provision appears to be manifested by the GAC Operating Principles. GAC Operating Principles, March 2010, http://gac.icann.org/system/files/GAC_Operating_Principles_1.pdf. Importantly, the Operating Principles note that the ICANN Bylaws are authoritative over any differences “in interpretation between the principles set out in these Operating Principles and ICANN’s Articles of Incorporation and Bylaws.” See also GAC Operating Principles, Article XV, Principle 54.

³¹⁴ Interviews, September and October 2010.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ GAC Operating Principles, Article I, Principle 1, March 2010.

³¹⁸ Ibid., Article XV, Principle 54.

³¹⁹ Ibid., Article XII, Principle 46.

³²⁰ Ibid., Article XII, Principle 47.

³²¹ Between March and July 2004, both the Board and the GAC held meetings, but did not discuss the sTLD applications in significant detail. The Board held meetings on April 19, May 11, May 21, May 25, and June 29, 2004. See ICANN, “2004 Board Meeting Minutes,” 2004, <http://www.icann.org/en/minutes/index-2004.html>. The GAC held meetings on February 29 – March 3, and July 17 – 20, 2004. See GAC, “GAC Meetings,” <http://gac.icann.org/meetings>. See ICANN, “Status Report on the sTLD Evaluation Process,” December 3, 2005, <http://www.icann.org/en/tlds/stld-apps-19mar04/stld-status-report.pdf>; Independent Evaluators, “Evaluation Report on New sTLD Applications,” July 12, 2004, <http://www.icann.org/en/tlds/stld-apps-19mar04/PostAppD.pdf>.

³²² ICANN, “Appendix E – Supplemental/Follow-up Materials,” November, 30, 2005, <http://www.icann.org/en/tlds/stld-apps-19mar04/AppE-30nov05.pdf>.

On October 18, 2004, the ICANN Board held the first meeting since July 2004 during which a discussion of the sTLDs was documented. The corresponding meeting minutes indicate that “Kurt Pritz, the ICANN Vice President of Business Operations[,] provided a detailed summary of the current process of and status regarding the ten sponsored top-level domain applicants” and Paul Twomey, ICANN’s President and CEO, also provided information on the sTLD applicants.³²³ Mohamed Sharil Tarmizi, Chairman of the GAC, was present during this meeting as the “GAC Liaison.”³²⁴ No corresponding resolutions were made by the Board at this meeting.³²⁵ Another meeting was held on November 15, 2004.³²⁶ The minutes note that “Kurt Pritz again provided an update on the status of the process for each of the ten [sTLD] applicants,” and there was a “limited discussion by the Board regarding the process points,” but no resulting resolutions.³²⁷

In a five-page letter to Tarmizi, dated December 1, 2004, Dr. Twomey requested “input from the GAC on the public policy elements” on several issues pending before the Board.³²⁸ Twomey also observed that, “it seems to me that the interaction between the GAC and ICANN staff would merit from some increase in intensity” and suggested “establish[ing] a GAC position for transmission to the Board on the public policy elements” of issues pending before the ICANN Board.³²⁹ Twomey also noted in this letter that “it may be worthwhile considering how the interaction could be increased between the GAC and the other Supporting Organizations and Advisory Committees for the mutual benefit of both sides.”³³⁰ The next section of this letter laid out the issues pending before the Board for which Twomey requested GAC input. In the following paragraph, Twomey outlined the status of the sTLD applications:

*ICANN continues to move forward on three (3) fronts in the area of **generic Top-Level Domains**. First of all, following the 10 applications for new sponsored TLD’s (sTLDs) and the evaluation of their bids by independent evaluators, we have commenced contract negotiations with the applicants for .TRAVEL and .POST. In parallel, the applicants are responding to the reports of the independent evaluators, and in some instance have entered into direct discussions with the evaluation panels in order to clarify some issues. Any outstanding issues between the independent panels and the applicants will be resolved by ICANN’s Board and we expect to move towards contract negotiations with some other applicants as well. Secondly, ICANN is about to launch the re-bid of the .NET agreement as foreseen in the relevant contract. GAC*

³²³ ICANN, “Special Meeting of the Board Minutes,” October 18, 2004, <http://www.icann.org/en/minutes/minutes-18oct04.htm>.

³²⁴ Ibid. A liaison to the Board is a non-voting member, who is permitted to attend Board meetings. The Bylaws specify that the GAC must appoint the position of liaison annually. See ICANN Bylaws Art. VI. Sec. 9.

³²⁵ ICANN, “Special Meeting of the Board Minutes,” October 18, 2004, <http://www.icann.org/en/minutes/minutes-18oct04.htm>.

³²⁵ ICANN, “Special Meeting of the Board Minutes,” October 18, 2004, <http://www.icann.org/en/minutes/minutes-18oct04.htm>.

³²⁶ ICANN, “Special Meeting of the Board Minutes,” November 15, 2004, <http://www.icann.org/en/minutes/minutes-15nov04.htm>.

³²⁷ Ibid.

³²⁸ Paul Twomey to Mohamed Sharil Tarmizi, ICANN Correspondence, December, 1 2004, <http://www.icann.org/correspondence/twomey-to-tarmizi-01dec04.pdf>.

³²⁹ Ibid.

³³⁰ Ibid.

*members can follow the process via the information we post to the ICANN web-site. Thirdly, as mentioned, we have published the draft of a Strategy for the Introduction of New gTLD's.*³³¹

2.3 The Role of the GAC in the .xxx Process: 2005

Despite receiving a number of supplemental materials from ICM in support of its application in late 2004, as of early 2005 the ICANN Board was still uncertain that ICM had satisfied the requirements for the .xxx sTLD. On January 24, 2005, the Board held a special meeting to discuss the status of ICM's application. At this meeting, Kurt Pritz "introduced the .XXX application materials, evaluators' responses and the applicant's supplemental materials" and "there was extensive Board discussion regarding the application," focused on ICM's proposed sponsored community.³³² According to the minutes, the Board determined that it would be useful for ICM to give a presentation and invited ICM to do so at a later Board meeting.³³³ ICM delivered the presentation on April 3, 2005 in Mar del Plata, Argentina, a few days prior to the scheduled ICANN Board meeting,³³⁴ to an audience of Board members and a number of Board liaisons, including Tarmizi.³³⁵

Concurrently, the GAC convened in Mar del Plata on April 2–5 in 2005 for the first of three scheduled meetings in 2005.³³⁶ The Mar del Plata Communiqué does not indicate that the GAC held any discussions related to the sTLDs or the .xxx application specifically.³³⁷ On April 3, 2005,³³⁸ Tarmizi sent a letter to Paul Twomey responding to Twomey's previous request for GAC input on December 1, 2004.³³⁹ In this letter, Tarmizi stated that the GAC had no objections to any of the sTLD applications:

*No GAC members have expressed specific reservations or comments, in the GAC, about the applications for sTLDs in the current round. However should sTLDs use ENUM, that should not interfere with established international policies for the E164 numbering system. ICANN should ensure that sponsors of sTLDs encompass the entirety of the relevant user community, and that eventual distortions of competition are effectively avoided.*³⁴⁰

³³¹ Ibid., 4 (emphasis in the original).

³³² ICANN, "Special Meeting of the Board," January 23, 2005, <http://www.icann.org/en/minutes/minutes-24jan05.htm>.

³³³ Ibid.

³³⁴ The ICANN Board held its regular meeting in Mar del Plata, Argentina on April 8, 2005.

³³⁵ ICM, "Request for IRP," June 6, 2008, at 28, <http://www.icann.org/en/irp/icm-v-icann/icm-irp-request-06jun08.pdf>.

³³⁶ GAC, "Meeting 22: Mar del Plata Communiqué," April 5, 2005, http://gac.icann.org/system/files/GAC_22_Mar_del_Plata.pdf. The other meetings scheduled for 2005 included: Meeting 23: Luxembourg on July 9-12, 2005, and Meeting 24: Vancouver on November 28 – December 1, 2005. Cf. GAC, "Meetings," <http://gac.icann.org/meetings>.

³³⁷ Ibid.

³³⁸ The ICANN meeting minutes on this date and the Tarmizi letter do not indicate whether the letter was written and sent before or after the Board meeting on this date.

³³⁹ Mohamed Sharil Tarmizi to Paul Twomey, April 3, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>.

³⁴⁰ Ibid.

Following the April 3 special Board meeting, the Board met again for a regular meeting on April 8, 2005 in Mar del Plata.³⁴¹ The meeting minutes reflect that the Board hoped to reach a decision within thirty days:

*We have had a fairly extensive discussion about .ASIA and .XXX. We continue to evaluate those. The others will be attended as we can get to them. But, I want to say for the record, that we will attempt within the next 30 days to come to a conclusion one way or the other about .ASIA and .XXX.*³⁴²

Approximately one month later, on May 3, 2005, the Board held another special meeting, and had a “broad discussion . . . whether or not the [.xxx application] met the criteria within the RFP particularly relating to the definition and coherence of the ‘sponsored community’.”³⁴³ No conclusion was reached in these meetings, and “the Board agreed it would discuss this issue again at the next Board meeting.”³⁴⁴

On June 1, 2005, the Board held another special meeting and discussed the .xxx application at length with a “particular focus on the ‘sponsored community’ issues.”³⁴⁵ At this meeting, the Board resolved to enter into negotiations with ICM for the technical and commercial terms of a contractual agreement relating to the delegation of the sTLD.³⁴⁶ Whether this resolution indicated that ICM had adequately met the sTLD sponsorship criteria later became a factual dispute in the arbitration proceedings under the Independent Review Process beginning in 2008.³⁴⁷

The GAC held its second meeting of the year in Luxembourg on July 7–12, 2005.³⁴⁸ The Luxembourg Communiqué does not specifically mention ICM’s application, the proposed .xxx sTLD, or the Board’s June 1, 2005 resolution to enter into contract negotiations with ICM. However, the Luxembourg Communiqué makes the following reference with regard to “new TLDs”:

*The GAC notes from recent experience that the introduction of new TLDs can give rise to significant public policy issues, including content. Accordingly, the GAC welcomes the initiative of ICANN to hold consultations with respect to the implementation of the new Top-level Domains strategy. The GAC looks forward to providing advice to the process. The GAC also encourages the Board to actively consult all constituencies with regard to the development of this strategy.*³⁴⁹

³⁴¹ ICANN, “Mar Del Plata Meeting,” April 8, 2005, <http://www.icann.org/en/meetings/mardelplata/captioning-BoD-meeting-08apr05.htm>.

³⁴² Ibid.

³⁴³ ICANN, “Special Meeting of the Board,” May 3, 2005, <http://www.icann.org/en/minutes/minutes-03may05.htm>.

³⁴⁴ Ibid.

³⁴⁵ ICANN, “Special Meeting of the Board,” June 1, 2005, <http://www.icann.org/en/minutes/minutes-01jun05.htm>.

³⁴⁶ Ibid.

³⁴⁷ See ICM Request for Independent Review Process, June 6, 2008, <http://icann.org/en/irp/icm-v-icann/icm-irp-request-06jun08.pdf>.

³⁴⁸ GAC, “Meeting 23: Luxembourg Communiqué,” July 12, 2005, http://gac.icann.org/system/files/GAC_23_Luxembourg.pdf.

³⁴⁹ Ibid.

This is the only reference in the Luxembourg Communiqué to the introduction of new TLDs; there are no references to sTLDs specifically.³⁵⁰ The phrase “significant public policy issues” is not defined further in this document.³⁵¹

Following the Luxembourg meetings, the ICANN Board met in September and resolved that the ICANN General Counsel and the CEO and President, “are directed to discuss possible additional contract provisions or modifications for inclusion in the .xxx registry agreement” which, among other things, ensure the “development and implementation of policies consistent with the principles in the ICM application.”³⁵² The ICANN Board posted the first draft registry agreement for the .xxx sTLD on the ICANN website for public comment on August 9, 2005.³⁵³

Three days later, on August 12, in a letter addressed to “the ICANN Board,” Tarmizi expressed the GAC’s discomfort with the possibility of a .xxx sTLD:

*In other GAC sessions, a number of other governments also expressed some concern with the potential introduction of this TLD. The views are diverse and wide ranging. Although not necessarily well articulated in Luxembourg, as Chairman, I believe there remains a strong sense of discomfort in the GAC about the TLD, notwithstanding the explanations to date.*³⁵⁴

Tarmizi disclosed that he had been “approached by some of the [governments with concerns]” and had “advised them that apart from the advice given in relation to the creation of new gTLDs in the Luxembourg Communiqué that implicitly refers to the proposed TLD, sovereign governments are also free to write directly to ICANN about specific concerns.” In the same letter, Tarmizi also asked the Board to “allow time for additional governmental and public policy concerns to be expressed before reaching a final decision.”³⁵⁵

Following this, Michael Gallagher, Assistant Secretary of the US Department of Commerce and Administrator of the NTIA, wrote to Vint Cerf “to urge the Board to ensure that the concerns of all members have been adequately heard and resolved before the Board takes action on [the .xxx] application.”³⁵⁶ The ICANN website’s “Correspondence” page³⁵⁷ currently dates this letter August 15, 2005.³⁵⁸ The posted digital copy of this letter has two date

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² ICANN, “Special Meeting of the Board,” September 15, 2005, <http://www.icann.org/en/minutes/minutes-15sep05.htm>.

³⁵³ ICM and ICANN, “.Draft Sponsored TLD Registry Agreement,” August 1, 2005, <http://www.icann.org/en/tlds/agreements/xxx/proposed-xxx-agmt-09aug05.pdf>.

³⁵⁴ Mohamed Sharil Tarmizi to ICANN Board, August 12, 2005, ICANN Correspondence <http://www.icann.org/correspondence/tarmizi-to-board-12aug05.htm>.

³⁵⁵ Ibid.

³⁵⁶ Michael Gallagher to Vint Cerf, August 15, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/gallagher-to-cerf-15aug05.pdf>.

³⁵⁷ ICANN, “Correspondence,” <http://www.icann.org/correspondence>.

³⁵⁸ Ibid.

stamps on it: August 11 and “received August 15.”³⁵⁹ This letter additionally noted that the Department of Commerce had received a large number of negative comments from the public regarding the proposed sTLD.³⁶⁰

On August 15, the same day the Gallagher letter was posted to ICANN’s website, ICM officially requested an additional month to allow ICANN to address the concerns raised by the GAC.³⁶¹ Consequently, consideration of the proposed agreement was postponed until the September 2005 Board meeting.³⁶²

On September 6, 2005, Marcelo de Carvalho Lopes, the Secretary of Information Technology Policy of Brazil, wrote to Mohamed Sharil Tarmizi and stated that “significant impacts in local concerns have been introduced [as a result of the .xxx proposal] without adequate consultation with national governments.”³⁶³ Lopes also requested that “any new decision concerning the introduction of any other TLDs should only be taken after a careful analysis of the real need for such introduction within the Internet and due consultation” with all affected parties and governments.³⁶⁴

In a special meeting on September 15, 2005, the Board resolved to continue discussions with ICM and to address “additional provisions or modifications for inclusion” in the agreement “to ensure there are effective provisions requiring development and implementation of policies consistent with the principles in the ICM application.”³⁶⁵ On September 16, Peter Zangl, Deputy Director of the European Commission’s Information Society, Media Directorate General and a member of the GAC, wrote to Vint Cerf and asked ICANN to allow the GAC to review the independent evaluators’ reports on the sTLD proposals before the Board reached a final decision on .xxx. Zangl also requested that the ICANN Board explain their reasons for accepting the ICM’s application in response to the 2003 RFP round after it was denied in the 2000 “proof of concept” round.³⁶⁶ A response to this letter was not issued until mid-January 2006.³⁶⁷

Although the proposed .xxx registry agreement was again on the agenda for discussion at the special meeting of the Board held on October 12, 2005, the meeting minutes do not recount any discussion concerning the agreement, ICM, or .xxx.³⁶⁸ However, the minutes

³⁵⁹ During the Berkman team’s interview process, some interviewees noted there was confusion as to whether the letter was received on August 11 or on August 15, 2005. Compare <http://www.icann.org/correspondence/gallagher-to-cerf-15aug05.pdf> with the Correspondence Page date: <http://www.icann.org/correspondence>.

³⁶⁰ *Ibid.*

³⁶¹ Stuart Lawley to Vint Cerf, August 15, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/lawley-to-twomey-15aug05.pdf>. See also ICM, “Request for Independent Review Process,” June 6, 2010, p 34, <http://icann.org/en/irp/icm-v-icann/icm-irp-request-06jun08.pdf>.

³⁶² *Ibid.*

³⁶³ Marcelo de Carvalho Lopes to Mohamed Sharil Tarmizi, September 6, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/lopez-to-tarmizi-06sep05.pdf>.

³⁶⁴ *Ibid.*

³⁶⁵ ICANN, “Special Meeting of the Board,” September 15, 2005, <http://www.icann.org/correspondence/lopez-to-tarmizi-06sep05.pdf>.

³⁶⁶ Peter Zangl to Vint Cerf, September 16, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/zangl-to-cerf-16sep05.pdf>.

³⁶⁷ Vint Cerf to Peter Zangl, January 30, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/cerf-to-zangl-30jan06.pdf>.

³⁶⁸ ICANN, “Special Meeting of the Board,” October 12, 2005, <http://www.icann.org/en/minutes/minutes-12oct05.htm>.

note that “there was discussion regarding the nature of other matters on the Board’s agenda and the remaining agenda items were put over until the next possible time for the Board to take up such matters.”³⁶⁹ Prior to the end of 2005, the ICANN Board held three more meetings: a special meeting on October 24, a special meeting on November 8, and the Vancouver Meeting in early December.³⁷⁰ The .xxx sTLD and proposed registry agreement were not listed on the agendas for these meetings nor mentioned in the meeting minutes. In a letter to Paul Twomey dated November 23, 2005, Jonas Bjelfvenstam, the State Secretary for Communications and Regional Policy in Sweden, expressed the Swedish disapproval for the .xxx domain. Bjelfvenstam almost made the following remarks regarding the GAC’s role in the ICANN decision-making process:

*I know that all TLD applications are dealt with in procedures open to everyone for comment. However, in a case like this, where public interests clearly are involved, we feel it could have been appropriate for ICANN to request advice from GAC. Admittedly, GAC could have given advice to ICANN anyway at any point in time of the process and to my knowledge, no GAC members have raised the question before the GAC meeting July 9 - 12, 2005, in Luxembourg. However, we all probably rested assure that ICANN’s negative opinion on .xxx, expressed in 2000, would stand. From the ICANN decision on June 1, 2005, there was too little time for GAC to have an informed discussion on the subject at its Luxembourg summer meeting; one month would be insufficient time for governments to independently consider and respond to the subject matter. In this specific case, several countries raised serious concerns at the GAC meeting. However, there was too little information at hand to have an informed and fruitful discussion and hence no conclusions were reached on the subject.*³⁷¹

The letter requested that the ICANN Board “postpone conclusive discussion on .xxx until after the upcoming GAC meeting in November 29–30, 2005, in Vancouver” so that the GAC could discuss matters. Bjelfvenstam asked the Board to provide “in detail how it means .xxx fulfils the criteria set in advance (‘criteria for Independent Evaluators’).”³⁷²

On the same day, November 23, Paul Twomey responded to Bjelfvenstam’s letter.³⁷³ In his response, Twomey explained that the ICANN Board had put off “any decision on [the .xxx] application until at least the ICANN Board meeting on 4 December 2005.”³⁷⁴ The GAC’s third and final meeting in 2005 was held over November 28–December 1 in Vancouver, British Columbia. In the GAC’s Vancouver Communiqué, the only relevant note on the .xxx application was the following:

The GAC also welcomed a report from ICANN on the status of Board approval of sponsored TLDs, as well as the Evaluation Report requested by GAC members. In that

³⁶⁹ Ibid.

³⁷⁰ See ICANN, “2005 Board Meetings,” 2005, <http://www.icann.org/en/minutes/index-2005.html>.

³⁷¹ Jonas Bjelfvenstam to Paul Twomey, November 23, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/bjelfvenstam-to-twomey-23nov05.htm>.

³⁷² Ibid.

³⁷³ Paul Twomey to Jonas Bjelfvenstam, November 23, 2005, ICANN Correspondence, <http://www.icann.org/correspondence/twomey-to-bjelfvenstam-23nov05.pdf>.

³⁷⁴ Ibid.

*regard, the GAC welcomed the decision to postpone the Board's consideration of the .XXX application from its December 4th, 2005 meeting until such time as the GAC has been able to review the Evaluation Report and the additional information requested from ICANN.*³⁷⁵

2.4 The Role of the GAC in the .xxx Process: 2006

As of January 1, 2006, the Board had not yet voted on the pending .xxx registry agreement. The next significant events occurred following the GAC's meeting in Wellington in March. Until then, ICANN continued to negotiate the terms for the proposed .xxx registry agreement while responding to written communication from the members of the community.

On January 17, 2006, Vint Cerf issued a seven-page letter responding to Peter Zangl's September 16, 2005 letter.³⁷⁶ In this letter, Cerf highlighted some of the procedural and substantive differences between the 2000 "proof of concept" round and the 2003 RFP and addressed a number of issues related to the GAC that were raised in Zangl's original letter. Cerf explained that the GAC was first formally informed of the pending sTLD applications in a "1 December 2004 letter from Dr. Twomey" to the GAC which "request[ed] input on the public policy elements of a number of issues and highlighting major developments in ICANN."³⁷⁷ Cerf stated that "the Chairman of the GAC responded to Dr. Twomey on 3 April 2005," and "noted [in this letter] that, as of that date, '[n]o GAC members have expressed specific reservations or comments, in the GAC, about the applications for sTLDs in the current round.'"³⁷⁸ Cerf then noted that "on 1 June 2005, the Board voted to begin discussion of proposed commercial and technical terms with ICM" and that "this decision generated more GAC interest in the application than had been shown earlier."³⁷⁹ Cerf also stated that during this time period, Paul Twomey reported to the GAC that "no comments had been received from governments regarding the application" and the GAC had not "raised the issue in any formal comment to ICANN, such as by inclusion in a Communiqué."³⁸⁰ Finally, Cerf pointed out that the next formal correspondence received by ICANN was the August 12, 2005 letter from the GAC Chairman that described the overall discomfort of the GAC.³⁸¹

On February 11, 2006, Paul Twomey sent Mohamed Sharil Tarmizi a letter that was essentially identical in substance to the letter Vint Cerf sent to Peter Zangl on January 17.³⁸² In addition to summarizing the Board's interaction with the GAC to date, the Twomey letter

³⁷⁵ GAC, "Communiqué 24—Vancouver," December 1, 2005, http://gac.icann.org/system/files/GAC_24_Vancouver_Communique.pdf.

³⁷⁶ Vint Cerf to Peter Zangl, January 17, 2006, ICANN Correspondence, <http://www.icann.org/correspondence/cerf-to-zangl-30jan06.pdf>. See also Peter Zangl to Vint Cerf, September 16, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-16sep05.pdf>.

³⁷⁷ *Ibid.*, 2. The letter also includes a hyperlink to the Paul Twomey letter sent to Mohamed Sharil Tarmizi on December 1, 2004.

³⁷⁸ *Ibid.*, 2-3 (some punctuation omitted).

³⁷⁹ *Ibid.*, 3.

³⁸⁰ *Ibid.*

³⁸¹ *Ibid.*

³⁸² Paul Twomey to Mohamed Sharil Tarmizi, February 11, 2006, ICANN Correspondence, <http://www.icann.org/correspondence/twomey-to-tarmizi-16feb06.pdf>. Cf. Vint Cerf to Peter Zangl, January 17, 2006, <http://www.icann.org/en/correspondence/cerf-to-zangl-30jan06.pdf>.

also noted that ICANN had “received letters from some members of the Governmental Advisory Committee (GAC) about the . . . application submitted by ICM Registry for .xxx” and summarized the ICM application and the Board’s interaction with the GAC since the application was received in 2004.³⁸³

On March 17, 2006, Peter Zangl replied to Vint Cerf’s January 17, 2006 letter.³⁸⁴ In his letter, Zangl thanked Cerf for the reply and acknowledged that ICANN is responsible for making the final decision. Zangl also made the following remarks:

I would emphasize however that the request for additional information made by the GAC in Vancouver results from the conclusion of the evaluation team that a number of the applications, including .xxx ‘do not meet all of the selection criteria’ and that, moreover, their ‘deficiencies cannot be remedied within the applicant’s proposed framework’. Importantly, the evaluators ‘recommend that ICANN not consider these applications further’.

In order to carry about our duties effectively in the GAC therefore, you will understand why it would be useful to know why the Board decided to proceed with the application, in particular given such explicit advice from the evaluators. I note and appreciate the extensive information you have provided in your letter about the Board’s deliberations, but I do not feel that this specific question is succinctly addressed. I would be grateful therefore if there is additional information that you, on behalf of the Board, can share with us on these issues.

On March 20, 2006, John M. R. Kneuer, the Acting Assistant Secretary at the US Department of Commerce and Acting Assistant Secretary for the NTIA, wrote to Mohamed Sharil Tarmizi.³⁸⁵ His letter advised the GAC that the proposed .xxx registry agreement did not reflect a number of key commitments offered by ICM within the contract’s provisions and requested that the GAC bring this to the attention of the ICANN Board prior to the Wellington, New Zealand meeting.³⁸⁶ The letter also included a description of the provisions that the NTIA said were not reflected in the agreement.³⁸⁷

On March 25, 2006, Stuart Lawley, ICM’s CEO, sent a letter to Tarmizi responding to the comments made by the NTIA on March 20.³⁸⁸ In this letter, Lawley stated that the letter from the NTIA was incorrect and argued that the issues raised by the NTIA were already addressed by a number of specific commitments that had been negotiated between ICANN and ICM.³⁸⁹

³⁸³ Ibid.

³⁸⁴ Peter Zangl to Vinton Cerf, March 17, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-17mar06.pdf>. See also Vint Cerf, to Peter Zangl, January 17, 2006, <http://www.icann.org/en/correspondence/cerf-to-zangl-30jan06.pdf>.

³⁸⁵ John M. R. Kneuer to Mohamed Sharil Tarmizi, March 20, 2006, ICANN Correspondence, <http://www.icann.org/correspondence/kneuer-to-tarmizi-20mar06.pdf>.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Stuart Lawley to Mohamed Sharil Tarmizi, March 25, 2006, ICANN Correspondence, <http://www.icann.org/correspondence/lawley-to-tarmizi-25mar06.pdf>.

³⁸⁹ Ibid.

A few days after the exchange of letters, the GAC met in Wellington, New Zealand.³⁹⁰ The Wellington Communiqué expressed the most critical remarks with regard to the .xxx application to date by the GAC. In particular, the Communiqué stated that “the GAC does not believe the February 11 letter provides sufficient detail regarding the rationale for the Board determination that the application had overcome the deficiencies noted in the Examination Report.”³⁹¹ The Communiqué further requested “a written explanation of the Board decision, particularly with regard to the sponsored community and public interest criteria outlined in the sponsored top-level domain selection criteria.”³⁹² The Communiqué also stated that ICM committed to “a range of public interest benefits as part of the bid to operate the .xxx domain” and that “these undertakings have not yet been included as ICM obligations in the proposed .xxx Registry Agreement.” It also listed a number of such provisions that the GAC wanted to be addressed.³⁹³

In a separate section of the Wellington Communiqué, titled “GAC–ICANN Board Cooperation,” the Communiqué noted that “the GAC acknowledges that there is a need for the GAC to consider changes in its working methods in order to enable it to interact more routinely with the ICANN Board and the community.”³⁹⁴

The day after the GAC Communiqué was issued, the ICANN Board held its regular meeting in Wellington.³⁹⁵ At this meeting, the Board resolved that “the President and the General Counsel are directed to analyze all publicly received inputs” and “to continue negotiations with [ICM].”³⁹⁶ The resolution stated that the President and General Counsel also are “to ensure that the TLD sponsor will have in place adequate mechanisms to address any potential registrant violations of the sponsor’s policies,” evaluate the proposed amendments to the registry agreement and provide the Board with recommendations.³⁹⁷

On April 28, 2006, the ICANN Board held a special meeting and discussed, among other things, the status of the proposed .xxx sTLD registry agreement.³⁹⁸ John Jeffrey, the ICANN General Counsel, provided an update on the negotiations and the changes that had been made to the proposed registry agreement since the Wellington meetings. Jeffrey noted that ICM had provided “a final version of their proposal for a response to all concerns from the community and relating to the GAC Communiqué.”³⁹⁹ Vint Cerf indicated that he would like to “have an up or down vote at the 10 May Meeting.”⁴⁰⁰ John Jeffrey also stated that that

³⁹⁰ GAC, “Communiqué 25—Wellington,” March 28, 2006, http://gac.icann.org/system/files/GAC_25_Wellington_Communique.pdf.

³⁹¹ *Ibid.*, 3. See also Paul Twomey to Mohamed Sharil Tarmizi, February 16, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/twomey-to-tarmizi-16feb06.pdf>.

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*, 2-3.

³⁹⁵ ICANN, “Meeting of the Board, Wellington, NZ,” March 31, 2006, <http://www.icann.org/en/minutes/minutes-31mar06.htm>.

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

³⁹⁸ ICANN, “Special Meeting of the ICANN Board,” 18 April, 2006, <http://www.icann.org/en/minutes/minutes-18apr06.htm>.

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.*

“the ICM version [of the proposed agreement], including a letter from ICM, would be published later that day for public comment.”⁴⁰¹

Mohamed Sharil Tarmizi, who was present at this Board meeting, “requested an update on whether there would be a response to the GAC regarding the items that set out in the Communiqué in Wellington.” Paul Twomey stated that “a response would be provided before the 10 May Meeting.”⁴⁰² Over the remainder of the Board meeting, the minutes indicate the Board members discussed concerns regarding the proposed registry agreement, including the manner of compliance and whether policy enforcement provisions would be sufficient to cover a community “as complex as the adult entertainment community.”⁴⁰³ Paul Twomey sent a letter addressed to Tarmizi and members of the GAC on May 4, 2006.⁴⁰⁴ The letter stated that Twomey was writing in response to the GAC’s request for information regarding the decision to proceed with the .xxx negotiations in June 2005. In this letter the ICANN Board again directed the GAC to the “11 February letter to explain ‘the Board decision, particularly with regard to the sponsored community and public interest criteria.’”⁴⁰⁵ The letter further stated that “it is important to note that the Board decision as to the .xxx application is still pending” and that the June 2005 decision only permitted the ICANN staff to enter into negotiations for a proposed registry agreement. Twomey explained that this decision did not prejudice “the Board’s right to evaluate the resulting contract and to decide whether it meets all of the criteria before the Board including public policy advice such as the Board either approves or rejects the registry agreement relating to the .xxx application.”⁴⁰⁶ The remainder of the letter explained the process of evaluation again as explained in the February 11 letter and, in particular, noted that “in all instances where the evaluators’ negative reports were reevaluated by the Board of Directors, the applicants answered all questions and clarified issues that had been of concern to the evaluators to the satisfaction of a majority of the Board.”⁴⁰⁷

On May 9, 2006, Martin Boyle, the UK Representative to the GAC, sent a letter to Vint Cerf as a follow-up to the discussions held at the Wellington meeting.⁴⁰⁸ The letter describes the “firm view [of the UK] that if the dot.xxx domain name is to be authorized, it would be important that ICANN ensures the benefits and safeguards proposed by the registry, ICM, including the monitoring all dot.xxx content and rating of content on all servers pointed to by dot.xxx, are genuinely achieved from day one.”⁴⁰⁹ Boyle also pointed out that “it will be important for the integrity of ICANN’s position as final approving authority. . . to be seen as able to intervene promptly and effectively if for any reason failure on the part of ICM in any of these fundamental safeguards.”⁴¹⁰

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ John Jeffrey to Mohamed Sharil Tarmizi and members of the GAC, May 4, 2006, ICANN Correspondence, <http://icann.org/correspondence/twomey-to-tarmizi-04may06.pdf>. See also Paul Twomey to Mohamed Sharil Tarmizi, February 11, 2006, <http://icann.org/en/correspondence/twomey-to-tarmizi-16feb06.pdf>.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

⁴⁰⁸ Martin Boyle to Vint Cerf, May 9, 2010, ICANN Correspondence, <http://www.icann.org/correspondence/boyle-to-cerf-09may06.htm>.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

Also on May 9, 2006, Tim Ruiz, Vice President of GoDaddy, sent a letter to ICANN to “encourage the ICANN Board to consider the proposed .xxx Registry Agreement only in regards to how it addresses the public policy concerns raised by the GAC.”⁴¹¹ Ruiz also stated that the current round of TLD expansion was still not complete after two years and notes that “this fact will certainly discourage future applicants for new sponsored or un-sponsored gTLDs.”⁴¹²

On May 10, 2006, the Board held a special meeting and voted on the proposed .xxx registry agreement, following a “detailed discussion” of the agreement terms, including the promises made by ICM in support of the proposal, concerns regarding ICANN’s ability to enforce the terms through a contractual framework, the sponsorship criteria, GAC advice and community input.⁴¹³ By a 9–5 vote, the ICANN Board resolved to reject the current draft of the .xxx registry agreement (but not ICM’s application as a whole), citing concerns about the agreement’s enforceability, the sponsorship criteria, and other concerns voiced in the public comments received.⁴¹⁴ ICM filed a Request for Reconsideration on the same day;⁴¹⁵ however, after ICANN invited ICM to submit a revised draft of the registry agreement, ICM withdrew its Request.⁴¹⁶

Stuart Lawley, President of ICM, sent a letter to Vint Cerf on May 30, 2006 expressing his disappointment at the Board’s decision and at “the lack of communication from ICANN” on the current status of the application. Lawley noted that after reviewing the Board’s voting transcript he was “convinced” that “certain misconceptions prevented the Board from reaching a balanced and equitable judgment on the agreement.” In particular, Lawley described the May 9 letter from Martin Boyle, the UK GAC representative, as being “mischaracterized.” Lawley also stated that ICM was still committed to the project and had filed an expedited request for reconsideration. Finally, Lawley outlined an ICM initiative that “enable[s] certain responsible members of the online adult entertainment community . . . to submit a request to reserve a particular domain for their subsequent registration should ICANN authorize ICM to operate .XXX”⁴¹⁷

Between June 2006 and January 1, 2007, ICANN has no public records of GAC correspondence regarding the proposed .xxx registry agreement or the sTLD application. Additionally, the .xxx proposed registry agreement was not mentioned in any Board meeting minutes during this time period.

⁴¹¹ Tim Ruiz to ICANN, May 9, 2006, ICANN Correspondence, <http://www.icann.org/correspondence/ruiz-to-board-09may06.pdf>.

⁴¹² Ibid.

⁴¹³ ICANN, “Special Meeting of the Board,” May 10, 2006, <http://www.icann.org/en/minutes/minutes-10may06.htm>.

⁴¹⁴ ICANN, “Voting Transcript of Board Meeting,” May 10, 2006, <http://www.icann.org/en/minutes/voting-transcript-10may06.htm>.

⁴¹⁵ ICM, “Request for Reconsideration of Board Action,” May 10, 2006, <http://www.icann.org/en/committees/reconsideration/icm-06-4/petition-20may06.pdf>.

⁴¹⁶ ICM, “Request for Reconsideration 06-4: Letter from J. Beckwith Burr to Reconsideration Committee,” October 29, 2006, <http://www.icann.org/en/committees/reconsideration/withdrawal-of-request-06-4-29oct06.htm>.

⁴¹⁷ Stewart Lawley to Vint Cerf, May 30, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/lawley-to-cerf-30may06.htm>.

2.5 The Role of the GAC in the .xxx Process: 2007

On January 5, 2007, ICANN posted a “revised proposed” .xxx registry agreement between ICANN and ICM for public comments until February 5, 2007.⁴¹⁸ On February 2, 2007, Tarmizi sent a letter to Vint Cerf in response to the January 5 announcement.⁴¹⁹

The letter stated that the “GAC convened a teleconference on 17 January 2007 to discuss its reaction to [the call for comments]” and that the participating GAC members on the call “noted that the modifications to the proposed agreement are intended to address public policy issues raised by the GAC in its Wellington, New Zealand Communiqué of March 2006.” The letter also pointed out that “it is unlikely that the GAC will be in a position to provide any comments on .xxx, above and beyond that provided in the Wellington Communiqué, before the next meeting in Lisbon.”⁴²⁰

The letter also stated that, despite the ICANN President’s letters sent on February 11 and May 4, 2006, the GAC had requested “written clarification from the ICANN Board regarding its decision June 1 2005” and “reiterate[s] the GAC’s request for a clear explanation of why the ICANN Board is satisfied that the .xxx application has overcome the deficiencies relating to the proposed sponsorship community.”⁴²¹ The letter also requested that ICANN provide the GAC with confirmation that the proposed .xxx registry agreement contained enforceable provisions covering “all of ICM Registry’s commitments.”

Finally, Tarmizi’s letter suggested that it would be appropriate for the GAC and the ICANN Board to hold “face-to-face discussions” in Lisbon in March 2007. In his concluding remarks, Tarmizi again stated that several GAC members remained “emphatically opposed from the public policy perspective to the introduction of an .xxx sTLD”—as was noted in the Wellington Communiqué—and that such sentiments were not contingent on the “specificities of the agreement.”⁴²²

Two special meetings of the ICANN Board were held between February 5, 2007 and the March 2007 Lisbon meetings. The first meeting, held on February 12, 2007, included a lengthy discussion of the proposed .xxx agreement, which covered community and public comments, status of advice from the GAC, including a “clarification of the letter from the GAC Chair and Chair-Elect” and whether additional public policy advice was to be expected, and how ICM measures up to the RFP criteria.⁴²³

Some of the notable points raised during this meeting were that more than 200,000 emails had been sent to ICANN and more than 1,300 comments had been submitted to the public comment forums since the initial ICM application. Of these, 600 comments and 55,579 emails had been received since the January 5, 2007 posting of the proposed registry agreement. The Board also discussed the extent of the burden being placed on ICM to show

⁴¹⁸ ICANN Announcement, “ICANN Publishes Revised Proposed Agreement on .XXX,” January 5, 2007, <http://www.icann.org/en/announcements/announcement-05jan07.htm>.

⁴¹⁹ Mohamed Sharil Tarmizi to Vint Cerf, February 2, 2007, ICANN Correspondence, <http://www.icann.org/en/correspondence/tarmizi-to-cerf-02feb07.pdf>.

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ ICANN, “Special Meeting of the Board,” February 12, 2007, <http://www.icann.org/en/minutes/minutes-12feb07.htm>.

that the entire sponsoring community supports the creation of the .xxx domain. Some Board members raised what they described as a recent lack of support for the defined community observed in negative emails and public comments. Ultimately, the Board resolved that “a majority of the Board has serious concerns” about the underlying sponsored community support, and that ICM should provide further information to ICANN to help determine whether the sponsorship criteria had been met. Tarmizi stated during this meeting that the February 2, 2007 letter sent to Vint Cerf served as the GAC’s official advice on the current proposed registry agreement.

ICM responded on March 8, 2007 to the Board’s request for information and provided a list of “pre-reservants” compiled from the last six months.⁴²⁴ This list was generated through ICM’s “pre-reservation” initiative, which Stuart Lawley had discussed in his May 30, 2006 letter to Vint Cerf.⁴²⁵ Attached to the letter were over 75,000 pre-reservations of domain name strings specifically requested by webmasters, totaling 546 pages. A number of statistics in favor of community sponsorship were also noted in this letter.

The Board held its next special meeting on March 12, 2007. At this meeting, the Board engaged in another lengthy discussion concerning the proposed .xxx registry agreement and whether the sponsorship criteria had been met. The Board meeting minutes noted that most members felt the Board should hold off voting on the application until, or after, the Lisbon meeting, which was two weeks away. The minutes also indicated that, again, Tarmizi noted that the Board could seek “additional advice from the GAC” prior to the Lisbon meetings, but such a request would need to be made “expeditiously.” Tarmizi also noted that some GAC members remained adamantly against the creation of the .xxx sTLD.⁴²⁶

The GAC representatives at this meeting (Tarmizi and Janis Karklins) asked if a response to the GAC’s request for more information on the Board’s June 2005 decision would be provided prior to the Lisbon meetings. In response, “the Chairman said that a response would be provided”; the minutes stated that “this was confirmed by Paul Twomey,” who pointed out that some previous letters were responsive to the GAC’s requests and some “additional clarity around the GAC’s advice could be presented on this matter.”⁴²⁷ The GAC request was answered on March 14, 2007, in a one-page letter from Vint Cerf.⁴²⁸ Cerf again noted that the communications from ICANN on February 11 and May 4, 2006 contained the information the GAC requested. Cerf also stated that the Board was “still reviewing the materials and ha[d] not made a determination as to whether the revisions to the ICM Registry contract contain the necessary enforceable provisions.” Cerf acknowledged that some members of the GAC were opposed to the creation of the .xxx sTLD and that they had requested that the final decision be delayed until the Lisbon meetings.

⁴²⁴ Stuart Lawley to Vint Cerf and ICANN Board, March 8, 2007, ICANN Correspondence, <http://www.icann.org/correspondence/cover-letter-pre-reservation-aatt.pdf>.

⁴²⁵ Stuart Lawley to Vint Cerf, May 30, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/lawley-to-cerf-30may06.pdf>.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

⁴²⁸ Vint Cerf to Mohamed Sharil Tarmizi, March 14, 2007, ICANN Correspondence, <http://www.icann.org/correspondence/cerf-to-tarmizi-karklins-14Mar07.pdf>.

The GAC Lisbon meetings were held in late March. The Lisbon Communiqué was issued on March 28, 2007.⁴²⁹ With regard to .xxx, the Lisbon Communiqué remarked that the “Wellington Communiqué remains a valid and important expression of the GAC’s views on .xxx” and that the GAC “does not consider the information provided by the Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria.”⁴³⁰

The Communiqué also brings attention to the Canadian government’s comments, which had been posted to the ICANN public forums. These comments raised concerns that ICANN was moving towards an “ongoing management and oversight role regarding Internet content, which would be inconsistent with its technical mandate.”⁴³¹

Following the GAC meetings in Lisbon, the ICANN Board also held a meeting on March 30, 2007.⁴³² During this meeting, the Board determined that the ICM application failed to meet the sponsored community criteria in the RFP specification and, based on the extensive public policy issues raised in the GAC Communiqués, it would not be appropriate for the Board to approve the ICM application or the revised agreement. Consequently, the Board voted to reject the ICM application in its entirety.

2.6 Perceptions of the GAC’s Role in the .xxx Process Based on Berkman Case Study Interviews

Individuals who have been interviewed in the course of developing this case study shared different observations regarding the interaction between the GAC and the ICANN Board during the evaluation of the .xxx application. Some interviewees suggested a clash of institutional cultures that inhibited better communication. Others cited a lack of appreciation on the part of the ICANN Board for the role of the GAC and the difficult political challenges faced by an inter-governmental body, all with domestic constituencies to which they must answer. Other observers indicated that the schedule of the policy-making process did not allow sufficient time for GAC to offer advice to the ICANN Board. Some of those interviewees described a lack of clarity regarding what constituted GAC advice to the ICANN Board. Others suggested that the GAC did not offer timely advice on the .xxx decision because members believed that the case was closed.⁴³³

3 The Independent Review Panel: ICM v. ICANN

3.1 Independent Review Requests and the Independent Review Panel in ICANN’s Bylaws

The Independent Review Panel (IRP) is one of three existing mechanisms purposed for the review of ICANN Board activities and decisions (the other two mechanisms are the

⁴²⁹ GAC, “Communiqué 28—Lisbon,” March 28, 2007, 4, http://gac.icann.org/system/files/GAC_28_Lisbon_Communique.pdf.

⁴³⁰ Ibid.

⁴³¹ Ibid. at 5.

⁴³² ICANN, “Meeting of the ICANN Board, Lisbon,” March 28, 2007, http://www.icann.org/en/minutes/resolutions-30mar07.htm#_Toc36876524.

⁴³³ Interviews, September and October 2010.

Ombudsman and Reconsideration Requests). Article IV, Section 3 of the ICANN Bylaws states that, “any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review.”⁴³⁴ Once submitted, a request for independent review is “referred to an Independent Review Panel (IRP)” which compares the “contested actions of the Board to the Articles of Incorporation and Bylaws” and ultimately declares “whether the Board has acted consistently with” the provisions contained therein.⁴³⁵

At the request of either disputing party, the request for independent review can be heard by a three-member panel of arbiters; however, if the parties do not opt for a three-member panel, the request is considered by a one-member panel.⁴³⁶ In either case, the panel that considers the request for independent review has the power to:

- a) request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
- b) declare that an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
- c) recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon opinion of the IRP.⁴³⁷

The IRP makes “its final declaration based solely on the documentation, supporting materials, and arguments submitted by the parties” and “specifically designate[s]” a prevailing party.⁴³⁸ The “party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider,” and “each party shall bear its own expenses.”⁴³⁹ To date, *ICM v. ICANN* is the only request for independent review that has been heard by an IRP on the merits.⁴⁴⁰ In this case, the IRP consisted of a three-member panel of arbitrators contracted by the International Centre for Dispute Resolution.⁴⁴¹ The panel included Judge Stephen M. Schwebel, Jan Paulson, and Judge Dickran Tevrizian.⁴⁴²

⁴³⁴ ICANN Bylaws, Article IV, Section 3(2), August 5, 2010, <http://icann.org/en/general/bylaws.htm>.

⁴³⁵ *Ibid.*, Article IV, Section 3. As a side note, use of the term “IRP” appears to be used differently in documents and either refers to the “Independent Review Process” or the “Independent Review Panel.” Except where otherwise noted, this report intends the term IRP to refer to the Independent Review Panel.

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*, Article IV, Section 3(8).

⁴³⁸ *Ibid.*, Article IV, Section 3(12).

⁴³⁹ *Ibid.*, Article IV, Section 3(12).

⁴⁴⁰ See ICANN, “IRP,” <http://www.icann.org/en/irp>

⁴⁴¹ See ICANN, “Resolutions Adopted at Special ICANN Board Meeting” Special Meeting of the Board via Telephone 19 April 2004 <http://www.icann.org/en/minutes/resolutions-19apr04.htm>, when the ICANN Board designated the International Centre for Dispute Resolution as the Independent Review Provider..

⁴⁴² Declaration of the Independent Review Panel, ICDR. Case No. 50 117 T 00224 08, (February 19, 2010) (hereinafter referred to as the “IRP Declaration”), available at <http://www.icann.org/en/irp/icm-v-icann/irp-panel-declaration-19feb10-en.pdf>.

3.2 ICM's Request for Independent Review

On June 6, 2008, ICM submitted a request for independent review, alleging that ICANN acted in a manner “inconsistent with its Articles of Incorporation and Bylaws” by improperly administering the 2003 RFP and rejecting ICM’s .xxx application in March 2007.⁴⁴³ ICM requested for the IRP to declare that: (1) ICANN’s March 2007 rejection of the ICM application was inconsistent with the ICANN Bylaws and Articles of Incorporation, (2) ICANN “must immediately execute a registry agreement on terms and conditions substantially similar to ICM’s draft registry agreement posted on ICANN’s website on February 6, 2007,” and (3) the IRP’s “determination regarding whether any of ICANN’s actions were inconsistent with ICANN’s Articles of Incorporation and Bylaws is *binding* on ICANN.”⁴⁴⁴ In support of these allegations, ICM argued that several events throughout ICANN’s evaluation of the .xxx application were inconsistent with the Articles of Incorporation and Bylaws. Additionally, ICM argued that the five reasons ICANN gave in support of its rejection were inconsistent with the Articles of Incorporation, Bylaws, and the way the other applicants were treated.⁴⁴⁵

Primarily, ICM argued that the June 1, 2005 Board decision constituted an approval of the ICM proposal in light of the RFP criteria, including the sponsorship criteria.⁴⁴⁶ ICM argued that ICANN had used a “two-step” process with the other applicants, whereby applicants were first approved on the merits of the RFP criteria, “followed by registry agreement negotiation” and execution.⁴⁴⁷ According to ICM, the .xxx application was the only application that deviated from this process by reopening the sponsorship criteria.⁴⁴⁸ ICM also stated that there was a lack of “evidence before the Board that ICM’s support in the community was eroding.”⁴⁴⁹ Ultimately, ICM claimed that “ICANN’s reopening of the sponsorship criteria—which it did only to ICM—was unfair, discriminatory, and pretextual, and a departure from transparent, fair, and well documented policies.”

The IRP request also claimed that the independent evaluations identified greater deficiencies in other sTLD applications (including .jobs and .mobi) and accepted those proposals with comparatively little resistance from ICANN.⁴⁵⁰ For example, ICM stated that “following the negotiations, the proposed .travel and .jobs registry agreements were posted on the ICANN website on 24 March 2005, and were approved two weeks later, on 8 April 2005.”⁴⁵¹ According to the IRP request, “the process for each application still followed the original two-step process of criteria approval followed by registry agreement negotiation” and in “no case other than with the .xxx application” did the Board later reverse its decision after it had voted in favor of negotiations.⁴⁵²

⁴⁴³ ICM, “Request for Independent Review Process,” June 8, 2008, <http://icann.org/en/irp/icm-v-icann/icm-irp-request-06jun08.pdf>.

⁴⁴⁴ *Ibid.*, 1-2 (emphasis added).

⁴⁴⁵ IRP Declaration, 45.

⁴⁴⁶ *Ibid.* See also ICM, “Request for Independent Review Process.”

⁴⁴⁷ ICM, “Request for Independent Review Process,” 25-26.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ IRP Declaration, 45.

⁴⁵⁰ *Ibid.*, 25.

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.*, 25-26.

As additional evidence, ICM claimed “several ICANN senior officials and Board members,” including Vint Cerf, Kurt Pritz, and Joichi Ito made comments that reflected that the June 1, 2005 decision was a determination that ICM had satisfied the RFP criteria.⁴⁵³ In particular, ICM claimed that Cerf had “informed the GAC that ICM’s application had satisfied the selection criteria” at the July 2005 ICANN meeting in Luxembourg.⁴⁵⁴

Finally, the IRP request pointed out that “the GAC was invited to and was often represented at meeting in which ICM’s application (and others) were discussed and debated” and furthermore “[the GAC] was regularly provided with briefing papers regarding the sTLD RFP process, and it was permitted to participate in the Board’s discussions regarding ICM’s application.”⁴⁵⁵ The core of this argument focuses on the lack of “any objects to the .xxx sTLD . . . at the outset, when the sTLD evaluation criteria were debated and ultimately approved” and when “ICANN resolved to commence registry agreement negotiations with ICM.”⁴⁵⁶ ICM alleged in the IRP Request that the GAC raised no objections to the creation of .xxx and that it was only after the United States Department of Commerce began voicing its concerns in March 2006 that the GAC began to take a dissenting view, expressed mainly in its correspondence with ICANN and in the Wellington and Lisbon Communiqués.⁴⁵⁷ The IRP request also referenced statements from ICANN Board members who raised doubts about the decision on March 30, 2007 to reject ICM’s proposal. Peter Dengate Thrush was quoted as saying that ICANN’s argument that .xxx does not represent a “sponsored community” was “particularly thin,” and that “if ICANN is going to raise this kind of objection, then it better think seriously about getting out of the business of introducing new TLDs.”⁴⁵⁸ Similarly, Susan Crawford argued that if no consensus existed against the .xxx TLD in the adult community, then, “given our mandate to create TLD competition, we have no authority to block the addition of this TLD to the root.”⁴⁵⁹

ICM also argued that ICANN had never precisely identified what “public policy” issues were raised by the ICM agreement that would warrant the rejection of the application in its entirety.⁴⁶⁰ In particular, ICM claimed that ICANN’s interpretation of the Wellington Communiqué and governmental correspondence, which had asserted that ICM was to take responsibility for “enforcing the world’s various and different laws concerning pornography” was “sufficiently absurd as to have been made in bad faith” and discriminatory.⁴⁶¹ Among the remaining arguments, ICM also contended that its proposed registry agreement contained sufficient provisions to address child pornography issues and detailed mechanisms that would permit the identification and filtration of illegal or offensive content. Moreover, ICM claimed that ICANN’s view that the ICM proposal raised “significant law enforcement compliance issues” indicated that the “GAC was requiring ICM to enforce local restrictions on access to illegal and offensive content and if [ICM] proved unable to,

⁴⁵³ Ibid., 29.

⁴⁵⁴ Ibid., 29.

⁴⁵⁵ Ibid., 30.

⁴⁵⁶ Ibid., 31.

⁴⁵⁷ Ibid., 37.

⁴⁵⁸ Ibid., 46.

⁴⁵⁹ Ibid., 47.

⁴⁶⁰ Ibid., 46.

⁴⁶¹ Ibid.

ICANN would have to do so.” According to ICM, the GAC’s advice required ICANN to impose responsibilities on ICM that were inconsistent with ICANN’s technical mandate.

3.3 ICANN’s Response to ICM’s Request for Independent Review

ICANN filed its “Response to ICM’s Request for Independent Review” on September 8, 2008.⁴⁶² In response to ICM’s allegations of inconsistency, ICANN argued that: (1) ICANN’s consideration of the ICM proposal was “*more* open and transparent than one would find in virtually any other context in conjunction with any other organization”; (2) the June 1, 2005 decision to enter into negotiations did not bind ICANN to award ICM a registry agreement and retained the ability to reject ICM’s application; and (3) ICANN could have rejected the application solely based on the recommendations from the Independent Evaluation Panel, but instead attempted to work “closely and in good faith with ICM to cure apparent problems with the application and ultimately decided such problems could not be addressed by the agreement.”⁴⁶³

Additionally, ICANN argued that the “Bylaws support a deferential standard of review” to be applied in the Independent Review Process, “particularly with respect to ICM’s claims.”⁴⁶⁴ On this point, ICANN argued that “as long as the Board’s discussions are open and transparent, its decisions are made in good faith, and the relevant parties have been given an opportunity to be heard, there is a strong presumption that the Board’s decisions are appropriate.”⁴⁶⁵

In support of these arguments, ICANN included an explanation of its “decision-making processes” and “process for independent review” within its response.⁴⁶⁶ In this section, ICANN argued that “the Independent Review Process is not a form of traditional dispute resolution, i.e., mediation or arbitration,” and described the Independent Review Process as a mechanism “intended to provide the community with a formal process for reviewing specific decisions of the ICANN Board.” ICANN pointed to Article IV, Section 3(15) of its Bylaws and claimed that the “IRP’s declaration is not binding on the parties” and “the Board, ‘where feasible,’” is only required to “consider the IRP’s declaration at the Board’s next meeting.”⁴⁶⁷ ICANN also pointed out that “the Bylaws expressly provide that the Independent Review should be conducted via ‘email and otherwise via the Internet to the maximum extent feasible.” On this point, ICANN argued that “the Independent Review Process does not specifically contemplate the need for a live hearing.”⁴⁶⁸

ICANN’s central factual contention was that its initial approval of the ICM proposal in 2005 and the subsequent contract negotiations were tentative and did not constitute a commitment to award a registry agreement. ICANN argued that its negotiations with ICM were intended to determine whether the terms of a registry agreement could satisfy the

⁴⁶² ICANN, “ICANN’s Response to ICM’s IRP Request,” September, 8, 2008, <http://www.icann.org/en/irp/icm-v-icann/icann-response-to-icm-request-08sep08.pdf>.

⁴⁶³ *Ibid.*, 3-4.

⁴⁶⁴ *Ibid.*, 4.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*, 5.

⁴⁶⁷ *Ibid.*, 9.

⁴⁶⁸ *Ibid.*, 9.

ICANN Board’s concerns about the proposal’s compliance with the sTLD sponsorship criteria. “The entire premise of ICM’s request—that proceeding to contract negotiations amounted to a guarantee that ICM would obtain a contract for the .XXX TLD—is simply false.”⁴⁶⁹ ICANN argued further that its final rejection of ICM’s proposal in 2007 “came after extensive review, analysis and debate among ICANN Board members” and was not a sign of capriciousness in its decision-making processes. Instead, ICANN argued its decision reflected the following reasons:

- a) ICM’s application and revised agreement failed to meet, among other things, the “sponsored community” requirement of the RFP specification;
- b) [The Board’s decision was based] on the extensive public comment and the GAC’s Communiqués, the agreement raised considerable public policy issues/concerns. The application and agreement did not resolve the issues raised by the GAC’s Communiqués, and the Board did not believe the public policy concerns could be credibly resolved with the mechanisms proposed by ICM;
- c) The application raised significant law enforcement compliance issues because of countries’ varying laws relating to content and practices that define the nature of the application; and
- d) The Board agreed with the GAC’s Lisbon Communiqué, that under the revised agreement, there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding content on the Internet, which is inconsistent with its technical mandate.⁴⁷⁰

ICANN requested that the IRP declare that the ICANN Board’s decisions, “absent a showing of bad faith,” are entitled to deference from ICM and the IRP.⁴⁷¹ Additionally, ICANN argued that, contrary to ICM’s claims, it acted in full accord with its Bylaws and its Articles of Incorporation.⁴⁷²

3.4 Establishing the IRP Process

The IRP process is governed by the International Arbitration Rules of the American Arbitration Association’s International Centre for Dispute Resolution (ICDR) with supplementary procedural modifications specifically tailored to ICANN.⁴⁷³ The ICANN Bylaws offer the IRP provider, ICDR, considerable latitude to “establish operating rules and procedures.” In terms of the procedural aspects of the Independent Review, the ICANN Bylaws state the following:

In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the

⁴⁶⁹ Ibid., 4.

⁴⁷⁰ Ibid., 38–39.

⁴⁷¹ Ibid., 39 ff.

⁴⁷² Ibid., 43 ff.

⁴⁷³ ICDR, “Supplementary Procedures for ICANN Independent Review Process,” <http://www.adr.org/sp.asp?id=32197>.

*maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.*⁴⁷⁴

In its “Response to ICM’s Request for Independent Review,” ICANN argued that this provision indicated that the “Independent Review Process does not specifically contemplate the need for a live hearing.”⁴⁷⁵ Additionally, ICANN argued that this provision also provided the option for a quick, low cost review, conducted over telephone and email.

The Berkman team was unable to locate an official document on record in which the IRP, ICM, or ICANN acknowledge a resolution to these questions raised by ICANN. However, according to interviewees, the IRP apparently determined in an unpublished decision that although the Bylaws and Supplementary Procedures encourage conducting the Independent Review quickly over telephone, Internet, and other electronic means, the procedures give the ICDR panelists clear discretion to hold live hearings.⁴⁷⁶ Indeed, what followed was a twenty-month full arbitration process with full documentation, witness testimony, expert opinion and cross-examination.

3.5 Memorial on the Merits, Witness Statements, and Expert Reports

On January 22, 2008, ICM filed its memorial on the merits, outlining ICANN’s organizational history and its successive calls for proposals for new TLDs. ICM reaffirmed its argument that ICANN had violated its Articles of Incorporation and its Bylaws and that ICANN’s actions were inconsistent with “relevant principles of International Law” and “relevant principles of California law.”⁴⁷⁷ ICM also submitted testimony from Stuart Lawley (Chairman and President of ICM), J. Beckwith (“Becky”) Burr (former advisor to the FTC, former advisor to the NTIA, and legal counsel to ICM in connection with its 2004 sTLD submission), Elizabeth Williams (consultant to ICANN during its solicitations for TLD proposals), Milton Mueller (professor at the Syracuse University School of Information Studies), and Jack Goldsmith (professor at Harvard Law School).⁴⁷⁸

In its response to ICM’s memorial on the merits, ICANN argued that ICM had mischaracterized the laws applying to the IRP proceedings, that ICM’s factual claims were incorrect, and that ICANN had acted in complete accord with its Articles of Incorporation and its Bylaws.⁴⁷⁹ ICANN also submitted testimony from Vint Cerf (then-VP at Google, former Chairman of the Board at ICANN), Paul Twomey (then-CEO and President of ICANN, former Chairman of the GAC), Alejandro Pisanty (former Board member of ICANN), and David Caron (professor of law at UC Berkeley, arbitrator).⁴⁸⁰

⁴⁷⁴ ICANN Bylaws, Article IV, Section 3(10), August 5, 2010, <http://icann.org/en/general/bylaws.htm>.

⁴⁷⁵ ICANN, “ICANN’s Response to ICM’s IRP Request,” September 8, 2008, <http://www.icann.org/en/irp/icm-v-icann/icann-reponse-to-icm-request-08sep08.pdf>.

⁴⁷⁶ Interviews, September and October 2010.

⁴⁷⁷ ICANN, “ICM’s Memorial on the Merits,” January 22, 2009, <http://www.icann.org/en/irp/icm-v-icann/icm-memorial-on-merits-22jan09-en.pdf>, iv – v.

⁴⁷⁸ ICANN, “Witness Statements and Expert Report Submitted in Support of ICM’s Memorial on the Merits,” January 22, 2009, <http://www.icann.org/en/irp/icm-v-icann/supporting-documentation-for-icmmemorial-22jan09-en.pdf>.

⁴⁷⁹ ICANN, “ICANN’s Response to ICM’s Memorial on the Merits,” May 8, 2009, <http://www.icann.org/en/irp/icm-v-icann/icann-response-for-icm-memorial-on-merits-08may09-en.pdf>.

⁴⁸⁰ ICANN, “Witness Statements and Expert Report submitted in support of ICANN’s Response to ICM’s Memorial on the Merits,” May 8, 2009, <http://www.icann.org/en/irp/icm-v-icann/supporting-documentation-icann-response-08may09-en.pdf>.

3.6 The IRP's Declaration

On February 19, 2010, the IRP decided 2–1 in favor of ICM.⁴⁸¹ Three key holdings came from this decision. First, the panel determined that the holdings of the IRP are advisory in nature and do not constitute binding arbitral awards.⁴⁸² Second, the panel determined that “the actions and decisions of the ICANN Board are not entitled to deference whether by application of the ‘business judgment rule’ or otherwise; they are to be appraised not deferentially but objectively.”⁴⁸³ Finally, the IRP also determined that “the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .xxx TLD met the required sponsorship criteria.”⁴⁸⁴

The IRP noted that although there “is a measure of ambiguity in the pertinent provisions of the Bylaws,” the use of the phrase “to declare whether an action or inaction of the Board was inconsistent” supported an interpretation that IRP decisions were intended to be advisory, and not binding on the ICANN Board. In particular, the IRP likened this to a recommendation rather than a binding order. Moreover, the IRP also described the provision of Article IV, Section 3(15), which states, “where feasible, the Board shall consider the IRP declaration at the Board’s next meeting” as a “relaxed temporal proviso” where the Board has “to do no more than *consider* the IRP declaration.”⁴⁸⁵ Ultimately, the Board found that the loose nature of the language “emphasize[d] that [the IRP declaration] is not binding.”⁴⁸⁶ Next, the IRP determined that Independent Review is conducted *de novo* and, thus, “ICANN Board decisions do not enjoy a deferential standard of review.”⁴⁸⁷ On this point, the IRP determined that the Articles of Incorporation and Bylaws, which require, among other things, “ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International Review Process provided for shall (or shall not) accord deference to decisions of the ICANN Board.” The IRP also found that that as a California corporation, ICANN may call on the “business judgment rule” when relevant provisions in the Articles of Incorporation and Bylaws are otherwise absent.⁴⁸⁸ After analyzing the events surrounding the June 1, 2005 Board decision to enter into negotiations with ICM, the IRP determined that the “reconsideration of sponsorship criteria, once the Board had found them to have been met, was not in accord with documented policy.”⁴⁸⁹

3.7 IRP Process Observations Based on Berkman Case Study Interviews

As previously noted, the ICM request for independent review was the first to be heard by an IRP. The case poses several questions related to the IRP process and the interpretation of the relevant sections of the Bylaws.

⁴⁸¹ ICANN, “Independent Review Panel Declaration,” February 19, 2010, <http://www.icann.org/en/irp/icmv-icann/irp-panel-declaration-19feb10-en.pdf>.

⁴⁸² *Ibid.*, 70.

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.*

⁴⁸⁵ *Ibid.*, 61 (emphasis added).

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*, 62.

⁴⁸⁹ *Ibid.*, 68.

Given the cost and lengthiness of the IRP proceedings, several interviewees questioned whether the IRP provides an accessible and widely applicable means for reviewing the ICANN Board's decisions. Some interviewees stated that the high cost of the proceedings meant that it offers a venue for only the wealthiest of participants and is not a viable option for the vast majority of ICANN stakeholders. Others asserted that the cost, risk, and duration of the IRP will mean that no others will be likely to appeal ICANN decisions via this mechanism, even among those with the financial resources to do so.⁴⁹⁰

In addition to the questions raised about limits of the IRP as an accountability mechanism, others questioned how ICANN's interpretation of the process reflects on ICANN's commitment to accountability. Some interviewees expressed the belief that ICANN's interpretation of the IRP—that the process should not entail live testimony, that ICANN should be offered deference under the business judgment rule, and that the IRP's decision should not be binding on the ICANN Board—was inconsistent with an organization with a mandate to ensure that it is accountable to its stakeholders.⁴⁹¹

Perceptions also varied with regard to the ultimate effectiveness of the IRP as an accountability mechanism in this specific case. Some asserted that this process demonstrated accountability, given that an applicant for a new TLD was able to initiate the review process and argue their case on the merits before independent arbitrators, and in doing so compelled ICANN to defend the basis of its actions. Moreover, IRP's decision appears to have convinced ICANN to reverse its decision. Other interviewees expressed the opinion that the absence of a binding resolution from the IRP is indicative of the fundamental lack of accountability at ICANN.⁴⁹²

⁴⁹⁰ Interviews, September and October 2010.

⁴⁹¹ Interviews, September and October 2010.

⁴⁹² Interviews, September and October 2010.

Appendix E: The DNS-CERT Proposal

Abstract

ICANN's DNS-CERT proposal advocates the creation of an organization to analyze, assess, and respond to global DNS security threats. This case study begins with an overview of ICANN's DNS security mandate as described in its Memorandum of Understanding with the United States Department of Commerce, its Bylaws, and its 2009 AoC. A summary of the DNS-CERT proposal follows, based on ICANN's "Proposed Strategic Initiatives for DNS Security, Stability, and Resiliency" and its "DNS-CERT Business Case." The study then traces the origins of the controversy surrounding the DNS-CERT proposal, beginning with ICANN's publication of the proposal and the remarks made in Nairobi by its CEO, Rod Beckstrom, and the controversy's development through public comments, correspondence, and material gathered in interviews with the DNS community.

The review of these materials suggests three key issues underlying the controversy: (1) the merits and clarity of ICANN's assessment of the current state of DNS security and its proposal for the creation of a centralized CERT; (2) varying interpretations of ICANN's DNS security mandate; and (3) procedural issues related to openness, transparency, public input, and stakeholder participation.

Case Study Sources and Methodology

For more information on our sources and methodology, please see Appendix A.

This case study is based on publicly available materials, including public comments, ICANN documents, academic studies, media reports, and expert opinions. It provides a summary of the facts regarding ICANN's DNS-CERT proposal. As per Exhibit B, section 1 of the Services Agreement between the Berkman Center and ICANN, its goal is to help identify key issues, challenges, and areas of disagreement related to ICANN's DNS-CERT proposal. The observations below will contribute to the Berkman team's final report.

In addition to publicly available sources, this case study includes statements, opinions and perceptions of those we interviewed in the course of developing this case. These perceptions and opinions play an important role in the interpretation of ICANN decisions and their reception by the community. The statements of interviewees do not reflect the opinions or conclusions of the study team. While we have made every effort to remove factual inaccuracies, we do not attest to the accuracy of the opinions offered by interviewees. The interviews were conducted on the condition of confidentiality.

Note: As per the Services Agreement, this case study focuses on events prior to June 17, 2010. However, the DNS-CERT proposal and related events are still evolving. As such, this study may not reflect the most recent developments in this case.

Disclosure: Professor Jonathan Zittrain, Berkman Center Faculty Co-Director and Co-Principal Investigator of this review, is on the Board of Directors of the Internet Society (ISOC). This study refers to a letter from Lynn St. Amour, President and CEO of ISOC, in establishing the factual basis of the DNS-CERT controversy.

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1 Background: ICANN's Role in DNS Security

In its original Memorandum of Understanding (MoU) with the United States Department of Commerce, ICANN was tasked with the technical management of the Domain Name System (DNS). ICANN assumed responsibility for four areas of DNS management: “stability, competition, bottom-up coordination, and representation.”⁴⁹³ ICANN’s commitment to DNS stability was reflected in its original Bylaws, in which the Root Server System Advisory Committee (RSSAC) was established to “examine and advise on the security aspects of the root name server system.”⁴⁹⁴

In 2001, ICANN extended its commitment to DNS security when the Board directed ICANN’s President “to appoint a President’s standing committee on the security and stability of the Internet’s naming and address allocation systems.”⁴⁹⁵ A year later, in May 2002, the Board resolved to convert the standing committee into the permanent “Security and Stability Advisory Committee” (SSAC), which remains a cornerstone of ICANN’s DNS security efforts.⁴⁹⁶ The “new Bylaws,” published soon thereafter, confirmed DNS security as one of ICANN’s central organizational goals. The first of ICANN’s “Core Values,” according to the revised Bylaws, is “[p]reserving and enhancing the operational stability, reliability, and global interoperability of the Internet.”⁴⁹⁷

ICANN’s Affirmation of Commitments (AoC), published in September, 2009, once again reaffirmed ICANN’s commitment to DNS security. “ICANN has developed a plan,” it reads,

*to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation.*⁴⁹⁸

The ICANN plan for preserving DNS security, stability, and resiliency has three areas of focus: (1) general attention to physical and network security of the DNS, (2) contingency planning, and (3) “maintaining clear processes.”⁴⁹⁹

2 Overview of ICANN's DNS-CERT Proposal

Pursuant to the commitments described in the AoC, ICANN published a draft of its “Plan for Enhancing Internet Security, Stability, and Resiliency” in May 2009.⁵⁰⁰ The draft plan describes ICANN’s high-level

⁴⁹³ ICANN, “Memorandum of Understanding Between the United States Department of Commerce and Internet Corporation for Assigned Names and Numbers,” November 25, 1998, <http://www.icann.org/en/general/icann-mou-25nov98.htm>.

⁴⁹⁴ ICANN, “Bylaws,” November 6, 1998, <http://www.icann.org/en/general/archive-bylaws/bylaws-06nov98.htm>.

⁴⁹⁵ ICANN, “Third Annual Meeting of the ICANN Board in Marina del Ray Preliminary Report,” November 15, 2001, <http://www.icann.org/en/minutes/prelim-report-15nov01.htm#StandingCommitteeonSecurityandStability>.

⁴⁹⁶ ICANN, “Special Meeting of the Board Preliminary Report,” May 13, 2002, <http://www.icann.org/en/minutes/prelim-report-13may02.htm#SecurityCommittee>.

⁴⁹⁷ ICANN, “Bylaws,” December 15, 2002, <http://www.icann.org/en/general/archive-bylaws/bylaws-15dec02.htm>.

⁴⁹⁸ ICANN, “Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers,” September 30, 2009, <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

⁴⁹⁹ Ibid.

⁵⁰⁰ ICANN, “Plan for Enhancing Internet Security, Stability, and Resiliency,” May 16, 2009, <http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf>.

security objectives, clarifies its role within the broader Internet security community, and provides an overview of its anticipated security-related projects for the 2009–2010 operating year—including the implementation of DNSSEC for the authoritative root zone, enhanced security measures for new gTLDs and IDNs, and active collaboration with a wide range of security stakeholders.

In December 2009, ICANN published a draft of its 2010–2013 strategic plan. The draft plan makes reference to “DNS CERT concept development” as a plan under the heading of “[p]reserve DNS stability and security,” but provides no additional detail. The final draft of the plan, published on February 22, 2010, includes a brief overview of the anticipated project:

*ICANN will work in partnership with other organizations to develop an approach to the establishment of a DNS CERT in order to address one of the broader issues of Internet security. This system would enable a more coordinated and effective response to incidents and attacks on the DNS. In addition, ICANN will be working with the Internet community to enhance contingency planning and exercises to address risks and threats to the DNS.*⁵⁰¹

On February 12, 2010, ICANN published two additional security-related documents: the “Proposed Strategic Initiatives for Improved DNS Security, Stability and Resiliency”⁵⁰² and the “Global DNS-CERT Business Case.”⁵⁰³ Taken together, these two documents define the contours of ICANN’S DNS-CERT initiative, which aims to facilitate the creation an independent organization to anticipate, evaluate, and respond to the full range of DNS security threats.

2.1 Proposed Strategic Initiatives

The Proposed Strategic Initiatives document begins with a series of statements about the current state of DNS security. First among them is the observation that the DNS—a fundamental component of the majority of user applications on the Internet—exists “in an environment of increasing threats and risks.”⁵⁰⁴ The increase in the “frequency and serious nature” of calls to action within the DNS security community, it argues, indicates a growing need for system-wide response capabilities. It claims that current efforts, however, are “not systemically focused.” Overall, ICANN takes the position that the DNS “lacks system-wide focal points for accountability related to key capabilities in risk assessment, contingency planning and exercises, and dedicated, sustained response.”⁵⁰⁵

The document argues that ICANN’S obligation to DNS security (as defined in the AoC and other policy documents) compels it to “ensure establishment of system-wide approaches to assess risk, to plan and exercise contingencies against potential threats and to orchestrate collaborative incident response capabilities to improve the overall security, stability and resiliency of the DNS system.”⁵⁰⁶

ICANN outlines three types of current DNS security risks: malicious activity risks (including DDoS and cache poisoning attacks), technical risks (including the DNS protocol vulnerabilities identified by Dan

⁵⁰¹ ICANN, “July 2010–June 2013 Strategic Plan,” February 19, 2010, <http://www.icann.org/en/strategic-plan/strategic-plan-2010-2013-19feb10-en.pdf>.

⁵⁰² ICANN, “Proposed Strategic Initiatives for Improved DNS Security, Stability and Resiliency,” February 12, 2010, <http://www.icann.org/en/topics/ssr/strategic-ssr-initiatives-09feb10-en.pdf>.

⁵⁰³ ICANN, “Global DNS-CERT Business Case: Improving the Security, Stability and Resiliency of the DNS,” February 12, 2009, <http://www.icann.org/en/topics/ssr/dns-cert-business-case-19mar10-en.pdf>.

⁵⁰⁴ ICANN, “Proposed Strategic Initiatives,” 2.

⁵⁰⁵ *Ibid.*, 3.

⁵⁰⁶ *Ibid.*, 4.

Kaminsky), and organizational failures (such as when a root server operator, registry, or registrar can no longer perform its function).⁵⁰⁷

The document proposes two initiatives in response to these risks. The first is a program to coordinate “system-wide DNS risk analysis, contingency planning, and exercises.”⁵⁰⁸ An expert advisory group, composed of DNS operators and the broader cybersecurity community, would oversee risk assessment and contingency planning activities. A DNS root-system information-sharing mechanism would facilitate analysis and incident response. Finally, ICANN would lead a series of multi-stakeholder exercises to identify weaknesses in current DNS security response practices.⁵⁰⁹

The second proposed initiative is the creation of a DNS-CERT organization, to serve as a central point of contact in coordinating responses to DNS security incidents. The DNS-CERT proposal is described fully in the DNS-CERT business case.

2.2 DNS-CERT Business Case

The DNS-CERT business case begins with a detailed evaluation of the current state of play in DNS security. It begins with an overview of the structure and importance of the DNS. The essential role of the DNS, it argues, has driven an increase in malicious activity aimed at disrupting or compromising the system’s security. At the same time, the increasing importance of the DNS to a range of vital applications has raised the stakes of other structural risks, such as technical and organizational failures. Citing a report from the 2009 Global DNS Security, Stability, & Resiliency Symposium (a gathering of the global community of DNS security stakeholders held in Atlanta in February 2009), the proposal contends that “information sharing within the DNS community is sorely lacking” and that security response capabilities are “limited at all levels.”⁵¹⁰ Such limitations are not necessarily due to any ineptitude or torpor within the DNS community, but rather may result from geographic constraints or limitations in resources, as well as the fact that loosely coordinated responses to security threats have, until recently, worked adequately well.

The proposal lists a series of previous DNS security incidents—including the Conficker worm, the Kaminsky vulnerability, domain hijacking, and the Avalanche attacks—to make the case that a centralized body is needed to coordinate responses to such events.⁵¹¹ The proposed DNS-CERT organization would meet this need. The organization would represent the interests of broad and highly diverse range of stakeholders, including DNS root operators, TLD registries and registrars, ISPs, existing CERTs, governments, vendors, and end-users.⁵¹² Its mission would be the following:

*Ensure DNS operators and supporting organizations have a security coordination center with sufficient expertise and resources to enable timely and efficient response to threats to the security, stability and resiliency of the DNS.*⁵¹³

Three goals, with accompanying objectives, would to support the mission:

- 1. Goal:** Gain situational awareness and share information.

⁵⁰⁷ Ibid., 4–8.

⁵⁰⁸ Ibid., 9.

⁵⁰⁹ Ibid., 9–11.

⁵¹⁰ ICANN et al., “The Global DNS: Security, Stability & Resiliency Symposium: Summary, Trends, and Next Steps,” April 2, 2009, http://www.gtisc.gatech.edu/pdf/DNS_SSR_Symposium_Summary_Report.pdf.

⁵¹¹ ICANN, “DNS-CERT Business Case,” 7–10.

⁵¹² Ibid., 9–10.

⁵¹³ Ibid., 11.

Objective: Establish communications means and procedures to maximum number of players; exercise regularly.

2. Goal: Improve coordination within the DNS operational community.

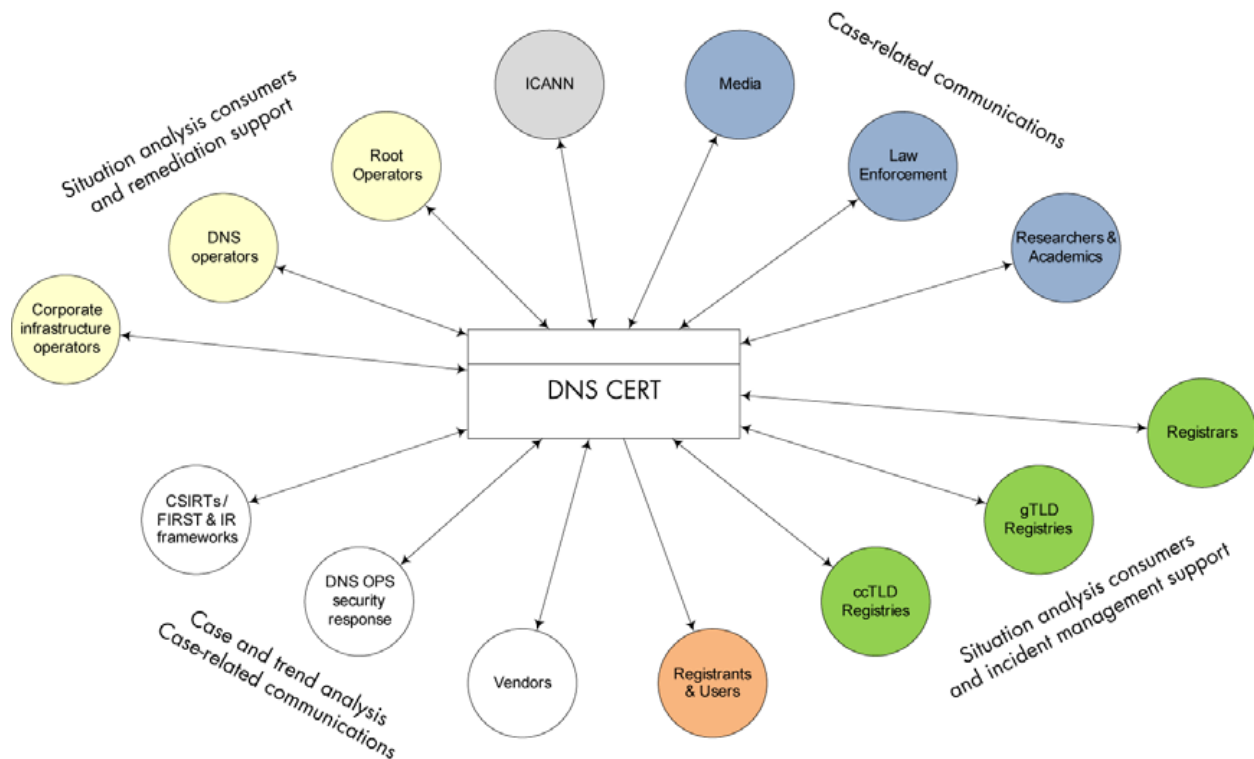
Objective: Enable measurement and facilitate information sharing about the health, stability and resiliency of the DNS. Engage in appropriate situations: support contingency planning and exercises; undertake After Action Reporting (AAR). Engage with DNS-OARC and RISG, among others collaborators, to leverage expertise and existing operational response capabilities related to information sharing and analysis.

3. Goal: Improve coordination with the broader security community.

Objective: Establish relationships with key partners (CERTs, security researchers, key security lists, vendors, antivirus companies, law enforcement and governments); participate in contingency planning and exercises; engage in appropriate situations; undertake After Action Reporting (AAR).⁵¹⁴

The proposed DNS-CERT’s core responsibilities would be to provide proactive services—including education, training, contingency exercises, and continuous monitoring of DNS health—and reactive services, including serving as a hub for coordinating responses to DNS security incidents.⁵¹⁵

Although the precise relationships with constituents and stakeholders remain undefined, the proposal envisions DNS-CERT as a central node in the gathering and distribution of information about DNS security threats, which it illustrates in the following diagram:⁵¹⁶



⁵¹⁴ Ibid., 10–11.

⁵¹⁵ Ibid., 12.

⁵¹⁶ Ibid., 14.

ICANN lays out a series of steps to establish the organization, based on guidelines published by CERT/CC.⁵¹⁷ These steps—beginning with the identification of stakeholders and participants, and ending with the definition of roles and responsibilities—are described in the remaining portion of the proposal, although, as it notes, the proposal is intended as “the basis for further development of this effort through community support and feedback.”⁵¹⁸

The document ends with a brief overview of DNS-CERT’s proposed funding sources, governance model, and organizational structure. An estimated \$4.2 million annual budget is suggested for the organization, along with a staff of fifteen, a steering committee, and a Board of Governors. ICANN would serve as the project’s initial sponsor “until the organization can stand on its own.”⁵¹⁹ ICANN’s role in the governance and operations of the proposed organization is not clearly articulated in the proposal. It reads:

Although we envisage the organization being established with initial support from ICANN, the DNS-CERT is intended to operate as much as possible as a freestanding organization, not directly dependent upon any one organization for its direction and operation. Therefore, to be successful, the DNS-CERT must be created with a governance structure that makes it accountable to key stakeholders and to the public at large.

3 Timeline: Origins of the Controversy

ICANN began formal discussions with stakeholders about the DNS-CERT proposal in December 2009 (see pp. 4–5 above), when it was first included in the draft 2010–2013 strategic plan. Although the need for an organization similar to DNS-CERT had been identified at the February 2009 DNS symposium, there was no indication of a direct role for ICANN until December 1 of that year. ICANN has indicated that ten private consultations centered on DNS-CERT occurred during the following week, with a handful more taking place in January.⁵²⁰

The draft 2010–2013 ICANN Strategic Plan was posted for public comment on December 1, 2009 and closed on January 21, 2010.⁵²¹ Seven of the twenty-nine public comments received in response to the 2010–2013 strategic plan directly addressed DNS-CERT proposal.⁵²² These comments are generally supportive of ICANN’s stated intention to develop a specific proposal related to DNS-CERT; the comments mainly address the overall need for better coordination in DNS security response efforts. The only openly critical comment came from Eric Brunner-Williams, who wrote:

I am concerned by the detail-free plan to copy-a-Cert....The point is, CERTs are not a given thing, they are a box into which some money and some purpose is put. We should decide how much money and what purposes, not just ‘start a CERT’....If we are not careful, an ‘ICANN CERT’ will [be] captured, much like the ICANN SSAC function during the fast-flux hosting effort, by retail cops-and-robbers concerns that missed the fundamental issues of rapid update by

⁵¹⁷ CERT/CC has published a set of guidelines for the establishment of new Computer Security Incident Response Teams (CSIRTs). See CERT/CC, “How does an organization start a CSIRT?,” http://www.cert.org/csirts/csirt_faq.html#16.

⁵¹⁸ *Ibid.*, 15.

⁵¹⁹ *Ibid.*, 16.

⁵²⁰ ICANN, “Summary of Consultations and Comments related to the ICANN Global DNS-CERT Business Case,” May 24, 2010, <http://www.icann.org/en/public-comment/summary-analysis-strategic-ssr-initiatives-and-dns-cert-business-case-24may10-en.pdf>.

⁵²¹ ICANN, “Public Comment Requested on Draft 2010-2013 Strategic Plan,” December 1, 2009, <http://www.icann.org/en/announcements/announcement-01dec09-en.htm>.

⁵²² See received public comments: ICANN, “[stratplan-2010] Chronological Index,” <http://forum.icann.org/lists/stratplan-2010/>.

*registries as a fundamental tool of modern dns exploiting systems, and zero effective cost of registration, again by modern dns exploiting systems. At that point we would have a ‘CERT’ which ‘makes the suits smile’ but does us no good when competent and motivated programmers target infrastructure.*⁵²³

ICANN published its “DNS-CERT Business Case” and its “Proposed Strategic Initiatives” for public comment on February 12, 2010. Until March 25, however, only one comment had been submitted, correcting a factual detail in the strategic initiatives document.⁵²⁴

At least as far as publicly accessible materials are concerned, the DNS-CERT proposal remained largely uncontroversial until ICANN’s meeting in Nairobi in March 2010. During a joint GAC–Board meeting on March 9, the CEO of ICANN, Rod Beckstrom, conveyed a series of warnings about the health of the global DNS.⁵²⁵ “What I want to share with you,” he said,

as a representative of many countries of the world is that the domain name system is under attack today as it has never been before. I have personally consulted with over 20 CEO’s of the top Registries and Registrars globally, all of whom are seeing increasing attacks and complexity of attacks and who are extremely concerned.

The domain name system is more fragile and vulnerable today than it has ever been. It could stop at any given point in time literally. It has never stopped, it has been slowed down through attacks and the Kominsky exploit that was disclosed only 18 months or so ago could have been used to fundamentally cripple the domain name system. That system is used 1 trillion times per day and your economies depend upon it. It can stop or it can materially be damaged and harmed. It is under attack. . . .

*I’m sharing this because I’m gravely concerned and we need your help. So we’re going to be asking you for your advice on domain name security and on the DNS CERT and what can be done and particularly to learn the lessons from you as well. What has been accomplished in your countries?*⁵²⁶

Mr. Beckstrom’s remarks provoked strong reactions from the ICANN community. After the Nairobi meetings, ICANN extended the public comment period on the DNS-CERT Business Case and its Proposed Strategic Initiatives documents to April 14, 2010.⁵²⁷ In total, ICANN received 13 comments on the strategic initiatives document and 25 comments on the DNS-CERT proposal. Included in the comments were formal letters from the GNSO, ccNSO, and ALAC. (See below, “Reactions from the ICANN Community,” for an overview of the substance of commentary from the ICANN community.)

⁵²³ Eric Brunner-Williams, “On ‘DNS-CERT concept development’ and ‘100% uptime,’” January 28, 2010, <http://forum.icann.org/lists/stratplan-2010/msg00027.html>.

⁵²⁴ Till Doerges, “Comment: Proposed Strategic Initiatives for Improved DNS Security, Stability and Resiliency (SSR),” February 27, 2010, <http://forum.icann.org/lists/strat-ini-ssr/msg00000.html>.

⁵²⁵ ICANN, “Transcript of the GAC Board Meeting,” March 9, 2010, <http://gac.icann.org/system/files/transcript-gac-board-meeting-09mar10-en.pdf>, 26.

⁵²⁶ This passage is copied verbatim from ICANN’s unedited transcript of the meeting.

⁵²⁷ The original source of the request to extend the public comment deadline is unclear. The ICANN summary of the public comments cites “requests from the community” with no further detail (see below, n. 40). The first public comment submitted on the DNS-CERT business case—a joint letter from the Chairs of the gNSO, ccNSO, and ALAC—reads, “We welcome the extension of the current public comment periods on ICANN’s proposed strategic initiatives for improved DNS security, stability and resiliency and the global DNS-CERT business case document to 14 April 2010” (see above, n. 57).

The comments generally take the form of formal input from organizations of various types. Only four individuals submitted comments. Three of ICANN’s advisory committees and supporting organizations submitted comments: ALAC, ccNSO, and gNSO. Five commercial stakeholders submitted comments: AT&T, Net Choicer, PayPal, PRESENSE Technologies GmbH, and USCIB. Governments, national CERTs, registry operators, TLD associations, and other Internet organizations submitted the remainder of the comments.

On April 6–7, ICANN hosted a private, invitation-only workshop on DNS security in Washington, D.C..⁵²⁸ Workshop participants—comprised of representatives from various corners of the DNS security community—discussed a series of real and hypothetical DNS security scenarios in order to identify gaps in existing security response mechanisms. A draft of the findings of the workshop was posted for public comment on May 24, 2010.⁵²⁹ The draft report includes a summary of the workshop proceedings, a list of takeaways, and a dissenting “minority report” from other workshop participants. ICANN solicited public comments on the draft report through July 2, during which it received six comments in total.⁵³⁰ On May 24, ICANN published two additional documents related to DNS-CERT.⁵³¹ The first was a sixteen-page summary of public comments received in response to the strategic initiatives and the DNS-CERT business case.⁵³² This summary provides synopses of all public comments received, highlighting three overarching themes: (1) the need for a “deeper understanding of the threats and risks to the DNS” before a specific DNS-CERT proposal can be usefully proposed; (2) the need for more information about existing security response mechanisms and opportunities to enhance existing efforts; and (3) the view that establishing a DNS-CERT may be beyond ICANN’s mission as a technical coordinating organization.⁵³³

The second document published on May 24th was a 26-page record of ICANN’s consultations regarding DNS-CERT, divided into three areas: (1) consultations prior to the publication of the business case; (2) consultations related to the draft 2010–2013 strategic plan, of which DNS-CERT was a part; and (3) inputs received after the business case was posted for public review.⁵³⁴ The consultation record shows several private consultations with DNS stakeholders prior to the publication of the business case, as well as seven public comments regarding the initial suggestion for DNS-CERT in the 2010–2013 strategic plan.

4 Reactions from the ICANN Community

The following sections describe three areas of the ICANN community’s reactions to the DNS-CERT proposal and Mr. Beckstrom’s Nairobi remarks: (1) issues of substance, including ICANN’s assessment of the current state of DNS security and the details of the solution it proposes; (2) the

⁵²⁸ ICANN, “April 2010 DNS-CERT Operational Requirements and Collaboration Analysis Workshop Report,” May 24, 2010, <http://www.icann.org/en/topics/ssr/dns-cert-collaboration-analysis-24may10-en.pdf>.

⁵²⁹ ICANN, “Public Comment: April 2010 DNS-CERT Operational Requirements & Collaboration Analysis,” May 24, 2010, <http://www.icann.org/en/announcements/announcement-24may10-en.htm>

⁵³⁰ ICANN, “dns-collab-analysis,” May 24, 2010, <http://forum.icann.org/lists/dns-collab-analysis/>.

⁵³¹ ICANN, “Public Comment: April 2010 DNS-CERT Operational Requirements & Collaboration Analysis,” May 24, 2010, <http://www.icann.org/en/announcements/announcement-24may10-en.htm>.

⁵³² ICANN, “Summary & Analysis of Comments on the Security Strategic Initiatives and Global DNS-CERT Business Case paper,” May 24, 2010, <http://www.icann.org/en/public-comment/summary-analysis-strategic-ssr-initiatives-and-dns-cert-business-case-24may10-en.pdf>.

⁵³³ *Ibid.*, 1–2.

⁵³⁴ ICANN, “DNS-CERT Consultation record,” May 24, 2010, <http://www.icann.org/en/topics/ssr/dns-cert-consultation-record-24may10-en.pdf>.

extent to which DNS security operations fall within ICANN’s mandate; and (3) issues of procedure, including openness, transparency, public input, and stakeholder participation.

4.1. Substantive Issues

The most immediate substantive issue is the CEO’s characterization of the fragility of the DNS. Many stakeholders—including participants from the Nairobi meeting—felt that ICANN’s CEO exaggerated the threats facing DNS security and understated the effectiveness of existing security response mechanisms. Two days after the meeting, for instance, Chris Disspain (on behalf of the ccNSO) published a sharply-worded letter, calling Mr. Beckstrom’s remarks “inflammatory” and “alarming.”⁵³⁵ The next month, Lynn St. Amour wrote to the ICANN Board on behalf of the Internet Society (ISOC), stating that Mr. Beckstrom’s warning about the fragility of the DNS “has raised concern among many, yet the facts to substantiate that statement have not been made available to the community.”⁵³⁶ “[M]any recognized experts in DNS security,” she wrote,

...are on record saying that they do not agree that the Internet is suddenly experiencing dramatically greater or new types of attack, or that the DNS, or the Internet itself, are likely to collapse at any moment.

Kevin Murphy at *Domain Incite* unsympathetically called the remarks “part call to arms, part Chicken Little.”⁵³⁷ Mr. Byron Holland, CEO and President of the Canadian Internet Registration Authority, wrote:

*the tone of the message could be considered somewhat inflammatory....Many people in the room felt that Beckstrom was speaking out of turn and disregarding the work the community is already undertaking to ensure the stability and the security of the DNS.*⁵³⁸

Reactions to the substance of the DNS-CERT proposal—as expressed in public comments to ICANN and observations made in interviews for this case study—have varied substantially, ranging from cautious support on one end of the spectrum to vigorous skepticism on the other. These reactions center on two main questions: first, whether an organization such as DNS-CERT is necessary, given the current landscape of DNS security risks; and second, whether the proposed organization, as specified in ICANN’s business case, is appropriately conceived.

ICANN’s argument—as expressed in the Proposed Strategic Initiatives and the DNS-CERT business case, and outlined by its CEO in Nairobi—is straightforward: an increase in the frequency and complexity of attacks on the DNS has led to the need for a centralized body to coordinate proactive and reactive responses to DNS security threats. Community members, in contrast, display a range of reactions to ICANN’s characterization of the risks facing DNS security as the following statements illustrate. The Council of European National Top-level Domain Registries (“CENTR”) wrote that “ICANN should focus first on sharing information” about security threats and existing response capabilities “in order to

⁵³⁵ ICANN, “Letter from Chris Disspain to Rod Beckstrom”, March 11, 2010, <http://www.icann.org/correspondence/disspain-to-beckstrom-11mar10-en.pdf>, 1.

⁵³⁶ ICANN, “Letter from Lynn St. Amour to ICANN Board of Directors,” April 14, 2010, <http://www.icann.org/correspondence/amour-to-dengate-thrush-14apr10-en.pdf>, 1.

⁵³⁷ Kevin Murphy, “Beckstrom: DNS is under attack,” *Domain Incite*, March 11, 2010, <http://domainincite.com/beckstrom-dns-is-under-attack/>.

⁵³⁸ Byron Holland, “DNS-Community Emergency Response Team, or CERT,” *Public Domain*, March 26, 2010, <http://blog.cira.ca/2010/03/dns-community-emergency-response-team-or-cert/>.

build a common assessment of risks and weaknesses.”⁵³⁹ Lynn St. Amour, quoted above, questioned whether ICANN’s assessment aligned with the judgment of the DNS security community. In his response to Ms. St Amour, Mr. Beckstrom echoed the call for more information, but shifted some of the burden to the DNS community: “We have...been informed,” he writes,

*that many registries have experienced increases in botnet attacks; but none have, so far, been willing to come forth and share their data....It would be very helpful if we could work together to gather additional data on attacks on registries, and on how that information is being shared and measured on a global basis. It would greatly contribute to our joint efforts to evaluate the seriousness of the threat and coordinate our forces more effectively to meet it.*⁵⁴⁰

Numerous community members have expressed the view in interviews and public comments, which ICANN appears to share, that further information is needed before the fragility of the DNS can be accurately assessed.

The second point of contention is whether, given existing knowledge about the threats to DNS security, a centralized DNS-CERT–like organization should be established. As ICANN’s CEO made clear in his letter to ISOC, ICANN considers existing security response mechanisms to be largely inadequate: “I am not convinced that we are yet doing enough,” wrote Mr. Beckstrom, “or moving quickly enough.”⁵⁴¹ Many, however, expressed concern that the model ICANN describes in its DNS-CERT proposal is not an optimal approach. For instance, the Registries Stakeholder Group, in a unanimously-approved statement, argued that existing DNS security response mechanisms are well-established and often highly robust. The responses to the Conficker worm and the Kaminsky vulnerability, as one example, “demonstrated a very effective level of coordination, information sharing, and action.”⁵⁴² Similarly, CENTR argues in its comments that the community’s response to Conficker is

*a perfect illustration of the fact that security relies fundamentally on cooperation and collaboration amongst different experts and that’s how the current security network is build up. In such a framework different security incidents can be addressed more effective [sic] and on the long run much more efficient than with the proposed concept of a CERT focusing on one single area with potential security problem, like DNS.*⁵⁴³

Ms. St. Amour agrees with Mr. Beckstrom about the importance of DNS security, but, regarding the specifics of ICANN’s DNS-CERT proposal, notes that “we are concerned that the current proposals do not show convincingly that there has been a full analysis of alternate approaches.”⁵⁴⁴

On the other hand, some interviewees from the cybersecurity and DNS operational communities have endorsed the idea of a centralized CERT.⁵⁴⁵ Much of the impetus for the idea derived from the first

⁵³⁹ CENTR, “CENTR Comment in response to the consultation on the Domain Name System-Computer Emergency Response Team (DNS-CERT) Business Case,” March 24, 2010, http://forum.icann.org/lists/dns-cert-proposal/pdfPZE4i_GvRI.pdf.

⁵⁴⁰ Rod Beckstrom, “Letter from Rod Beckstrom to Lynn St. Amour,” June 18, 2010, <http://www.icann.org/correspondence/beckstrom-to-st-amour-18jun10-en.pdf>.

⁵⁴¹ Ibid.

⁵⁴² RySG, “Registries Stakeholder Group Statements Regarding the ‘Proposed Strategic Initiatives for Improved DNS Security, Stability and Resiliency (SSR)’ and ‘Global DNS-CERT Business Case,’” April 14, 2010, http://www.gtldregistries.org/webfm_send/79.

⁵⁴³ CENTR, “CENTR Comment,” 1.

⁵⁴⁴ Lynn St. Amour, “Letter from Lynn St. Amour to Rod Beckstrom,” 2.

⁵⁴⁵ Interview, September 2010.

“Global DNS Security, Stability, & Resiliency Symposium” of February 2009. The report from the symposium argues that

*the DNS technical, operational, and security communities are disjointed and in need of a dedicated information sharing and incident response capability. These functions are generally performed by CERTs, but no such capability exists expressly for the DNS community.*⁵⁴⁶

Similarly, Paul Vixie, founder of DNS-OARC, has advocated publicly for the creation of a DNS-CERT organization: “We need a 24x7 monitoring and response and coordination function,” he writes, “with full time analysts looking at real time DNS events and participating in a global mesh of DNS NOCs.”⁵⁴⁷ Although DNS security was originally a component of OARC’s mandate, Mr. Vixie writes that “Somewhere along the way we got distracted. . . . DNS-OARC was a huge undertaking, and one that I significantly underestimated.”

4.2 ICANN’s DNS Security Mandate

ICANN proposes to oversee the governance, operations, and funding (of the nontrivial \$4.2 million annual budget) of the organization “until the DNS-CERT’s initial operational capability is achieved.”⁵⁴⁸ However, the proposal does not stipulate how ICANN will determine when this capacity has been reached; in addition, the permanent structure of the organization’s governance, operations, and funding remain undefined.

Many community members have rejected the idea of ICANN playing an operational role in DNS security. In a joint letter, the gNSO, ccNSO, and ALAC wrote that “In general terms, ICANN plays a coordinating, non-operational role in managing Internet naming and numbering resources. However, we are concerned that, in this particular case, ICANN’s proposed role remains unclear.”⁵⁴⁹ Ms. St. Amour writes, “we continue to be concerned that ICANN may be broadening out from its principle mandate as coordinator of the global resource that is the domain name system into the management of new and peripheral operational functions.”⁵⁵⁰ The Registries Stakeholder Group provides a similar argument:

ICANN points to its Bylaws and the Affirmation of Commitments (AoC) to define its responsibility to ensure the stable and secure operation of the Internet’s unique identifier systems. In general terms, ICANN plays a coordinating, non-operational role in managing Internet naming and numbering resources. However, in the SSR and DNS-CERT documents, ICANN’s proposed role seems both unclear and over-broad. The RySG shares the concern already voiced by some in the community that ICANN’s role in these potential initiatives and undertakings not cross over into an operational capacity. ICANN should undertake activities that are consistent with its limited technical coordination role. There should be a systematic examination of that role in relation to the SSR and DNS-CERT, using existing community processes. ICANN must be able to explain its

⁵⁴⁶ ICANN et al., “The Global DNS Security, Stability, & Resiliency Symposium: Summary, Trends, and Next Steps,” April 2, 2009, http://www.gtisc.gatech.edu/.../DNS_SSR_Symposium_Summary_Report.pdf.

⁵⁴⁷ Paul Vixie, “Perspectives on a DNS-CERT,” March 12, 2010, <http://www.isc.org/community/blog/201003/perspectives-dns-cert>.

⁵⁴⁸ ICANN, “DNS-CERT Business Case,” 15–16.

⁵⁴⁹ gNSO, ccNSO, and ALAC, “Joint letter from Chairs of the gNSO, ccNSO and ALAC,” March 25, 2010, <http://gnso.icann.org/correspondence/chairs-letter-re-dns-cert-25mar10-en.pdf>.

⁵⁵⁰ Lynn St. Amour, “Letter to Rod Beckstrom,” 2.

*remit and work within it, rather than expanding its mission to meet unrealistic or uninformed expectations, or into areas best filled by other entities.*⁵⁵¹

The Registries Stakeholder Group points to the third of ICANN’s core values, as stated in the ICANN Bylaws, to substantiate its argument that ICANN should avoid playing an operational role wherever possible.⁵⁵² This core value is:

*To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*⁵⁵³

The concerns regarding ICANN’s DNS security mandate may also stem from uncertainty surrounding its intentions. One interviewee described DNS security as an issue on which ICANN has “real legitimacy” and an area where it could successfully facilitate a bottom-up decision-making process among its full range of stakeholders. Lack of clarity regarding ICANN’s motivations, however, has made the DNS-CERT proposal “feel like a land grab,” causing a “missed opportunity” in the realm of DNS security, according to this interviewee.⁵⁵⁴

The ambiguity surrounding ICANN’s role in the proposed organization is displayed in the ICANN CEO’s letter to ISOC. “[W]e have never proposed that ICANN should be the operator of such a CERT,” he wrote, “but rather have asked the community for their view on the proposal that such a global DNS CERT should be established.”⁵⁵⁵ In the same paragraph, however, he wrote, “I think that ICANN should probably have a role in the operation of such a CERT, if required by the community, but in any case, we look forward to the continuing discussions.” The DNS-CERT business case does not clearly describe whether ICANN should be the operator or merely have a role in the operation of the CERT.

4.3 Procedural Issues

The review of a diverse set of publicly available materials (see above), as well as a series of interviews, suggests that the root of the DNS-CERT controversy is—to varying degrees—attributed to factors such as limited transparency in the development of the DNS-CERT proposal, the perceived absence of opportunities for public input prior to the publication of the detailed business case, and the apparent lack of adequate prior consultation with the community of DNS security stakeholders.

4.3.1. Openness and Transparency

As the above reactions indicate, a perceived lack of openness appears to have fueled additional concerns. Reportedly, DNS stakeholders were not informed that Mr. Beckstrom would be making any remarks related to DNS security issues prior to the Nairobi meeting.⁵⁵⁶ This claim is supported by the fact that DNS security was not mentioned on the GAC meeting agenda.

⁵⁵¹ RySG, “Registries Stakeholder Group Statements,” 2.

⁵⁵² RySG, “Registries Stakeholder Group Statements.”

⁵⁵³ ICANN, “Bylaws,” Section 2.3.

⁵⁵⁴ Interview, September 2010.

⁵⁵⁵ Rod Beckstrom, “Letter to Lynn St. Amour,” 2.

⁵⁵⁶ Interview, September 2010.

ICANN’s CEO opened his remarks with the claim that he had “personally consulted with over 20 CEO’s of the top Registries and Registrars globally.” As one interviewee noted, however, Mr. Beckstrom has refused to disclose the names of the registry and registrar members with whom he consulted. Furthermore, ICANN has conducted surveys within governments about DNS security issues, unbeknownst to members of the DNS communities within those countries.⁵⁵⁷ As Mr. Disspain expressed in his letter from March 11, 2010, the Nairobi remarks have, to varying degrees, undermined the credibility of ccTLD operators on DNS security issues in the eyes of governments, implanting unnecessary barriers to DNS policy goals. One interviewee suggested that ICANN’s handling of the process led to the demise of an idea that otherwise carried a good amount of legitimacy and may have led to productive collaborations between ICANN and the DNS security community.⁵⁵⁸ Several public comment submissions expressed similar concerns about a general lack of openness and transparency throughout the DNS-CERT process, generating confusion and mistrust about ICANN’s intentions.

4.3.2 Public Input and Stakeholder Participation

Interviews and public materials have raised the issue of the degree to which ICANN solicited and addressed input from DNS security stakeholders and the public at large during the DNS-CERT process. Mr. Disspain, for instance, wrote:

Our concerns lie not with your focus on security issues, but with your precipitated unilateral analysis of such an important issue and the public and inflammatory manner by which your views have been communicated.

We agree that, as CEO of ICANN, it is your responsibility to address these issues, but it is equally your responsibility to do so through ICANN’s bottom-up, consensus-based multistakeholder model. It is also the responsibility of those in positions of influence within ICANN to show due care when making statements on complex, cross-cutting issues to ensure effective analysis and stakeholder engagement without unnecessary confusion or concern.⁵⁵⁹

Ms. St. Amour echoes Mr. Disspain in expressing “strong concerns” about the means by which the DNS-CERT proposal was developed, arguing that ICANN has failed to demonstrate a commitment to “open, freely accessible, multi-stakeholder, and knowledge-based processes.”⁵⁶⁰ In addition to a lack of stakeholder involvement, Ms. St. Amour also contends that ICANN’s security-related proposals:

do not show convincingly that there has been a full analysis of alternate models. ISOC believes that the proposals have been put forward prematurely—without the full backing of the supporting organizations and advisory committees in ICANN, nor with the broader community, including the technical community.⁵⁶¹

At the *Internet Governance Project*, Milton Mueller blogged:

One moral of this story is that there is still a residue of suspicion within the traditional internet technical community about ICANN and its ambitions. Another is that an ICANN CEO who

⁵⁵⁷ Interview, September 2010.

⁵⁵⁸ Interview, September 2010.

⁵⁵⁹ Chris Disspain, “Letter from Chris Disspain to Rod Beckstrom.”

⁵⁶⁰ *Ibid.*, 2.

⁵⁶¹ *Ibid.*

challenges them or who makes them look as if they aren't doing their jobs right will have hell to pay.

One interviewee commented that “ICANN’s openness is commendable,” referring particularly to the public comment period for both the “Proposed Strategic Initiatives” and the “DNS-CERT Business Case” and ICANN’s willingness to extend the deadline at the public’s request. The interviewee expressed concern, however, that ICANN “hasn’t done much to show that it’s responsive to input from the public.”⁵⁶²

Some DNS stakeholders have expressed strong concern about the lack of opportunities to participate prior to the Nairobi meeting. For instance, the ccNSO’s letter to the ICANN CEO reads:

Although ICANN’s DNS-CERT business plan acknowledges existing security stakeholders such as CERT/CC and the CERT network, FIRST and DNS-OARC and other involved parties such as RIRs, DNS Root Operators, registrars and ccTLD and gTLD registries, little effort appears to have been made to engage these groups in developing the DNS-CERT proposal. This lack of dialogue leads to the potential for duplication of efforts and confusion, rather than clarification, of specific roles and responsibilities.⁵⁶³

Interviews and written submissions by ICANN staff solicited for this case study offer a markedly different perspective on the opportunities for input and stakeholder involvement during the development of the DNS-CERT proposal. ICANN staff point to a long series of consultations and public submissions dating to early 2009, during which they consulted with numerous networking and security experts (see Appendix 1 for a timeline and references). In the 2009 DNS symposium held in Atlanta, participants explicitly identified the need for a centralized CERT-like coordinating body. The report from the 2010 DNS symposium, however—which occurred prior to the Nairobi meeting—took a more measured position, emphasizing above all the need for further research and information-sharing before a specific program could be proposed.

ICANN’s consultation records show that, prior to the Nairobi meeting and the publication of the DNS-CERT proposal, participation from the ICANN community at large was minimal. ICANN consulted with a range of DNS security stakeholders, but the majority of interactions with the DNS community took place in private consultations. The draft 2010–2013 strategic plan suggests the creation of a DNS-CERT project, but offers no details to which the public could respond.

After Nairobi, many stakeholders continued to be dissatisfied with the lack of opportunities to participate.⁵⁶⁴ ICANN’s April 6–7 workshop in Washington, D.C. aimed to convene a range of participants from the DNS security community specifically to share information and identify the gaps in current DNS security measures. However, the workshop was held privately, and fewer than thirty participants were invited,⁵⁶⁵ causing some to view the workshop with skepticism rather than enthusiasm.

⁵⁶² Interview, September 2010.

⁵⁶³ ccNSO, “Comments on ICANN DNS-CERT Proposal,” 1.

⁵⁶⁴ Interview, September 2010.

⁵⁶⁵ ICANN, “April 2010 DNS-CERT Operational Requirements and Collaboration Analysis Workshop Report” (see the list of participants at the end of the report).

- ⁱ ICANN, Affirmation of Commitments, paragraph 9.1, September 30, 2009, <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.
- ⁱⁱ ICANN, “Applications Received for the Accountability and Transparency Review,” April 12, 2010, <http://www.icann.org/en/reviews/affirmation/review-1-applications-en.htm>.
- ⁱⁱⁱ ICANN, AoC, paragraph 9.1.
- ^{iv} ICANN, “Activities of the Accountability and Transparency Review Team,” <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>.
- ^v ICANN, “Accountability and Transparency Review Team—Selection of Independent Expert and Update on ATRT Review,” August 10, 2010, <http://www.icann.org/en/announcements/announcement-10aug10-en.htm>.
- ^{vi} ICANN, “Services Agreement,” August 5, 2010, <http://www.icann.org/en/reviews/affirmation/harvard-services-agreement-05aug10-en.pdf>.
- ^{vii} See, e.g., Jonathan Zittrain, “ICANN: Between the Public and the Private,” *Berkeley Technology Law Journal* 14 (1999) and John Palfrey, “The End of the Experiment: How ICANN’s Foray into Global Internet Democracy Failed,” *Harvard Journal of Law and Technology* 17 (2004).
- ^{viii} ICANN, “Services Agreement,” August 5, 2010, <http://www.icann.org/en/reviews/affirmation/harvard-services-agreement-05aug10-en.pdf>.
- ^{ix} Rolf H. Weber, “Accountability in Internet Governance,” *International Journal of Communications Law & Policy* 13 (2009): 153-167.
- ^x ICANN, “Accountability and Transparency Frameworks and Principles,” approved February 15, 2008, <http://www.icann.org/en/accountability/frameworks-principles/contents-overview.htm>.
- ^{xi} See Jonathan GS Koppell, “Pathologies of Accountability: ICANN and the Challenge of ‘Multiple Accountabilities Disorder,’” *Public Administration Review* 65 (2005): 94–108; John Palfrey, *The End of the Experiment: How ICANN’s Foray into Global Internet Democracy Failed*, Harvard Public Law Working Paper No. 93/Berkman Center Research Publication No. 2004-02 (2004); Milton Mueller, “ICANN, Inc.: Accountability and participation in the governance of critical Internet resources,” Internet Governance Project, November 16, 2009, <http://www.internetgovernance.org/pdf/ICANNInc.pdf>; and Rolf H. Weber, “Accountability in Internet Governance,” *International Journal of Communications Law & Policy* 13 (2009): 153-167.
- ^{xii} See Jonathan GS Koppell, “Pathologies of Accountability: ICANN and the Challenge of ‘Multiple Accountabilities Disorder,’” *Public Administration Review* 65 (2005): 94–108.
- ^{xiii} Milton Mueller, “ICANN, Inc.: Accountability and participation in the governance of critical Internet resources,” Internet Governance Project, November 16 2009, <http://www.internetgovernance.org/pdf/ICANNInc.pdf>, 1.
- ^{xiv} *Ibid.*, 6.
- ^{xv} See R. Shawn Gunnarson, “A Fresh Start for ICANN,” Kirton & McConkie, June 1, 2010, http://www.techpolicyinstitute.org/files/gunnarson_icann%20white%20paper.pdf, 21. Gunnarson argues that ICANN’s organizational structure is incompatible with genuine accountability to the Internet community: “. . . structure will defeat any effort to resolve these persistent criticisms. The fault lies not in a single person or policy, but in ICANN’s organizational structure. Its board of directors holds unreviewable power over what is, after all, a private corporation. Its origins cast doubt on the legitimacy of its authority.” Similarly, a policy document from the European Union argues that genuine accountability for ICANN hinges on “effective mechanisms for independent scrutiny and review of its Board decisions and independent appeal mechanisms . . . based on international law.” See Council of the European Union, International Management of the Internet Domain Name System, Doc. 11960/09, Annex, July 14, 2009, http://www.se2009.eu/polopoly_fs/1.17222!menu/standard/file/Coreper%20Guidelines%20on%20Internet.pdf, 4.
- ^{xvi} Rolf H. Weber, “Internet governance: Transparency and the governance of the Internet,” *Computer Law & Security Report* 24 (2008): 342–348.
- ^{xvii} ICANN, “ICANN Accountability & Transparency Frameworks and Principles,” approved February 15, 2008, <http://www.icann.org/en/transparency/acct-trans-frameworks-principles-10jan08.pdf>.
- ^{xviii} Milton Mueller, “ICANN, Inc.: Accountability and participation in the governance of critical Internet resources,” Internet Governance Project, November 16, 2009, <http://www.internetgovernance.org/pdf/ICANNInc.pdf>, 18. Also see John Palfrey, “The End of the Experiment: How ICANN’s Foray into Global Internet Democracy Failed,” *Harvard Journal of Law and Technology* 17 (2004).
- ^{xix} Rolf H. Weber, “Accountability in Internet Governance,” *International Journal of Communications Law & Policy* 13 (2009): 153-167.
- ^{xx} Milton Mueller, “ICANN, Inc.: Accountability and participation in the governance of critical Internet resources,” Internet Governance Project, November 16, 2009, <http://www.internetgovernance.org/pdf/ICANNInc.pdf>.
- ^{xxi} John Palfrey, “The End of the Experiment: How ICANN’s Foray into Global Internet Democracy Failed,” *Harvard Journal of Law and Technology* 17 (2004), 15.
- ^{xxii} See Appendices C–E for full versions.
- ^{xxiii} See Appendices A and B for details.

- ^{xxiv} See Section II B.1.
- ^{xxv} ICANN, “Documentary Information Disclosure Policy,” <http://www.icann.org/en/transparency/didp-en.htm>.
- ^{xxvi} ICANN, “We Need Your Input to Change the ICANN Website,” July 28, 2006, <http://www.icann.org/en/announcements/website-enhancement-28jul06.htm>.
- ^{xxvii} Kieren McCarthy, “Help us to improve the ICANN website—online survey,” *ICANN Blog*, June 19, 2009, <http://blog.icann.org/2009/06/help-us-to-improve-the-icann-website-online-survey/>.
- ^{xxviii} Kieren McCarthy, “Update on website revamp,” *ICANN Blog*, October 20, 2009, <http://blog.icann.org/2009/10/update-on-website-revamp/>.
- ^{xxix} ICANN, “ICANN Board Resolutions Wiki Launched—Public Comment Encouraged,” June 21, 2010, <http://www.icann.org/en/announcements/announcement-21jun10-en.htm>.
- ^{xxx} ICANN Bylaws, Article III, Section 7.
- ^{xxxi} ICANN, “DIDP Requests and Responses,” <http://www.icann.org/en/transparency/didp-requests-and-responses-en.htm>.
- ^{xxxii} ICANN, “Documentary Information Disclosure Policy,” <http://www.icann.org/en/transparency/didp-en.htm>.
- ^{xxxiii} *Ibid.*
- ^{xxxiv} *Ibid.*
- ^{xxxv} ICANN, “Accountability and Transparency Frameworks and Principles: Accountability in the Public Sphere,” approved February 15, 2008, <http://www.icann.com/en/accountability/frameworks-principles/public-sphere.htm>.
- ^{xxxvi} ICANN, “Dashboard: ICANN Performance Metrics—Refreshed,” <https://charts.icann.org/public/>.
- ^{xxxvii} John Palfrey, “The End of the Experiment: How ICANN’s Foray into Global Internet Democracy Failed,” *Harvard J. of L. and Tech.* 17 (2004).
- ^{xxxviii} *Ibid.*, 3.
- ^{xxxix} ICANN Bylaws, Article I, Section 2.4, August 5, 2010, <http://www.icann.org/en/general/bylaws.htm>.
- ^{xl} *Ibid.*, Article III, Section 6. Article III also contains provisions related to a Manager of Public Participation and the maintenance of the ICANN website. Annexes A and B address standards for participation within the GNSO and ccNSO Policy Development Processes.
- ^{xli} ICANN, “Accountability and Transparency Frameworks and Principles,” approved February 15, 2008, <http://www.icann.org/transparency/acct-trans-frameworks-principles-10jan08.pdf>.
- ^{xlii} ICANN, “Document Publication Operational Policy,” <http://www.icann.org/en/participate/draft-document-publication-operational-policy-en.pdf>. The policy “encourage[s] the early sharing of documentation...for public review and discussion” at ICANN meetings.
- ^{xliii} ICANN, AoC, paragraph 9.1.
- ^{xliv} ICANN Bylaws (“New Bylaws”), Article III, Section 3, December 15, 2002, <http://www.icann.org/en/general/archive-bylaws/bylaws-15dec02.htm>.
- ^{xliv} Nick Ashton-Hart, “Remote Participation for Nairobi: Details Available,” *ICANN Blog*, February 16, 2010, <http://blog.icann.org/2010/02/remote-participation-for-nairobi-details-available/>.
- ^{xlv} ICANN, “Public Participation Committee of the Board: Proposed Work Programme for 2010/2011,” March 12, 2010, <http://www.icann.org/en/committees/participation/proposed-work-programme-for-2010-2011-12mar10-en.pdf>.
- ^{xlvii} GNSO, “CCT Final Consolidated Recommendations,” April 9, 2010, <http://gnso.icann.org/drafts/cct-consolidated-report-final-09apr10-en.pdf>.
- ^{xlviii} GNSO, “Council Resolutions,” June 23, 2010, <http://gnso.icann.org/resolutions/#201006>.
- ^{xlix} ICANN, “Strategic Plan Survey,” November 19, 2009, <http://www.icann.org/en/announcements/announcement-19nov09-en.htm>.
- ¹ See European Commission, “Codecision: Ordinary Legislative Procedure ‘Step by Step,’” http://ec.europa.eu/codecision/stepbystep/text/index_en.htm#1; and European Commission, “Steps in the Strategy: Strategic Planning and Programming,” http://ec.europa.eu/atwork/strategicplanning/index_en.htm. See also Wikimedia, “Strategic Planning Process,” <http://strategy.wikimedia.org/wiki/Process>; and Wikimedia, “Strategic Plan Priorities,” http://strategy.wikimedia.org/wiki/Strategic_Plan/Movement_Priorities.
- ² See Henry Chesbrough, *Open Innovation: The New Imperative For Creating and Profiting From Technology* (Boston: Harvard Business School Press, 2006).
- ³ ICANN, “ICANN Meeting Fellowships,” <http://www.icann.org/en/fellowships/>. See also ICANN, “Webinars,” <http://www.icann.org/en/learning/webinars.htm>; ICANN, “Preliminary Report: Resolutions of Special Board Meeting,” May 21, 2009, <http://www.icann.org/en/minutes/prelim-report-21may09.htm>.
- ⁴ ICANN, “Public Participation Committee of the Board: Proposed Work Programme for 2010/2011,” March 12, 2010, <http://www.icann.org/en/committees/participation/proposed-work-programme-for-2010-2011-12mar10-en.pdf>. Much of ICANN’s work happens remotely—according to the Board Public Participation Committee, “the largest proportion of interaction between community members happens intersessionally where the participants are *all* remote participants.”
- ⁵ Kieren McCarthy, “Public Participation: my ICANN leaving report,” December 1, 2009, <http://kierenmccarthy.com/2009/12/01/public-participation-my-icann-leaving-report/>.
- ⁶ The GNSO Policy Development Process Work Team is considering a “fast-track” option to enable urgent action where needed while still ensuring broad community participation. This proposal is supported by the ALAC: see ICANN, “At-Large GNSO Liaison,”

https://st.icann.org/gnso-liaison/index.cgi?at_large_gnso_liaison.

^{lvi} For example, the United States government's online public participation forums allow participants to vote comments and suggestions up and down and to respond to individual submissions. Comments are tagged according to category, ranked according to the amount of user activity they generate, and given a score on a "controversy meter" that indicates the ratio between the number of up and down votes they receive. Community members may also be engaged in the translation of comments and related documents. See Open Government Dialogue, <http://opengov.ideascale.com>.

^{lvii} ICANN, "Public Comments Index Against ATRT Work Teams and Highlights," August 20, 2010, <http://www.icann.org/en/reviews/affirmation/index-of-public-comments-20aug10-en.pdf>.

^{lviii} See Roselle L. Wissler, "Court-Connected Mediation In General Civil Cases: What We Know from Empirical Research," *Ohio State Journal on Dispute Resolution* 17 (2002), 641–690. Wissler concludes that people felt that "they had an opportunity to tell their side of the story, they participated actively in the process, they had considerable input in determining the outcome of the dispute and they were not pressed by the mediator or others to settle." See also Patrick Field, et al., "Integrating Mediation in Land Use Decision Making," Consensus Building Institute, January 2010, 38. Field finds that mediation participants had a "willingness to participate in mediation despite indications by many that their most recent experience with mediation did not result in an agreement that satisfied them."

^{lix} ICANN, AoC, paragraph 9.1(e).

^{lx} ICANN, "Public Comment: Community Working Group Report on Implementation of GNSO New gTLD Recommendation Number 6," September 22, 2010, <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>.

^{lxi} ICANN Bylaws, Article VI, Section 2.

^{lxii} *Ibid.*, Article IV, Section 3.

^{lxiii} ICANN, "Adopted Board Resolutions, Cairo," November 7, 2008, http://www.icann.org/en/minutes/resolutions-07nov08.htm#_Toc87682575. For a list of current Board committees, see: ICANN, "Board Committees," http://www.icann.org/en/committees/board_committees.html.

^{lxiv} *Ibid.*.

^{lxv} The Boston Consulting Group and Colin Carter & Associates, *Independent Review of the Board of ICANN*, 2008.

^{lxvi} *Principles of Corporate Governance* (American Law Institute: 1994), § 3.01.

^{lxvii} James Fishman and Stephen Schwarz, *Nonprofit Organizations: Statutes, Regulations, and Forms* (New York: Foundation Press; 2006), 142-143.

^{lxviii} ICANN, "Public Comments Index Against ATRT Work Teams and Highlights," August 20, 2010, <http://www.icann.org/en/reviews/affirmation/index-of-public-comments-20aug10-en.pdf>.

^{lxix} ICANN, "Adopted Board Resolutions | Brussels," June 25, 2010, <http://www.icann.org/en/minutes/resolutions-25jun10-en.htm>.

^{lxx} Kieren McCarthy, "ICANN board briefing materials; more cover pages than information," August 17, 2010, <http://kierenmccarthy.com/2010/08/17/icann-board-briefing-materials-more-cover-pages-than-information/>.

^{lxxi} ICANN, "ICANN Board Resolutions—Draft—2009," <https://community.icann.org/display/ctap/Board+Resolutions>. The wiki is still in draft form and does not appear to be open to direct input from community members. Comments are invited via an "Add Comments" box on the wiki, which is not available as of October 7, 2010, or via a public comments forum (the period lasted from June 21–July 26, 2010; no comments were submitted). The projected date for completion is December 5–10, 2010, during ICANN's 39th International Public Meeting in Cartagena.

^{lxxii} ICANN's Bylaws describe each mechanism: Article V (Ombudsman); Article IV, Section 2 (Reconsideration Requests); and Article IV, Section 3 (Independent Review Panel).

^{lxxiii} ICANN Bylaws, Article IV, Section 1.

^{lxxiv} *Ibid.*, Article V, Section 2.

^{lxxv} See Section II B.2.

^{lxxvi} ICANN proposed the community re-vote process in July 2009, posting a draft for public comment at ICANN, "Public Comment: Proposed Bylaw Changes to Improve Accountability," July 27, 2009, <http://www.icann.org/en/announcements/announcement-27jul09-en.htm>. Interviewees have suggested a variety of additional review mechanisms, including the concept of an independent judiciary body tasked with hearing and evaluating arguments about the ICANN Board's decisions and activities. Rolf H. Weber and the Center for Democracy & Technology have both called for the creation of a similar judicial review process based on international law; see Weber, *Shaping Internet Governance: Regulatory Challenges* (New York: Springer, 2010), 103 and Center for Democracy & Technology, "Independence and Accountability: The Future of ICANN," June 8, 2009, http://www.cdt.org/international/20090608_icann.pdf. See also R. Shawn Gunnarson, "A Fresh Start for ICANN," Kirton & McConkie, June 1, 2010, http://www.techpolicyinstitute.org/files/gunnarson_icann%20white%20paper.pdf.

^{lxxvii} ICANN, "Limitations on Third Party Review of Corporate Board Actions under California Law: Supplied by ICANN," August 31, 2010, <http://icann.org/en/reviews/affirmation/third-party-review-of-board-actions-under-california-law-31aug10-en.pdf>.

^{lxxviii} ICANN Bylaws, Article XI, Section 2.1(a).

^{lxxix} *Ibid.*, Article XI, Section 2.1(i).

^{lxxx} Compare ICANN Bylaws, Article III, Section 6.1(c) (emphasis supplied) with Article XI, Section 2.1(a).

^{lxxxi} See ICANN Bylaws, Article III, Section 6 et seq., and Article XI, Section 2.1, et seq.

^{lxxxii} See ICANN, "Correspondence," <http://www.icann.org/en/correspondence> and GAC, "Communiqués," <http://gac.icann.org/communiques>. To date, the GAC has issued 38 Communiqués and submitted 23 letters addressed to the Board,

individual Board members, and ICANN.

^{lxxxiii} See e.g., Mohamed Sharil Tarmizi to Paul Twomey, April 3, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/tarmizi-to-twomey-03apr05.pdf>; Mohamed Sharil Tarmizi to ICANN Board of Directors, August 12, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/tarmizi-to-board-12aug05.htm>; Peter Zangl to Vint Cerf, September 16, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-16sep05.pdf>; Jonas Bjelfvenstam to Paul Twomey, November 23, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/bjelfvenstam-to-twomey-23nov05.htm>; Peter Zangl to Vint Cerf, March 17, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-17mar06.pdf>; Martin Boyle to Vinton Cerf, May 4, 2006, ICANN Correspondence, <http://www.icann.org/en/correspondence/boyle-to-cerf-09may06.htm>; and Helen Coonan to Vint Cerf, February 28, 2007, ICANN Correspondence, <http://www.icann.org/en/correspondence/coonan-to-cerf-28feb2007.pdf>.

^{lxxxiv} See e.g., Mohamed Sharil Tarmizi to Paul Twomey, April 3, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/tarmizi-to-twomey-03apr05.pdf>; Peter Zangl to Vinton Cerf, September 16, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-16sep05.pdf>; Jonas Bjelfvenstam to Paul Twomey, November 23, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/bjelfvenstam-to-twomey-23nov05.htm>; and Peter Zangl to Vint Cerf, March 17, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/zangl-to-cerf-17mar06.pdf>.

^{lxxxv} GAC, “GAC Communiqué—Luxembourg,” July 12, 2005, http://gac.icann.org/system/files/GAC_23_Luxembourg.pdf; GAC, “GAC Communiqué—Vancouver,” December 2005, http://gac.icann.org/system/files/GAC_24_Vancouver_Communique.pdf; GAC, “GAC Communiqué—Wellington,” March 28, 2006, http://gac.icann.org/system/files/GAC_25_Wellington_Communique.pdf; GAC, “GAC Communiqué—Lisbon,” March 28, 2007, http://gac.icann.org/system/files/GAC_28_Lisbon_Communique.pdf.

^{lxxxvi} ICANN Bylaws, Article XI, Section 2.1(h), (j), (k).

^{lxxxvii} *Ibid.*, Article XI, Section 2.1(h).

^{lxxxviii} *Ibid.*, Article III, Section 6.1(c).

^{lxxxix} As discussed in the previous section, the definition of “advice” is not precisely defined in the Bylaws, and in some limited cases this term is used interchangeably with “opinion.” For the purposes of this section, this report uses the term “advice” to encompass both advice and opinion as intended in the Bylaws.

^{xc} ICANN Bylaws, Article XI, Section 2.1(j).

^{xci} *Ibid.*, Article XI, Section 2.1(j).

^{xcii} *Ibid.*, Article XI, Section 2.1(k).

^{xciii} *Ibid.*, Article XI, Section 9.1(a); Article XI, Section 2.1(f).

^{xciv} *Ibid.*, Article VI, Section 9.5.

^{xcv} *Ibid.*, Article VI, Section 9.5.

^{xcvi} The current interim GAC Chair and Liaison to the Board is Heather Dryden: ICANN, “Heather Dryden Biography,” <http://icann.org/en/biog/dryden.htm>. Previous GAC Chair persons and Liaisons were Janis Karklins (2007- 2010), Mohamed Sharil Tarmizi (2002-2007), and Paul Twomey (1999-2002). Cf. ICANN, “Biography of Ambassador Janis Karklins,” <http://icann.org/en/biog/karklins.html>; ICANN, “Biography of Mohamed Sharil Tarmizi,” <http://icann.org/en/biog/tarmizi.htm>; ICANN, “Biography, Paul Twomey,” <http://icann.org/en/biog/twomey.htm>.

^{xcvii} ICANN Bylaws, Article XI, Section 2.1(h).

^{xcviii} See e.g., Marcelo de Carvalho Lopes to Mohamed Sharil Tarmizi, September 6, 2005, ICANN Correspondence, <http://www.icann.org/en/correspondence/lopez-to-tarmizi-06sep05.pdf>.

^{xcix} ICANN Bylaws, Article XI, Section 2.1(h).

^c *Ibid.*, Article VI, Section 9.5.

**2011-03-18-12 Annex Exhibit D Board Paper ATRT
Report 28 Feb 2011 - Summary Forum on ATRT Final
Recommendations - 17 Feb**

Summary of Public Comments on the Accountability and Transparency Review Team’s Final Recommendations

This document provides an overview of the public comments¹ received in response to the [Final Recommendations](#), issued by the Accountability & Transparency Review Team (ATRT), which features twenty-seven final recommendations. The comments are grouped per recommendation addressed and working groups. Responses without such references are summarized under "General Comments". The summary does in no way substitute for the original contributions, which should be consulted for complete information. The number of comments submitted on this paper tallies up to eleven, including one off-topic entry. The comments are hyperlinked below for easy access and available at: <http://forum.icann.org/lists/atrt-final-recommendations/>

Contributions provided by:

Association for Competitive Technology	ACT	Frank Fowlie	FF
At-Large Advisory Committee	ALAC	Kirton McConkie	KMC
Country Code Names Supporting Organization Council	ccNSO	Lizbeth Web Marketing Consultant	LWMC (off-topic)
International Chamber of Commerce	ICC	Netchoice	NET
International Trademark Association	INTA	Nominet	NOM
		2011 Nominating Committee	NomCom

RECOMMENDATION/CONCLUSION	SUMMARY OF COMMENTS
<u>General Comments</u>	ACT: The ATRT has exceeded expectations in bringing the inaugural AoC review to a successful conclusion. The final product of the ATRT represents the perfect ICANN document because it synthesizes an incredibly diverse set of inputs into a clear, actionable set of recommendations. It is perhaps a bit myopic: there is more to accountability and transparency than mechanisms. ACT applauds the ATRT recommendations regarding metrics, which are essential to be truly transparent

¹ The public comment period ran from 31 December 2010 to 14 February 2011.

and accountable. Now that the ATRT has produced consensus recommendations, the burden falls to ICANN to implement those recommendations without prejudice and in a timely fashion. The AoC is unequivocal about the Board's responsibility: *the Board will take action within six months of receipt of the recommendations*. In Cartagena, Rod Beckstrom seemed to indicate that the Board and staff would pick and choose which recommendations to implement and when, based on constraints of time and budget. While later comments by ICANN leadership seemed to back away from this assertion, the episode only furthered the impression that ICANN is not fully committed to the ATRT process. If ICANN fails to implement the changes developed by a community-driven process that it helped create, it will raise questions as to whether the organization is capable of demonstrating real accountability to anyone. ICANN's detractors are following the review process with great interest. Should ICANN fail to rise to the challenge of implementing the ATRT recommendations, detractors will use that failure in their efforts to see greater control over ICANN. The ATRT paper demands a commitment to continued dialogue, community engagement and improvement – ICANN must now take up the baton and demonstrate its commitment to strengthening its processes.

ALAC: very much appreciates the work of the ATRT. The thoroughness of their approach to the review is evident in the Final Recommendations. ALAC, however, requests feedback on how section (d) and (e) of the Affirmation of Commitments paragraph 9.1 will be addressed in the context of the ATRT's final recommendations – *please refer to the AoC:* <http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> –. The ALAC also seeks assurance from the ICANN Board that the matters raised in these sections will be a priority of the next ATRT.

ccNSO: welcomes the opportunity to comment and recognizes the thorough and exhaustive efforts of the ATRT. The AoC set ambitious deadlines for this work and the ccNSO Council applauds the ATRT for successfully undertaking a comprehensive review process within these challenging timeframes. The ccNSO Council recognizes the willingness of ATRT members to critically question and analyze ICANN's existing mechanisms for consultation, policy development and decision-making and to develop an appropriately challenging, ambitious and wide-ranging set of recommendations. The implementation of these recommendations will deliver considerable improvement. The ccNSO Council endorses these recommendations in their entirety and calls upon the ICANN Board, with appropriate support from staff, to adopt the ATRT's recommendations

within the AoC timeframes. The process (including staff briefing) by which the Board takes decisions and action on each recommendation should be completely transparent to stakeholders. Should the ICANN Board determine not to implement any of the recommendations, as they would impose unreasonable costs or prohibitive resource constraints, the Board should provide a detailed explanation of the decision.

ICC: appreciates the ATRT's substantive efforts, welcomes the final recommendations and is pleased to see the progress made to integrate specific timelines for action and implementation of the recommendations. ICC continues to encourage careful consideration of the recommendations by the Board and ICANN leadership and urges prompt movement towards implementation particularly of those recommendations, which the ATRT identified as cases where ICANN should already have taken action. The ATRT recommendation that such priority items should have a start or completion date prior to June 2011 is a productive approach. ICC supports the ATRT request that the Board provide a status report on all the recommendations at the March 2011 ICANN meeting in San Francisco.

INTA: appreciates the ATRT efforts to provide a balanced review. INTA agrees with the findings and recommendations. The additions of a few clarification and details (as requested below) will ensure that the report is a useful guide for improving accountability and transparency within ICANN.

KMC: Misspelling – Gunnarson not Gunnerson. The ATRT deserves the community's thanks. Once implemented, the recommendations will markedly improve ICANN's transparency and accountability. The ATRT deserves praise for producing effective recommendations despite the difficulties it encountered as the first AoC review team and the impediments created by ICANN's lackluster cooperation.

NET: supports the remarkable work done by the ATRT who labored under time and resource constraints and had to create a new process from scratch. Not only did it produce substantive recommendations, it also showed the way for future Affirmation review teams. However, there is a missing element i.e. a workable definition of what *public interest* is in the context of ICANN – to be undertaken by the next ATRT in 2013. Leaving the term *public interest* undefined leaves the floor open to conflicting and competing interpretations that serve the particular interests of ICANN stakeholders. The cost of failing to define public interest is that ICANN will continue to struggle with

competing visions of that definition in future reviews and policy-making processes. A structured community-wide discussion is the best way to institutionalize key Affirmation imperatives such as *public interest* and *consumer trust*. Institutionalize should not mean *creating a new institution* but rather ensuring that the entire organization is acting in support of its mandate. ICANN's Board saw this coming and adopted a resolution in Cartagena for a community-wide effort to develop definitions and metrics for terms in the Affirmation review of the new gTLD program. This is an essential first step for managing and measuring the success of new gTLDs. The Board now needs to request another community-wide effort to define public interest.

NOM: welcomes the thorough and consensual approach adopted by the ATRT. The report provides a good basis for ICANN moving forward and sets a quality benchmark for future reviews. NOM welcomes and endorses the recommendations and supports the ATRT's priority assessment. It is important that the Board establish an implementation plan as soon as possible and that deadlines prescribed by the report are met. NOM believes that there needs to be clear Board-level responsibility for follow-up and would suggest that the Chair of the Board ex officio should have the role of *responsible owner* for implementation. The reasons for not implementing a recommendation should be made very clear and the responsible owner should identify the measures to take to respond to the concerns behind the recommendation. It is important that sufficient resources are made available to support implementation. The CEO should be accountable to the *responsible owner* for ensuring sufficient resources for the timely implementation of the recommendations. The ATRT identified a concept of how to serve the public interest in the context of accountability – *please refer to appendix A of the [Final Recommendations](#)*. NOM believes this is a useful guideline for the future when read in conjunction with section 4 of the Affirmation of Commitments: <http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. These should serve as principles for all Board decisions.

NomCom: welcomes the final ATRT report. While NomCom agrees with much of the report, it is important that key features of NomCom should be maintained, namely: NomCom is an independent committee and its decisions are final. These are essential to its success and care must be taken to ensure that nothing in the implementation of the ATRT's recommendations should undermine these essential aspects.

Recommendation 1: *Recognizing the work of the Board Governance committee on Board training and skills building, pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, the Board should establish (in time to enable the integration of these recommendations into the Nominating Committee process commencing in late 2011) formal mechanisms for identifying the collective skill-set required by the ICANN Board including such skills as public policy, finance, strategic planning, corporate governance, negotiation, and dispute resolution. Emphasis should be placed upon ensuring the Board has the skills and experience to effectively provide oversight of ICANN operations consistent with the global public interest and deliver best practice in corporate governance. This should build upon the initial work undertaken in the independent reviews and involve:*

a. Benchmarking Board skill-sets against similar corporate and other governance structures; b. Tailoring the required skills to suit ICANN's unique structure and mission, through an open consultation process, including direct consultation with the leadership of the SOs and ACs; c. Reviewing these requirements annually, delivering a formalised starting point for the NomCom each year; and d. From the Nominating Committee process commencing in late 2011, publishing the outcomes and requirements as part of the Nominating Committee's call-for-nominations.

Recommendation 2: *The Board should reinforce and review on a*

INTA: add to the skill-set a mention of knowledge in intellectual property and in particular, trademark law.

NomCom: expresses the following concerns: a) how would formal mechanisms for identifying skill-sets be developed; b) how would the skill-sets be taken into account as requirements in candidate recruitment and selection process – NomCom must remain independent and its decisions final; c) selections would be judged against these requirements. The NomCom agrees that better identifying the Board's activities and challenges would be useful in guiding the NomCom as it seeks candidates and in identifying any gaps in the knowledge and experience including geographic, gender and cultural diversity. However, it cannot guarantee that it will be able to recruit high quality international volunteer candidates with those skills. NomCom is also constrained by diversity requirements (with respect to global interest), term limits and by the fact that positions are unique in the great amount of time they demand of volunteers. The overall composition of the Board would be strengthened and NomCom would face fewer constraints in its processes if the SO/ACs gave more consideration to geographic, gender and cultural diversity when selecting Directors. Many of the ATRT's recommendations could and should be addressed to the SOs and ALAC. We note At-Large's work in 2010 to develop a broad set of criteria for candidates for the voting Director position it selected. We suggest that all SOs adopt a similar practice. NomCom cannot provide immediate solutions to gaps in skills and experience, as the process would take 18 months to two years from the AGM. Nominating Committees have long attempted to write a "job description" of the positions – in most cases these descriptions have been developed either directly or with the help of Members of the Board/Council concerned. These descriptions are available in the *Invitation for Statements of Interest* and the *Leadership Positions* document. Both documents have been part of the NomCom Process since 2006. Nomcom is aware that both documents could and should be improved and concedes that it is not as well informed of the Board's work and working methods as it should be. The 2011 NomCom has discussed this with the Board Chair and Chair of the Board Governance Committee. Such information would help NomCom identify and understand the experience useful in potential candidates. Information of this type could form the basis of the "skill-set" information the ATRT recommends be made available, could be updated as required and would be publicly available. NomCom would also benefit from more information about the work of the Councils and challenges they face.

NomCom: suggests that that the NomCom elect should attend the AGM from the start of the week

regular basis, (but no less than every 3 years) the training and skills building programmes established pursuant to Recommendation #1.

Recommendation 3: *The Board and Nominating Committee should, subject to the caveat that all deliberations and decisions about candidates must remain confidential, as soon as possible but no later than the Nominating Committee process commencing in late 2011 increase the transparency of the Nominating Committee's deliberations and decision making process by doing such things as clearly articulating the timeline and skill-set criteria at the earliest stage possible before the process starts and, once the process is complete, explain the choices made.*

Recommendation 7: *In accordance with the Affirmation of Commitments:*

7.1 Commencing immediately, the Board should promptly publish all appropriate materials related to decision making processes – including preliminary announcements, briefing materials provided by staff and others, detailed Minutes, and where submitted, individual Directors' statements relating to significant decisions. The redaction of materials should be kept to a minimum, limited to discussion of existing or threatened litigation, and staff issues such as appointments.

7.2 Commencing immediately, the Board should publish "a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied." ICANN should also articulate that rationale for accepting or rejecting input received from public comments and the ICANN community, including Supporting Organizations and Advisory Committees.

until the end when its members are formally appointed. The week should be used for discussions with the community about the challenges facing ICANN and the quality that might be desirable in candidates for the coming period. Information collected could be made available for public comment before being adopted by NomCom for its year of office.

NomCom: strongly agrees with the call for greater transparency on its procedures. Internal NomCom deliberations on candidates must remain confidential in order to ensure a robust process that attracts quality candidates. With regard to procedural transparency, the 2011 NomCom is attempting to introduce more opportunity for discussion with the community and hopes that these additional meetings will become part of ICANN's regular meeting schedule. Regarding timeline, the NomCom has published a timeline of its activities since 2006.

ccNSO: high priority.

Recommendation 9: *The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy “advice” under the Bylaws.*

Recommendation 10: *Having established what constitutes “advice,” the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or data base in which each request to the GAC and advice received from the GAC is documented along with the Board’s consideration of and response to each advice.*

Recommendation 11: *The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner, to find a mutually acceptable solution.” This process*

ccNSO: high priority in light of recent developments and perceived ambiguity regarding GAC and ICANN Board interaction over the new gTLD Applicant Guidebook process.

NOM: high priority. The GAC-Board meeting scheduled for the end of February shows the importance of the recommendations related to the role and effectiveness of the GAC and its interaction with the Board.

ccNSO: high priority in light of recent developments and perceived ambiguity regarding GAC and ICANN Board interaction over the new gTLD Applicant Guidebook process.

NOM: high priority. The GAC-Board meeting scheduled for the end of February shows the importance of the recommendations related to the role and effectiveness of the GAC and its interaction with the Board.

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NOM: high priority. The GAC-Board meeting scheduled for the end of February shows the importance of the recommendations related to the role and effectiveness of the GAC and its interaction with the Board.

must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

Recommendation 12: *The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.*

Recommendation 13: *The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.*

Recommendation 14: *The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.*

ccNSO: high priority in light of recent developments and perceived ambiguity regarding GAC and ICANN Board interaction over the new gTLD Applicant Guidebook process.

NOM: high priority. The GAC-Board meeting scheduled for the end of February shows the importance of the recommendations related to the role and effectiveness of the GAC and its interaction with the Board.

ccNSO: high priority in light of recent developments and perceived ambiguity regarding GAC and ICANN Board interaction over the new gTLD Applicant Guidebook process.

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ccNSO: high priority in light of recent developments and perceived ambiguity regarding GAC and ICANN Board interaction over the new gTLD Applicant Guidebook process.

NOM: high priority. The GAC-Board meeting scheduled for the end of February shows the importance of the recommendations related to the role and effectiveness of the GAC and its interaction with the Board.

Recommendation 15: The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.

Recommendation 16: *Public notice and comment processes should provide for both a distinct “Comment” cycle and a “Reply Comment” cycle that allows community respondents to address and rebut arguments raised in opposing parties’ comments.*

Recommendation 17: *As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.*

Recommendation 23: *As soon as possible, but no later than June 2011, the ICANN Board should implement Recommendation 2.7 of the 2009 Draft Implementation Plan for Improving Institutional Confidence which calls on ICANN to seek input from a committee of independent experts on the restructuring of the three review mechanisms - the Independent Review Panel (IRP), the Reconsideration Process and the Office of the Ombudsman. This should be a broad, comprehensive assessment of the*

ccNSO: high priority.

ICC: agrees that this should be implemented as soon as possible but no later than June 2011 as this will help increase public confidence in ICANN’s decision-making, help prioritize ICANN’s activities and facilitate business participation.

ccNSO: high priority.

ICC: agrees that this should be implemented as soon as possible but no later than June 2011 as this will help increase public confidence in ICANN’s decision-making, help prioritize ICANN’s activities and facilitate business participation.

ccNSO: high priority.

ICC: agrees that this should be implemented as soon as possible but no later than June 2011 as this will help increase public confidence in ICANN’s decision-making, help prioritize ICANN’s activities and facilitate business participation.

INTA: agrees with the comment and reply comment concept. INTA suggests, however, that the commenting process should end with the reply comment. Permitting further comments after the reply comment is likely to lead to bureaucratic delays.

ccNSO: high priority.

KMC: ICANN’s position that *the Board cannot empower any entity to overturn decisions or actions of the Board* was not challenged by the ATRT because *it did not reach consensus on whether binding authority was the standard upon which to judge ICANN’s accountability*. The foundation of ICANN’s accountability is insecure – *ultimate responsibility for ensuring the highest possible levels of transparency and accountability must necessarily reside with the Board*. Yet the validity of binding authority over the Board – however limited – now depends on unresolved questions of

accountability and transparency of the three existing mechanisms and of their inter-relation, if any (i.e., whether the three processes provide for a graduated review process), determining whether reducing costs, issuing timelier decisions, and covering a wider spectrum of issues would improve Board accountability. The committee of independent experts should also look at the mechanisms in Recommendation 2.8 and Recommendation 2.9 of the Draft Implementation Plan. Upon receipt of the final report of the independent experts, the Board should take actions on the recommendations as soon as practicable.

Recommendation 24: *As soon as possible, but no later than the March 2011 ICANN meeting, the operations of the Office of the Ombudsman and the relationship between the Office of the Ombudsman and the Board of Directors should be assessed and, to the extent they are not, should be brought into compliance with the relevant aspects of internationally recognized standards for: a) an Ombudsman function; and b) a Board supporting such a function under the Standards of Practice of the International Ombudsman Association.*

Recommendation 27: *The Board should regularly evaluate progress against these recommendations and the accountability and transparency commitments in the AoC, and in general analyze the accountability and transparency performance of the whole organization so as to once a year report to the community on progress made and to prepare for the next ATRT review. All evaluations should be overseen by the Board.*

policy and California law. Resolving those questions is fundamental and urgent. The AoC commits ICANN to consider *an appeal mechanism for Board decisions* to improve Board governance and ATRT's impasse puts that commitment in serious doubt. ICANN's opposition to binding review of the Board is eroding international support for the private sector model of DNS management. The ICANN Board should approve this recommendation at the ICANN Silicon Valley Meeting and organize a committee of independent experts with authority to conduct a comprehensive study of ICANN's review mechanisms. This committee should strive to identify a review mechanism that is both independent of the Board and binding on it. It should be directed to determine, with the assistance of legal counsel, whether California law requires the Board to reject any appeal mechanism with the power to reverse its actions.

FF: there is a small grammatical error: the sentence begins with a collective (relevant aspects of internationally recognized standards) and ends with a singular (Standards of Practice of the International Ombudsman Association). The singular is redundant, and this part of the sentence referring to the IOA should be deleted.

NOM: NOM believes that this recommendation is appropriate: it will be important for the credibility of the process to have regular comprehensive progress reports at ICANN meetings. The status reports should be given by the *responsible owner*. We believe that there should also be a report back at the third meeting in 2011, bearing in mind that some of the deadlines are in October.

<p><u>Working Group 1</u></p>	<p>INTA: - in paragraph 1 on page 15, quote finding #1 in its entirety so as to increase clarity: <i>the central purpose of the NomCom is to find genuinely independent and unaffiliated Board, Council and ALAC members.</i></p> <ul style="list-style-type: none"> - reference the findings # 2 and 7 from the October 2008 Reports. - item #4 on page 20: <i>building on the work of the Board Governance Committee, the Board should continue to enhance Board performance and work practices</i> is too vague to be effective; add specific details about how previous work and reforms can be improved and built upon. Explain what “enhancing” Board performance would entail or what would constitute adequate enhancement of performance. <p>NomCom: the ATRT recommendations only address the ICANN Board of Directors – it is important to recognize that NomCom also selects members of the GNSO and ccNSO Councils and members of the ALAC. NomCom’s processes apply to all positions it selects. Moreover, the recommendations only address NomCom appointed members of the ICANN Board of Directors, those appointed to the Board by the Supporting Organizations and ALAC are not mentioned.</p> <p>----</p>
<p><u>Working Group 2</u></p>	<p>INTA: agrees with the recommendations provided in this section.</p> <p>----</p>
<p><u>Working Group 3</u></p>	<p>INTA: supports these clear recommendations.</p> <p>----</p>
<p><u>Working Group 4</u></p>	<p>INTA: agrees with the recommendations. The input of an independent body is critical to ensuring stability and fairness. Binding decisions could constitute a balance in the decision-making process.</p>

2011-03-18-13 Annex TLG Review Final Report-03dec10- en

Review of the

Technical Liaison Group (TLG)

Prepared for the Internet Corporation for Assigned Names and Numbers

3 December 2010

Founded in 2003, JAS Communications LLC is a unique professional services firm delivering risk management, technology, and governance solutions to a wide range of commercial and government clients.

<http://www.jascommunications.com>

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1 Preface to the final version

JAS would like to thank all of the individuals that have participated in the review process. We received significant and valuable feedback to the public draft, and have amended our report accordingly. Specifically, we addressed the following areas:

- Better documented the history of the TLG and ICANN's relationship with the TLG organizations;
- Refined our approach to "recommendations" and "alternative considerations";
- Expanded and refined our position on placement of technical Directors via the TLG;
- Expanded discussion on more attractive alternative bilateral relationship models between ICANN and industry organizations;
- Numerous expansions and clarifications throughout.

We have enjoyed working with ICANN on this project and appreciate the valuable time and commentary provided by members of the Community.

2 Summary

The Technical Liaison Group (TLG) is designed to connect the ICANN Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities. The TLG consists of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB). The TLG is described in ICANN's Bylaws under Article XI-A, Section 2.¹

ICANN's Bylaws describe an ongoing organizational review process as a part of its commitment to evolution and improvement. As specified in the Bylaws, the goal of the review shall be to determine:

- Whether that organization has a continuing purpose in the ICANN structure, and
- If so, whether any change in structure or operations is desirable to improve its effectiveness.

Additionally, the ICANN Structural Improvements Committee (SIC) tasked the external reviewer to answer the following questions:

- Has the TLG been effective in achieving its objectives as defined in Article XI-A, Section 2 of ICANN Bylaws?
- What elements –if any- prevented the full achievement of TLG's objectives?
- Did the establishment of the TLG impact –positively or adversely- the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?
- Does the rationale for TLG as spelled out in the Bylaws need to be revised, and in which sense?
- What structural and operational measures can be imagined to enhance the effectiveness of the TLG?
- Any other question that is relevant to the overall scope of this review and that is considered appropriate to address.

JAS Communications LLC was engaged to perform the first such review of the TLG in August 2010. We solicited feedback from the ICANN community, namely the Board, Management, Governmental Advisory Committee (GAC), Supporting Organizations, Advisory Committees, and TLG organizations and have collected qualitative data through interviews and email communications from more than 25 sources.

In summary, JAS found that the TLG is an antiquated structure of limited utility in the ICANN of today. The TLG: (1) does not and never has functioned as intended; (2) grants significant governance privileges to organizations with no reciprocity; and (3) places individuals on the Board for only a one-year term making it nearly impossible for them to be effective contributors.

Moreover, the continued existence of the TLG poses some risk to ICANN due to the lack of role clarity and the very real opportunity for questions of loyalty and conflicts of interest to arise in the Boardroom.

¹ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

As such, JAS recommends that ICANN disband the TLG and replace the inter-organizational liaison function with other more typical non-Bylaws level constructs.

Obviously, formal relationships between institutions are both common and important. The question is not whether ICANN should have these relationships, but on the modality for formalizing such relationships. JAS recommends the “one size fits all” TLG construct be replaced by more typical and flexible non-Bylaws mechanisms. Bilateral mechanisms like Memoranda of Understanding provide all parties with a flexible framework in which to negotiate and formalize the unique nature of complex institutional relationships.

In the event ICANN elects not to implement our recommendation to disband the TLG, JAS considered alternative, incremental improvements to the existing TLG model. These potential improvements are described as “Alternative Considerations” in the analysis section of the document.

2.1 Summary of Recommendations

RECOMMENDATION 1: Dismantle the TLG.

RECOMMENDATION 2: Utilize non-Bylaws constructs such as Memoranda of Understanding (MoU) to negotiate and formally memorialize institutional relationships on a bilateral basis.

RECOMMENDATION 3: Reaffirm the Nominating Committee’s present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

2.2 Summary of Alternative Considerations

ALTERNATIVE CONSIDERATION I: If the TLG is not dismantled, consider rebuilding the TLG membership pursuant to criteria and objectives set by the ICANN Board with the full range of global, technically-oriented organizations presently in existence considered for membership.

ALTERNATIVE CONSIDERATION II: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

ALTERNATIVE CONSIDERATION III: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

ALTERNATIVE CONSIDERATION IV: Address the issue of role clarity for the TLG liaison (or for all liaison roles). Clearly specify a duty of loyalty to ICANN for the Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

3 JAS Review Methodology

JAS was engaged in August 2010 and data collection started immediately. Unlike previous organizational reviews, this review did not span an ICANN public meeting.

Phone interviews were conducted with all individuals that were interested and made themselves available. Our questions were open ended allowing participants to interpret the question in a manner that best fit their perspective and role. Follow-up questions were asked to help ensure that the discussion stayed on track and that we gathered the necessary information from each participant.

Interviews shared common elements by design to enable responses to be directly compared and contrasted. All interviews were conducted with at least two JAS representatives present enabling one to take the lead and the other to document and cross-check responses in real time with previous interviews (potentially leading to clarifying questions). Interviews were recorded with advance permission.²

JAS solicited feedback by email to ICANN structures, past and present TLG members, and by reaching out to individuals that were referred to us or who we determined through research would have valuable perspective. A public draft was published on 23 October 2010 and an ICANN public comment period opened on the same day. During the 30 day public comment period, seven comments were received.³ JAS conducted additional interviews during the period between the public draft and final report, including interviews with all contributors to the public comments. All public comments were reviewed carefully, and many directly lead to changes in the final report. Numerous references to specific public comments may be found herein.

3.1 Weaknesses

JAS is pleased with the overall response to the TLG review. The greatest area of weakness in our analysis is the relatively high concentration of Western European and North American respondents. JAS made an effort to market the study as broadly as possible including: announcements on ICANN mailing lists, posting an email address on the public ICANN Organizational Review web site, emailing the Chairs of all relevant ICANN structures, and through networking and seeking referrals. Unfortunately, this did not translate into broad geographic participation.

We believe this is a result of straightforward self-selection bias and the reality that the TLG is relatively obscure. While it is important to be mindful of this bias, we do not believe it is debilitating for the purposes of this study. We were pleased that the release of the initial draft seemed to encourage discussion which translated to more broad participation in the review process. We note that controlling for selection bias is an ongoing challenge for ICANN organizational reviews given the extremely broad nature of the ICANN stakeholders and the high variance in the ability for external reviewers to identify and reach stakeholders in a timely fashion.

² These recordings will be destroyed at the completion of the engagement.

³ **[tlg-review-2010] Chronological Index.** Internet Corporation for Assigned Names and Numbers. 21 November 2010. Accessed 22 November 2010. < <http://forum.icann.org/lists/tlg-review-2010/>>

4 Findings

4.1 History of the TLG

The Technical Liaison Group (TLG) has the stated purpose of connecting the ICANN Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities, and formalizing ICANN's relationship with several institutions. Created during the 2002 reorganization of ICANN and the December 15, 2002 Bylaws,⁴ TLG membership is defined as the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C) and the Internet Architecture Board (IAB) committee of the Internet Engineering Task Force (IETF). Subsequent documentation regarding the TLG has proven to be quite limited.

The selection of TLG member organizations appears to be historical: ETSI, ITU-T, W3C and the IETF were the founding members of the ICANN Protocol Supporting Organization (PSO)⁵ and 1999 signatories to a Memorandum of Understanding⁶ with ICANN, recognizing each as an international standards development organization. These organizations were reported by several sources to have been chosen in part because of their direct technical relevance to the naming and numbering of the Internet and in part to build the necessary consensus and buy-in needed for ICANN to come into being. While no documentation could be located stating explicitly that the TLG "replaced" the PSO during the 2002 ICANN reorganization, the historical record and several interviewees indicate this is most likely the case.⁷

Historically, there has been consistent recognition of the importance of providing accurate and objective technical advice to ICANN and the Board. Prior to the formation of ICANN, the proposed organizational approaches to managing the Internet's unique identifiers included mechanisms to provide advice on technical matters.⁸ ⁹ While there is general agreement that such advice is important, the specific modality of this advice has been a point of debate through ICANN's history, and remains a debated topic to this very day.

⁴ **Organizational Meeting of the Transition Board Minutes.** Internet Corporation for Assigned Names and Numbers. 15 December 2002. Accessed 22 November 2010. <<http://www.icann.org/minutes/minutes-organizational-meeting-15dec02.htm>>

⁵ **Request for Comments 2690: Proposal for an MOU-Based ICANN Protocol Support Organization.** Scott Bradner. September 1999. Accessed 22 November 2010. <<http://tools.ietf.org/html/rfc2690>>

⁶ **Request for Comments 2691: A Memorandum of Understanding for an ICANN Protocol Support Organization.** Scott Bradner. September 1999. Accessed 22 November 2010. <<http://tools.ietf.org/html/rfc2690>>

⁷ **IAB Response to ICANN Evolution and Reform.** Internet Architecture Board. June 2002. Accessed 1 December 2010. <<http://www.iab.org/documents/docs/icann-response.html>>

⁸ **Institutionalizing the IANA Functions to Deliver a Stable and Accessible Global Internet for Mission Critical Business Traffic and Transactions.** Scott Bradner. 28 January 1998. Accessed 22 November 2010. <<http://www.sobco.com/presentations/1998.01.28-reng.inet.london/index.htm>>

⁹ **Generic Top Level Domain Memorandum of Understanding.** International Ad Hoc Committee. Archived 11 December 1997. Accessed 3 December 2010. <<http://web.archive.org/web/19971211190034/http://www.gtld-mou.org>>

4.2 IETF/IAB Involvement in TLG

The IETF (and, thus, IAB) has a different relationship with ICANN than the other members of the TLG; this relationship is multifaceted and memorialized in multiple formats including an MoU between the IETF and ICANN.¹⁰ As a part of this relationship, IETF has a separate liaison to the ICANN Board independent of the TLG and therefore does not participate in the TLG rotation. The IAB largely withdrew from the TLG in 2005 for reasons described in a later section of this report.

4.3 Mandate and guidance

The Technical Liaison Group was established under Article XI-A, Section 2 of the ICANN Bylaws.¹¹ Pursuant to the Bylaws, TLG's purpose is to "connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities."

The Bylaws further describe two modes of operation for the TLG:

- a. *In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.*
- b. *As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.¹²*

The Bylaws also specifically prohibit TLG from forming an identity, organizing, or becoming a body in and of itself, and from becoming involved with the IANA function or ICANN's work with the IETF/IAB:

The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

¹⁰ **Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority.** Internet Corporation for Assigned Names and Numbers. March 10, 2000. Accessed 22 November 2010. <<http://www.icann.org/en/general/ietf-icann-mou-01mar00.htm>>

¹¹ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

¹² *ibid.*

*The TLG shall have no involvement with the IANA's work for the Internet Engineering Task Force, Internet Research Task Force, or the Internet Architecture Board, as described in the Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.*¹³

4.4 Participation in ICANN governance

The TLG directly participates in ICANN governance in two ways: through an annual rotating Board liaison seat, and an annual rotating delegate to the Nominating Committee. A historical list of the individuals holding these seats is available on ICANN's web site.¹⁴

4.4.1 Individuals of high caliber

Virtually all interviewees described the individuals occupying the TLG Board liaison seat and the TLG delegate to the Nominating Committee as being exceptional in their individual capacity and additive to the respective ICANN bodies. The value of these individuals is realized informally through participation in discussion and debate rather than through any formal TLG mechanism. The high quality of past and present delegates was mentioned in nearly every interview and is further evidenced in the public comments received from Mr. Steve Goldstein and Mr. Roberto Gaetano.^{15 16}

4.4.2 Institutional relationships are not reciprocated

The level of participation in ICANN governance granted via the Board and Nominating Committee seats is not reciprocated. ICANN does not possess a comparable level of participation in the governance of ETSI, ITU-T¹⁷, or W3C (note that IAB does not participate in these rotations so there is no question of reciprocity).

4.4.3 Concern around conflicts of interest and lack of role clarity

Most interviewees described a level of concern around the participation of possibly competing entities in the governance of ICANN. The core issue is a lack of role clarity around the Board observer positions and competing fiduciary responsibilities. The ITU-T participation was of particular concern because of the occasionally competing agendas of ICANN and ITU-T. Be it perceived or actual competition, some sources described a reduced ability for the Board to openly and fully discuss specific topics as a direct result of this lack of clarity.

¹³ *ibid.*

¹⁴ **ICANN Board of Directors.** Internet Corporation for Assigned Names and Numbers. 5 June 2010. Accessed 9 October 2010. <<http://www.icann.com/en/general/board.html>>

¹⁵ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

¹⁶ **TLG Review.** Public comments of Mr. Roberto Gaetano. 20 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00005.html>>

¹⁷ **Letter from Dr Hamadoun Touré to Mr. Rod Beckstrom.** 16 August 2010. Accessed 1 December 2010. <<http://www.icann.org/en/correspondence/toure-to-beckstrom-16aug10-en.pdf>>

4.4.4 Concern around the prohibition of TLG meetings or policy advice

A minority of interviewees noted that the specific prohibitions against the TLG organizing, holding meetings, and providing policy advice to the Board as a committee are odd at best and insulting to TLG member institutions at worst.

4.5 Resourcing

TLG is not resourced by ICANN beyond travel support and some limited administrative and IT support. While not trivial, the level of financial resourcing does not appear to be significant. ETSI also generously provides some level of administrative support to the TLG on a pro-bono basis; the primary support provided by ETSI is communication and coordination among TLG members regarding seat rotation.

4.6 Historical Activity/Performance

4.6.1 Limited performance of roles described in the Bylaws

We have found no evidence that the formal invocation (the “a” mode of operation described in the Bylaws) has ever occurred. No written record of such an invocation can be located, and, without exception, none of the interviewees could recall a single invocation. The institutional response from W3C and the individual comment from Mr. Steve Goldstein also support this finding.^{18 19}

The more general liaising role (the “b” mode of operation described in the Bylaws) is more difficult to quantify; however, most interviewees described limited historical utility of this function.

As additional evidence supporting the lack of TLG activity, the IAB effectively removed itself from the TLG in 2005. From the Minutes of IAB Meetings at IETF62, March 7-11, 2005, agenda item 2:

Liaisons to ICANN TLG

*Rob Austein and Geoff Huston have served as our liaisons [SIC] to the ICANN Technical Liaison Group (TLG). As they reported very little activity in that group for the IETF, the IAB elected to leave the liaison seats vacant for now.*²⁰

This fact was further memorialized in Mr. Thomas Narten’s public comment.²¹ The reviewers note that ICANN’s TLG page presently lists the IAB position as “<tba>.”²²

¹⁸ **W3C Comments on the ICANN TLG Review.** Public comments of Mr. Thomas Roessler. 19 November 2010. Accessed 22 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00004.html>>

¹⁹ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

²⁰ **Minutes of IAB Meetings at IETF62.** Internet Engineering Task Force, Internet Architecture Board (IAB). March 7-11, 2005. Accessed 22 November 2010. <<http://www.iab.org/documents/iabmins/iabmins.2005-03-07.txt>>

²¹ **Review comments on TLG Review Report.** Public comments of Mr. Thomas Narten. 21 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00006.html>>

²² **The ICANN TLG (Technical Liaison Group).** Internet Corporation for Assigned Names and Numbers. Accessed 22 November 2010. <<http://www.icann.org/en/structure/tlg.htm>>

4.6.2 Informal value of individual contributors

Virtually all interviewees described the individuals occupying the TLG Board liaison seat as having valuable technical skills that were additive to the overall Board discussions. No feedback was available regarding the individuals occupying the Nominating Committee seat.

4.6.3 No concrete value of TLG aside from individual contributors

A minority of interviewees offered “nice to have” and “not doing any harm” arguments in favor of maintaining the TLG in present form, but failed to articulate concrete value to ICANN outside of seating technically competent individual contributors.

4.6.4 Lack of documentation

Aside from the administrative appointment of new members and recognition of exiting members, no written records of TLG activity could be located. An email list does not appear to exist. Because of the Bylaws' prohibition of TLG meetings and other self-organization, it is not clear whether the lack of documentation is appropriate or expected.

4.6.5 Structural disadvantage created by forced one-year terms

There was wide agreement that the forced one-year rotation of the TLG Board observer position made it very difficult for the individual filling that seat to be an effective Director. Board continuity and the significant amount of time it takes to get “up to speed” as an ICANN Director was discussed at length in the ICANN Board Review.²³ The forced one-year rotation of TLG members further exacerbates the issue.

4.6.6 Unique source of technical Board members

Several interviewees defended the TLG as a unique source of qualified technical Board members outside of ICANN's politicized nomination and appointment mechanisms. A minority of sources indicated a lack of confidence in ICANN's existing nominating and appointment mechanisms to identify and place talented and unbiased technically-oriented Directors.

4.7 Comparisons to peer organizations

JAS was unable to locate any peer organization with a similar mechanism. Bylaws-level inter-organizational relationships absent an investment, joint venture, or other obvious construct are rare for a host of reasons, particularly their inflexibility. The vast majority of international organizational relationships are handled through management constructs, non-fiduciary Board advisory committees and other liaison processes/activities. The reviewers note that the use of non-fiduciary advisory committees in other organizations alleviates conflict of interest issues and provides the opportunity for negotiation and customization of the institutional relationship to meet the unique needs of both organizations.

We further note that ICANN presently uses MoUs to formalize several relationships, including the relationship with IETF and the past and present relationship with the United States Department of Commerce (the “Affirmation of Commitments” could be considered a MoU). Moreover, a MoU with the

²³ *Independent Review of the Board of ICANN*. Boston Consulting Group and Colin Carter and Associates. November 2008. Accessed 3 October 2010. <<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>>

New Partnership for Africa's Development Planning and Coordinating Agency is presently being negotiated.²⁴

²⁴ **Agenda for Board Meeting – Cartagena.** Internet Corporation for Assigned Names and Numbers. 28 November 2010. Accessed 1 December 2010. <<http://www.icann.org/en/minutes/agenda-10dec10-en.htm>>

5 Analysis and Recommendations

5.1 Overview and key issues

In general there was very little disagreement about the facts regarding TLG; however, there was a wide range of opinions about how best to improve the TLG, or whether to dismantle it altogether. JAS found nearly universal recognition that TLG is odd and awkward, but is that enough to require action? We believe so. We find that the TLG has not functioned as designed, is not adding material value, and its continued existence in the current form is potentially damaging to ICANN. Historically, the structural issues have been partially obscured by the outstanding, honorable, and highly qualified people filling the liaison positions.

JAS identified two macro concerns that we believe are the root cause of several issues with respect to the TLG:

The TLG is an attempt at a “one size fits all” relationship model. JAS believes that some of the awkwardness with respect to the TLG is inherent in the reality that the TLG organizations are very different and ICANN should and must have very different relationships with these organizations. Pressing these four organizations and ICANN into the “one size fits all” TLG model has proven both ineffective and uncomfortable.

The reviewers consider that the TLG is already inconsistent due to differences in ICANN’s institutional relationships with the TLG members. Pursuant to the ICANN Bylaws, *“IAB does not participate in these rotations because the IETF otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN Nominating Committee.”*²⁵ Notwithstanding IAB’s voluntary withdraw from the TLG (described previously), the ICANN/IETF relationship is already formalized in other mechanisms, including a dedicated IETF liaison to the ICANN Board and NomCom. Similarly, the ITU has a multifaceted relationship with ICANN vis-à-vis their participation in the GAC.²⁶

The TLG mixes the objectives of (1) formalizing institutional relationships and (2) supplying unbiased technical advice to the ICANN Board. Several interviewees underscored both the importance of a reliable mechanism for providing unbiased technical advice to the ICANN Board and the importance of the formal institutional relationships TLG provides. While both of these objectives are important, JAS notes that these objectives are at times incompatible and mixing them in the present TLG construct is a source of tension. Similar concerns about the provision of technical advice to ICANN were raised by the IAB prior to the creation of the TLG.²⁷

²⁵ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

²⁶ Note discussion of this issue in Section 1 of the ITU-T institutional response.

²⁷ **IAB Response to ICANN Evolution and Reform.** Internet Architecture Board. June, 2002. Accessed 1 December 2010. <<http://www.iab.org/documents/docs/icann-response.html>>

In addition to the above macro issues, JAS identified several additional recurring themes:

- The TLG is atypical and not well understood both inside and outside of the ICANN community;
- The TLG is not used as intended and documented;
- ICANN governance participation privileges are not reciprocated by TLG organizations;
- TLG Board observers are disadvantaged by forced one-year terms; and
- ICANN is harmed by perceived or actual conflicts of interest and lack of role clarity of TLG members.

QUESTION: Does the TLG have a continuing purpose in the ICANN structure?

JAS believes the TLG is the product of a previous chapter of ICANN's history and has limited ongoing value to ICANN.²⁸ As such, JAS recommends that ICANN dismantle the TLG. We believe the primary benefit to ICANN of the TLG – placement of qualified technical persons on the Board – is more appropriately realized through the existing Board selection mechanisms, namely the Nominating Committee. As noted, previous TLG Board observers are of exceptional caliber and as such would have been outstanding candidates for Board placement through the Nominating Committee.

Dismantling the TLG provides an excellent opportunity to work toward a smaller and more efficient Board, as recommended by the independent Board review²⁹ and several interviewees.

Public comments from Dr. Steve Crocker, Mr. Steve Goldstein, Mr. Thomas Narten, and the institutional response from IAB support this recommendation.^{30 31 32}

RECOMMENDATION 1: Dismantle the TLG.

Obviously, formal relationships between institutions are both common and important. The question is not whether ICANN should have these relationships, but on the modality for formalizing such relationships. JAS recommends the “one size fits all” TLG construct be replaced by more typical and flexible non-bylaws mechanisms. Bilateral mechanisms like Memoranda of Understanding provide all parties with a flexible framework in which to negotiate and formalize the unique nature of complex institutional relationships.

RECOMMENDATION 2: Utilize non-B

²⁸ Note that the question of whether the TLG provides value to the other organizations is, of course, beyond the scope of this report. This report is solely from an ICANN perspective.

²⁹ **Independent Review of the Board of ICANN.** Boston Consulting Group and Colin Carter and Associates. November 2008. Accessed 2 October 2010. <<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>>

³⁰ **Comments on 16 Oct 2010 draft of Review of the TLG.** Dr. Steve Crocker. 16 October 2010. Accessed 19 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00000.html>>

³¹ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

³² **Review comments on TLG Review Report.** Public comments of Mr. Thomas Narten. 21 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00006.html>>

ylaws constructs such as Memoranda of Understanding (MoU) to negotiate and formally memorialize institutional relationships on a bilateral basis.

If ICANN elects not to dismantle the TLG, JAS offers several alternative considerations for potential incremental improvements to the existing TLG structure.

5.2 Technical advice to the ICANN Board

The rather odd nature of TLG as specified in the Bylaws, specifically the prohibition on becoming a cohesive body, holding meetings, or providing policy advice to the Board as a committee, essentially limits the TLG to individual contributors. The only concrete value of the TLG consistently articulated to JAS through the review process was the identification and appointment of technical expertise to the Board.

Article XI-A, section 2, subsection 3b of the ICANN Bylaws define the TLG as having a “watchdog” role:

b. As an ongoing “watchdog” activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.³³

While JAS notes that it is extremely atypical for corporate Bylaws to identify a “watchdog,” a majority of interviewees underscored the importance of having a reliable *and apolitical* technical presence in the ICANN Boardroom. A minority of interviewees expressed concern that the present ICANN Board selection mechanisms are highly politicized and may not be a reliable long-term source of objective expert technical candidates. Several interviewees defended the TLG as a *unique* and *reliable* source of technical Board members outside of ICANN’s political processes. We believe the concept of maintaining an ongoing objective technical presence in the ICANN Boardroom may be an interpretation of the “watchdog” language in the ICANN Bylaws.

Similarly, several sources supported the continued existence of the TLG largely to mitigate concerns about the existing identification and selection mechanisms and their ability to appoint technically qualified directors.

QUESTION: Does the TLG provide a unique source of objective technical experts to the ICANN Board?

JAS is sympathetic to concerns about the continued availability of objective technical advice to the ICANN Board. Based on the reviewers experience with all types of organizations, we observe that as an organization grows in size and stature, nomination and selection processes do tend to become increasingly politicized. That being said, balancing the skill sets on the Board is an organizational risk

³³ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

that ICANN must manage through the nominating processes.³⁴ While we believe that technical expertise in the Boardroom is important, we also believe that managing this risk through the TLG construct is ill-advised and ineffective. JAS notes that several concerns expressed by a majority of interviewees about the TLG are in fact largely political in nature thus questioning the potential for the TLG to be a source of apolitical technical advice. We further note that as ICANN has matured, policy decisions have been steadily pushed out of the Board and into the ICANN policy constructs. Without in any way diminishing the valuable individual contributions of past and present liaisons, the TLG’s “watchdog” role has not proven itself to have substantial unique value to ICANN nor to the Internet community as a whole.

The primary basis for our assertion that the TLG does not provide a *unique* source of technically qualified Board candidates is the fact that the outstanding past TLG Board delegates are highly qualified technical experts and could certainly have been appointed to the ICANN Board through the existing mechanisms. We note that Mr. Roberto Gaetano argues against this position in his public comment where he asserts that “*the NomCom has already multiple constraints like gender equality and geopolitical distribution, and adding a new one would make their already difficult job impossible.*”³⁵ Similarly, the public comment from Julian Pritchard (ETSI) takes the position that the TLG indeed offers a unique source of candidates:

*The suggestion that the same delegates would appear via NONCOM [sic] if the TLG is closed is a false assumption. Without the pressure that the ETSI Board puts on its membership to offer candidates due to our TLG obligations these people would probably never even appear on the NOMCOM radar screen.*³⁶

However, we do not view technical expertise as being fundamentally different from any other skill set that a Board nominating process must manage and balance, including executive leadership experience, international relations experience, financial acumen, and the like. While the marketing and outreach activities of ICANN’s Nominating Committee are far beyond the scope of this review, a lack of confidence in the existing nominating mechanisms is not a reason to create or sustain an orthogonal mechanism.

JAS believes that maintaining the mix of skill sets on the Board is the duty of the Nominating Committee, at the direction of the Board, and sees little value in maintaining TLG solely for this purpose. Article VI Section 3 in whole, and particularly Section 4, clearly obligates the Nominating Committee and

³⁴ The reviewers are sensitive to the fact that reviewing ICANN’s nominating and placement mechanisms are well beyond the remit of this report.

³⁵ **TLG Review.** Mr. Roberto Gaetano. 20 November 2010. Accessed 21 November 2010.
<<http://forum.icann.org/lists/tlg-review-2010/msg00005.html>>

³⁶ **ETSI comments on the Draft TLG Report.** Julian Pritchard. 17 November 2010. Accessed 22 November 2010.
<<http://forum.icann.org/lists/tlg-review-2010/msg00003.html>>

Supporting Organizations to staff the Board with appropriately skilled persons, including those with technical skill.³⁷

In the reviewers' past experience with a variety of organizations, overall Board skill set mix is typically and most effectively managed in a central, coordinated fashion under active management by the Board as opposed to a piecemeal approach leveraging disparate mechanisms. We further recommend that any concerns about the existing nominating and selection mechanisms are addressed head-on and not used as justification to create or sustain alternative mechanisms. Finally, there is a natural tendency for individuals to over-prioritize familiar and/or historically important skill sets. As an organization evolves, part of the evolutionary process is a critical re-evaluation of the full range of skill sets to ensure that the organization thrives.

We believe it is clear that the TLG does not provide a vector for accessing uniquely qualified individuals that the other Board selection mechanisms lack. JAS believes that maintaining the TLG solely as a source of technically qualified Board members is neither necessary nor advisable.

RECOMMENDATION 3: Reaffirm the Nominating Committee's present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

QUESTION: Does the TLG play a role with respect to ICANN's accountability to the Internet public?

In addition to technical skill, comments from Mr. Thomas Roessler (W3C) also discuss the topic of accountability:

The current Technical Liaison Group arrangement, while imperfect, provides ICANN with much needed governance-level interactions with the technical community. W3C's participation in this mechanism helps to ensure that the Web standards community is part of these interactions. It further provides a high-level accountability mechanism between ICANN and the Web community. We firmly believe that this accountability mechanism is an important element of ICANN's overall accountability to the public, and its ability to function as a trusted coordinator for the Internet's and Web's naming and numbering infrastructures.³⁸

We do not believe the TLG was intended to be an accountability mechanism, and note that the restrictions placed on the TLG in the ICANN Bylaws would make it difficult for the TLG to function in this capacity. Furthermore, the historical record does not seem to indicate that the TLG has played a role in ICANN's accountability activities/framework to date.

³⁷ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#VI>>

³⁸ **W3C Comments on the ICANN TLG Review.** Public comments of Mr. Thomas Roessler. 19 November 2010. Accessed 22 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00004.html>>

5.3 The TLG is atypical and not well understood

JAS found nearly universal recognition that TLG is odd, awkward, and not well known – even within the ICANN sphere. As discussed previously, despite fairly wide solicitations for input for this review, few individuals had input or views to share. Several individuals we contacted proactively had no familiarity with the TLG. The only value of the TLG clearly and consistently articulated to the reviewers was the placement of qualified technical persons on the Board.

QUESTION: Does the rationale for TLG as spelled out in the Bylaws need to be revised, and if so, in what sense?

Again, JAS believes the TLG is the product of a previous chapter of ICANN’s history and has limited ongoing value to ICANN. The TLG was created when ICANN was very young; now that ICANN has matured, more traditional and more flexible vectors for inter-organization relationships are appropriate. As an example, the ICANN Board and/or Management could establish active consultation mechanisms for liaising with other organizations. Bilateral Memoranda of Understanding (MoU) are a typical method to codify inter-organizational relationships and surrounding processes.

QUESTION: Did the establishment of the TLG impact – positively or adversely - the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?

It is not clear whether the TLG construct had an impact on the institutional relationships between ICANN and the TLG organizations. JAS hypothesizes that the relatively obscure nature of the TLG and limited historical activity are indications that there has been little overall impact for the better or worse. Furthermore, JAS believes that ICANN’s relationships with IETF and ITU-T in particular are far more influenced by factors well removed from the TLG for there to be any impact from the limited TLG activities. JAS believes the TLG is largely a “token” construct without any real meaning or function, and has had limited to no historical impact on any participating organization.

That being said, JAS believes the existence of the TLG has caused loyalties in the ICANN Boardroom to be questioned at times, an unfortunate and damaging occurrence. This will be discussed at length in a subsequent section.

5.4 The TLG is not used as intended

QUESTION: Has the TLG been effective in achieving its objectives as defined in Article XI-A Section 2 of ICANN Bylaws?

No. We have been unable to find any evidence that formal invocations of the TLG have ever occurred. The liaising function with the W3C, ETSI, and ITU-T is largely ineffective. We believe liaising with these (and other) organizations is better accomplished through other mechanisms.

As ICANN has matured, policy decisions have been steadily pushed out of the Board and into the policy constructs. Injecting technical advice at Board level actually makes it more difficult to sustain this

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model, and it creates the undesirable opportunity for lobbying at the Board level as opposed to within the policy constructs.

QUESTION: Are W3C, ETSI, and ITU-T the right organizations to be represented on the TLG?

Several interviewees identified ETSI as a “regional standards body” and questioned their presence on the TLG. In contrast, several other interviewees, including the institutional response from ETSI, made strong arguments that ETSI is in fact a “global standards body.” Fortunately, for the purpose of this review, it isn’t important to somehow classify ETSI’s scope, but merely to point-out the varying opinions within the stakeholder community.

For those who regard ETSI as a regional standards body, their membership in the TLG is troubling in that it blurs the line between a pure technical advisory body and a body representing regional interests, particularly when no other regions are represented in this way. For those who believe ETSI is a global standards body, their membership in TLG seems entirely appropriate and similar to ITU-T, W3C and the IAB.

QUESTION: Should other organizations and/or standards bodies be added to the TLG?

This issue opens a "slippery slope" problem for ICANN. As the saying goes: *The beauty of standards is that there are so many to choose from.* Opening the TLG to additional standards body membership would likely open a flood of “if X then why not Y?” arguments which would be damaging and counterproductive. Any approach to augmenting TLG membership must be undertaken carefully in a structured fashion.

Several sources noted that the IEEE and the Unicode Consortium may be appropriate additions to the TLG. Fewer recommended ACM, ISO, and ANSI be considered.

JAS notes that the present TLG membership was set in 1999 given the needs of ICANN at the time, the state of the Internet at the time, and the bodies that existed at the time. If the TLG is not dismantled, it should be rebuilt considering the present slate of global technical bodies, the present needs of ICANN, and the technologies currently in-play on the Internet. A full range of global, technically-oriented organizations should be considered for TLG membership against specific objectives set by the ICANN Board.

ALTERNATIVE CONSIDERATION I: If the TLG is not dismantled, consider rebuilding the TLG membership pursuant to criteria and objectives set by the ICANN Board with the full range of global, technically-oriented organizations presently in existence considered for membership.

QUESTION: What elements – if any - prevented the full achievement of TLG’s objectives?

The TLG is not used as intended because: (1) it does not receive formal tasking from the Board; (2) is prohibited from proactively offering counsel in many areas; and (3) the utility of TLG organizations liaising with ICANN through the TLG construct is in doubt.

5.5 ICANN governance participation privileges are not reciprocated by TLG organizations

JAS found it surprising and atypical that none of the TLG organizations have reciprocated the governance participation privilege that ICANN has granted through the TLG mechanism. We believe this too is an artifact of the past when ICANN was a very different organization. We strongly believe governance participation privileges at the highest level – participation on the Board – should and must be reciprocated to form effective peer relationships.

ALTERNATIVE CONSIDERATION II: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

5.6 TLG Board observers are disadvantaged by forced one-year terms

The Board review and a majority of interviewees noted that continuity of the ICANN Board is an issue. Even with three-year terms, the significant learning curve together with the historically low reappointment rate of Nominating Committee-selected Directors creates a high level of Director churn. The TLG-appointed observers are further disadvantaged by a forced one-year term with limited reappointment potential.³⁹ This makes it extremely difficult for the TLG-appointed Director to be a meaningful contributor to the Board.

That being said, extending TLG Board appointments involves a number of moving parts. At present, the seat is determined by a three-year institutional rotation, making continuity impossible.

ALTERNATIVE CONSIDERATION III: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

This would put the TLG-appointed Director on par with the rest of the Board and give them an opportunity to be a contributor. Note that this recommendation must not be considered in a vacuum as the issue of term is highly related to subsequent discussion and recommendations; further, care must be given to the design of the nomination and voting mechanism to ensure functionality and fairness.

5.7 ICANN is harmed by conflicts of interest and lack of role clarity of TLG members

Almost all interviewees noted concerns about ITU-T’s participation in the TLG. The core issue is one of role clarity: when an ITU-T representative sits in the TLG-appointed Board observer seat, is that

³⁹ Noting that the seat rotates through three organizations; the earliest opportunity for reappointment would be in three years.

individual an ICANN fiduciary concerned with ICANN’s best interests, or an ITU-T fiduciary concerned with ITU-T’s best interests? The question moves from unclear to untenable when the observer is an employee of, or under contract with, a competing organization. JAS finds it impossible to rectify the conflict of interest in such a scenario and sees no alternative but to remove actual or perceived competitors from the fiduciary Board.

Any scenario where the loyalties of the individuals in the Board room are unclear sets in motion a host of undesirable activities to “work around” these issues. JAS has some evidence that such “working around” has occurred in the past as a direct result of such a presence in the Board room. We find it challenging at best for a competitor to have such a significant role in ICANN’s governance spelled out in the Bylaws and again note that ICANN has no such role in any TLG organization’s governance.

Within the stakeholder community, ICANN and ITU-T are occasionally viewed as competitors.⁴⁰ At present, the other TLG organizations are not perceived as ICANN competitors, so this concern was initially directed specifically at ITU-T. However, JAS believes this is a symptom of two larger governance problems: the lack of Board observer role clarity and the atypical nature of the TLG construct. ITU-T is the present concern, but any of the TLG participants could be of concern now or in the future. If TLG is not disbanded, it must be re-architected to address this issue systemically.

JAS is sensitive to the assertion made by several sources that managing conflicts of interest is a normal part of corporate Board membership. The ICANN Board regularly deals with perceived and actual conflicts and ICANN Board members regularly recuse themselves from specific conversations. However, JAS draws a distinction between directors being occasionally conflicted on particular issues and directors being systemically and/or institutionally conflicted on an ongoing basis. JAS further notes that it is exceedingly rare for institutional competitors to share Board members for these reasons. JAS finds occasional issue-based conflicts typical and manageable, but systemic and persistent institutional conflicts untenable.

JAS finds this to be a serious and dangerous issue that ICANN must address. Absent a resolution on this issue, the ICANN Board will be forced to avoid or postpone critical conversations, or to fragment. This is a serious risk and is damaging to ICANN.

ALTERNATIVE CONSIDERATION IV: Address the issue of role clarity for the TLG liaison (or for all liaison roles). Clearly specify a duty of loyalty to ICANN for the Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

Absent a clear duty of loyalty to ICANN, one option is a periodic mutual briefing structure where the TLG liaison is invited to brief the ICANN Board on the activities of TLG organizations and the TLG liaison is briefed on ICANN’s activities. JAS notes that effective liaison relationships rarely require the capacity of a dedicated Board member; structured mutual briefings are often much more effective as they don’t present ongoing conflict of interest concerns and likely have a much higher signal to noise ratio allowing the organizations to effectively focus on the topics where liaising is necessary.

⁴⁰ Please note the counterargument in the institutional response from ITU-T.

6 Institutional Responses

Please note that institutional responses were formulated based on the public draft of this report dated 23 October 2010. JAS took all public comments – including institutional responses – into consideration while preparing the final draft of this report.

6.1 ETSI

General comments:

The draft Report totally ignores ETSI's activities as a Global SDO. The draft Report totally ignores the history of ETSI's involvement with ICANN. The TLG appeared in the ICANN reform as the place where standardization organizations, formerly represented in the Protocol Supporting Organization (PSO) and the Domain Names Supporting Organization (DNSO), continued having a role in ICANN after the abolishment of the PSO. Under the PSO rules members had to be considered as 'international', and the "full" members had to include individuals or companies primarily located in at least three different regions and at least two different countries within each of those regions. ETSI's wide international membership base (today over 700 members from more than 60 countries) was more than sufficient for accreditation as "International" rather than "Regional" in the ICANN context. In the DNSO, ETSI was present via CORE, the Committee of Registrars, of which ETSI was a founding member. ETSI was also responsible for the creation of the CORE Database used for DNS registration.

The TLG allows ETSI to participate in a formal way to ICANN. ETSI has supported ICANN for a long time, and the participation in the TLG shows this commitment to the support. Technical Liaisons have an important role to ensure that ICANN has the right balance in technical knowledge. The ICANN Board seat allows ETSI to bring technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective). The ICANN Board liaison provides valuable information back to ETSI members which helps to ensure technical compatibility issue and interoperability.

Specific comments (numbered with respect to the draft TLG Report):

4.2.2 Institutional relationships are not reciprocated

Reciprocity was never mentioned before and has never been requested by ICANN so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies (as a result Roberto Gaetano attended a number of times when he was ICANN Board Vice-Chair).

It is doubtful that ICANN participation to the ETSI Board would bring any value to ICANN. However, ETSI participation to ICANN brings technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective).

4.2.3 Concern around conflicts of interest and lack of role clarity

There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives. The ETSI role is quite clear; e.g. to provide technical understanding and clarification.

5.1 Overview and key issues

ICANN governance participation privileges are not reciprocated by TLG organizations. Same response as for 4.2.2 above: Reciprocity was never mentioned before and has never been requested by ICANN so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies (as a result Roberto Gaetano attended a number of times when he was ICANN Board Vice-Chair). It is doubtful that ICANN participation to the ETSI Board would bring any value to ICANN. However, ETSI participation to ICANN brings technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective).

ICANN is harmed by conflicts of interest and lack of role clarity of TLG members.

Same response as for 4.2.3 above: There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives. The ETSI role is quite clear; e.g. to provide technical understanding and clarification.

5.2 The TLG is atypical and not well understood

QUESTION: Does the TLG provide a unique source of qualified technical Board members?

The suggestion that the same delegates would appear via NONCOM [SIC] if the TLG is closed is a false assumption. Without the pressure that the ETSI Board puts on its membership to offer candidates due to our TLG obligations these people would probably never even appear on the NOMCOM radar screen.

5.3 The TLG is not used as intended

QUESTION: Are W3C, ETSI, and ITU-T the right organizations to be represented on the TLG?

RECOMMENDATION 3: If the TLG is not dismantled, consider removing region-specific representation from the TLG, specifically ETSI.

The text in this section of the report show a total lack understanding of ETSI and it's global role. Characterizing ETSI as a Regional SDO is wrong in this context. In the ICANN context ETSI is operating as a "global" SDO representing the interests of 700+ members from 60+ countries rather than in it's European ESO-role. ETSI is the birth place of GSM and the home of the 3GPP secretariat therefore ETSI also brings the technical knowledge from the mobile sector to ICANN and in addition, the work in ETSI TC TISPAN supplementing the IETF work is of significant importance. ETSI is primary a technical organization and provides Technical Specifications to support the Internet infrastructure! See also, the comment above on the history ETSI's involvement with ICANN and accreditation as an International body under the PSO rules.

QUESTION: What structural and operational measures can be imagined to enhance the effectiveness of the TLG?

Although the TLG is not allowed to hold meetings nor to perform internal consultations a certain amount of co-ordination is required to ensure that the rotating seats on the ICANN Board and NOMCOM are filled with suitable candidates from the appropriate TLG organizations. The Governance Support Director has provided that service since 2004, acting as a co-ordination point and issuing reminders to the ETSI Board, ITU-T TSB Director, and W3C in due

time, and also maintaining contact with the ICANN Board and NOMCOM Secretariats. If the TLG continues then this coordination function should either be formalised or clearly taken-over by the ICANN Secretariat. ETSI is more than happy to continue offering this co-ordination function.

5.4 ICANN governance participation privileges are not reciprocated by TLG organizations

Same response as for 4.2.2 and 5.1 above: There was never any request for reciprocity, so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies. ETSI provides ICANN with a valuable resource in the form of delegates to the ICANN board and the NomCom, this person is paid by the ETSI member he/she works for which costs their company time and real money. So, in practical term ETSI is investing to ICANN. Within ETSI ICANN is treated in the same way as if ETSI & ICANN had signed a formal Memorandum of Understanding (even though no such paper exists in this case).

5.6 ICANN is harmed by conflicts of interest and lack of role clarity of TLG members There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives.

These comments have been endorsed at the ETSI Board meeting #80 on 5 November 2010.

Julian Pritchard
Governance Support Director & ETSI Board Secretary
ETSI (European Telecommunications Standards Institute)

6.2 IAB

Dear Colleagues,

A few weeks ago the IAB received a request from JAS Communications LLC for the review of the Technical Liaison Group. For the IAB I would like to offer a short initial response.

First, we support the recommendation to dismantle the TLG and agree with the JAS summary that it is "is an antiquated structure of limited utility in the ICANN of today."

However in the discussions about dismantling the TLG and in particular the discussion that led to Recommendation 2 the report opens the question of "technically qualified directors", a question that goes beyond review of the TLG.

We believe that it is critical for ICANN broadly (and the board specifically) to operate from a solid basis of technical and operational skills (e.g. in the area of broad Internet Architecture and in the specifics of use and stability of identifiers). We are concerned that ICANN does not have adequate mechanisms for guaranteeing sufficient representation of technically qualified Directors. It is not clear to us that Recommendation 2, and a reminder to the Nomcom in particular, are an adequate vehicle to resolve these concerns.

The IAB intends to investigate these concerns and their validity further. In doing so we would expect to develop a position that might lead to amendments or even contradictions of Recommendations 2. For example, development of that position might lead to further thoughts on the role of an ICANN board liaison and therefore relate to Recommendation 7.

For completeness, the IAB notes that in its March 7, 2005 meeting we elected to leave the IAB-appointed seat on the TLG vacant. That decision was based on reports of very little activity in the group by those who had acted in that membership role. (<http://www.iab.org/documents/iabmins/iabmins.2005-03-07.html>)

For the IAB,

--Olaf Kolkman
IAB Chair.

The Internet Architecture Board
www.iab.org
[EMAIL ADDRESS REMOVED]

6.3 ITU-T

I would like to thank for the opportunity to comment on the draft report "Review of the Technical Liaison Group (TLG)" prepared by JAS Communications for ICANN and issued on 23 October 2010 for public comment (<http://www.icann.org/en/reviews/tlg/tlg-review-draft-report-16oct10-en.pdf>). The draft report makes numerous references to ITU-T and its relationship to ICANN, in particular to the perceived competitiveness between ICANN and, as the draft report states, ITU-T.

1 - As matters related to ITU often tend to be misrepresented, especially in the Internet community, I would like to recall the following.

ITU comprises three Sectors: ITU-T (Standardization), ITU-R (Radiocommunication) and ITU-D (Development). It is ITU-T, the Telecommunication Standardization Sector, which has an observer seat on the TLG, not ITU. But it is ITU, not ITU-T, which has an observer seat on the GAC, the Governmental Advisory Committee.

Some of ITU-T's most well-known standards include:

- ITU-T H.264, an advanced video compression standard, jointly developed with ISO and IEC, which can be found in more than a billion consumer devices and for which ITU-T has received Hollywood's prestigious Primetime Emmy award;
- ADSL/VDSL standards without which many consumers would not be able to benefit from high-speed Internet access;
- Optical networking standards without which the Internet would come to a halt.

Currently, some of the work which receives highest attention in the market includes

- ITU-T's home networking standard ("G.hn"), a next generation wired home networking standard which supports high-speed communication over power lines, phone lines and coaxial cable;
- ITU-T L.1000 "Universal power adapter and charger solution for mobile terminals and other ICT devices";
- ITU-T's work related to ICTs (Information and Communication Technologies) and climate change which includes the development of a standardized methodology for measuring the emissions caused by ICT throughout their lifecycle, as well as the positive effects in, for instance, cutting energy requirements.

2 - ITU has a diverse membership comprising Member States (the governments) and Sector Members (non-governmental entities and mainly private sector). In ITU-T, most of the work (95%) is done by the Sector Members. Due to ITU's diverse membership it is not surprising that opinions can span a wide range at times. However, all too often an opinion of a single Member State is portrayed as "the ITU

opinion." This is not correct. Correct would be to say that a Member State, or a group of Member States, have a certain opinion. ITU's opinion is reflected in its Resolutions and Decisions as approved by its various conferences, some of which are treaty making conferences (this is, in particular, the case for the Plenipotentiary Conference, the supreme organ of ITU).

3 - I disagree that ITU-T is singled out in the discussion on conflict of interest. Any ICANN Board Member could have a potential conflict of interest. Corporate boards routinely include people from companies that could be potential competitors, and it should not be too difficult to cite best practices of corporate boards. The ITU-T representative signs the same forms as any other ICANN Board member, so the question of divided loyalty for the ITU-T representative is as relevant or irrelevant as it is for any other ICANN Board Member. To my knowledge, nobody ever expressed any doubts about inappropriate behavior of an ITU-T representative on the ICANN Board.

4 - The draft report implies that some people think that ITU and ICANN are competitors, or are perceived as competitors. However, ITU's Plenipotentiary Conference (October 2010) has made clear the need for ITU and ICANN to cooperate. To cite but one example: ITU resolves "to explore ways and means for greater collaboration and coordination between ITU and relevant organizations¹ involved in the development of IP-based networks and the future internet, through cooperation agreements, as appropriate, in order to increase the role of ITU in Internet governance so as to ensure maximum benefits to the global community;

- 1 [footnote] including, but not limited to, the Internet Corporation for Assigned Names and Numbers (ICANN), the regional Internet registries (RIRs), the Internet Engineering
- 2 Task Force (IETF), the Internet Society (ISOC) and the World Wide Web Consortium (W3C), on the basis of reciprocity."

5 - Regarding making reciprocity a condition of participation for TLG organizations: nothing prevents ICANN from applying for a Sector Membership in ITU-T, ITU-R and/or ITU-D. As a Sector Member, ICANN would enjoy the same rights as any other Sector Member and would therefore have much more weight in ITU than, say, ITU-T in ICANN.

6 - The ICANN Bylaws say: "The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities." I wish to reiterate that ITU-T is more than happy to collaborate with ICANN on standards matters.

7 - ITU remains committed to working towards collaboration and cooperation with ICANN as appropriate and on the basis of reciprocity (including through the MoU which ITU Management has previously suggested) as expressed in ITU's Plenipotentiary Resolutions (October 2010) referred to above.

Reinhard Scholl,
Deputy to the Director of the Telecommunication Standardization Bureau,
TLG Liaison 2008

6.4 W3C

We appreciate the opportunity to comment on the Technical Liaison Group Review report prepared by JAS Communications for ICANN: <http://www.icann.org/en/reviews/tlg/tlg-review-draft-report-16oct10-en.pdf>

While we do not agree with several of the details of this report, we will not elaborate on these. Instead, this comment focuses on the high-level issues.

The Technical Liaison Group fulfills three functions within ICANN, each of which deserves a separate discussion.

1. Responding to direct technical questions from ICANN. We are not aware that this mechanism has actually been used as envisioned in the ICANN Bylaws. We agree with the reviewers that the details of this mechanism do not need to raise to a bylaw level function within the ICANN structure. However, the Bylaws' observations on ICANN's need with respect to technical input are apt:

The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important.

We believe that these principles continue to hold, and remain willing to assist ICANN by collaborating on technical matters as needed.

2. Participation in ICANN's Nominating Committee, in a voting facility. The design of the ICANN Nominating Committee aims at broad participation of stakeholders in the Internet Ecosystem, beyond the immediate ICANN community. This design provides important safeguards for ICANN's ability to function as a broadly accountable and independent organization. We recommend to consider standardization organizations' role in the Nominating Committee with this background, and remain willing to assist ICANN by naming a representative to this committee.

On a mechanical note, we have not found the annual rotation arrangement for the TLG to be an obstacle to effective participation in the nominating committee, since this committee is reconvened on an annual basis.

3. Participation on the ICANN Board, in a liaison facility. In the Affirmation of Commitments [1], ICANN reinforces its commitment to "maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet", and "to operate as a multi-stakeholder, private sector led organization with input from the public." Broad participation in ICANN's governance process is a critical element of this multi-stakeholder nature, as is recognized by ICANN's own board review working group [2]:

Having carefully considered the multiple aspects related to the size and composition of the Board of ICANN, the WG has concluded that the reviewers' recommendation to adopt major reductions of the size of the Board was inappropriately based on practices of the corporate sector. ICANN does not fit easily into a corporate model for a number of reasons, including: the cultural and geographic diversity of its stakeholder base; the plurality of tasks assigned to the Board; and the nature of ICANN's mission.

Further, the board review working group notes on liaisons' role:

In particular, the WG is keen to ensure that any change to the current Liaison arrangements does not impede or decrease the much needed interactions between the Board and the technical community.

On the balance of these perspectives, the WG has concluded that no change needs to be made to the current Liaison arrangements at this point.

The current Technical Liaison Group arrangement, while imperfect, provides ICANN with much needed governance-level interactions with the technical community. W3C's participation in this mechanism helps to ensure that the Web standards community is part of these interactions. It further provides a high-level accountability mechanism between ICANN and the Web community. We firmly believe that this accountability mechanism is an important element of ICANN's overall accountability to the public, and its ability to function as a trusted coordinator for the Internet's and Web's naming and numbering infrastructures.

We look forward to further discussions about improvements of this mechanism.

[1] <http://www.icann.org/en/announcements/announcement-30sep09-en.htm>

[2] <http://icann.org/en/reviews/board/board-review-final-26jan10-en.pdf>

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Thomas Roessler, W3C <tlr@xxxxxx> (@roessler)

7 Sources

Anonymous (n=1)	Wolfgang Kleinwächter
Scott Bradner	Cheryl Langdon-Orr
Eric Brunner-Williams	Marco Lorenzoni
Bernardo Correia	Thomas Narten
Steve Crocker	Julian Pritchard
Leslie Daigle	Thomas Roessler
Francisco da Silva	George Sadowsky
Chris Disspain	Reinhard Scholl
Roberto Gaetano	Jonne Soininen
Steve Goldstein	Fernando Soriano
Chuck Gomes	Peter Dengate Thrush
Richard Hill	Richard Thwaites
Dennis Jennings	Paul Twomey

2011-03-18-13 Annex TLG Review Summary of Public Comments

Summary of Public Comments on the Independent External Consultant’s Final Report on the TLG Review

This document provides an overview of the public comments¹ received in response to the [Final Report](#), issued by the independent external consultant JAS Communications LLC, which features 3 final recommendations, suggests a number of “alternative considerations” and offers extensive analysis. The comments are grouped per recommendation addressed and responses without such references are summarized under "General Comments". The summary does in no way substitute for the original contributions, which should be consulted for complete information. The number of comments submitted on this paper tallies up to one. This comment is hyperlinked below for easy access and available at: <http://icann.org/en/public-comment/#tlg-final-report>

Contributions provided by:

[European Telecommunications Standards Institute](#)

ETSI

RECOMMENDATION/CONCLUSION	SUMMARY OF COMMENTS
General comments	ETSI: ‘This version of the Report is much improved compared to the first draft.’
<p>5.5 ICANN governance participation privileges are not reciprocated by TLG organizations</p> <p>JAS found it surprising and atypical that none of the TLG organizations have reciprocated the governance participation privilege that ICANN has granted through the TLG mechanism. We believe this too is an artifact of the past when ICANN was a very different organization. We strongly believe governance participation privileges at the highest level – participation on the Board – should and must be reciprocated to form effective peer relationships.</p> <p><u>ALTERNATIVE CONSIDERATION II</u>: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.</p>	<p>ETSI: ‘Section 5.5 still misses the point about reciprocity where it states "... We strongly believe governance participation privileges at the highest level - participation on the Board - should and must be reciprocated to form effective peer relationships..."’</p> <p>ETSI ‘Reciprocity has to be targeted at the appropriate level in the structure of the peer TLG member body. Giving ICANN access to the ETSI Board would probably be pointless for both sides. In ETSI, it may be more appropriate to give ICANN access to the ETSI GA (as we do at the moment) and/or OCG and/or directly to the related Technical Committees as we do with the mapping annexes to our Partnership Agreements with other bodies. In any case, it should be a bilateral peer-peer arrangement at the highest most appropriate level, not necessarily Board-level (... in ETSI the Board is not the highest level of governance!).’</p>

¹ The public comment period ran from 10 December 2010 to 24 January 2011.

2011-03-18-14 Annex Fast Track Review

ANNEX TO BOARD SUBMISSION NO. 2011-03-18-14

SUBMISSION TITLE: Results of IDN ccTLD Fast Track Review

The first review of the Fast Track program sought community input on a variety of identified topics: Transparency, Community Support, Meaningfulness, Determination of the IDN ccTLD Manager, IDN Tables, Confusingly Similar Strings, Disputes and Objections/Re-evaluation Rights. While the Summary And Analysis, attached hereto as Exhibit A, contains a detailed mapping of the relevant topics to the suggested recommendations, this is an executive summary of all recommendations arising out of the review of the Fast Track Process.

1. **Community Support:**

Two aspects of community support were addressed in the review: (1) a clarification of the differences in the community support requirements between the Fast Track string evaluation process and the IANA delegation process; and (2) that the Fast Track string evaluation process community support requirements may be met in differing ways among applicants.

Recommendations Arising From Review:

- No immediate changes recommended in the IDN ccTLD Fast Track Process.
- ICANN already implemented modifications to requester communication on the community support topic, and in this way enhanced the information made available about the differences in community support requirements between the two stages, as well as further information on how applicants can satisfy the community support documentation at the string evaluation stage. The enhanced communication is a clarification and introduces no changes to the process.
- Another recommendation is to review the documentation currently provided to requestors regarding differences between processes, and revise the documentation to reduce requester confusion on this issue.

2. **Confusing similarity assessment:**

Per the Final Implementation Plan for IDN ccTLD Fast Process, the stability panel checks for string similarity between applied for strings and existing TLDs as well as all possible 2-character ASCII strings (to prevent conflict with the allocation of ASCII ccTLD strings based on the alpha-2 codes defined by ISO 3166-1).

As explained in Exhibit A, a large number of comments were received from individuals and entities in the Bulgarian Internet community, asking that ICANN re-evaluate the Bulgarian IDN ccTLD request for .bg in Cyrillic because of an assessment by the DNS Stability Panel that the string was confusingly similar to an existing ccTLD extension.

Recommendations Arising From Review:

- The more strings processed through the IDN ccTLD Fast Track Process, the more difficult the assessment is going to be in terms of confusing similarity. Rules of assessing confusing similarity should be clarified through discussions with the community. This will start with a session scheduled for the ICANN Silicon Valley meeting in San Francisco, March 2011. The goal of this session is to review the results of the first IDN ccTLD Fast Track Process Review with a special emphasis on the confusing similarity assessment criteria.
- In addition, ICANN and UNESCO recently entered into a Letter of Intent to engage in a project directed at providing linguistic and script assistance for those seeking to apply for IDNs in Cyrillic.

3. **Transparency:**

The Fast Track process rules impose strict confidentiality around application procedures. Until a string passes the string evaluation stage, confidentiality of the identity of the applicant and the requested string are maintained. Upon successful completion of the String Evaluation Stage, while the requester and string are announced publicly, no other application material is publicly released. This strict confidentiality allows the requesting country or territory to work within their community and relevant public authorities on meeting the string evaluation requirements without influences that may be caused by the request details being made public before the string is approved. Comments received in the Fast Track review supported two competing notions; some, including the ccNSO, supported the maintenance of the level of confidentiality of

application materials that is currently observed in the Fast Track Process. Others requested the release of the application materials earlier in the process. Some commenters also requested the publication of string evaluation reports.

Recommendations Arising From Review:

- No immediate changes are recommended in the IDN ccTLD Fast Track Process. The recommendation concurs with ccNSO’s view supporting the continued maintenance of confidentiality between ICANN and the requestor during string evaluation.
- The recommendation is to continue to keep applied for strings confidential until such time the request successfully passes string evaluation and is announced on the ICANN website.
- The recommendation is to continue to share the string evaluation reports with the requester and to not publish the reports publically.
- The requester may select to make their application or related information public.

4. IDN Tables

All applicants must submit an IDN Table(s) with their request in the Fast Track Process. Once the requested IDN ccTLD is delegated in the DNS, IDN ccTLD managers are required to publish their IDN Table in the IDN Practices Repository. The IANA Functions maintains a collection of IDN tables in what is known as the IDN Practices Repository. Per the IDN Guidelines, IDN ccTLD managers, and IDN capable gTLD registries are required to submit their IDN Tables to the IANA Functions Department for publication in the IDN Practices Repository. This service is provided by ICANN solely for informational sharing purposes.

IDN tables were discussed at length both during the public session as well as the public comment period. Some suggested the continued discussion of making the IDN Tables better due to security concerns, others suggested ICANN remain at status quo in regards to how the tables are reviewed in the Fast Track Process (ie. ICANN should not initiate validating the actual content in the tables). One commenter suggested ICANN should stop publishing the IANA IDN Practices Repository. There are concerns that publishing such a repository “inserts ICANN into registry naming policy.” More comments also

discussed the ability of registries to reuse an IDN table if one is already published. One commenter asked if the display of the tables in the IDN Practices Repository can be improved.

Recommendations Arising From Review:

- No immediate changes are recommended for IDN ccTLD Fast Track Process. The recommendation is to continue to ensure that IDN tables are provided by each applicant and that tables are prepared in accordance with requirements of the IDNA protocol, IDN Guidelines, and IDN Tables Repository.
- While no immediate change to the process is recommended at this time, the recommendation is to review the IDN Tables display for possible enhancements and to consider support of table reuse.
- On the broader subject of treatment of IDN tables, it is recommended that the role and effect of IDN tables be redirected to the project on issues regarding delegation of variant TLDs and be introduced for consideration in the ccNSO PDP. If those forums are unable to progress the work, an alternative is to form a separate working group. Staff will work with the IDN Variant Project team members to determine if the IDN tables discussion is best suited in this project and report progress to the Board at a later time.
- Regarding the security issue raised by the inaccuracy of IDN tables, there is a lack of educational materials available at the moment on this subject. The recommendation is for further work on this topic to be addressed as part of the variant management work.

5. Disputes and Objections

Several commenters noted that the Fast Track was intended to be for clear cases and non-controversial requests. Many commenters from the Bulgarian Internet community members requested that ICANN provide a mechanism for appeal or re-evaluation of Bulgaria's request for .бг (.bg in Cyrillic). The Bulgarian Internet community has made the request for reconsideration in several other forums as well in response to the call for public comment.

Recommendations Arising From Review:

- As the subject of a more permanent policy regarding the creation of IDN ccTLDs is part of policy development work within the ccNSO, and there has been no directive that the intent of the Fast Track Process should be broadened from its limited scope and application where no disputes or issues exist, ICANN recommends no changes to the IDN ccTLD Fast Track Process at this time. The creation of an appeals process within the Fast Track, or a detailed objection procedure, would expand the scope of the initial, interim process and infringe on the policy work arising out of the ccNSO to create a permanent process.

6. Variants

The comments concerning variants expressed concern about the lack of a clear definition for variants and a description of the problems associated with delegation of variants in the root zone. Some in the technical community stated that the discussion on delegating variant TLDs must not continue until a clear definition of the problem has been reached. The following comment summarizes the concerns expressed in the comments:

- 1) that ICANN stop talking about variants unless ICANN is prepared to supply one or more clear and concise definitions.*
- 2) if requesters are able to continue submitting variants, then ICANN should require that they explain their relationships and explicitly indicate which form they are requesting be immediately delegated , which form they are hoping to be delegated eventually, and which form they are merely trying to have reserved forever.*
- 3) applicants requesting delegation of variants be required to explicitly indicate whether they are looking for aliases/synonyms with a single delegation tree or whether they are looking for multiple delegation trees that they intend to manage in a linked way.*

Recommendations Arising From Review:

- No immediate changes are recommended in the IDN ccTLD Fast Track Process.
- ICANN has initiated a major project to evaluate the variant management issue as outlined in the ICANN released **Draft Proposal for the Study of Issues**

Related to the Delegation of IDN Variant TLDs

(<http://www.icann.org/en/announcements/announcement-5-21feb11-en.htm>).

7. Notification of Global Resources

Commenters suggested including a mechanism whereby operators of new IDN ccTLDs receive a checklist that identifies some of the global resources that can be notified about the coming availability of their IDN ccTLD, such as the Mozilla Foundation.

Recommendations Arising From Review:

- ICANN will explore potential ways to provide such a mechanism. This is not anticipated to require a change in the Fast Track Process Implementation Plan.

8. ccTLD records in the IANA Whois Database

Commenter suggested that where the operator of an IDN ccTLD is the same ASCII ccTLD operator for a given country or territory, the IANA Whois record should be linked. However, no two (or more) TLDs are “linked” in the ICANN system; each is a unique TLD. Changes in the ASCII TLD do not prompt staff to apply the same changes to the IDN ccTLD unless instructed to do so by the ccTLD managers/completed through IANA root zone change process.

Recommendations Arising From Review:

- No immediate changes are recommended for IDN ccTLD Fast Track Process. This feedback will be provided to the IANA Functions Department for their input on the technical feasibility of this suggestion.

Submitted by: Naela Sarras

Position: Manager, IDN Fast Track

Date Noted: 2 March 2011

Email and Phone Number: naela.sarras@icann.org, +1 310 301 5819

2011-03-18-14 Annex Fast Track Review Exhibit A - Summary and Analysis of Comments



2011-03-18-14 Annex to Board Submission

**ICANN Recommendations of Public Comments Received on the
Review of the IDN ccTLD Fast Track Process**



1. Background

Per the Final Implementation Plan for IDN ccTLD Fast Track Process, approved by the ICANN Board at its annual meeting in Seoul, Republic of Korea on 30 October 2009 (<http://www.icann.org/en/minutes/resolutions-30oct09-en.htm#2>), the ICANN Board directed staff to “monitor the operation of the IDN ccTLD Fast Track process at regular intervals to ensure its smooth operation, and, subject to Board review, update the process when new technology or policies become available, with the goal to efficiently meet the needs of Fast Track process requesters, and to best meet the needs of the global Internet community.”

On 22 October 2010, ICANN announced its first review of the IDN ccTLD Fast Track Process.

A public comment period ran from 22 October to 17 December 2010 and was subsequently extended to 31 January 2011 at community request. The archive of public comments can be found at: <http://forum.icann.org/lists/fast-track-review-2010/>.

A public session was held during the ICANN meeting in Cartagena on 6 December 2010 to further discuss how well the process was functioning for the community. Information about this session can be found at: <http://cartagena39.icann.org/node/15415>.

2. Summary of Comments

ICANN received input on the IDN ccTLD Fast Track Review from individual Internet users, the DNS technical community, APRALO, the Hong Kong Internet Registration Corporation (HKIRC) and the Country Code Names Supporting Organization (ccNSO). An analysis of these comments along with ICANN recommendations is provided below.

Main Themes

1. A large number of comments were received from individuals and entities in the Bulgarian Internet community, asking that ICANN re-evaluate the Bulgarian IDN ccTLD request for .bg in Cyrillic. Many questioned the transparency of the decision that found the applied for Bulgarian string was too similar to .br. Several commenters proposed that the requested string is not confusable with “.br.” The commenters further proposed that because the proposed string is not confusable with .br, the applied-for string should be accepted by ICANN within the Fast Track Process. Alternatively, the Country Code Names Supporting Organization (ccNSO) stated that disputes and objection/re-evaluation are policy issues that should not be addressed through an amendment to the Fast Track Process.
2. The ccNSO, APRALO, HKIRC and Jothan Frakes commended the successful launch of the Fast Track process. The ccNSO and HKIRC noted that the transparency in the process was appropriate and maintaining confidentiality during string evaluation allows requesting countries and territories to resolve issues of public authority and community-support without undue politicization of the process.
3. Several members of the DNS technical community noted issues with the treatment of IDN tables. One comment suggested that it was time for ICANN to stop publishing the IANA



Repository. Several noted that this inserts ICANN into registry naming policy. The ccNSO stated that this was a policy issue not appropriately addressed in ICANN implementation processes. One comment stated that ICANN should not engage in or actively foster the management of IDN tables.

4. Several commenters noted that the Fast Track was intended to be for clear cases and non-controversial requests. If the Fast Track process is to continue, issues with confusable strings as mentioned in the comments, will continue to arise.
5. Several commenters raised the issue of variants.

The comment forum can be viewed at <http://forum.icann.org/lists/fast-track-review-2010/>.

3. Analysis and ICANN Recommendations

To facilitate the review process, the review process suggested eight topics of discussion covering different aspects of the policies in place for the IDN ccTLD Fast Track program. Topics included: transparency, community support, meaningfulness, determination of the IDN ccTLD manager, IDN tables, disputes, confusingly similar string and objection/re-evaluation rights. A short explanation of each of the topics was included in the announcement that accompanied the public comment period. The following is an analysis of the comments on each of the proposed topics along with ICANN recommendations. Each topic begins with the description included in Fast Track Review announcement document, please see:

<http://www.icann.org/en/announcements/announcement-2-22oct10-en.htm>.

The included recommendations should be considered as initial feedback to the community. All received comments and suggestion for changes to the Fast Track Process will be provided to the ICANN Board for its consideration and decision. The feedback is provided for transparency, and will be included in the advice presented to the Board for consideration when making any decisions on the outcomes of the review of the Fast Track Process.

Transparency

On the subject of transparency of the Fast Track Process, the topic was introduced as follows:

The published [Fast Track] policy document states that requests are only published when they have successfully passed through the String Evaluation portion of the process. Before then ICANN publishes only the total number of received requests, the status the requests are in and the corresponding number of languages. In this published material there is no information regarding the countries and territories requesting the TLD, nor any details of the requests' contents.

- a. *This is very useful from the perspective that in some cases the requester wishes to keep the request confidential, and in other cases ICANN has received requests that are not valid and do not fulfill the established requirements.*
- b. *To a certain extent, the process is not completely open and transparent. A lot of end-user inquiries have been received about which countries and territories ICANN has received requests from, which we have not been able to adequately respond to. Further, in comparison, the gTLD process will publish received requests (minus selected confidential information) after the administrative review that takes place immediately after the close of an application round.*

Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
Members of Bulgarian Internet community	<p>23 of the 36 total comments received were from members of the Bulgarian Internet community. Most comments questioned the transparency of the process. The comments included statements such as:</p> <p>“whenever procedures are not public, there are views that not everything in them is correct.”</p> <p>-and-</p> <p>“the DNS panel’s criteria, used to evaluate the domains should be made public. Now, with all this anonymity, people in Bulgaria believe that the panel didn’t review carefully the request, and didn’t explore all options.”</p> <p>Commenters noted that the Bulgarian community did not see the grounds behind the rejection of the string by the DNS Stability Panel.</p>	<p>A detailed description of the rules followed in determining whether an applied-for string is confusingly similar to existing TLDs, potential future IDN ccTLDs, or other-wise applied-for TLDs, is described at: http://blog.icann.org/2010/03/clearing-the-confusion-fast-track/ These details were previously released in response to community inquiries for this information.</p> <p>As additional TLDs in various scripts are being applied for and/or approved for delegation, the rules under which string confusability is established will be re-examined for future applicability. While specific proposals regarding the string confusability requirements are put forward in the comments as applicable to specific applications and scripts, ICANN recommends that the subject matter is of high importance, and should take multiple scripts into consideration in order to be useful for the process. Further, the rules around string-confusability must coexist with the gTLD Program.</p> <p>As a result, ICANN recommends additional discussion on the broader subject, and an initial session to accommodate this has been scheduled for the ICANN Silicon Valley meeting in San Francisco, March 2011.</p>
ccNSO	<p>The ccNSO appreciates and supports the need for appropriate levels of transparency in the Fast Track process. Maintaining confidentiality during string evaluation allows requesting countries</p>	<p>ICANN also notes that this was the reason behind the initial confidentiality requirement during string evaluation. ICANN recommends no changes to the Fast</p>

	and territories to resolve issues of public authority and community-support without undue politicization of the process.	Track Process on the basis of this comment.
APRALO	The transparency of the evaluation process for IDN ccTLD applications should be enhanced. “Applied for strings should be announced earlier in the process and string evaluation reports should be made public.”	<p>As noted above, the discussion of transparency during the development of the process resulted in the inclusion of confidentiality during the string evaluation phase. ICANN does not recommend that the APRALO’s call for reduced confidentiality overrides the benefits of maintaining confidentiality (as cited by the ccNSO and identified in the creation of the Fast Track Process) afforded to applicants. ICANN does not recommend any changes to the Fast Track Process on the basis of this comment. However, this concern could be addressed in further discussion and policy development with the ccNSO.</p> <p>On the subject of releasing the string evaluation reports, this has also been under discussion. However, due to the confidentiality requirements of the Fast Track Process, ICANN does not publish the reports. It is up to each individual requester to determine whether or not it will share its application information or evaluation report more broadly. The confidentiality requirement only binds ICANN.</p> <p>It is recommended that ICANN continue to only share these reports with the requester.</p>
HKIRC	The “current arrangement where requests are only published when they have successfully passed through the	See above. No changes to the Fast Track Process are recommended on the basis of this comment.



	<p>String Evaluation stage as appropriate.”</p> <p>Suggest that clarification be added to clearly reflect the differences in community support for the string in the string evaluation step, as separate from the required demonstration of community support for the IDN ccTLD manager in the IANA delegation stage. This clarification should be made for ease of preparation for future applicants.</p>	<p>ICANN has already implemented modifications to requestor communication on the community support topic, and in this way enhanced the information made available about this distinction. The enhanced communication is a clarification and introduces no changes to the process.</p>
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Community Support

On the subject of the community support requirement in the Fast Track Process, the topic was introduced as follows:

The policy document requires demonstration of Internet community support for the applied-for TLD string. The notion of community support and the requirement for documenting such has been a topic of discussion since the launch of the process. While examples and descriptions of what this support could entail, the Final Implementation Plan does not specify exactly the amount or detail of how one can demonstrate community support. The policy reason behind this is that the approach is different depending on geographic location, culture, and other developments in the respective countries and territories. All such different approaches are valid and appropriate to the Fast Track Process.

The following issues have been raised, that may be appropriate for discussion in this review:

- *Some do not agree with the need for community support documentation and do not understand the difference between the type of support for the string (to be established in the String Evaluation) and the type of the support for the ccTLD manager (to be established in the Delegation evaluation).*
- *Some do not find it necessary to demonstrate community support for the string nor the manager. The reason being that such decisions can be made by government entities, and the need for support undermines the authority of the government in the country or territory.*

Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
ccNSO	The community support elements are relevant elements of the Fast Track process, though will not necessarily	The ccNSO comment is reflective of concerns that arose during the first year of the Fast Track process. To address

	be fulfilled in the same way by all requesters. Some requesters noted the need to know more clearly how to demonstrate community support.	these concerns, ICANN has already modified how it communicates with requesters regarding demonstrating community support within the string evaluation phase. Early in the implementation of the Fast Track, ICANN produced a blog entry providing some further explanation of the community support requirement, available at http://blog.icann.org/2010/02/community-support-for-idn-cclds/ . This is a clarification of the implementation of the Fast Track, and no changes are recommended to the Fast Track process in order to continue providing clarification to requesters and the community on this issue.
HKIRC	The existing steps are found to be reasonable and necessary.	See above. No changes recommended are recommended to address this topic.
Nikola Marinov	More guidelines on who is treated as a part of the local community should be included in the Fast Track.	See previous comment that additional examples and information is being provided to requesting countries and territories as clarification.

Meaningfulness

On the subject of the meaningfulness requirement in the Fast Track Process, the topic was introduced as follows:

The strings requested through the Fast Track Process must be demonstrated to be meaningful representations of the corresponding country or territory name. If the strings requested do not automatically fulfill this requirement through a published authoritative list, the requester must include documentation from a linguistic expert that the strings are in fact meaningful representations of the country or territory name. Some requesters have stated that this requirement is not necessary in cases where the strings requested are agreed to by the government and otherwise seem obviously meaningful.

The issue has been raised that in some cases, the strings requested do not fulfill the meaningfulness automatically. Staff is looking especially for feedback as to whether additional elements could result in automatically fulfilling this requirement, and if so, which.

Comments and ICANN Recommendations:

While no comments were received during the review on meaningfulness, ICANN notes that the linguistic support provided by the UN Group of Experts on Geographic Names (UNGEGN) has been a very useful resource for requesting countries and territories.

Determination of the IDN ccTLD Manager

On the subject of the determination of the IDN ccTLD manager in the Fast Track Process, ICANN introduced the topic as follows:

This is a topic related to the community support topic discussed above and is primarily raised here for clarification purposes.

In many cases the IDN ccTLD manager is the manager that submits the original IDN ccTLD request. However, this is not a requirement. But it results in confusion in some cases because the IDN ccTLD manager is not “evaluated” in the String Evaluation, but only subsequently in the String Delegation.

Clarifications in the long term will be beneficial on this subject (we are also trying to make this more clearly in the information provided participants in the Fast Track Process).

Comments and ICANN Recommendations:

No comments received.

IDN Tables

On the subject of IDN Tables in the Fast Track Process, the topic was introduced as follows:

Historically the content of IDN Tables has not been evaluated and approved in any way or form by ICANN. This includes the IDN tables provided in the Fast Track Process. Staff does review the received tables in very limited capacity and only in relation to for example potential/obvious errors and to what extent the tables fulfill the requirements of the IDN Guidelines.

However there has been a discussion in the community that requesters should simply send in or refer to other IDN tables (that have already “passed through” the system) and in that way their lack of a table will not delay the processing of the IDN ccTLD request. Such behavior opens the discussion of whether there should be better or other types of checks in place to review the received IDN tables.

The responsibility of serving the community in the best possible way (and most secure way) by having measures in place with these IDN tables, including sufficient variant identification and registration rules, which is intended to avoid user confusion as much as possible is a responsibility primarily of the TLD registry. The question is, as we open up for more IDNs and IDNs generally at the top level, if additional rules should be in place.



Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
John Klensin	Stated that “it is perhaps useful to think about that model as relatively more about transparency of registry requirements than as about normative decisions that should affect or bind other registries or represent broadly authoritative statements about languages, writing systems, or script usage.” Management of language tables is not an activity ICANN should engage or actively try to foster.	ICANN agrees. No changes are recommended immediately to the Fast Track Process. It is recommended that the role and effect of IDN tables be discussed during the Variant Management project and also be introduced for consideration in the ccNSO PDP. If those forums are unable to progress the work, a separate working group will be formed. Meanwhile, in the Fast Track Process, ICANN will continue to ensure that IDN tables are provided by each applicant and follow the administrative rules in the IDN Tables Repository. In addition, submitted table will continue to be reviewed to check if a table contains invalid characters, or otherwise appears to generate problems in relation to the IDNA protocol or IDN Guidelines.
ccNSO	The ccNSO believes the issue of IDN table assessment is a policy issue not appropriately addressed during ICANN staff implementation processes.	See above. No changes recommended at this time.
HKIRC	Welcomed discussion on the need for additional rules concerning IDN tables, but “it would be an overambitious task for a central body like ICANN to evaluate and approve the IDN tables...ICANN should bear in mind its genuine limitation on handling the issue.”	ICANN agrees, see recommendation above to consider the issue as part of the Variant management discussion and in the ccNSO PDP. ICANN notes that consistency must exist

		between the IDN Tables Repository, the Fast Track Process, and the new gTLD Program requirements. No immediate changes are recommended to the Fast Track Program based on this comment.
Xiaodong Lee	Raised a question about the accuracy of IDN tables, and suggested that perhaps an evaluation panel be formed to improve the IANA table (repository). Noted that a registry that uses a table wrong will cause security issues, such as phishing.	Agreed, see above recommendation. ICANN further notes the security issue raised here, and that there are not a lot of educational materials in existence at the moment on this subject. ICANN recommends initiating a project to make such educational information available. The information should be developed with assistance from experts in the community. No changes are recommended to the Fast Track process to address this comment.
Ram Mohan	Stated that it is time for ICANN to stop trying to publish this IANA Repository of IDN Tables. This does not scale, and by publishing the tables in a repository ICANN takes on other responsibilities. Caution against doing a limited staff review and feedback in the case of Security issues. If there is some limited review, it may not be sufficient to catch a table that crosses multiple scripts or includes problems that are not obvious.	ICANN notes that at the moment IANA maintains a collection of “IDN tables” in what is known as the IDN Practices Repository. Per the IDN Guidelines, IDN ccTLD managers, and IDN capable gTLD registries submit their IDN Tables to the IANA Functions Department for publication in the IDN Practices Repository. This service is provided by ICANN solely for informational sharing purposes. As the suggested change would affect other processes than the Fast Track Process, ICANN does

		not recommend the proposed change to take effect in the Fast Track Review. Instead, please see above for ICANN recommendation regarding review and security issues. As a result no ICANN recommended changes.
Harald Alvestrand	Stated that ICANN should review submitted tables for correctness. ICANN should consider whether it could publish or cause to be found linguistic commentary on IDN tables. ICANN should support requesters who reuse an existing table rather than create their own.	Noted. Coordination with colleagues in the IANA Functions Department may provide better display of the IDN Tables to facilitate support of reuse. No changes to the Fast Track process are recommended to address this portion of the comment. In addition, communication with requesters on the subject of re-use will be enhanced in the Fast Track Process. ICANN considers this clarification and not a change to the process.
Jaap Akkerhuis	Stated if ICANN is going to evaluate tables, it's directly getting involved into registry naming policy and it's something that [ICANN] we should be aware of.	Noted, see above.
Mohammed El Bashir	Arabic was an example where registries had loaded Arabic language tables to the IANA Repository when Arabic was not their primary language and this created issues. A linguistic panel charged with reviewing IDN tables could address this problem.	Noted, see above.
Nikola Marinov	Stated that "IDN tables should be reviewed and checked for letters that are not a part of the official country alphabet."	Noted, see above.

Volodya	Stated that “the Fast Track has created a slightly higher ambiguity on domain... a suggestion would be to set up equivalency tables, which would automatically register the domain in both local and Latin script where possible.”	This comment is not fully understood by ICANN. As a result ICANN will follow-up within the recommended ongoing discussion mentioned above.
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Confusingly Similar String

On the subject of confusingly similar strings in the Fast Track Process, the topic was introduced as follows:

Some issues have arisen out of requested strings that are confusingly similar to existing strings and/or other requested-strings. The confusability is determined by the DNS Stability Panel, which works well, although there is some cases has been demonstrated different opinions on whether a string is confusingly similar or not. Staff believes that the DNS Stability Panel working guidelines are adequate as they supply a careful approach to what strings are approved as TLDs, especially due to the limited nature of the Fast Track Process. Nonetheless this has been raised as a topic of discussion.

Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
John Klensin	Stated that “as the number of approved and delegated domains increases, comparisons with all such domains will inevitably become both more complicated and more subjective: for example, it is worth remembering that almost every script has characters that consist exclusively of vertical, horizontal, or slanted lines: not having such characters would be an archaeological surprise.” and “If the Fast Track process is to continue for an extended period, unless the evaluation process has additional clear advice from the community that lead to consistent rules about how to handle these cases, disagreements are almost inevitable.”	Agreed, see discussion in the Transparency section about a planned session for the ICANN Silicon Valley meeting in San Francisco to garner input from the community on this topic.
ccNSO	Concurs with the view of staff that no additional measures or guidelines are needed.	Noted. See above. No immediate changes are recommended but ICANN is planning to engage the community

		in further discussions on the issues of string confusability.
HKIRC	Considers the existing mechanism to be effective and sound.	Noted. But see above. As ICANN and hence applicants and the eventual users do run into problems in this subject, more discussion is recommended.
Stoyan Danev	<p>Stated “the whole Bulgarian community supports the proposed [Bulgarian IDN ccTLD] string, a lot of international experts agreed there is no similarity between the string and any other existing domains.”</p> <p>Provided a link to a confusability tool provided by the Unicode Consortium, which shows the Bulgarian string as similar to “6r” rather than “br.” (see http://unicode.org/cldr/utility/confusables.jsp?a=6r&r=IDNA2008).</p>	Noted, while it is not possible for ICANN to comment on a specific example, see above for recommended action for further discussions on the topic of string confusability.
George Todoroff	<p>Provided a very detailed analysis of the similarities between .6r and .br, using the Unicode Technical Standard #39 confusables document. Stated that the applied string .6r “could be confused only with the string .6r, which does not exist” and inquired as to how this situation was different from the string for the Russian Federation, which was approved by ICANN although it had one character confusable with a Latin character. Alek Lynge and Nikolay Popov supported this comment.</p>	Noted, while it is not possible for ICANN to comment on a specific example, see above for recommended action items and link to a clarification on how the confusability is assessed.

Disputes, Objection and Re-Evaluation:

On the subject of disputes, objection and re-evaluation in the Fast Track Process, the topic was introduced as follows:

No controversial strings have been considered at this stage. As such, no disputes between requesters from different territories and countries have been experienced. Disputes between requesters from the same country or territory needing to deal with and decide locally which requests proceeds seems to be working adequately at this stage. The approach to date is that

there needs to be agreement within a country or territory before a fast Track request can be processed.

It might be useful to have a discussion about what action, if any, ICANN should take in situation where one part of a government or relevant public authority provides the necessary support documentation for an IDN ccTLD request, but another part of the same government or public authority states an opinion which could be considered opposite. This situation could occur during String Evaluation, String Delegation or post delegation

It has been noted by the community that there are no re-evaluation or objection mechanism for declined IDN ccTLD requests. The primary reason for this is that the Fast Track Process is considered an interim process, short-termed for those countries and territories where there is no controversy with implementing IDN ccTLDs. As such if there are any disputes or issues coming up through the evaluation, such should be referred to the coming long-term process for IDN ccTLDs. The long-term process is currently in the policy developed phase in the ccNSO. Question is if the Fast Track Process should be expanded to include such options, or if it should stay in its limited capacity.

Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
HKIRC	Noted that the Fast Track was intended for non-controversial requests, and that the process cannot handle, nor was it designed to handle controversies and disputes in applications. Stated that the mechanism for dispute resolution should be studied and tailored in the [ccNSO] policy development process for the introduction of IDN ccTLDs.	Noted. No change in the current Fast Track process is recommended.
ccNSO	The ccNSO states that the treatment of disputes is a “policy issue and should not be addressed through an amendment of existing implementation rules and procedures.”	Noted. No change in the current Fast Track process is recommended.
	The ccNSO “believes that an expansion of the Fast Track process to include objection or re-evaluation rights is a fundamental change in the Fast Track process and should not be addressed	Noted. No change in the current Fast Track process is recommended.

	<p>through an amendment to the existing implementation rules and procedures... Including such an option at the string evaluation stage would increase the risk of undue politicization of the process...and could also jeopardize the independence of the external reviewers.” The ccNSO notes that to the extent disputes or issues are the result of ICANN (staff) decisions, the current, established processes for reconsideration and independent review of ICANN actions are applicable and available.</p>	
Bulgarian Internet Community	<p>23 of the 36 comments that ICANN received in the Fast Track Review were received from the Bulgarian Internet community. Most of the comments requested that ICANN provide a mechanism for appeal or re-evaluation of Bulgaria’s request for .бг in Cyrillic.</p>	<p>Noted. As this subject is under policy discussion in the ccNSO and since the intent with the Fast Track Process remains limited and to those applications where no disputes or issues exists, ICANN recommends no changes.</p>
Nayden Filipov	<p>Questioned why the Fast Track process did not state that the Bulgarian government could have appealed through the reconsideration process or the independent review process. Nayden asked that the Board review the Fast Track and introduce the possibility of an appeal procedure.</p>	<p>The Reconsideration Process could be applicable to any ICANN staff or Board action, and the Independent Review process could be applicable for any Board action, assuming the Bylaws requirements are met to allow for either review mechanism to be implemented. Therefore there is no need to identify the specific availability of the Reconsideration processes or other ICANN review mechanisms (see http://www.icann.org/en/general/accounability_review.html and the ICANN Bylaws for more information) within any individual ICANN initiative such as the Fast Track documentation. Please also see ICANN recommendations to related comments.</p>
Pencho	<p>“Please revise the fast track application process and allow Bulgaria to apply</p>	<p>ICANN cannot comment on a specific application in the Fast Track</p>

Petrov	again and get the domain.”	process. But in general, please note there is no built-in re-evaluation option in the Fast Track Process, and please see above for ICANN recommendations on related comments.
Association UNINET	Stated that they were “the first group in Bulgaria that started public discussions about an IDN ccTLD back in in 2006.” During four years of public consultation, polls and surveys indicate that the Bulgarian Internet community would only accept the .6r (bg) string and would vote against any other. UNINET noted there was not a mechanism to challenge the DNS Stability Panel result in the Fast Track process. UNINET suggested the best way forward would be for Bulgaria to reapply in a modified fast track process, with a more open evaluation, “so all interested parties would be able to submit comments and proposals.”	<p>ICANN supports the community outreach and deliberations for countries and territories to determine which string would best serve the country or territory as an IDN ccTLD. However, ICANN also notes that in 2006, there were no requirements in place for the IDN ccTLD Fast Track Process. As such the community may not have received the necessary information to make their decision.</p> <p>ICANN cannot comment on a specific application in the Fast Track process and notes that it is unfortunate if no other string would satisfy the Bulgarian internet community; however, as the Fast Track process is a limited initial introduction of IDN ccTLDs strict rules exists to ensure the safety of existing TLDs and users thereof. ICANN recommends no changes.</p>
Mira Doikova, on behalf of Bulgarian Netizens Group	“I support the re-evaluation for Bulgaria.”	As stated above, the Fast Track Process has no re-evaluation process. Please see above for additional feedback.
Stoyan Danev	Submitted two comments, both strongly supporting re-evaluation of the Bulgarian IDN ccTLD request. He noted that two Facebook groups support the Bulgarian IDN ccTLD string, one group had 118 members (as of 17 Dec 2010), and	Note. Please see above for feedback.

	<p>another had 968 members. He also provided links to a joint statement of 4 major Bulgarian IT Associations – the Bulgarian Web Association, the Bulgarian Association of Information Technologies, Bulgaria ICT Center and the association of development companies BASSCOM – all requesting re-evaluation.</p>	
Petar Mehmedov	<p>Asked that ICANN reconsider the Bulgarian request and add the ability to reassess rejected applications. This comment was also echoed by Ivan Stoyankov, Petko Kolev, Nikola Marinov, Alex Nikolova, Alek Lynge, and Daniel Asparuhoff.</p>	Noted. See above for feedback.
Kalina Uzunova	<p>Noted that since the rejection of the Bulgarian IDN ccTLD Fast Track request, “the idea of a Bulgarian Cyrillic domain has suffered severely.” She asked that the ICANN Board reconsider and allow Bulgaria to reapply with the same proposal. “There are sufficient measures to prevent occurring of even one case of confusion.”</p>	Noted. See above for feedback.
Krum Jonev	<p>Suggested that two rules be applied in the re-evaluation [on the Bulgarian IDN]:</p> <ol style="list-style-type: none"> “1. All names in the .бг (.bg) idn cctld must be registered only with Cyrillic letters. 2. All names in the .бг (.bg) idn cctld must contain at least one letter, which can be visually distinguished from the Latin alphabet (one of the letters: б, г, д, ж, и, й, л, п, ф, ц, ч, ш, щ, ъ, ь, ю, я).” 	<p>Noted. See above for recommendations to generally revisit the subject matter of string confusability across multiple scripts vs a single script.</p> <p>ICANN further notes that the proposed changes/rules would not be possible for ICANN to impose on a ccTLD manager per the relationship between ICANN and IDN ccTLD managers today. Such registration policies are set by the IDN ccTLD manager with input from their community.</p>

Other Topics:

Other topics on which comments were provided in the Fast Track Process Review:

Comments and ICANN Recommendations:

Affiliation	Comment	ICANN Recommendation
John Klensin	<p><i>Script families:</i> Klensin provided examples of script families that should be considered more carefully in the Fast Track. Examples included Chinese-Japanese-Korean, Greek-Latin-Cyrillic, Western Arabic and Eastern Arabic (including Persian and Urdu).</p>	Noted.
Eric Brunner-Williams	<p>The Fast Track process is broken because the one script per presumption, and the presumption that only non-Latin scripts apply in the Fast Track, was made a rule in the Fast Track without sufficient reflection.</p> <p>“decorated Latin” has been excluded by the IDN ccTLD Fast Track, and “has the effect of limiting the benefit of IDN ccTLDs to the majority of populations in East Asian, Eastern European, West Asian and North African states, and utterly denying it to the pluralities of populations of the Americas who do not ordinarily use a Latin language, but who do ordinarily use a Latin script, with extensions.”</p>	Noted. This is however a limitation in the Fast Track Process because the subject matter needed further policy discussion. Such is ongoing in the ccNSO and as a result ICANN does not recommend immediate changes to the Fast Track Process.
John Klensin	Noted that the exclusion of extended Latin may have once been reasonable but was now “becoming a significant bar to equitable and balanced internationalization of the DNS.” Permitting extended Latin will raise confusability issues and	Noted, see above.

	<p>that a model for handling this should be developed before Latin-character strings are added rather than on a case-by-case basis.</p>	
<p>John Klensin</p>	<p><i>Application quality.</i> Stated that with the “increase in the number of non-ASCII domain names, the potential for confusion by people not familiar with the relevant scripts will rise.” ... ICANN may need to provide improved tools and/or tutorials to permit creating and verifying conforming applications or may need clear and transparent rules about the degree to which staff are permitted or encouraged to help perfect applications... Applications that are incomplete or inadequate in any way should be returned to the applicant for updating.”</p>	<p>Noted. The purposeful limitations of the Fast Track Process mitigate the risk of this confusion occurring and therefore no changes to the Fast Track process are recommended to accommodate the remaining IDN ccTLD applicants. ICANN will and does assist applicants, per the Staff Support Function as detailed in the Final Implementation Plan. The Fast Track is limited in scope. As the ccNSO PDP is completed, rules for ICANN-requestor communications and formal tools for verifying requests for completeness may be developed. The Fast Track experiences will inform the development of these processes and tools. Even in the Fast Track process, incomplete requests are turned back. As a result, the applicant can make changes in writing or submit an entirely new application. At this time, ICANN is accepting written modification inquiries. ICANN recommends no changes.</p>
<p>John Klensin</p>	<p><i>Variants:</i> noted the confusion in the community and Fast Track regarding the term “variant”. Recommended 1) that ICANN stop talking about variants unless ICANN is prepared to supply one or more clear and concise definitions. 2) If requesters are able to continue submitting variants, then ICANN should require that they explain their relationships and explicitly indicate which form they are requesting be immediately delegated , which form they are hoping to be delegated eventually, and which form they are merely</p>	<p>ICANN has already initiated a major project to evaluate the Variant Management issue. This includes launching a Board directed project to identify and study the issues of delegating IDN variant TLDs in the DNS Root Zone. The plan proposes composing teams of community experts in linguistics, DNS, registry operations, policy and security and stability. A session on this proposed plan is planned for the ICANN Silicon Valley meeting in San Francisco and community participation is appreciated.</p>

	<p>trying to have reserved forever. 3) applicants requesting delegation of variants be required to explicitly indicate whether they are looking for aliases/synonyms with a single delegation tree or whether they are looking for multiple delegation trees that they intend to manage in a linked way.</p> <p>Finally, noted that ICANN should make it very clear to all concerned that delegation of variants only after all of the relevant technical issues have been resolved is likely to be equivalent to “never” and that short-term plans should not be made on that basis.</p>	
Eric Brunner-Williams	<p>The treatment of variants has led to an “inability to express usefully what is meant by equivalences of variants,” and limiting the Fast Track process to states has the effect of limiting minority languages from participating in the process.</p>	<p>Noted. Please see above discussions on scope of Fast Track program and the proposed variant management project.</p>
John Klensin	<p><i>Duration:</i> noted that the Fast Track was intended to be an interim mechanism to cover cases that were presumably easy. Recommend shutting down the Fast Track and replacing it with a permanent mechanism better equipped to handle more complex cases.</p>	<p>Noted. The interim nature of the Fast Track was always and still is the intent for the process. The expectation is that the Fast Track Process would run for a minimum of 2 years and/or until the ccNSO has finished its policy deliberations for a ‘long-term’ and more permanent process for IDN ccTLDs.</p>
Jothan Frakes	<p>Provided a suggestion for including in the Fast Track a mechanism for new IDN ccTLD operators to receive a checklist that indicates some of the global resources that can be notified about the coming</p>	<p>Noted. ICANN will explore potential ways to provide such a mechanism.</p>

	availability of their IDN ccTLD, such as the Mozilla Foundation.	
APRALO	Suggested that where the operator of an IDN ccTLD is the same as that for a corresponding ASCII ccTLD, the IANA Whois record should reflect this situation more appropriately.	Noted. This feedback will be provided to the IANA Functions Department for their input on the technical feasibility of this suggestion.
Hong Xue	Questioned whether the DNS Stability Panel, on which ICANN relied in rejecting a requested string, was not subject to the pre-existing reconsideration or independent review processes.	The ICANN Bylaws set out the requirements for requesting Reconsideration (Article IV, Section 2) or initiating the Independent Review Process (Article IV, Section 3). Additional information on ICANN's accountability mechanisms is available at http://www.icann.org/en/general/accountability_review.html .
Stoyan Danev	Stated that “the Bulgarian community has clearly demonstrated that selecting another string is unacceptable and if the proposed one is not approved, Bulgaria will remain WITHOUT an IDN ccTLD. This is really against the ICANN policy of making the Internet accessible to everyone.”	Please see more discussions above. Also, note that the Fast Track Process is limited in nature until a more permanent and expanded process becomes available. As a result the Fast Track Process does not yet include eligibility to apply for an IDN ccTLD in all scripts and in all cases at this time. For example, Latin strings, similar strings and variant strings are not permitted at this time. While this is an unfortunate reality, proceeding with the limited Fast Track launch allows those countries and territories where no disputes or issues existed regarding their proposed strings to move forward. At the same time a process intended for a broader audience is being built in the ccNSO.
Kristian Hristov	Disappointment with the result for Bulgaria, and that it would be unreasonable for Bulgaria to have to choose a different string from the Cyrillic version of .bg. This view was echoed by Ludmil Minkov, who also suggested that “a more in	ICANN cannot comment on a specific request but recognizes the issue in general and has engaged in activities with others in the community to help find solutions. One example is the ongoing work with UNESCO to support its efforts to provide member states with help by creating a reference table of IDN ccTLD Cyrillic

	depth study and understanding of the Cyrillic script will help ICANN to see the big difference between” Latin and Cyrillic characters. Viktor Boyadjiev stated, “if Bulgaria is obliged to choose a new TLD, it wont get any community support.”	country names/abbreviations.
Ivo Genov	Stated that “ICANN should make a little effort to be able to get out of the situation with the Bulgarian candidature with a favorable solution for all parties...People are frustrated that their so long awaited domain remains a mirage and begin to start suggestions that all Bulgarians must give up the domain in Cyrillic or create a local version of it.”	ICANN is committed to supporting internationalized domain names. One example of our commitment is the ongoing work with UNESCO. Please see response in above two comments

Comments Received (in Comment Forum)

Below is a link to each comment reference in the above analysis:

APRALO - <http://forum.icann.org/lists/fast-track-review-2010/msg00029.html>

Hong Kong Internet Registration Corporation Ltd - <http://forum.icann.org/lists/fast-track-review-2010/msg00027.html>

Country Code Names Supporting Organization (2 comments) - <http://forum.icann.org/lists/fast-track-review-2010/msg00025.html> and <http://forum.icann.org/lists/fast-track-review-2010/msg00015.html>

John C Klensin - <http://forum.icann.org/lists/fast-track-review-2010/msg00022.html>

Eric Brunner-Williams (2 comments) - <http://forum.icann.org/lists/fast-track-review-2010/msg00018.html> and <http://forum.icann.org/lists/fast-track-review-2010/msg00017.html>

Ivo Genov - <http://forum.icann.org/lists/fast-track-review-2010/msg00028.html>

Nayden Filipov - <http://forum.icann.org/lists/fast-track-review-2010/msg00026.html>

Pencho Petrov - <http://forum.icann.org/lists/fast-track-review-2010/msg00024.html>



Mira Doikova (Bulgarian Netizens Group) - <http://forum.icann.org/lists/fast-track-review-2010/msg00023.html>

Stoyan Danev (2 comments) - <http://forum.icann.org/lists/fast-track-review-2010/msg00021.html>
and <http://forum.icann.org/lists/fast-track-review-2010/msg00002.html>

Petar Mehmedov - <http://forum.icann.org/lists/fast-track-review-2010/msg00020.html>

Kalina Uzunova - <http://forum.icann.org/lists/fast-track-review-2010/msg00019.html>

Association UNINET - <http://forum.icann.org/lists/fast-track-review-2010/msg00016.html>

Kristian Hristov - <http://forum.icann.org/lists/fast-track-review-2010/msg00014.html>

Daniel Asparuhoff - <http://forum.icann.org/lists/fast-track-review-2010/msg00013.html>

Viktor Boyadjiev - <http://forum.icann.org/lists/fast-track-review-2010/msg00012.html>

Nikolay Popov - <http://forum.icann.org/lists/fast-track-review-2010/msg00011.html>

Alek Lynge - <http://forum.icann.org/lists/fast-track-review-2010/msg00010.html>

Alex Nikolova - <http://forum.icann.org/lists/fast-track-review-2010/msg00009.html>

George Todoroff - <http://forum.icann.org/lists/fast-track-review-2010/msg00008.html>

Ludmil Minkov - <http://forum.icann.org/lists/fast-track-review-2010/msg00007.html>

Nikola Marinov - <http://forum.icann.org/lists/fast-track-review-2010/msg00006.html>

Petko Kolev - <http://forum.icann.org/lists/fast-track-review-2010/msg00005.html>

Ivan Stoyankov - <http://forum.icann.org/lists/fast-track-review-2010/msg00004.html>

Krum Jonev - <http://forum.icann.org/lists/fast-track-review-2010/msg00003.html>

Jothan Frakes - <http://forum.icann.org/lists/fast-track-review-2010/msg00001.html>

Volodya - <http://forum.icann.org/lists/fast-track-review-2010/msg00000.html>

Comments Received (in Public Session)

A public session was held during the ICANN meeting in Cartagena on 6 December 2010 to further discuss how well the process was functioning for the community. Comments from this session have also been incorporated in the above analysis. Information about this session can be found at: <http://cartagena39.icann.org/node/15415>.

Next steps

ICANN will publish this document of analysis and recommendations, and provide the document to the ICANN Board of Directors along with an initial set of recommendations. The Board is likely to discuss the Fast Track Review, comments received and initial recommendations at the ICANN Silicon Valley meeting in San Francisco in March 2011.

ICANN will also use this review opportunity to fix minor typographical errors that were identified in the published Final Implementation Plan for IDN ccTLD Fast Track Process document (<http://www.icann.org/en/topics/idn/fast-track/idn-ccTLD-implementation-plan-16nov09-en.pdf>.)

CEOMonthlyOnepageMetricsFeb2011 Board



CEO Monthly One - Page Metrics Report (Board)

15-Feb-11

Actual Financial Data*4 (as of 31 January 2011)	YTD (millions)
Operating Revenues	\$ 38.6
Operating Expenses	\$ 28.8
Contribution from Operations	\$ 8.6
Assets	\$ 93.2
Liabilities	\$ 14.8
Cash	\$ 24.1
Reserve Fund	\$ 50.3

IDN Fast Track Billing Activity*5	YTD
Requests processed	15
IDN fees billed	\$548k
IDN fees collected	\$106K

Staffing *6 (as of 31 January)	Now
# of Staff	121
Open Positions	14
Retained Searches	4

Hires/Terminations*6	Month	YTD
New Hires	1	9
Involuntary	0	2
Voluntary	3	9
Total Terminations	3	11

Participation ICANN Meetings	Cartagena - 39th ICANN Meeting	% of Attendees
Participants	1,026	100%
Staff (w/Contractors and Vendors)	82	8.00%
Supported Travelers	115	11.20%

Support Services at Meetings	Cartagena - 39th ICANN Meeting	% of Sessions
Sessions Conducted	141	100.0%
Live Audio Streaming	99	70.2%
Telephone Conferencing	84	59.6%
Interpretation	34	24.1%
Live Scribing	23	16.3%
Audio Transcription	69	48.9%
Web Chat Rooms	79	56.0%

Documents Translated	Trimester 1	YTD Translations	Avg Languages per document
Published Documents	39		
Translation Requests	125	5.829 M word	4

Policy Development *1	T1 - Initiated	In Progress	Completed
ASO global policy proposals *4	0	0	2
ccNSO work groups *2	1	10	2
GNSO work groups *2	1	14	5
SSAC projects	0	0	2
At-Large statements *3	14	1	10

Deployment IPv4	IANA /8 Blocks Available	IANA Percentage Available
IPv4 space remaining	5	2.26%

Deployment IPv6	Percentage of Total
IPv6 traffic to ICANN Sites	3.00%

Internet Metrics	T3 - Open	T3 - Closed	YTD Outstanding
IETF Requests	720	735	294
Root Zone Requests	135	118	120
RIR Requests	2	2	0

Domain name registrations in gTLD's *2 (as of September)	New Registrations YTD	Total Registrations
gTLD Total	9,684,749	126,134,412

IDN FastTrack Requests *3	Month	YTD
Total Requests	0	38
IDN ccTLD's in the Root Zone	11	27

ccTLD commitments	Trimester 1	Signed Total	% of Signed Total
New ccTLD Accountability Frameworks	0	62	30%

Registrar Data Escrow	Now	% of gTLD Registrations Protected
No. registrars enrolled	870	99.50%

Involuntary Terminated or Non-Renewed Registrars *6	YTD	% of Total Registrars
Terminated	13	1.35%

"L" Root Service	Month	YTD
Uptime	100%	100%
Requests Served	25 Billion	233 Billion
Average Requests per second		10,000

*** Footnotes:**

- 1) Data is FY 11 Trimester 1 - ending 13 December 2010
- 2) Includes community working groups, work teams, committees, task forces only
- 3) Includes At-Large advisories and statements to Board and SOs only
- 4) ASO global policy proposals "in progress" are those being tracked by ICANN staff
- 2) Based on ICANN confidentiality restrictions, there is a 90 day lag of data available
- 3) Data as of 10 February 2011; Identifies the Number of IDN Fast Track applications completed and applications currently being processed.
- 4) FY11 Data through 31 January, 2011
- 5) Inception to date data; beginning January 2010
- 6) Data as of 31 January 2011; Key Hires – Rodrigo de la Parra (Regional Relations, Latin America); Key Departures – Kevin Wilson, Frank Fowlie; Key Searches – VP Global Partnerships, Chief Security Officer, VP IT, Ombudsman, Chief of Staff

Media_clips



ICANN Media Clips

Date Range:

05 January – 24 February 2011

The Washington Post

POST BUSINESS

Rush is on for custom domain name suffixes

By Ian Shapira | Feb. 7, 2011

The pillar of the basic Web address - the trusty .com domain - is about to face vast new competition that will dramatically transform the Web as we know it. New Web sites, with more subject-specific, sometimes controversial suffixes, will soon populate the online galaxy, such as .eco, .love, .god, .sport, .gay or .kurd.

This massive expansion to the Internet's domain name system will either make the Web more intuitive or create more cluttered, maddening experiences. No one knows yet. But with an infinite number of naming possibilities, an industry of Web wildcatters is racing to grab these potentially lucrative territories with addresses that are bound to provoke.

Who gets to run .abortion Web sites - people who support abortion rights or those who don't? Which individual or mosque can run the .islam or .muhammad sites? Can the Ku Klux Klan own .nazi on free speech grounds, or will a Jewish organization run the domain and permit only educational Web sites - say, *remember.nazi* or *antidefamation.nazi*? And who's going to get .amazon - the Internet retailer or Brazil?

The decisions will come down to a little-known nonprofit based in Marina del Rey, Calif., whose international board of directors approved the expansion in 2008 but has been stuck debating how best to run the program before launching it. Now, [the Internet Corporation for Assigned Names and Numbers, or ICANN](#), is on the cusp of completing those talks in March or April and will soon solicit applications from companies and governments that want to propose and operate the new addresses.

This week, hundreds of investors, consultants and entrepreneurs are expected to converge in San Francisco for the first [".nxt" conference, a three-day affair featuring seminars on ICANN's complicated application guidelines](#). The conference's Web site, which has a list of applicants, is not without a sense of humor: "Join the Internet land rush!" a headline screams, above a photograph of the Tom Cruise character galloping on a horse in the movie "[Far and Away](#)," the 1992 film about giveaways out West in the late 19th century.

These online territories are hardly free. The price tag to apply is \$185,000, a cost that ensures only well-financed organizations operate the domains and cuts out many smaller grass-roots organizations, developing countries or dreamers, according to critics. (Rejectees get some of the application fee returned.) That's on top of the \$25,000 annual fee domain operators have to pay ICANN.

Lauren Weinstein, co-founder of People for Internet Responsibility, a grass-roots firm in Los Angeles, alleges that the new domains are designed purely to make money for ICANN and the companies that control the domains. The new Web addresses, he added, will only mean more aggravation for trademark holders and confusion for the average Internet user.

[Peter Dengate Thrush, chair of the ICANN board of directors](#), argued that the high application fee is based on the nonprofit's bet that it's going to get sued, and to protect against cybersquatters or other organizations ill equipped to manage an entire domain of hundreds, if not thousands of Web sites. "Our job is to protect competition and give extra choices for consumers and entrepreneurs," Thrush said.

Many organizations are competing for the same domain names, in disputes that often will be settled by an ICANN-sponsored auction or by an ICANN board decision. Two companies vying for the environmentally-friendly .eco domain have competing endorsements: one from a nonprofit chaired by former vice president Al Gore; the other from a group founded by former Soviet Union president Mikhail Gorbachev.

The Internet has 21 generic domains such as .com, .net., .edu or .org and hundreds of others for countries, such as .de for Germany. The most prevalent generic domains are .com and .net, which account for about half of the world's 202 million Internet addresses.

Since 2000, ICANN has expanded the number of "generic top-level domains" only twice, and only in tiny doses to such sites ending in .biz, .jobs, .museum, or .mobi (for mobile sites). Those domains have so far yet to attract huge audiences.

But many entrepreneurs expect that the new expansion of Web addresses - the first of which won't go live until early 2012 - will catch on with users and make money. Many budding domain operators expect to earn millions of dollars, according to Kieren McCarthy, a former ICANN general manager who is organizing next week's domain name conference in San Francisco.

The future operator of .sport, for instance, could sell as many as 200,000 or more Web addresses - *hockey.sport*, *bethesda.sport* or *washingtoncapitals.sport* - for wholesale prices ranging from \$6 to \$50 to such companies as Go Daddy. These firms then re-sell the Web sites to consumers for higher prices. McCarthy also said ICANN is debating whether the domain operators could sell Web addresses directly to the consumer themselves.

Ron Andruff, president and chief executive of dotSport LLC, a New York-based outfit, said he believes more users will find niche interests and communities more easily with the new addresses. "Google and Bing are not in business of helping you find what you are looking for," he said. "They're in the business of generating revenue from those willing to bid the highest to get on their search results page."

[Scott Seitz, the CEO of DotGay LLC](#), wants to build a universe of sites - he expects 300,000 initially - with addresses such as *lawyers.gay*, *aids.gay*, *hotels.gay* or *communitycenter.gay*. He has the backing of several prominent gays rights groups including Human Rights Campaign and the Gay & Lesbian Alliance Against Defamation (GLAAD).

Seitz, who is gay, said *the* simple idea of operating the domain devoted to the gay movement exerts its own pressures. "I have a responsibility, and I am in awe of that," said Seitz, adding that he and his

business partners intend on donating two-thirds of their revenue to various social causes. "I buried 40 friends in 18 months [who died from complications related to HIV]. Having .gay is scary, it could be crazy. I've already told people to get steel doors and window bars for security to protect against anti-gay organizations that wouldn't want dot-gay to happen."

For people who might propose controversial domains - such as .nazi, which ICANN officials have worried about - approval will be based on the applicant's identity and intentions, and on the grounds of "morality and public order." Such companies as Canon or IBM will be given priority for .canon or .ibm, and so will municipalities for such domains as .paris or .nyc.

Some people are chasing after multiple domains. [Antony Van Couvering, the chief executive of Minds + Machines](#), a California-based registry company, is working with various partners to pursue not only .eco (with the backing of Gore's Alliance for Climate Protection), but a slew of others, including .gay, .nyc, and, in the interest of capturing even the most far-flung audiences, .zulu - for South Africa's largest ethnic population. It's the .eco domain that will be competitive, though. Jacob Malthouse, a former ICANN official, formed [a Vancouver-based company that is also going after .eco; his venture has the support of Gorbachev's Green Cross International](#).

Other entrepreneurs may bump up against corporate titans and trademark issues. Constantine Roussos, of Los Angeles, has spent years working on his application for .music. [Roussos, a 34-year-old musician whose family owns real estate in Cyprus, envisions .music](#) as the industry's trusted inventory of Web sites operated by musicians, managers, studios, promoters, composers and so on. For example, only artists with verifiable professional identities could create sites such as *queen.music* or *pink.music*.

Roussos believes the .music domain will help Internet users easily connect to their favorite band's real Web site by typing the name of the band followed by .music on their Web browser; and will help musicians sell their music directly to consumers. Many famous bands - Queen, Kiss, the Eagles - don't own their own .com Web sites because their names use common words, he lamented.

The music industry, however, has its concerns about .music. In early January, [the Recording Industry Association of America wrote a letter to ICANN's board of directors](#), expressing fear that a .music domain might make musicians more vulnerable to piracy and trademark infringement.

But Roussos believes his model for .music might help the music industry. "When you're searching for Queen and type it into Google, will your results be the Queen of England or the Queen of Denmark?" he asked. "But if you go to *queen.music*, you know it's the band. It's faster. And it'll drive traffic and more money to the artist."

The New York Times

Drumming Up More Internet Addresses

By Laurie J. Flynn | Feb. 14, 2011

Correction Appended

Who could have guessed that 4.3 billion Internet connections wouldn't be enough?

Certainly not Vint Cerf.

In 1976, Mr. Cerf and his colleagues in the R.& D. office of the Defense Department had to make a judgment call: how much network address space should they allocate to an experiment connecting computers in an advanced data network?



They debated the question for more than a year. Finally, with a deadline looming, Mr. Cerf decided on a number — 4.3 billion separate network addresses, each one representing a connected device — that seemed to provide more room to grow than his experiment would ever require, far more, in fact, than he could ever imagine needing. And so he was comfortable rejecting the even larger number of addresses that some on his team had argued for.

“It was 1977,” Mr. Cerf said, in an interview last week. “We thought we were doing an experiment.”

“The problem was, the experiment never ended,” added Mr. Cerf, who is a former chairman of the [Internet Corporation for Assigned Names and Numbers](#), or [Icann](#), a nonprofit corporation that coordinates the Internet naming system. “We had no idea it would turn into the world’s global communications network.”

Today, the Internet that Mr. Cerf helped create more than 30 years ago is about to max out. Within the next 12 to 18 months, or perhaps sooner, every one of the 4.3 billion Internet Protocol addresses will have been allocated, and the Internet, at least as it exists today, will have reached full capacity.

I.P. addresses are the unique sequence of numbers assigned to each Web site, computer, game console or smartphone connected to the Internet. They are distinct from domain names, which identify Web sites, like [nytimes.com](#).

“There are 4.3 billion addresses, and a lot of people have more than one,” said Leo Vegoda, manager of number resources at Icann. “And there are seven billion people on the planet. That’s a big mismatch.”

The rapid expansion of Internet adoption in Asia has sped things up even more. Experts saw this problem coming years ago, and the transition to a new system, referred to as Internet Protocol version 6, is well under way. This new standard will support a virtually inexhaustible number of

devices, experts say. But there is some cause for concern because the two systems are largely incompatible, and as the transition takes place, the potential for breakdowns is enormous.

“This is a major turning point in the ongoing development of the Internet,” Rod Beckstrom, Icaann’s president and chief executive, said. “No one was caught off guard by this.” Still, the question looms, is the Internet industry prepared?

The answer depends on whom you ask. While it is true that no one has been caught off guard, some parts of the industry responded faster than others, leaving some technology companies scrambling to catch up. Software companies like [Google](#), [Microsoft](#) and [Facebook](#), along with PC makers, say they have been taking the problem seriously for years in hopes of thwarting any major calamities. The major operating systems — like Microsoft’s Windows 7 and [Apple](#)’s Mac OS X — have already incorporated the new system. And providers, including [Comcast](#), say they are ready to make the switch.

But Mr. Cerf is critical of Internet service providers, along with the manufacturers of Internet devices, for not addressing the problem sooner, saying that many chose to wait until customers started asking for the new system.

“How can customers be expected to know what they need?” Mr. Cerf said. He compared Internet protocols to the internal workings of a car engine. “It’s like changing a gear in a car’s transmission,” he said. “People shouldn’t have to worry about that.”

I.P. addresses are allocated by the Internet Assigned Numbers Authority, which is operated by Icaann, to five registries representing regions of the globe. Those registries distribute the addresses to Internet service providers like cable and phone companies, universities, governments and large corporations. Millions of new devices will be attached.

At a ceremony early this month in Florida, the last block of addresses based on the original standard, known as IPv4, were allocated to the five registries.

Comcast began working on the problem nearly six years ago, and last year began customer trials nationwide. Jorge Alberni, a Comcast spokesman, said the trials so far had gone smoothly.

Comcast is now beginning to distribute dual-mode cable modems, for example, that support both the original and the new Internet Protocol versions. By the time the transition is fully under way, Mr. Alberni said, most Comcast customers will already be using cable boxes and modems that support IPv6, as the new version is commonly called. In some case, customers with older equipment will have to make a swap.

“We don’t foresee any problems for our customers,” he said.

To help make the transition to IPv6 easier, [Yahoo](#), Google and Facebook, whose Web sites generate a combined traffic of more than a billion visits a day, have agreed to participate in a sort of trial run on June 8, named World IPv6 Day, to make sure their systems are ready. Participants are hoping that such an experiment will shed light on potential glitches.

Still, Leslie Daigle, chief Internet technology officer at the Internet Society, a nonprofit Internet policy organization overseeing the test run, warned that the transition to IPv6 was complex, and would most

likely cause headaches for customers as they grappled with compatibility problems. The hope is that the test run will reveal the exact scope of the challenge.

The change will require companies to retrain technicians and instruct help desk personnel how to field compatibility questions.

“I almost wish we could train the [Boy Scouts](#) and [Girl Scouts](#) to come to people’s houses to help out with this,” said Mr. Cerf, now chief Internet evangelist at Google. “This is not just about adding extra numbers,” he said. “It’s a different system.”

If the transition is not done right and done quickly, he said, Internet users with new equipment could face problems viewing Web sites based on the original standard.

Mr. Cerf compares the size of the challenge to the problem facing computer users at the turn of the 21st century, when every software program out there had to be modified to recognize the year 2000 and beyond.

“We had to find every place on the network,” he said.

In the end, the year 2000 issue, often referred to as Y2K, caused very few interruptions. But in this case, the problem won’t go away after a certain date.

Mr. Vegoda is optimistic that most people will not notice the difference between the two standards, and expects the transition to go relatively smoothly. “Most Internet users have no idea they’re using IPv4 today and if things go well they will have no idea they’re using IPv6 in the future,” he said.

Correction: February 14, 2011

Because of an editing error, a previous version of this story misstated Vint Cerf's relationship with the Internet Corporation for Assigned Names and Numbers, or Icaann. He is a former chairman, not the current chairman.



Internet exhausting addresses, but no IPocalypse

By Glenn Chapman (AFP) | Jan. 22, 2011

PALO ALTO, California — The Internet is running out of addresses.

With everything from smartphones to Internet-linked appliances and cars getting online, the group entrusted with organizing the Web is running out of the "IP" numbers that identify destinations for digital traffic.

The touted solution to the problem is a switch to a standard called IPv6 that allows trillions of Internet addresses, while the current IPv4 standard provides a meager four billion or so.

"The big pool in the sky that gives addresses is going to run out in the next several weeks," said Google engineer Lorenzo Colitti, who is leading the Internet giant's transition to the new standard.

"In some sense, we are driving toward a wall. We have to do something, and IPv6 is the only real long-term solution."

The pool in the sky is a fast-draining reservoir of IP addresses maintained by the non-profit Internet Corporation for Assigned Names and Numbers (ICANN).

ICANN has been calling for a change to IPv6 for years but websites and Internet service providers have been clinging to the old standard since the birth of the Internet.

"One of the reasons it has taken so long to change is that there is no obvious advantage or killer application for IPv6," Colitti said.

The number of addresses that IPv6 allows for amounts to 340 "undecillion" (followed by 36 zeroes); enough for a trillion people to each be assigned trillions of IP numbers, according to ICANN chief Rod Beckstrom.

"I guess if we could somehow link an IP address to every atom, we might begin to run into problems," Beckstrom said of IPv6 during an interview in his office in the Silicon Valley city of Palo Alto.

"As far as thinking about the number of objects that humans own and use, we are pretty safe."

With about seven billion people on the planet, the IPv4 protocol doesn't allow for everyone to have a gadget with its own online address.

The situation has been equated to not having enough telephone numbers for everyone.

Once the supply of IPv4 addresses ICANN distributes to the five regional centers around the world are gone, computers and other gadgets might have to start sharing instead of having unique identifying numbers.

"You will start to share with your neighbors, and that causes problems because applications can't distinguish you apart," Colitti said. "If your neighbor ends up in a blacklist, you will too."

"The Internet won't stop working; it will just slowly degrade," he continued, explaining that systems would eventually have trouble handling multiple connections on shared addresses. "Things will get slower and flakier."

New websites or online services stuck with shared IP addresses wouldn't perform as well as pre-existing offerings that have numbers all to themselves.

The effort and expense of changing to IPv6 would fall mostly on Internet service providers, websites and network operators that have to make sure systems can handle the new online addresses and properly route traffic.

Consumers, for the most part, shouldn't notice the switch since complex IP numbers would still appear to them as words and domains, such as icann.org.

Some people might need to update routers or modems that connect computers to the Internet.

"It is important that users don't worry," Colitti said, dismissing talk of an 'IPocalypse.'

"But, it is important that we as an industry work together," he noted. "It is critical we preserve this extremely precious Internet and allow it to grow."

Google, Facebook and other major Internet players will add IPv6 addresses to their systems in a one-day trial run on June 8 to let all parties involved check for trouble spots.

"We need to kick the tires on it at a global scale and see if there are some unforeseen problems," Colitti said. "There is really a rallying cry element to it. No single player can do it alone; we need to work together."

World IPv6 Day will start at 0001 GMT on June 8.

In a worst case scenario, running out of IPv4 addresses with no switch to IPv6 would mean new gadgets wouldn't be able to connect to the Internet because addresses weren't available, according to ICANN.

"Ideally, people will see nothing," Beckstrom said of a transition to IPv6.

But, "if enough networks don't move to IPv6," he continued, "people could literally see nothing because they can't connect the next iPad, iPhone, or whatever."

IPv6 allows for seemingly limitless innovation in the Internet as well as addresses enough for sensors in anything from chairs and thermostats to individual bottles of wine in a cellar to signal when vintages peak.

A full shift to IPv6 will take years, with the remaining stock of old IP addresses being allocated to support the transition, according to Beckstrom.



Go Daddy ready to launch '.co' marketing blitz

By Kristena Hansen (The Arizona Republic) | Jan. 17, 2011

PHOENIX — While the ".net," ".org" and ".gov" Internet domains are growing in popularity among those launching new websites, none have come close to threatening the decades-long reign of ".com."

But the ".co" domain may be the hottest new Web address, one that could be the first real .com competitor, according to some inside the domain-name industry.

Scottsdale-based [Go Daddy](#) was one of a few domain providers authorized to sell that domain suffix when it when it was launched in July. Now with about 250,000 .co registrations under its cap so far, the Internet-domain registrar will use its annual [Super Bowl](#) commercial next month to draw attention to it before television's biggest annual audience.

And the company will do it as only Go Daddy can.

The spot will unveil the new GoDaddy.co Girl who will join the ranks of other celebrity spokeswomen such as race-car driver [Danica Patrick](#) and celebrity fitness trainer [Jillian Michaels](#)

The company did not share how much it spent this year on the Super Bowl ads, but reports estimated that 30-seconds of airtime cost about \$2.5 million last year.

The company is keeping the new girl's identity under wraps until Super Bowl Sunday.

"Our new GoDaddy.co Girl is already a big name, but after this Super Bowl commercial, she's going to be in a whole new realm," CEO [Bob Parsons](#) said in a statement.

Unlike other .com alternatives, the .co domain, which gained about 600,000 registered names worldwide since its launch, should do well simply because it sounds so similar to .com, said Richard Merdinger, senior director of domain-registration service for Go Daddy.

"There's an international recognition of using .co to represent a company," he said. "We were exceptionally pleased with the volume of registrations we did do so far."

The .co suffix offers a whole new realm of opportunities for those searching to establish their Web presence, Merdinger said.

Industry insiders see a similar trend.

"We're seeing individuals registering them for themselves, their blog, their businesses," said Lori Anne Wardi, director of marketing for .CO Internet S.A.S., the official .co registry, which allows registrars such as Go Daddy to sell its domain names to the public. "We want to be where the next [Facebook](#) starts and the next [Twitter](#) starts."

Before its July launch, the .co domain was restricted for use by the Colombian government, much like the United States has the ".us" domain, Wardi said.

The decision to expand the domain name for public use last year follows the example of other country-code names that have become more popular in the mainstream, such as Tuvalu's ".tv" and Montenegro's ".me."

[Internet Corporation for Assigned Names and Numbers](#), the non-profit in charge of assigning domains, also is in talks about expanding generic domains, such as .com, so that a corporation could become its own registry. For example, Ford could apply to obtain a ".ford" domain name.

"It's a way for corporations to brand themselves," said Brad White, an [ICANN](#) spokesman. "It's a huge revolution in the Internet."

.CO Internet, a Colombia-based company, decided to only work with 10 registries, including Go Daddy, for the first year, Wardi said.

Its annual fee at Go Daddy is pricier — \$29.99 compared with \$11.99 for .com and other domains.

Wardi said the idea was to prevent devaluing of the domain. People will be less-willing to buy .co names in bulk and have them sit useless while waiting to be resold at a profit, which is another reason why .com names have become scarce, she said.

The Washington Post

POST BUSINESS

Launch of .jobs Web sites shakes up employment advertising industry

By Ian Shapira | Jan. 21, 2011

A massive network of employment Web sites - where any company can list job openings for free - launched this week over the protests of newspapers and online recruitment companies, who fear billions of dollars in lost revenue.

The 40,000 sites, with Web addresses that all end in ".jobs," have the potential to upend companies such as Monster.com and CareerBuilder.com, which just a decade ago set up for-profit jobs classifieds online that roiled the media companies that printed the listings on paper. The initiative is being backed by nearly 600 hundred industry titans such as Google, American Express, IBM, Northrop Grumman and Lockheed Martin.

Finding jobs on the sites is simple: A nurse looking for work need only type in www.nurse.jobs. For someone looking for a job in the District, there's www.washingtondc.jobs. It works for scores of professions, and in every state, any U.S. city with more than 5,000 people, and 126 countries. Later this year, suburbs and small towns will be tossed in, too, and the network is expected to grow to 100,000 Web sites.

The new sites are operated by a nagging rival to Monster: [the Indianapolis-based nonprofit DirectEmployers Association](#), whose executive director is Bill Warren, 69, a former Monster president whom [Monster sued unsuccessfully](#) after he left in 2000, he said.

In an interview, Warren pointed out what he views as hypocrisy by the online recruiters who fought the existence of his new venture: "Back in the 1990s, when we put the first employment site on the Internet, some of the people who are now protesting - Monster and CareerBuilder - were very happy and dancing on the graves of newspapers. But now, something like this is going to have an impact on them, and obviously, they're not so happy. This is an evolution of Internet recruiting."

Matthew Henson, a Monster spokesman, declined to comment.

All this potential upheaval was made possible by a nonprofit called the [Internet Corporation for Assigned Names and Numbers](#), which was created during the Clinton administration to run the Internet's address naming system.

The .jobs domain was approved five years ago, but only for corporate names such as IBM.jobs or LockheedMartin.jobs. Last month, ICANN gave final approval to DirectEmployers Association to add a

twist: search-friendly professions and geographic locations. The new flexibility caters more directly to how users search for jobs online, according to experts.

For-profit competitors vociferously complained to ICANN that the new leeway would harm their brands and business models.

"I think [these new jobs sites] are going to be a formidable challenge," said Peter Weddle, executive director of [the International Association of Employment Web Sites](#), which last year fought the approval of the new .jobs Web sites, and whose members include major newspapers as well as Monster and CareerBuilder. "ICANN is a small organization with a lot of influence, but with nobody overseeing its application over the rules."

Craig Schwartz, ICANN's chief registry liaison, rejected those accusations. [ICANN's board of directors](#) includes international executives from the private and nonprofit sectors, including a former Department of Homeland Security official, an IBM official and a former European Parliament member, according to ICANN's Web site.

"I don't agree that we're not accountable to anyone. We're accountable to the global Internet community and its stakeholders," Schwartz said. "That's why it takes a lot of time to process new rules. It's the nature of our global governance structure."

Major corporations, particularly those who are among the 580 major corporations that pay dues to the DirectEmployers Association, say the .jobs sites will shake the online recruitment industry. The association's members, which pay an annual fee of \$15,000, enjoy perks on the sites such as getting their job openings placed at the top. Warren said he did not rule out the possibility that non-members could pay a fee for high-priority placement in the future.

"Of all the solutions you hear of, this is the one you think has the most viable solution moving forward. This will have a profound effect on the jobs-list industry," said a senior recruiting executive for a top Fortune 500 technology company, who was not authorized by his bosses to speak publicly. Monster costs about \$400 per job. "The traditional job-board model is so pricey, especially in these economic times. We have to invest in the future."

Randy Goldberg, vice president for recruiting for the Hyatt hotel chain, which has several hotels and about 1,000 employees in the Washington region, said the new .jobs sites have an appealing Web model but will need to prove themselves.

"It all depends on whether candidates realize that the dot-jobs domain is out there and utilize it," he said. "The advantage of Monster and CareerBuilder is branding. And as long as people still go there, we'll still need to participate there."

"But this has the potential to be a game-changer," he added.

Goldberg said the key advantage of the .jobs sites is that employers can directly post all of their openings for free on one universal network of sites, and can ensure that none of those positions have been filled.

Goldberg said he often can't post all of Hyatt's available jobs on Monster or CareerBuilder because the fees are too expensive; and that some free sites such as Indeed.com or SimplyHired.com often post expired listings. "From a candidate's perspective, to know that I can go to hotels.jobs to be able to see a true clean list of all the jobs within that category, that's powerful," he said.

Peter M. Zollman, founding principal of [the AIM Group, an interactive media consultant firm](#), said the new sites cater to how people search for jobs these days. "The reality is that lots of people are now accustomed to using search engines and search engine strings to find a job rather than going to the traditional job boards," said Zollman, whose dozens of clients include Monster, The Washington Post and Lawjobs.com. "If you have built a jobs board for nurses called [www.orlandonursingjobs.com](#), and now these guys come along to start [www.orlandonursingjobs.jobs](#), there's a big risk. It could change the whole way people search and find jobs. "

That kind of scenario is exactly what the International Association of Employment Web Sites fears.

"This is an economic recovery killer," said Weddle. "It's going to infringe on the trademarks and undermine thousands of small businesses who have spent the last 15 years serving job seekers very well."

San Francisco Chronicle

Internet running out of addresses, new set needed

Final numbers allocated, new protocol in offing

By Carolyn Said | Feb. 04, 2011

Thirty years ago, when the Internet was just getting started, it seemed a safe bet that 4.3 billion addresses would be more than enough. After all, that was roughly the world's population at the time.

"Who the hell knew how much address space we needed?" said Vint Cerf, Google's chief Internet evangelist, considered the father of the Internet, in an interview last month with Australian journalists. "I thought it was an experiment, and I thought that 4.3 billion (addresses) would be enough to do an experiment."

But now it appears the number was too small.

"It turns out the experiment got out of the lab," said Leo Vegoda, number resources manager at the Internet Corp. for Assigned Names and Numbers (ICANN), in an interview Thursday. "There is a big mismatch between 4 billion and what we need today for a global-spanning telecommunications network that's good for transmitting data packets. We need more addresses."

Every website, computer, smart phone, network printer, cable TV and wireless device out there has a unique numerical IP (Internet protocol) address. As devices and data multiply and the world's population hovers around 7 billion, those IP addresses are now almost exhausted.

On Thursday, the international groups that coordinate Net addresses officially allocated the last blocks of them to five regional registries that in turn distribute to Internet service providers, websites and so forth. Those final allocations could be used up within months.

That means the Internet must now switch to a new address protocol. It's a bit like an overpopulated area code that's out of phone numbers - but instead of just creating a new area code, the behind-the-scenes IP addresses will become a lot more complex.

Seamless - for now

For most users, the transition should be seamless - until a few years from now, when people with older modems may need to upgrade them to recognize the new addresses.

The current system, IPv4 (version 4) uses "dotted quads" - four numbers separated by periods. For instance, the IP address for www.sfgate.com is 66.35.240.8. (Domain names, such as sfgate, essentially act as an address book, providing an easy way to look up IP addresses.)

The new system, IPv6, uses 128-bit addresses. A typical IPv6 address might look like this:
2001:0db8:0234:AB00:0123:8a2e:0370:7334.

It can handle a huge number of addresses, 340 undecillion, to be precise. That number can be expressed as writing 3.4 followed by 38 zeroes, said David Ulevitch, founder and CEO of OpenDNS, a San Francisco company that translates domain names into numbers.

"The (IPv4) trough is now empty," Ulevitch said. "The Internet continues to grow, and the only way to grow is to use IPv6."

The new protocol

In fact, enterprises have been experimenting with the new protocol for over a decade, but the imminent exhaustion of IP addresses provides motivation to step up those efforts, he said.

June 8 has been designated as the ultra-nerdy "Test Flight Day" when Google, Facebook, Yahoo and other major companies will offer their content over IPv6 to motivate ISPs, hardwaremakers, operating system vendors and others to handle the new addresses.

"It's drawing a line in the sand as to when everyone supports this important technology," said Greg Smith, senior director of technical marketing for Citrix Systems, which sells products to translate the older version of IP addresses to the new ones. "There's a chicken-and-egg dynamic: it requires some investment on the part of websites and companies and they don't want to make it until they see demand."

"This is not sneaking up on anybody," said Bill Woodcock, research director at San Francisco's Packet Clearing House, a nonprofit that researches Internet traffic and global network development. "IPv4 addresses will continue working exactly as they always have."

Some people with older modems may be affected eventually once the new protocol becomes the default.

"A lot of DSL modems and cable modems out there right now don't support v6 because they are the cheapest and most commodity pieces of gear and vendors didn't require their hardware providers to do that engineering until recently," Woodcock said. "At some point those may need to be swapped out."



New gTLDs Will Create Tens of Thousands of New Jobs

By Johnny Du | Jan. 5, 2011

Anyone paying attention to ICANN's public meetings in Cartagena last month would have quickly become aware of a powerful recurring theme — fear. Despite all the substantial progress that was made on the new generic top-level domains program, and despite the generally optimistic, up-beat tone of the debate, it was ultimately fear that ruled. Specifically, the fear of governments, and their lobbyists in the intellectual property community, that the program may have an overall adverse economic impact. The concern that new gTLDs will prove more costly to brand owners than would be justified by the positive economic benefits created by innovation in the domain name industry led directly to the program being delayed by ICANN's Board, yet again, for at least a quarter.

But as ICANN CEO Rod Beckstrom and others indicated during the meeting, while it's extremely easy to be afraid of the potential for unknown futures costs, it's correspondingly difficult to estimate the value of future innovation. We know that new gTLDs will lead to innovative uses of domain names — both in terms of how they are used, where they are used, and by whom — but it's very difficult to put a dollar value on that degree of innovation. This problem is compounded by the fact that, until ICANN finally approves the Applicant Guidebook and opens up the door to applicants, we won't know precisely how applicants intend to use their gTLDs. On the day the applications are published, new business models will almost inevitably be unleashed onto the world.

While the advantages of "innovation" may be difficult to quantify, there are some simple positive economic benefits of new gTLDs that appear to be no-brainers but which do not appear to have been discussed as much in ICANN's various economic studies and public fora. I'm thinking primarily of job creation. While some representatives on the Governmental Advisory Committee sit and worry about the costs to business of the gTLD program, their superiors back home are for the most part focused on one thing: economic stimulus. Many world leaders have put job creation at the forefront of their strategies for reversing the sluggishness of the global economy. The new gTLD program will help with that goal.

Put simply: new gTLDs will create new jobs.

New gTLDs will require, conservatively, a team of 10 to 20 people each to apply for, manage and operate. With ICANN imposing a ceiling of 1,000 applications per year, that's 10,000 to 20,000 new jobs created in each year the program runs. These will be, for the most part, well-paid white-collar positions requiring skilled information workers. Companies that do not exist today will come into existence, and they will need employees. Companies that have been trading water since the program was first announced will be able to start hiring.

On the flip-side, nobody is going to lose their job as a result of new gTLDs. No companies are going to go out of business. As Beckstrom noted in Cartagena, if any (US) companies felt new domain names contributed a material risk to their businesses, they would be legally obligated to disclose as much in their regulatory filings; none have. The economic impact of new gTLDs on jobs will be net-positive.

It has been estimated that the typical gTLD application will cost approximately \$500,000. With 1,000 gTLDs, that's a half a billion dollars spent just on applications in just the first round. That money does not disappear into a vacuum, it's spent on technical consulting, building out new information systems, recruiting attorneys and marketing specialists. Advertising agencies, auction houses, intellectual property consultancies, infrastructure providers, software developers, hardware manufacturers, and other business services will be needed, creating more jobs. The whole support ecosystem will benefit from the launch of the new gTLD program.

During the Cartagena public forum December 9, several new gTLD applicants stood before the microphone to announce that they were ready to start signing checks just as soon as ICANN finally approves the AGB. Elaine Pruis of Minds + Machines used her two minutes to succinctly state, to applause, the views of many: "Innovation lifts people out of poverty. Innovation not only creates jobs. It creates industries. New gTLDs will create jobs, not only for registry operators like myself and registrars but for the increased demand for DNS services."

ICANN itself will also receive many millions of dollars — in the form of auction proceeds as well as application fees — which it will be able to invest in worthy projects. The AGB currently envisages earmarking funds raised in auctions for, for example, supporting gTLD applications from developing nations, creating registry continuity schemes, or financing security projects that benefit the global Internet community as a whole. However the funds are distributed, they will certainly be reinvested in the community, again potentially creating jobs.

The benefit to developing nations and under-served communities is not a trivial one. While the program is held up in ICANN by powerful corporate interests in North America and Europe, the economic benefits of new gTLDs are being delaying in regions such as Asia and Africa, especially in locations that would be best served by internationalized domain names (IDNs). The surprisingly successful launch of the latest IDN ccTLD, in Russia, recently has proved that new TLDs, as well as given a voice to those disenfranchised by a quarter-century of a Latin-only DNS, can create unexpected economic benefits. There's no reason that these benefits should be restricted to the ccTLD market by more delays to the gTLD program.

This article is not meant to suggest, of course, the new gTLDs are going to solve the global economic crisis. Nor is it meant as a blanket endorsement of theories of trickle-down economics. But ICANN is in the very real position, right now, to make a small but meaningful contribution to job creation and thus the recovery, without the need for any government spending whatsoever. When you put aside all the speculation about the possible benefits of innovation, a simple fact remains: new gTLDs will need workers, and when workers are needed, jobs are created.

National Journal

Resolution Urges White House To Keep UN Away From Net

By Juliana Gruenwald | Jan. 26, 2011

Rep. Mary Bono Mack, R-Calif., Wednesday re-introduced a nonbinding resolution calling on President Obama to oppose any efforts by the United Nations to take over governance of the Internet.

"It has become increasingly clear that international governmental organizations, such as the United Nations, have aspirations to become the epicenter of Internet governance. And I'm going to do everything I can to make sure this never happens," Bono Mack, the new chairwoman of the Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade, said in a statement.

She introduced a similar resolution in the last Congress. Bono Mack wrote House Foreign Affairs Committee Chairwoman Ileana Ros-Lehtinen, R-Fla., Wednesday to urge her to advance the measure.

The resolution notes that some countries that favor having the United Nations or another international entity play a bigger role in Internet governance "use the Internet as a tool of surveillance to curtail legitimate political discussion and dissent." Such countries want the United Nations or another international entity to "endorse national policies that block access to information, stifle political dissent, and maintain outmoded communications structures," according to the resolution.

The main group that currently has a formal governing role over the Internet is the Internet Corporation for Assigned Names and Numbers, a California-based nonprofit that was picked by the U.S. government in 1998 to take over management of the Internet's domain name system.

In December, the United Nations hosted a meeting on ways to enhance "cooperation on international public policy issues pertaining to the Internet." At the meeting, ICANN President and CEO Rod Beckstrom called for continuing support for ICANN and its process of working with Internet stakeholders, including the United Nations and national governments.

"The entire ecosystem collaborates: ICANN, Internet service providers, domain name businesses, [the Internet Society], [the Internet Engineering Task Force], governments, regional Internet registries, individual Internet users, non-profits and businesses around the world. And it works," Beckstrom said in his prepared remarks. "The multi-stakeholder model is not the problem. It's the solution."

Are we about to fill up the Internet?

Existing IP addresses are running out, putting pressure on service providers and websites to start supporting new system

By Peter Svensson | Feb. 2, 2011

NEW YORK — The spread of Internet use in Asia and the proliferation of Internet-connected phones worldwide are causing the Internet to run out of numerical addresses, which act as "phone numbers" to ensure that surfers reach websites and e-mails find their destination.

The top-level authority that governs such addresses will distribute the last batches on Thursday, two people with knowledge of the situation told The Associated Press. They spoke on condition of anonymity because a formal announcement wasn't planned until Thursday.

That doesn't mean consumers will suddenly find websites unreachable, though. And if everything goes according to plan, Internet users won't even notice.

"It will just be 'business as usual' if everyone gets their job done," said John Curran, CEO of the American Registry for [Internet](#) Numbers, or ARIN, one of five regional groups that dole out such addresses. ARIN covers the U.S., Canada and the Caribbean.

The Internet Assigned Numbers Authority, the top-level administrator of the system, has called a press conference in Miami on Thursday.

One person said its last five "blocks" of Internet Protocol, or IP, addresses will be distributed then.

Only months left

These blocks, each with 16.8 million addresses, will be distributed to the regional registries. That means the regional groups will have IP addresses to distribute further to Internet service providers, websites and others before running out. Curran expects to deplete his allotment in six to nine months.

The current [Internet address](#) system, Internet Protocol version 4, has been in place since the 1980s.

It allows for a theoretical maximum of 4.3 billion addresses in use, far beyond what was thought necessary for what was then mainly a network for academic use.

Engineers have known for years that the pool of these IP addresses would one day run out.

Websites and service providers have been experimenting with a new technology that allows for many more addresses — an infinite number, for all practical purposes.

But many have been slow to do so because of a lack of immediate benefits. The exhaustion of IP addresses at the top level puts pressure on them to move more quickly.

The new system is called Internet Protocol version 6, or IPv6.

Curran said only about 2 percent of websites support it. However, many of those are the most-visited sites on the Internet, including [Google](#) and Facebook. He expects smaller sites to scramble for IPv6 addresses now.

Slow surfing

As Internet service providers run out of IPv4 addresses, they'll have to give subscribers IPv6 addresses.

The challenge lies in connecting them to websites that have only IPv4 addresses.

In essence, IPv4 and IPv6 are different "languages." Several "translation" technologies are available, but they haven't been tested on a large scale, Curran said.

That could [lead](#) to problems reaching some websites, or slow surfing.

"We're estimating how these boxes will work, but we haven't seen one deployed with tens of thousands of customers on it yet," Curran said.

The "end [game](#)" — the distribution of the last five blocks — was triggered by the distribution of two of the last seven blocks on Tuesday.

They went to the Asia Pacific Network Information Centre, the regional registry for East Asia (including India), Australia and the Pacific islands.

IPv4 Will Go On For Twenty Years

By Peter Judge | Feb. 3, 2011

The Internet's shift to IPv6 will take a long while, even though the last blocks of IPv4 addresses have been issued

Today, the last IPv4 addresses have been issued to regional authorities, but it will take five to ten years before they are issued to service providers and users, and twenty years before the Internet has properly moved to the new IPv6 protocol, officials said today.

On Monday, two blocks of IPv4 addresses were issued to the Asia Pacific Internet registry APNIC, which [triggered a rule under which the last five blocks would be given to the five regional registries](#). The global authorities no longer have any IPv4 addresses left, precipitating a need to move to IPv6 – although the transition will be orderly, according to a joint press conference held today by the Internet's main governing bodies.

A grim future without IPv6

"There is no imminent danger," said Olaf Kolkman, chair of the Internet Architecture Board (IAB). "The Internet will remain working as it did yesterday. The danger is in the possibilities and opportunities that will exist in say a decade or a decade from now."

IP addresses are unique identifiers made up of four numbers each, allowing computers to communicate with each other around the world. Version 4 of the Internet protocol (IPv4) supports around 4.3 billion addresses, but they are [being used up fast](#) by mobile devices and surging demand for connections.

IPv6, the "next generation" has been in development for nearly 20 years, and "nobody was caught off guard by this," said Rod Beckstrom, president of the Internet Corporation for Assigned Names and Numbers (ICANN).

Beckman, Kolkman, and executives from the Number Resource Organisation and the Internet Society, stressed that users would see no difference right now, but if organisations fail to move to IPv6, the future of the Internet would be more limited.

"We have an end-to-end network, with permissionless innovation," said Kolkman. "If we move away from that, because reaching each other by IPv4 end-to-end becomes very difficult, there will still be an Internet but it will be very different. It will be very hard to make [Skype](#) phone calls and do file sharing. Move to IPv6, and all those beautiful things remain possible."

An IPv4 black market?

Though the last blocks of IPv4 addresses have now been given to the regional registries (RIRs), it will be some time before they are all handed out to users, and fears have been raised that there may be panic buying and a possible black market.

“It is entirely in the RIRs’ hands,” said Beckstrom, arguing that there would be little of this sort of activity. “We have done our jobs... and the IPv4 addresses remaining in the pool will be allocated according to the rules of each region.”

To meet the demand for backward compatibility, some regional authorities will issue small blocks of 1,000 addresses widely, so anyone who wants can have IPv4 addresses – although such small blocks are “only useful for ensuring the transition to IPv6, not for conventional IPv4 deployment,” the conference was told.

IPv6 addresses have been available since 1999, and 8 June this year will see a [‘World IPv6 Day’](#), a test flight, in which tech giants [Facebook](#), [Google](#) and Yahoo will all will enable IPv6 on their main services and content delivery networks Akamai and Limelight Networks, will all attempt to motivate organisations across the industry to prepare their services for the [imminent transition](#).

“It’s only a matter of time before the RIRs and Internet Service Providers (ISPs) must start denying requests for IPv4 address space. Deploying IPv6 is now a requirement, not an option,” added NRO chair Raul Echeberria.

IPv4's finale 'one of the most important days of the Internet'

Miami event marks end of IPv4, heightens pressure on network operators and content providers to adopt IPv6

By Carolyn Duffy Marsan | Feb. 03, 2011

Internet policymakers officially handed out the last five blocks of IPv4 address space to each of the Regional Internet Registries (RIRs) at a ceremony held in Miami Thursday morning.

BACKGROUND: [IPv4 exhaustion predicted](#)

The ceremony marked the depletion of the free pool of addresses for IPv4, the main communications protocol that underpins the Internet. The ceremony's goal was not only to celebrate this historic milestone in the Internet's [40-year history](#), but also to demonstrate that this precious resource of IPv4 addresses was doled out in an equitable fashion around the globe.

Policymakers -- including the Internet Assigned Numbers Authority (IANA) and the Internet Corporation for Assigned Names and Numbers (ICANN) -- used the ceremony to underscore the need for network operators and content providers to [migrate to IPv6](#), the long-anticipated upgrade to IPv4.

"This is one of the most important days of the Internet," said Rob Beckstrom, ICANN's President and CEO. "A pool of more than 4 billion Internet addresses has been emptied ... This marks the opportunity to shift to a version of IP that is so large it is difficult to even imagine ... and that can carry us into the future."

IPv4 uses 32-bit addresses and can support 4.3 billion devices connected directly to the Internet. IPv6, on the other hand, uses 128-bit addresses and supports a virtually unlimited number of devices -- 2 to the 128th power.

PANIC TIME QUIZ: [How prepared are you for IPv6?](#)

Each of the RIRs was given what is called a /8 block of IPv4 addresses, which is around 16.7 million addresses. Experts say it will take anywhere from [three to seven months](#) for the registries to distribute the remaining IPv4 addresses to carriers.

Once the registries hand out all of the IPv4 addresses, network operators must either deploy complex, expensive network address translation (NAT) technologies to share IPv4 addresses among multiple users, or adopt IPv6.

COMPARISON: [IPv6 vs. Carrier-Grade NAT](#)

The Internet engineering community used the Miami event as an opportunity to encourage network operators and content providers to quickly adopt IPv6.

"Today begins the final chapter of IPv4," said Lynn St. Amour, president and CEO of the [Internet Society](#). "The sooner we all move to adopt IPv6, the better and brighter our future will be ... The fundamental key to the Internet's success is the unification of networks through globally addressing. That is why so many have stepped up to deploy IPv6."

Olaf Kolkman, chairman of the Internet Architecture Board, warned that network operators and content providers need to adopt IPv6 because the available technical workarounds will become increasingly difficult to support.

"The next 2 or 3 billion Internet users will use IPv6 only," he warned, but he added that coexistence between the two protocols will continue for decades. "As long as there will be people that have legacy equipment with IPv4, there will need to be a reason to communicate with IPv4."

[Read more about lans & wans](#) in Network World's LANs & WANs section.



Don't Panic! It's only the Internet running out of Addresses

By Steven J. Vaughan-Nichols | Feb. 3, 2011

The various Internet management groups made it official this morning. We're now out of Internet Protocol version 4 (IPv4) Internet address blocks. The final five blocks of IPv4 addresses were given out to the five Regional Internet Registries (RIR), which, in turn, will distribute these IP addresses to ISPs. That puts about 80-million more IPv4 addresses in play, but once they're gone, they're gone: IPv4 game over.

There was [nothing unexpected about the Internet running out of IPv4 addresses](#), except for how quickly the last few address blocks have been used up. As Rod Beckstrom, [Internet Corporation For Assigned Names and Numbers \(ICANN\)](#)'s President and CEO said in the announcement "This is truly a major turning point in the on-going development of the Internet. Nobody was caught off guard by this, the [Internet technical community has been planning for IPv4 depletion](#) for quite some time. But it means the adoption of IPv6 is now of paramount importance, since it will allow the Internet to continue its amazing growth and foster the global innovation we've all come to expect."

What does that mean for you? Well, in the short run, nothing if you're an ordinary user. If you're a CIO, network engineer or administrator, you've got to start getting [switch to over to IPv6](#). IPv6, with its 128-bit addresses, won't be running out of addresses any time this century.

IPv4 is another matter though. The [Asia-Pacific RIR, \(APNIC\)](#) will be the first to run out. I expect APNIC to give up its last free address in the early summer. [RIPE](#), which handles Europe, the Middle East and the former Soviet Union countries, will go next by year's end, and the [American Registry for Internet Numbers \(ARIN\)](#) will run out in early 2012.

If your business isn't ready for IPv6, and darn few are, there are some transitional technologies such as dual stack, dual-IP stacks, and Dual Stack Application Level Gateways that will let you [use IPv4 and IPv6 at the same time](#).

If all that's Greek to you, talk to your networking vendor or your ISP. You're going to need their help to switch over IPv6 anyway. Many of them, such as [Allied Telesis](#), [Mu Dynamics](#), and [Hurricane Electric](#) have IPv4/IPv6 transition products and services ready to go.

As Alain Durand, director of software engineering for [Juniper Networks](#) told me, "The expected announcement from the [Internet Assigned Numbers Authority \(IANA\)](#) that the remaining large IPv4 address blocks have now been assigned has long been forecast and should be kept in perspective as global Internet growth will continue without interruption for a long time to come. Juniper Networks has been assisting its service provider and enterprise customers with a continuum of IPv4 exhaustion

solutions, IPv6-enabled products and IPv4/IPv6 coexistence strategies for many years. There will be no disruption of service for the vast majority of Internet users, both wireless and wireline.”

So long, that is, as you upgrade your network infrastructure for the brave new world of IPv6. If you don't, well don't be shocked if in a year or two, you won't be able to get Internet addresses for your new office or your VoIP (Voice over Internet Protocol) programs won't connect.

Update: ICANN assigns its last IPv4 addresses

By Stephen Lawson | Feb. 3, 2011

The Internet Assigned Numbers Authority (IANA) has handed out its last IPv4 addresses, leaving the remaining blocks to regional registries that in some cases may exhaust them within a few months.

The end of IPv4 (Internet Protocol version 4) addresses was announced in a ceremony in Miami on Thursday morning. Each of the five regional Internet registries (RIRs) was allocated one of the final five large blocks of about 16 million addresses.

The end of the central supply of IPv4 addresses signaled the urgency of enterprises and service providers to migrate to IPv6, the latest version of the protocol, which has been available for more than a decade and allows for an almost unlimited number of addresses. When there are no more IPv4 addresses available from the RIRs, new hosts on the Internet will not be able to communicate with systems that use only IPv4 without special mechanisms that could degrade the Internet experience. Some experts advise adopting a "dual-stack" approach to remain connected with both IPv4 and IPv6 hosts.

"A pool of more than 4 billion Internet addresses has just been emptied this morning," said Rod Beckstrom, president and CEO of the Internet Corporation for Assigned Names and Numbers (ICANN), which oversees IANA. "The future of the Internet, and the innovation it fosters, lies with IPv6."

IANA and the RIRs had laid the groundwork for Thursday's action in advance by agreeing on a policy that when the supply of large blocks went down to five, [one would be assigned to each of the regional bodies](#). The policy was designed to ensure that regions where addresses were being used up less quickly wouldn't be left out in the end.

The Asia-Pacific Network Information Centre (APNIC) [was assigned two large blocks of addresses earlier this week](#), causing the rule to kick in.

Though there is wide agreement that enterprises and ISPs need to migrate to IPv6, [there are potential hazards both in delaying that move and in carrying it out](#). A key concern is that most available [security tools](#) don't work with IPv6. And though some experts point to network-based translation between the protocols as a short-term solution, others say that approach could break some applications and services.

The supply of fresh IPv4 addresses for North America will probably last only three to nine months, according to John Curran, president and CEO of the American Registry for Internet Numbers (ARIN), the region's RIR.

The action taken Thursday will have ripple effects on organizations that need IPv4 addresses in many countries.

As the final allocation took place, new rules immediately went into effect at the American Registry for Internet Numbers, the RIR for North America. In the past, ARIN has allowed its customers to forecast their need for addresses over the next 12 months and apply for a year's allocation. Now they will have to apply every 90 days, showing a forecast for that period.

"We don't want to have a circumstance where organizations come in and we give one a year's worth, and someone else has none," Curran said.

When APNIC's supply is reduced to its final block of 16 million addresses, it will restrict its customers to just one much smaller block of 1,024 addresses. It expects this supply to last approximately five years.

Thursday's action will have no noticeable short-term effects, Internet Architecture Board Chairman Olaf Kolkman said during a press conference following the Miami ceremony. But over time, the Internet will be severely limited if network administrators don't migrate to IPv6, he said.

"Such an Internet is likely to grow increasingly less capable of serving our needs than it is today," Kolkman said. Because of the need for adaptation tools within the network, the end-to-end model that makes many Internet applications work will break down. For example, it might become hard to make a Skype call or to trade files, he said.

For businesses, migrating to IPv6 will cost money, but not making the move eventually could cost revenue, he said. "The next 2 or 3 billion customers will use IPv6 only, and they will not be able to do business with you," Kolkman said.

As the pool of IPv4 addresses shrinks, it's possible that a black market will form, but it probably won't be large, said Raul Echeberria, chairman of the Number Resource Organization. All the RIRs have set procedures for transfers between address holders, which are designed to make sure that addresses only go to entities that need them. Echeberria believes most addresses will change hands through those mechanisms.

Despite the small portion of Internet traffic that uses IPv6 today -- recently estimated at less than one-tenth of 1% -- Echeberria is optimistic about the work done so far by vendors and network operators.

"All conditions are in place for a successful IPv6 transition," he said.

"A crisis has been averted," ICANN's Beckstrom said. The collaborative culture of the Internet allowed ICANN, the RIRs, the Internet Engineering Task Force and other entities to deal with the declining address space and create IPv6, he said. "This model is working incredibly well for the world."



Net powers: IPv4 is over. All hail IPv6!

By Stephen Shankland | Feb. 3, 2011

The Internet's overseers bid adieu to the last 83.9 million addresses needed to connect devices to today's Net--then took advantage of the moment to evangelize the next-generation Internet and the dangers of life support for today's Net.

Today's Internet is wired up with a technology called Internet Protocol version 4, or IPv4, which comes with 4.3 billion addresses to send data from one computer to another. That's a lot, but it's not enough, so now the move to the vastly more accommodating IPv6 is beginning in earnest.

"This is one most important days in the history of the Internet. A pool of more than 4 billion Internet addresses has just been emptied this morning," said Rod Beckstrom, chief executive of the [Internet Corporation For Assigned Names and Numbers \(ICANN\)](#), at press conference today in Florida.

The Net won't change immediately, but [IPv6 will gradually become the way everything on the Net is connected](#).

"We can think of it as generational change," said Lynn St Amour, CEO of the [Internet Society](#), which handles some Internet standards and advocacy issues and is organizing [World IPv6 Day](#) to iron out bugs on June 8. "The older previous generation doesn't go away, and has a lot to contribute, but it is the new generation that carries the future."

As IPv4 addresses have become more scarce, technologies such as network address translation (NAT) have sprung up to share a single address among multiple devices. That's been useful--but it has a pernicious effect of fragmenting the Internet behind an increasing number of network devices. The big message from today's conference was that only IPv6 will fulfill the promise of the Internet.

To maintain use of IPv4, "we'd need to spend increasing resources operating an increasingly brittle and nontransparent network," said Olaf Kolkman, chairman of the [Internet Architecture Board](#). "Such an Internet is likely to grow increasingly less capable of serving our needs today. Rather than maintaining the status quo, the IPv4 Internet is likely to degenerate. If you get too many layers of [network translation], you cripple your ability to do end-to-end communications. Accessing a Web site might be possible, but accessing a file-sharing protocol or hosting your own content may become more and more difficult."

St Amour concurred: "The fundamental key to the Internet's success is the unification of networks through universal access. That must continue to ensure the Internet does not become balkanized and does not disadvantage new entrants to the Internet."

How might that affect the real-world use of the Net?

"It might be very hard to make your Skype phone call, to do file sharing, to do those things we haven't dreamt of," Kolkman said.

And those who ignore moving their Web sites to IPv4 risk missing out on new arrivals to the Internet who'll use IPv6, he added.

"There are now 2 billion people who connect to the Internet. We've got 6 billion people in the world who want to connect themselves and their devices. That is simply not possible with IPv4. It's just not doable," Kolkman said. "The business impact if you don't make the transition is the next 2 or 3 billion customers will run IPv6 only and will not be able to do business with you."

Updated 9:18 a.m. PT with further commentary.

	Internet Protocol version 4 (IPv4)	Internet Protocol version 6 (IPv6)
Deployed	1981	1999
Address Size	32-bit number	128-bit number
Address Format	Dotted Decimal Notation: 192.149.252.76	Hexadecimal Notation: 3FFE:F200:0234:AB00: 0123:4567:8901:ABCD
Prefix Notation	192.149.0.0/24	3FFE:F200:0234::/48
Number of Addresses	$2^{32} = \sim 4,294,967,296$	$2^{128} = \sim 340,282,366,920,938,463,463,374,607,431,768,211,456$

Differences between IPv4 and IPv6 (Credit: Number Resource Organization)

Read more: http://news.cnet.com/8301-30685_3-20030520-264.html#ixzz1DJ5mgO3V



Internet address warehouse empty

By Juan Castro | Feb. 3, 2011

MIAMI — The global warehouse for Internet addresses ran empty on Thursday.

The non-profit Internet Corporation for Assigned Names and Numbers (ICANN) doled out its last five batches of "IP" numbers that identify destinations for digital traffic.

"A pool of more than four billion Internet addresses has been emptied this morning," ICANN chief Rod Beckstrom said at a Miami press conference.

"It is completely depleted. There are no more."

He brushed aside fears of modern life being devastated by an "IPocalypse," saying Regional Internet Registries (RIRs) worldwide will be doling out remaining addresses to support a shift to a bountiful new "IPv6" format.

"It is like running out of license plates," said Internet Architecture Board chairman Olaf Kolkman. "Driving on the road the next day would not change."

The touted solution to the problem is a switch to an "IPv6" format which allows trillions of Internet addresses, while the current IPv4 standard provides a meager four billion or so.

The effort and expense of changing to IPv6 would fall mostly on Internet service providers, websites and network operators that have to make sure systems can handle the new online addresses and properly route traffic.

"If an ISP (internet service provider) gets its act together, it shouldn't be a massive problem," Trefor Davies, chief operating officer of British ISP Timico, told AFP.

"We really should see this as an historic event," he continued. "The very nature of the Internet has changed with the transition."

Beckstrom expected the full switch to IPv6 to take years with potential overall costs in the billions of dollars, some of which could be factored into routine replacement of equipment.

"We are talking about billions of dollars here globally, not trillions of dollars," Beckstrom said.

Consumers, for the most part, should remain oblivious to the switch since complex IP numbers would still appear to them as words and domains, such as icann.org.

"My mother, my neighbor, my kids -- they should never notice," Kolkman said.

Some people might need to update routers or modems that connect computers to the Internet.

"All conditions are in place for a successful IPv6 transition," Beckstrom said. "The future of the Internet and the innovation it fosters lies within IPv6."

ICANN has been calling for a change to IPv6 for years but websites and Internet service providers have been clinging to the old standard since the birth of the Internet.

With about seven billion people on the planet, the IPv4 protocol doesn't allow for everyone to have a gadget with its own online address.

The situation has been equated to not having enough telephone numbers for everyone.

The number of addresses that IPv6 allows for amounts to 340 "undecillion" (followed by 36 zeroes); enough for a trillion people to each be assigned trillions of IP numbers, according to Beckstrom.

IPv4 addresses were expected to run out first in Asia, where demand has been highest as people and businesses in emerging markets embrace online lifestyles.

Once RIRs run out of IPv4 addresses, they will turn to IPv6.

The formats have been likened to different languages, with translation needed for systems to handle both.

Computers and other gadgets that don't get the new format might have to start sharing instead of having unique identifying numbers.

"The Internet won't stop working; it will just slowly degrade," Google engineer Lorenzo Colitti said of not making the move to IPv6. "Things will get slower and flakier."

Google, Facebook and other major Internet players will add IPv6 addresses to their systems in a one-day trial run on June 8 to let all parties involved check for trouble spots.

"We need to kick the tires on it at a global scale and see if there are some unforeseen problems," Colitti said. "There is really a rallying cry element to it. No single player can do it alone; we need to work together."

World IPv6 Day will start at 0001 GMT on June 8.

Adoption of IPv6 is vital to preventing the Internet from becoming "balkanized" with localized addressing frameworks, according to Internet Society chief technology officer Leslie Daigle.

ISPs and networks worldwide have implemented IPv6 or plan to do so, Daigle said.

"It's only a matter of time before the RIRs and Internet Service Providers must start denying requests for IPv4 address space," said Raul Echeberría, chairman of the Number Resource Organization, an RIR umbrella group.

"Deploying IPv6 is now a requirement, not an option."

Every IPv4 address is now allocated and could run out within weeks

By Cliff Saran | Feb. 3, 2011

It's official: the IPv4-based internet is full, or at least it will be within [a few weeks](#).

There are no more IPv4 addresses left to allocate, after APNIC, the Regional Internet Registry (RIR) for the Asia-Pacific region grabbed two blocks and the remainder were allocated equally between the five RIRs. ISPs will still be able to request IPv4 addresses from their RIR until the pool has been depleted, which could be a matter of weeks. A campaign is underway to [persuade website owners to switch to the new addressing system, IPv6](#).

Raul Echeberria, chairman of the Number Resource Organisation (NRO), the official representative of the five RIRs, said: "Depending on address space requests received, this could last each RIR anywhere from a few weeks to many months. It's only a matter of time before the RIRs and ISPs must start denying requests for IPv4 address space. Deploying IPv6 is now a requirement, not an option. All internet stakeholders must now take definitive action to deploy IPv6."

ICANN's chief executive Rod Beckstrom said, "The adoption of IPv6 is now of paramount importance, since it will allow the internet to continue its amazing growth and foster the global innovation we've all come to expect."

Q&A: What does the end of IPv4 addresses mean? Source: Sebastien Lahtinen, co-founder of broadband news site thinkbroadband.com

How many IPv4 and IPv6 addresses are there?

There are approximately four billion IPv4 addresses, however not all of these can be used openly on the internet. There are so many IPv6 addresses that each human being could have trillions of addresses

IPv4 = 4,294,967,296 addresses

IPv6 = 340,282,366,920,938,000,000,000,000,000,000,000,000,000,000 addresses

When will IPv4 finally run out?

This depends. IP addresses are distributed through registries and service providers to internet users, so it will take some time before each level runs out. We will start seeing some of the effects within weeks or months. We are now seeing final allocations from IANA to the Regional Internet Registries (RIPE in Europe), who will distribute them to Local Internet Registries (typically network operators/service providers) who will then assign space to users.

What happens when IPv4 runs out?

It is likely that network operators will try to free up unused IP addresses in the short term, but there will be an increasing push for IPv6 adoption.

There are also several systems designed to help in the transition between IPv4 and IPv6 to increase interoperability. We are likely to see increased use of Network Address Translation (NAT), which allows IP addresses to be shared by a number of users, something mobile broadband companies have already been using for many years on a large scale.

How do I use IPv6?

Most modern operating systems support IPv6 out of the box, including Windows 7, Windows Vista, the latest Apple Mac OS X and most Linux systems. Some older systems including Windows XP may require some additional configuration.

You also need to ensure your broadband router is IPv6-enabled. Most consumer routers currently are not supporting native IPv6, so make sure your next router does. Finally, you need to ensure your ISP supports IPv6.

How difficult is moving to IPv6 for consumers?

Moving to IPv6 should be a process that happens gradually when you upgrade equipment and there are transitioning provisions in place that will ensure interconnectivity between IPv4 and IPv6 network. This means that consumers have no need to panic; this is not a Millenium Bug situation.

Consumers don't generally have to interact with IP addresses directly, as the internet uses domain names which are more memorable for users, which are translated into IP addresses. These domains can have both IPv4 and IPv6 addresses.

ICANN: With IPv4 Gone, IPv6 Is Up Next

By Gabriel Perna | Feb. 3, 2011

If you didn't get an Internet address today, you missed your chance.

The numerical Internet addresses, described by the protocol known as IPv4, will be gone after today, to be replaced by IPv6, the Internet Corporation for Assigned Names and Numbers (ICANN) said.

At a press conference in Miami, ICANN said the internet's future expansion relies on IPv6, which will have to co-exist with the current internet protocol of IPv4, at least for a while.

Every device that can connect to the internet needs its own IP address, and under IPv4, there are a maximum of 4,294,967,296 IP addresses, which equates to 4.2 billion. The pool is nearly empty and the final allocation has been administered by the Internet Assigned Numbers Authority (IANA), under the authority of ICANN.

"This is a major turning point in the on-going development of the Internet," said Rod Beckstrom, ICANN's president and chief executive, at the press conference. "No one was caught off guard by this. The Internet technical community has been planning for IPv4 depletion for some time. But it means the adoption of IPv6 is now of paramount importance, since it will allow the Internet to continue its amazing growth and foster the global innovation we've all come to expect."

The new pool of IPv6 addresses is a lot larger than IPv4. ICANN estimates it's a hundred trillion times bigger than IPv4, which makes it virtually inexhaustible.

The major difference between the two is that IPv4 relies on 32-bit addresses, which is expressed in four octets. An example of IPv4 is 192.168.10. IPv6 uses 128-bit addresses expressed in hexadecimal numbers, for example 2001:0db8:85a3:0000:0000:8a2e:0370:7334.

For most operating systems, ICANN says IPv6 is enabled by default. If they are not, software distributors always include details on how to configure IPv6.

ICANN said the allocation of the final IPv4 addresses is similar to the last crates of a product leaving a manufacturing warehouse and going to the regional store so they can still be distributed to the public. They were allocated in two blocks to the Asia Pacific region by the Regional Internet Registry (RIR).

"It's only a matter of time before the RIRs and Internet Service Providers (ISPs) must start denying requests for IPv4 address space," Raúl Echeberría, chairman of the Number Resource Organization, the umbrella organization of the five RIRs, said at the press conference. "Deploying IPv6 is now a requirement, not an option."

The Internet Officially Runs Out of Addresses Today, But It's Not Cause for Panic

By Dan Nosowitz | Feb. 3, 2011

Today, in a [thoroughly nerdy ceremony](#) in Miami, the last five blocks of IPv4 addresses were handed out. That's sparked a lot of concern: The internet as we know it is out of space! The next evolution of Internet Protocol, IPv6, is largely unusable! Panic in the virtual streets! But that's all a bit misleading, at least for now. Here's what's really going on.

Back in 1981, when the internet was little more than an experiment, Internet Protocol Version 4, or IPv4, was created, in which every computer's identifying address is 32 bits long, allowing for a grand total of about 4.3 billion different addresses. These are typically shown as the IP address we're all used to: Four numbers, each ranging from 0 to 255, separated by dots. PopSci.com is 209.208.1.65. The 32-bit length was basically arbitrary--Vint Cerf, who chose that length all those decades ago, said [in an interview](#), "Who the hell knew how much address space we needed?" More than 4.3 billion, it turns out. ICANN, a group set up by the U.S. Department of Commerce, hands out IP addresses in large clumps to regional internet registries, or RIRs, which represent different parts of the world. Those RIRs then lease their addresses to ISPs, both home (like Comcast) and mobile (like Verizon Wireless).

Today, the last 84 million IP addresses were handed out to RIRs. So first of all, we're not out of IP addresses: Those RIRs haven't even begun handing the last addresses to ISPs, and the head of the North American RIR says he doesn't expect to run out for six or nine months. Then the ISPs have to run out. And then there's the curious fact that, according to estimates, only around 14% of all IPv4 addresses are actually being used, though the remainder are unlikely (due to cost, selfishness of owner, or inherent weird engineering) to free up. (You can read more about that process in [CNET's excellent explainer](#).) All in all, we're certainly not "out" of addresses, not for another year or two--but we are certainly getting close. So what's the solution?

The new version, IPv6, has 128-bit addresses, which gives 2^{128} IPv6 addresses in total--(hopefully) more than we'll ever need. But you can't just start using IPv6, because it and IPv4 are not inter-compatible. If your computer or smartphone only has an IPv6 address, you won't be able to access websites using IPv4, and vice versa. On the server and network side, it generally requires new hardware or new software to make the transition from IPv4 to IPv6, and that cost combined with the fact that nobody uses IPv6 right now has meant that only about 0.25% of the internet is accessible with an IPv6 address.

The solutions to this problem aren't thrilling. Eventually, we'll probably end up with a "dual-stack" configuration, in which the computer can basically use either an IPv4 or IPv6 address as needed. But you don't have to worry about any of that, really. Modern computers (Windows since XP SP1, Mac since OS 10.2) and smartphones support both iterations, and people generally lease modems from their ISP, so the only gadget consumers own that could conceivably be affected is the router--which is not a huge expense, all things considered. (You can check your compatibility [here](#).) For companies, this is going to be a pain in the ass, at best a tricky one and at worst a tricky *and* expensive one, but for Johnny

Websitevisitor, the worst result is some hiccups in the transition and maybe the purchase of a new router--unless the ISPs decide to pass some of their costs onto him.

That's a possibility, but not a likely one. Consumers hate seeing raises in internet costs, and generally the only way an ISP can make that work is by offering some kind of tangibly better experience by way of explanation. That could be speed (as in Verizon FiOS or 4G wireless) or some kind of feature upgrade, but the switch to IPv6 won't offer anything of that sort to consumers. Compared to other projects, like network expansion, it will be relatively affordable. It's also not something that's easy to explain (take it from me), and it's bad business to raise fees for a behind-the-scenes problem that, if successful, will leave a consumer's experience completely unchanged.

National Journal

Internet Hits Key Milestone

By Juliana Gruenwald | February 3, 2011

The Internet hit an important milestone Thursday. The group that manages the Internet's domain name system just handed out the last five blocks of addresses that use the original Internet protocol system known as IPv4.

The Internet Corporation for Assigned Names and Number made clear that this news will not affect average Internet users. But it will require websites to eventually transition to the next generation Internet protocol known as IPv6.

At a news conference in Miami, ICANN CEO **Rod Beckstrom** described the event as "one of the most important days in the Internet's history. It marks far more than a transition from one Internet address protocol to another. It marks the successful growth of the Internet."

Still, Beckstrom and other officials stressed that Internet users should not notice any difference. "This event is insignificant" for Internet users, Internet Architecture Board Chairman **Olaf Kolkman** said. "Next week the Internet won't be significantly different than it was a week ago."

ICANN's Internet Assigned Numbers Authority allocated the last blocks, containing about 60 million IPv4 addresses, to the five Regional Internet Registries on Thursday.

When asked how long it will take each region to exhaust their final allocation of IPv4 addresses, **Raúl Echeberría**, chairman of the Number Resources Organization that represents the regional registries, said it will depend on each region but said he expects the Asia-Pacific region will run out first. An official with that organization added that the Asia-Pacific regional registry, like the others, has a plan in place to ration the remaining IPv4 addresses and expected it would take five to 10 years to completely exhaust them all.

There are about 4.3 billion IPv4 addresses in total, with most of those now in use, but the transition to IPv6 will provide a "billion-trillion times" more addresses, Beckstrom said. Kolkman added that IPv6 will help enable the rollout of new technologies and innovations that are not possible under the current IPv4-based Internet.

ICANN and the other officials from Internet-technical groups called on companies, organizations and governments to help bring attention to the need to transition to IPv6.

"The older generation will not go away. It still has a lot to contribute," Internet Society President and CEO **Lynn St. Amour** said. "But the sooner we all move to adopt IPv6, the better."

In the meantime, many companies, organizations and others who use the Internet will have to make technical modifications to accommodate both IPv4 and IPv6 and eventually will only be given IPv6 addresses.

While major Internet firms like Google and Facebook have adapted their systems for IPv6, the Internet Society has helped organize World IPv6 Day on June 8 "to motivate organizations" around the world to transition to IPv6, St. Amour said. As part of this effort, Google, Facebook, Yahoo, Akamai and others will offer their content over IPv6 for a 24-hour "test drive," she added.



It's history: The IPv4 warehouse is empty

By Kevin McCaney | Feb. 3, 2011

The Internet Assigned Numbers Authority formally announced [final distribution](#) of IPv4 addresses today, marking a critical turning point in the Internet's history. The next major distribution of addresses will come from the next generation of Internet Protocols, IPv6.

The Internet Corporation for Assigned Names and Numbers (ICANN), the Number Resource Organization, the Internet Architecture Board, and the Internet Society announced the distribution at a news conference in Miami.

The move was expected after IANA, an arm of ICANN, distributed two blocks to the regional Internet registry for the Asia-Pacific region earlier this week, leaving IANA with five slash-eight blocks. ICANN's plan all along was to distribute the last five blocks to the five regional registries.

Despite the distribution, there are still plenty of unused IPv4 addresses in the hands of the regional registries, service providers and other organizations. The U.S. government reportedly has a large supply.

Essentially, the warehouse is empty, but the stores still have plenty in stock.

Nevertheless, the distribution is significant because it heralds the shift to IPv6, with its nearly infinite number of addresses, capability for new features and attendant security challenges.

The Obama administration has given agencies guidelines and deadlines for preparing their networks for IPv6. Although some progress has been made, overall adoption has been slow, and few organizations are using IPv6. The Office of Management and Budget has ordered civilian agencies to prepare public-facing servers and services for IPv6 traffic by the end of fiscal 2012, and agencies must have internal IP applications and systems ready by the end of fiscal 2014.

In announcing the final distribution of IPv4 addresses, ICANN officials noted the historic significance but assured reporters that it does not represent the IPocalypse.

"This is a major turning point in the ongoing development of the Internet," ICANN President and CEO Rod Beckstrom said. "No one was caught off guard by this. The Internet technical community has been planning for IPv4 depletion for some time. But it means the adoption of IPv6 is now of paramount importance since it will allow the Internet to continue its amazing growth and foster the global innovation we've all come to expect."

The IPv6 infrastructure will get a big test in June when the Internet Society holds [World IPv6 Day](#). On that day, a group of some of the largest Internet traffic generators will use IPv6 connections in an experiment to see how it works on a large scale.



IPv4 Addresses Gone; What Does It Mean for Internet Users?

By Mary Phillips-Sandy | Feb 3, 2011

Today the Internet Assigned Numbers Authority gave out the last [IPv4](#) addresses, marking the end of Internet Protocol version 4.

Since 1981 IPv4 has been the world's protocol for sending information between computers. It's associated with more than 4 billion unique Internet protocol addresses, which allow packets of data to reach their destinations.

Now that we've run out of IPv4 addresses the Internet will shift to a new protocol, dubbed IPv6. The new protocol has a 128-bit number, compared with IPv4's 32-bit number, and is formatted and notated differently than the previous version. It has more than [34 undecillion addresses](#) available.

The [Internet Corporation for Assigned Names and Numbers](#) says developers have been preparing for the transition for years. Websites will need to transition to the new protocol, but the switch shouldn't disrupt average Internet users. You may just notice that your IP address looks a little different: For most users, all it means is that your computer's IP address today might look like 192.0.2.10 (an example IPv4 address), but soon it may resemble 2001:0DB8::/feed:b766 (an example IPv6 address).

Who knows? Maybe someday museums will find a way to display IPv4 addresses alongside Model T Fords and gramophones.



Internet set for shake-up on addresses

By Joseph Menn | Feb. 3, 2011

The last internet addresses available under the protocol that has governed the net since its beginnings have been handed out, giving website owners just a few months to make sure that consumers with next-generation devices will be able to reach them.

The remaining millions of numeric addresses, out of an original 4bn, were formally handed over on Thursday to five regional authorities that expect to assign them in the next three to six months.

After that, any new websites or devices that have built-in addresses, including smartphones, will be given addresses in a format that does not automatically connect with those from the old system.

The new pool of numeric address – the real destination behind a user-friendly address such as [www.example.com](#) – are a billion times larger than the IPv4 pool.

Without adjustments, devices with the new locations – known as IPv6 for internet protocol version six – will fail to reach older websites that are based on IPv4, and new websites based on IPv6 will be unreachable by people relying on IPv4-only devices.

“We need to speed the global adoption of the next-generation protocol”, said Rod Beckstrom, chief executive at the [Internet Corp. for Assigned Names and Numbers](#), announcing the formal depletion.

Many of the world’s most popular websites, such as Google and Facebook, have already made their pages accessible from either type of device.

Internet service providers, who will bear most of the burden from the change, likewise have purchased equipment that translates from one protocol to the other to take care of their customers’ websites.

In the same vein, many computers and mobile phones sold in the past few years have capability for both protocols installed.

But adoption of the new technology has been slower than many internet advisory groups would have liked because businesses felt no urgency while IPv4 addresses remained.

Not until a few months down the road will the first problems appear, when some people on IPv6-only devices might find they are unable to reach some smaller websites.

As that population grows, lagging website owners will have to modernise to be accessible to all.

Because big equipment vendors and service providers have been preparing by building in the new configurations, website owners should not have to spend vast sums for new gear.

Instead, IPv6-ready services should be part of routine upgrades. “We are talking about billions of dollars here globally, not trillions”, Mr Beckstrom said.

But experts said that there would be security and performance issues that would persist for years.

The translation of one format to another by middleman service providers, such as internet service providers, would mean that financial institutions lack a direct view into the end user’s machine, complicating efforts to authenticate users’ identities.

“A lot of the internet service providers have already been doing this, almost all of them. The translation capabilities are all there”, said Cisco Systems senior vice-president Ben Fathi.

“But as we get more v6 devices, there are going to be fidelity, security and audit capabilities in allowing the ISPs to do the translation”.



Internet addresses depletion reflects wired world

By Alexei Oreskovic | Thu Feb 3, 2011

SAN FRANCISCO (Reuters) - Thirty years after the first Internet addresses were created, the supply of addresses officially ran dry on Thursday.

But don't panic. The transition to a new version of addresses is already well under way and, for most people, should occur without even being noticed.

At a special ceremony in Miami on Thursday, the organization that oversees the global allocation of Internet addresses distributed the last batch of so-called IPv4 addresses, underscoring the extent to which the Web has become an integral and pervasive part of modern life.

Every computer, smartphone and back-end Web server requires an IP address -- a unique string of numbers identifying a particular device -- in order to be connected to the Internet. The explosion of Web-connected gadgets, and the popularity of websites from Google Inc to Facebook, means that the world has now bumped up against the limit of roughly 4 billion IP addresses that are possible with the IPv4 standard introduced in 1981.

The solution is IPv6, a new standard for Internet addresses that should provide a lot more room for growth: There are 340 undecillion IPv6 addresses available. That's 340 trillion, trillion, trillion addresses.

"If all the space of IPv4 were to be sized and compared to a golf ball, a similar-sized comparison for IPv6 would be the size of the sun," said John Curan, the CEO of the American Registry for Internet Numbers, one of five nonprofit organizations that manage Internet addresses for particular regions of the world.

Just in case you're worried, Curan added that "we don't ever intend to see another transition."

For companies with websites, the transition to IPv6 means configuring their computer equipment to support the new standard rather than upgrading hardware, Curan said. Those that don't could see the performance of their sites slowed down, and potentially cut off to some users in the future.

Laptops, smartphones and other Web-connected gadgets, as well as Web browsers, already support IPv6, though Curan notes that according to some estimates less than 1 percent of Internet users may not have their equipment configured properly and will need to adjust their settings in the months ahead, as websites increasingly adopt the new standard.

(Reporting by Alexei Oreskovic, editing by Gerald E. McCormick)

IPv4 Officially Depleted, Eyes on IPv6

By Sean Michael Kerner | Feb. 3, 2011

At a ceremony held in Miami, the last five blocks of IPv4 address space were officially handed over to the five global Regional Internet Registries (RIRs). The event followed the [final request earlier this week](#) from APNIC (Asia Pacific Network Information Center) that triggered the exhaustion of the free pool of IPv4 address space.

With the official ceremony and depletion of the free pool of IPv4 addresses, the focus now turns to IPv6 adoption as a way to continue to expand Internet innovation. Rod Beckstom, CEO of ICANN, noted during the ceremony that the event marked one of the most important days in the history of the Internet.

"It marks far more than the transition from one Internet protocol to another; it marks the amazingly successful growth of the Internet with people all over the world coming online," Beckstom said during the event. "A pool of more than 4 billion Internet addresses has just been emptied this morning; completely depleted, there are no more."

IPv4 provides for up to 4.3 billion addresses. [IANA's longstanding policy](#) was that at the point there were only five blocks of /8 address remaining, each of the five global RIRs would receive one of the final blocks. Each /8 address block includes 16 million IPv4 addresses.

While the free pool of IPv4 addresses that IANA had to give to the RIRs is now exhausted, that doesn't mean the Internet will stop working, or change in the near term. RIRs still have their own pools of IPv4 address space which they can allocate to users within their own respective geographies.

In response to a question posed by *InternetNews.com*, Beckstom noted that the ICANN has done its job with respect to IPv4 allocation. He added that each individual RIR has its own policies for the final distribution of IPv4 space within their own region.

IPv4 will be around for many years

Raul Echeberria, chairman of the Number Resource Organization (NRO) noted that IPv4 will still be available to allocate by the RIRs for many years, but only in small blocks in an effort to help aid the transition to IPv6. Paul Wilson, director general of APNIC, predicted that his region will have small blocks of IPv4 to allocate for the next five to ten years.

"The current IPv4 based network will of course continue to function as usual," Lynn St Amour, president and CEO of the Internet Society said. "We can think of it as generational change -- the older, previous generation doesn't go away and still has a lot to contribute, but it is the newer generation that will carry the future."

IPv6, which has a 128-bit addressing scheme and support for 340 trillion, trillion, trillion (34×10 to the 38th power) Internet addresses is that future. To date, IPv6 adoption has been slow, but that is now likely to change.

"IPv6 adoption has been slow because we still had IPv4," Echeberria said in response to a question from *InternetNews.com*.

The other challenge facing IPv6 adoption is the fact that all Internet services work on IPv4 today. Olaf Kolkman, Chair of the Internet Architecture Board (IAB), noted that in order for the Internet to continue to grow, organizations will have to move to IPv6. He warned that if IPv6 is not adopted there will be all manner of difficult workarounds that will restrict the growth of the Internet.

IPv6 or 'an increasingly brittle' Internet

"If we continue to remain dependent on IPv4, we will need to spend increasing resources operating an increasingly brittle and non-transparent network," Kolkman said. Such an Internet is likely to grow increasingly less capable of serving our needs."

Kolkman added that there is no danger to the Internet right now, and that it will continue to work tomorrow as it did yesterday. He stressed that the danger of not moving to IPv6 is about the future.

"The danger is in the loss of opportunities that might exist in a decade or two decades from now, if we move away from an end-to-end model where everyone can connect," Kolkman said.

According to Kolkman, in time an end-to-end IPv4 network will not exist as new users and services adopt IPv6. He added that if we move to IPv6 all things remain possible and there will be innovation in the future that is unimaginable today.

While the need for IPv6 seems obvious to Kolkman, he noted that there is no actual mandate in place that the global community as a whole move to the new addressing protocol.

"There is nobody centrally mandating the use of IPv6," Kolkman said. "We all have to get there on our own and we have to get there together."



River of IPv4 addresses officially runs dry

By Iljitsch van Beijnum | Feb. 5, 2011

In a ceremony in Miami this morning, the final five blocks of IPv4 addresses were given out to the five Regional Internet Registries that further distribute IP addresses to the far corners of the planet. The five RIRs still have tens of millions of addresses as working inventory, but once those addresses are given out, it's over. Internet Protocol addresses are a prerequisite for all Internet communication—both the sender and the receiver need one. As such, additional addresses are necessary whenever new users are connected to the Internet.

Without access to more IP addresses, service providers are forced to have their customers share an address. For most types of communication, that's a workable solution, but it makes it much harder for two end-users to communicate directly, such as when making a VoIP call, video chatting, or transferring files directly using an instant messaging program, or through a peer-to-peer filesharing system.

A more permanent solution than sharing addresses is the new version of the Internet Protocol: IP version 6 or IPv6. IPv4 addresses in use today are 32 bits long, or up to 12 digits. This allows for a total of 4.3 billion addresses; 3.7 billion of them are usable. IPv6 has 128-bit addresses, which are 39 digits, allowing for an almost unlimited number of addresses. With IPv6, a single home can have billions of addresses, so each Internet-connected device can have its own IP.

Running on fumes

The RIRs have various policies governing the last scraps of IPv4 address. For instance, some will be held in reserve to allow for IPv6-to-IPv4 translators, and some for currently unforeseen future needs. So there won't be a moment when the very last IPv4 address is given out. Also, every year some millions of addresses are returned because they're not needed anymore or the organization holding them ceases to exist. What will happen instead is that at some point, a big ISP will ask for a large block of IPv4 addresses—for instance, Comcast wants another block of 16,777,216 addresses—and there simply isn't enough space left to fulfill that request.

This is going to happen within months for the Asia-Pacific RIR, APNIC, which has been using up around 10 million addresses per month for the past year, managing to burn through almost 24 million in January alone. With somewhere south of 100 million IPv4 addresses left, APNIC may have to say "no" within three or four months, and certainly before the year is out.

ARIN (North America) and the RIPE NCC (Europe, the Middle East and the former Soviet Union) aren't going through addresses quite as fast. The RIPE NCC could run out by the end of the year, but ARIN should be able to finish 2011 without having to refuse requests due to lack of space. The moment of truth for ARIN will very likely come at some point in 2012.

LACNIC (Latin America and the Caribbean) and especially AfriNIC (Africa) are in a more comfortable position and may be able to continue giving out IPv4 addresses for a few more years. Of course, all of this is predicated on existing usage patterns continuing.

The last /8 blocks, identified by the first number of the four-number IP address, were doled out as follows: 102 went to AfriNIC, 103 to APNIC, 104 to ARIN, 179 to LACNIC, and finally, 185 to the RIPE NCC.

The Internet Engineering Task Force is responsible for technical Internet standards such as IPv6—IPv4 predates the formation of the IETF. The IETF BEHAVE (Behavior Engineering for Hindrance Avoidance) working group works on NAT (address sharing) and NAT traversal, including translation between IPv6 and IPv4. These mechanisms will allow the Internet to keep working during the transition of IPv4 to IPv6.

"The IETF has actually been preparing for this day for a long time. In the Behave WG, we've developed transition technologies to ease the transition to IPv6, while also looking at the impact of carrier-grade NATs. In short, the depletion of the IANA IPv4 address pool is not a crisis, and will not have any notable short-term effects," Dave Thaler, software architect at Microsoft and IETF BEHAVE co-chair told Ars.

Thaler noted that the depletion of the global pool means that the pace of IPv6 deployment really needs to increase. "The urgency for IPv6 deployment will be strongest in areas of major growth, such as deployments of new Internet technologies," he said. "For others, the IANA depletion is a call to action to ensure that everyone is on track to support such worldwide growth while still keeping with the original principles that generated the Internet's success."

Many people already use NAT at home, but the carrier-grade version that is implemented in a service provider network will be more disruptive, because local computers can no longer reach out to the NAT device and have incoming packets directed to them.

"To continue to grow their businesses, ISPs will need to deploy some form of IPv4 address sharing—NAT44, NAT64, or similar technologies," Dan Wing, distinguished engineer at Cisco Systems and the other BEHAVE chair told Ars. "IPv4 address sharing will be necessary until all of the content and servers on the Internet support IPv6, which will take many years. Users will still need to run servers at home—for webcams, television place shifting, and so on. To accommodate that need, the IETF is working on a protocol, PCP, which allows operating a server behind an IPv6 firewall and a carrier's NAT44 or NAT64."

(NAT44 is sharing an IPv4 address, NAT64 is sharing an IPv4 address along with translation between IPv6 and IPv4, so users who only have IPv6 may reach IPv4 servers.)

Even though the pool of available IPv4 addresses is running dry, that doesn't mean that each and every address is in actual use. There are many places around the 'Net where large swaths of IP addresses remain unused. But for various reasons, ranging from having to audit firewalls to the expectations that money can be made from them in the future, these addresses aren't being released back to the RIRs for redistribution. The fact that addresses are given out in hierarchical fashion doesn't help. The same is true for the phone system: if New York needs more phone numbers, it can't get some unused Wyoming numbers.

Researchers at the Information Sciences Institute have created an [interactive map of the IPv4 address space](#) that clearly shows how lopsided the distribution of IP addresses is.

Ars has covered IPv6 extensively the past four years; have a look at our previous articles so you can start planning your own transition to IPv6.

The New York Times

For Countries That Own Shorter Web Site Suffixes, Extra Cash From Abroad

By Eric Pfanner | Feb. 6, 2011

Logging on to [Facebook](#)? You can use the social networking site's full Web address, or you can type [www.fb.me](#).

The shortcut is possible because the government of Montenegro makes its "country code top-level domain" — the ".me" suffix — available to commercial and private Internet users, for a fee, of course. Facebook and other companies have snapped up such addresses to help draw more users to their sites, or to prevent rivals from doing so.

The sale of country codes by governments that secured two-letter combinations that double as widely recognized words or symbols is not new. The island nation of Tuvalu, for example, has sold its code, ".tv," for more than a decade.

With a few exceptions, Internet addresses that end with country codes have failed to catch on with consumers, and ".com" remains the suffix of choice for marketers seeking to establish their Web credentials. Now companies that market country codes like ".me," ".tv" and ".co," for Colombia, are stepping up their efforts to sell them worldwide.

"The opportunity for us is to become the platform of choice for entrepreneurs around the world," said Juan Diego Calle, chief executive of .CO Internet, a company based in Miami that operates the ".co" registry under license from the Colombian government. "To do that, we want to build massive awareness."

One reason for the renewed push is a shortage of potential names ending with the most widely used domain suffix, ".com." More than 90 million ".com" addresses are already in use, and the companies that sell them say few combinations are still available.

Another reason is a liberalization of the domain name system. The [Internet Corporation for Assigned Names and Numbers](#), the organization that oversees Internet addresses, recently made it possible to create domain names in non-Latin alphabets, including Cyrillic and Arabic. Next year, the organization wants to make it possible to create all sorts of new endings, like ".paris" or ".shopping." Countries like Colombia and Montenegro want to get in before their country codes are lost in the crowd.

For financially struggling governments, the sale of country code domain names is a boon. Colombia, for example, gets 25 percent of the revenue from sales of the ".co" name under its deal with .CO Internet. Last year, the company generated a total of \$20 million from the sale of ".co" domains; this year, that is expected to rise to more than \$30 million, Mr. Calle said.

More than 600,000 “.co” addresses have been sold, in more than 200 countries, he said. Only about 20,000 of those are actually from Colombia, with the most interest coming from the United States and Europe.

The company predicts that the total number of “.co” registrations will rise to five million within five years. Mr. Calle was hoping for a surge of interest after a prominent marketing pitch over the weekend. During the [Super Bowl](#), the world’s largest domain name registrar, Go Daddy, highlighted “.co” in an advertisement. The spot, as is typical of the company’s TV ads, featured the “Go Daddy girls” in tight T-shirts and hot pants. But this time, [Joan Rivers](#) was one of them. Before the game, Go Daddy said it planned to introduce a new member of the team, a “ ‘.co’ girl.”

While some country codes have had a hard time attracting anything other than niche interest, analysts say the Colombian suffix may have a better chance to rival “.com” because the letters “co” are recognized in many languages as an abbreviation for “company” and are not merely seen as an abbreviation for the country’s name.

“As long as it doesn’t become well known that it’s just a bastardization of the country code for Colombia, it could take off,” said Josh Bourne, managing partner of FairWinds Partners, which advises firms on the use of domain names.

Many of the names with suffixes like “.co” or “.me” are simply defensive registrations by companies that want to prevent practices like so-called cybersquatting or domain name parking — that is, the registration of their name by a third party that essentially holds it for ransom.

To prevent that, the operators of a new top-level domain like “.co” are now generally required to let brand or trademark owners register their own names during a so-called sunrise period. As a result, the address [apple.co](#), for example, automatically redirects traffic to the company’s main site, [apple.com](#).

Some companies have been making more creative use of country code domain endings. Like Facebook, a number of well-known Web sites have used them for abbreviated addresses; these include [Overstock.com](#), an online retailer, which recently added a shorter address, [o.co](#), using the Colombian country code.

DoMEn, the company that operates the “.me” registry, has been promoting the use of “.me” for social media sites and bloggers, seeing it as a natural appendage for people who want to tell the world about themselves. The suffix has been employed, for example, by [About.me](#), a start-up that lets users create pages that aggregate their presence on other social networking services; About.me was acquired by [AOL](#) in December.

Other country codes that have been adopted for similar uses include “.at” (Austria), “.cc” (Cocos Islands) and “.tm” (Turkmenistan).

Yet not every country is eager to see its two-letter code adopted by marketers all over the world. France, for example, requires users of “.fr” to have a physical presence in the country.

“Some countries wanted to keep their domains clean and restrictive, but most of them have given up on that by now, in the search for additional revenue,” Mr. Bourne said.

While some of the companies selling country code domain names play down their affiliation with the countries that own the rights to these endings, seeing it as a barrier to wider international adoption, that is not the case for DoMEn.

Natasa Djukanovic, international sales director at DoMEn, said it was a good promotional opportunity for Montenegro: "A lot of people who didn't even know we existed now know where we are."



U.S. Proposal Raises Questions About Control of Web Addresses

By Chloe Albanesius | Feb. 8, 2011

With billions of people accessing the Internet, the Web's governing body has for years been working on a plan to expand the number of available [Web addresses](#). This includes increasing the number of generic top-level domains (gTLDs) so that [Web sites](#) are not restricted to things like .com or .edu, but can expand to anything from .technology to .yams.

A recent proposal from the U.S. government, however, has some concerned that government bodies will have the power to "veto" proposed gTLDs they find objectionable. In a [guest column](#) for CBS News, a Syracuse University professor suggested that the plan is an "assault on Internet freedom."

The issue is currently handled by the Internet Corporation for Assigned Names and Numbers (ICANN), a California-based organization that handles Internet governance issues. At its inception, the U.S. had a primary role in ICANN, but it relinquished that control in 2009 and instead became a member of ICANN's [Governmental Advisory Committee](#) (GAC), a group of government bodies that advises ICANN on issues of public policy.

ICANN has been working on an "Applicant Guidebook," which will basically spell out the rules for proposing and running a new gTLD. The ICANN Board and the GAC will meet from February 28 to March 1 to discuss any issues the GAC has with this Applicant Guidebook. In an effort to [streamline](#) the process, the GAC is looking to consolidate its discussion points prior the ICANN meeting via what it calls a "scorecard." Countries can submit proposals, ideas, or objections to this scorecard, and the GAC will present their conclusions to the ICANN community around February 21.

The U.S. contribution to the scorecard, which was [published](#) by the Internet Governance Project, would allow the GAC to have a role in rejecting proposed gTLDs.

"Any GAC member may raise an objection to a proposed string [gTLD] for any reason. If it is the consensus position of the GAC not to oppose objection raised by a GAC members or members, ICANN shall reject the application," according to the proposal.

Ultimately, the gTLD issue - what gTLDs are issued and who oversees them - are handled by ICANN. The GAC just has an advisory role. But if the GAC comes across a gTLD it finds objectionable, this U.S. plan would give it the power to reject the gTLD and ICANN would have to honor that rejection. However, there would have to be consensus among every single member of the 100-member GAC to object to the gTLD. For some, that could be viewed as a pretty tough vote to achieve; for others, a good way for governments to assert control over the Web.

The National Telecommunications & Information Administration (NTIA), which oversees the issue in the U.S. via the Commerce Department, said the proposal will prevent certain countries from blocking gTLDs and creating a fragmented Web.

"NTIA believes the suggestion has merit as it diminishes the potential for blocking of top level domain strings considered objectionable by governments," the agency said in a statement. "This type of blocking harms the architecture of the DNS and undermines the goal of universal resolvability (i.e., a single global Internet that facilitates the free flow of goods and services and freedom of expression)."

Milton Mueller, a professor at Syracuse University's School of Information Studies, however, does not think the GAC should have a say at all – consensus or not.

"The Dept. of Commerce is trying to put governments in control of the Internet's domain name system (DNS)," he wrote for CBS. "In an extraordinary reversal of the original U.S. approach to Internet governance, it is proposing that policies developed by ICANN be thrown out and replaced with policies approved by its Governmental Advisory Committee (GAC)."

Mueller said that governments typically "scratch one another's backs" and likely wouldn't object to things like China rejecting .humanrights or Saudi Arabia saying no to .gay.

NTIA said in a statement that it "continues to support a multi-stakeholder approach to the coordination of the domain name system to ensure the long-term viability of the Internet as a force for innovation and economic growth."

Pittsburgh Post-Gazette®

Two big changes address needs on Internet

By Ced Kurtz | Feb. 13, 2011

Two big changes are in the cards for the Internet -- one you will notice and one you probably will not.

On Feb. 3, the Internet Assigned Numbers Authority -- the address guru for the Internet -- announced that the Web has officially run out of new Internet Protocol (IP) addresses.

Addresses on the Internet are vital because they tell where on the Internet a device is located. So, for example, if you want to go to the Post-Gazette website, you need an IP address to connect to the PG servers.

All IP addresses are four sets of up to three numbers (post-gazette.com is 10.11.100.13). Obviously you do not need to type in that address to get to the PG. Instead you type in the URL (www.post-gazette.com), which is then converted to the IP address.

All possible combinations of four sets of three numbers add up to about 4.3 billion possible addresses. But since the introduction of IPv4 in 1981, all possible addresses have been distributed for use.

How can this be with only 7 billion people on the planet? IP addresses are assigned to devices, not humans. If you have four devices in your home individually connecting to the Internet, you are using four IP addresses.

As the Internet of Things -- appliances, phones, home security systems etc. -- connected grows, the need for IP addresses also grows.

So what happens now?

Just because all the IP addresses have been given out, doesn't mean they are all being used. In fact there are many IPs sitting idle.

The Internet Engineering Task Force recognized that addresses would run out, so in 1998 it published a new addressing scheme called IPv6. An IPv6 address contains eight groups of four hexadecimal (base 16) numbers separated by colons. This scheme astronomically increases the number of possible addresses. Instead of 4.3 billion addresses, IPv6 has 340 undecillion possible addresses. That is 340 trillion, trillion, trillion addresses. A common comparison is that if you think of all IPv4 addresses as the size of a golf ball, IPv6 would be the size of the sun.

The transition to IPv6 is under way and should be seamless to most users, although Web masters and device makers will have to adjust.

The second approaching change -- the noticeable one -- has to do with requests for more generic top-level domain name suffixes.

The Internet already has 21 generic top-level domains ending in well-known suffixes such as .com, .net, .gov, .edu, and others not so well known -- .info, .asia, .mobi and .tel.

In 2008, the Internet Corporation for Assigned Names and Numbers (ICANN) decided to expand domain suffixes. Controlling a domain suffix can be lucrative and deciding what will be added and who gets control could be an ICANN of worms.

Possibilities are endless and could include .eco, .sport, .art or more controversial ones such as .god, .gay or .abortion. ICANN must decide whether to allow suffixes and who should control them.

An earlier proposal to create a .xxx suffix to identify pornographic content was opposed by the porn industry and never went through.

If you think you might like a domain suffix of your own, be ready to shell out. There is a fee of \$185,000 to apply plus an annual fee to ICANN of \$25,000.

In addition to top-level domains, the Internet has hundreds of country code top-level domains, such as .de for Germany or .cn for China. These suffixes can be very profitable. In 2000, the South Pacific government of Tuvalu negotiated a 12-year contract worth \$50 million for selling use of its domain name .tv.



Now that you're used to .com and .net, get ready for .everythingelse

Feb. 14, 2011

The governing body that controls web domain names is preparing for what it calls a land rush. Soon, you might be seeing not just .com and .net but .eco, .flowers, .god, .gay, and dot just about anything else you can think of.

There's a price war brewing among broadband, Internet providers. But is now the time to jump in to the broadband stream? And if so, what service is best for you?

The process for getting these new top-level domain names on the market is kind of a strange one. [ICANN](#), the Internet Corporation for Assigned Names and Numbers, is in charge of doling them out and is preparing to [throw open the doors](#) to groups who want to control certain suffixes.

We talk to [Jonathan Zittrain](#) about all this. He's the co-founder and co-director of Harvard University's Berkman Center for Internet and Society and a frequent guest on our show. Jonathan says there is active debate on the expansion of top-level domain names. Some think there should be plenty of new names bringing further variety to the web and encouraging both free speech and entrepreneurship. Others feel that the whole structure of how the web works could be jeopardized.

As for whether people will use a .flowers or a .shoes when a perfectly familiar .com is available, Jonathan is skeptical. After all, business is not exactly booming for the previously approved .info, .biz, and .tv. But he says he was skeptical about the long term prospects of Twitter and Wikipedia too.

[Listen to this story.](#)

RSA: Experts hail early success for DNSSec

By Shaun Nichols | Feb 16, 2011

Security protocol looking strong so far, says panel

A panel of security experts has given an early thumbs-up to the DNSSec security protocol.

Icann chief executive Rod Beckstrom, cryptography pioneer Whitfield Diffie and security researcher Dan Kaminsky were among those who spoke on the progress of the security standard at the 2011 RSA Conference in San Francisco.

"What has been happening so far with this rather rapid propagation... I think this may well continue and may make a genuine difference in overall security," said Diffie.

Designed to prevent "cache poisoning" security attacks, the DNSSec system is designed to provide a secure method for exchanging and verifying DNS traffic. Rollout for the platform began last year when DNSSec was put in place [for the .org](#) and later [the .net domains](#), with plans to extend into the .com space

Kaminsky, whose research into DNS vulnerabilities [made headlines in 2008](#), admitted that while he didn't think he would ever be on a panel extolling its virtues, he now had to concede that DNSSec had shown great promise thus far.

"We have a lot of things to fix, and I don't think I have seen in my entire career a budding technology that has the potential to fix as many things as DNSSec," said Kaminsky.

The panel warned that challenges could lie ahead for the system. Nominum chief scientist and DNS inventor Paul Mockapetris warned companies to adopt DNSSec early and plan in advance to deal with the system's inevitable growing pains.

"You need to make sure that your DNS software is updated," Mockapetris cautioned.

"You have to make sure that you keep up with it because there are going to be some bumps in the road along the way."



Las direcciones de internet se agotan el jueves

Feb. 2, 2011

La organización internacional que asigna las IP explicará en una ceremonia cómo se organizará la transición hacia la nueva generación de direcciones

El número de direcciones **IPv4** llega a su fin. Concretamente es este jueves 3 de febrero, cuando está previsto que se anuncie su agotamiento. La Corporación de Internet para la [Asignación de Nombres y Números \(ICANN\)](#) ha convocado una rueda de prensa para dar detalles sobre lo que vendrá ahora y cómo se debe manejar la transición a las **nuevas IPv6**.

Son varias las organizaciones implicadas en el reparto de direcciones **IPv4** y en la coordinación de este proceso, y van a ser estas mismas las que anuncien los pasos da dar para llevar a cabo la transición que deberemos acometer. Aunque todavía no se sabe cómo se van a desarrollar los acontecimientos **los apocalípticos que hablan del fin de internet** parecen algo desacreditados atendiendo al ICANN.

La Corporación de Internet para la Asignación de Nombres y Números ofrece este jueves 3 de febrero una “ceremonia y rueda de prensa para realizar un anuncio significativo y debatir la transición global a la nueva generación de direcciones de Internet”. En este evento (que se podrá ver en streaming [aquí](#), a partir de las 15:30 hora peninsular) se anunciará oficialmente la asignación de los últimos bloques de IPv4 y se aportarán detalles sobre las nuevas IPv6.

Estos últimos bloques han ido a parar a la APNIC, la asociación que se encarga del registro regional de Internet en la zona de Asia y el Pacífico, que los repartirá según las necesidades. Ahora, la IANA (Agencia de Asignación de Números de Internet) se ha quedado sin direcciones IPv4 y se prepara para afrontar la tarea de pasar a las IPv6.

Hasta septiembre

Está previsto que las direcciones IPv4 ya asignadas, en manos de los diversos organismos regionales que las administran, **duren hasta septiembre**. Pero **a partir de ese momento no habrá más**. Quien necesite una nueva conexión a Internet recibirá una de tipo **IPv6**.

Sin embargo, existen algunas dudas sobre la transición a este nuevo estándar. Según el presidente del ICANN, Peter Dengate Thrush, podría darse un “mercado gris”, esto es, que **se comerciará de forma clandestina con los bloques de direcciones IPv4** ante de actualizar a IPv6, ya que la primera opción resultaría más barata.

IPv6, "el mayor punto de inflexión en el desarrollo de Internet"

MADRID, Feb. 4, 2011 (Portaltic/EP) -

Fin de las IPv4

La Corporación de Internet para la Asignación de Nombres y Números (ICANN, en sus siglas en inglés) ya ha entregado los últimos bloques de direcciones IPv4 y lo ha hecho oficial en una conferencia de prensa celebrada el jueves en Miami (Florida).

Esto significa que la futura expansión de Internet depende ahora de la correcta implementación global de la próxima generación de protocolo de Internet, llamado IPv6, cuya utilización será "un requisito, no una opción", tal y como asegura el presidente de Number Resources Organization (NRO), Raúl Echeberría.

Según la nota de prensa de la ICANN, a esta conferencia también acudieron las organizaciones Number Resources Organization (NRO), Internet Architecture Board (IAB) y la Sociedad de Internet. La asignación final de las direcciones de Internet IPv4 fue administrada por la Internet Assigned Numbers Authority (IANA), una división de la ICANN.

"Este es un importante punto de inflexión en el desarrollo del curso de Internet", aseguró el presidente y director ejecutivo de la ICANN, Rod Beckstrom. Además, afirmó que el fin de las IPv4 estaba planificado desde hacía algún tiempo y que el protocolo IPv6 "es de suma importancia, ya que permitirá a Internet continuar su crecimiento de forma asombrosa y fomentar la innovación global".

El nuevo IPv6 abrirá un conjunto de direcciones de Internet que es billones de veces superior a la cantidad total de direcciones IPv4 que existían, alrededor de 4,3 millones, lo que significa que "el número de direcciones IPv6 es prácticamente inagotable en un futuro inmediato".

Durante la conferencia también se recordó que los dos "bloques" de las últimas direcciones IPv4, cerca de 33 millones de direcciones, se asignaron a principios de esta semana en el Registro Regional de Internet (RIR) para la región Asia-Pacífico, una organización sin ánimo de lucro que coordina la infraestructura de Internet.

El resto de direcciones IPv4 se repartieron en partes iguales entre los cinco RIR mundiales que las distribuirán entre los proveedores de servicios de Internet (ISP), universidades, gobiernos, empresas de telecomunicaciones y otras empresas.

"En poco tiempo los RIR y los ISP comenzarán a negar las peticiones de direcciones IPv4", aseguró el presidente de la NRO, Raúl Echeberría.

Internet à court d'adresses ?

LEMONDE.FR avec AFP | Feb. 4, 2011

L'organisme chargé de réglementer les noms de domaine d'Internet, l'Icann, a annoncé, jeudi 3 février, qu'il avait distribué ses cinq derniers lots de numéros IP (protocole Internet), permettant d'identifier les destinations du trafic Internet à travers le monde. *"Un réservoir de plus de quatre milliards d'adresses Internet a été vidé ce matin"*, a déclaré le patron de l'Icann [Rod Beckstrom](#) lors d'une conférence de presse à Miami.

"C'est complètement vide, il n'y en a plus". "C'est comme quand on est à court de plaques d'immatriculation", a déclaré pour sa part [Olaf Kolkman](#), président de l'organisme technique chapeautant les aspects techniques d'Internet, l'Internet architecture board.

Le monde numérique n'est pas pour autant au bord de l'"*IPocalypse*", assure M. Beckstrom. Dans certaines parties du monde, les registres régionaux de noms de domaine seraient en mesure de fournir des adresses en attendant le basculement du standard actuel, baptisé [Internet Protocol](#) version 4 (IPv4) au standard IPv6 (version 6), virtuellement inépuisable.

Développé au début des années 1980, le standard actuel IPv4 permet l'existence de *"seulement"* 4 milliards d'adresses IP (formées de séries de 4 nombres séparés par des points) gérées par l'Icann. Les utilisateurs de la Toile, un réseau connectant initialement des universités, compte désormais plus de deux milliards d'internautes, selon les derniers chiffres de l'Union internationale des télécommunications. Cela fait plusieurs années que l'Icann demande l'adoption du nouveau standard IPv6, qui existe depuis 1999.

TRANSITION PROGRESSIVE

L'IPv6, permet l'existence d'environ 340 sextillions d'adresses (soit 340 fois 10 à la puissance 36) : suffisamment pour que mille milliard de gens disposent chacun de mille milliards d'adresses IP, selon le président de l'[Icann Rod](#) Beckstrom. Mais d'après les professionnels, les réseaux fonctionnant avec le système IPv6 ne représenteraient que 1 % du trafic global.

Pour les internautes, le basculement progressif vers l'IPv6 se fera de manière imperceptible. L'effort et l'investissement nécessaires pour basculer sur ce standard reposent surtout sur les fournisseurs d'accès, qui doivent faire en sorte que leurs réseaux puissent gérer ces nouvelles adresses et router le trafic.

Pour en savoir plus : [le document de l'Icann sur l'IPv6](#)

Pool of existing Internet addresses now empty

Feb. 4, 2011

SAN FRANCISCO, Feb. 3 (Xinhua) -- The pool of available unallocated addresses for the existing Internet protocol has now been completely emptied, the organization that oversees the allocation of Internet addresses announced on Thursday.

The announcement was made by the Internet Corporation for Assigned Names and Numbers (ICANN), together with three other international non-profit groups which collaboratively work to coordinate the world's Internet addressing system and its technical standards.

The last five blocks of Internet addresses IPv4, the original Internet protocol addressing system, were allocated to five so-called Regional Internet Registry Thursday during a ceremony held in Miami in the U.S. state of Florida, according to a press released from ICANN.

"A critical point in the history of the Internet was reached today with the allocation of the last remaining IPv4 (Internet Protocol version 4) Internet addresses from a central pool," ICANN said.

ICANN noted that the depletion of the first generation of Internet addresses means the future expansion of the Internet is now dependent on the successful global deployment of the next generation of Internet protocol called IPv6.

Internet Protocol (IP) addresses are the unique numeric identifiers assigned to every computer or device that is connected to the Internet.

The original IPv4 protocol was developed in the early 1980s and has a capacity of just over four billion IP addresses.

The new Internet protocol, IPv6, will open up a pool of Internet addresses that is a billion-trillion times larger than the total pool of IPv4 addresses, which means the number of IPv6 addresses is virtually inexhaustible for the foreseeable future, ICANN said.

It also pointed out that Thursday's announcement is not "IPocalypse" as called by some media reports.

"This is a major turning point in the on-going development of the Internet," Rod Beckstrom, ICANN's president and chief executive officer, said in a statement.

"No one was caught off guard by this. The Internet technical community has been planning for IPv4 depletion for some time. But it means the adoption of IPv6 is now of paramount importance, since it will allow the Internet to continue its amazing growth and foster the global innovation we've all come to expect," he added.

The allocation of the final IPv4 addresses is analogous to the last crates of a product leaving a manufacturing warehouse and going to the regional stores or distributions centers, where they can still be distributed to the public, ICANN explained.

"Once they are gone, the supply is exhausted," it said in the press release.



When the Internet Nearly Fractured, and How It Could Happen Again

By Nancy Scola | Feb. 24, 2011

When the entire country of Egypt was forced offline by its government last month, it served as a global wake-up call that the Internet is a more fragile medium than we imagine it to be. What happened in Egypt was particularly striking, but other, subtler tests of the Internet's resilience abound.

Turn your eye to the domain name system, for example. Commonly referred to as DNS, the domain name system is the obscure but almost unimaginably important process whereby memorable names like "TheAtlantic.com" get translated into the numbers that actually pinpoint *The Atlantic's* place on the Internet. There, in the innards of the Internet, there's controversy brewing. The Department of Homeland Security's Immigrations and Customs Enforcement division and the Department of Justice have been targeting domain names for takedowns, and the United States Senate is considering a bill that would empower the Attorney General to blacklist website names from the Internet's directories.

But this isn't the first time that DNS has been a contested space. In one particularly curious episode from the modern Internet's early days, a man named Eugene Kashpureff ignited a battle over the future of the global network that brought him face-to-face with the Royal Canadian Mounted Police.

It was the mid-1990s. The Internet was transitioning from the province of a limited pool of academics, engineers, researchers and enthusiasts into something bigger and more important. The White House was first beginning to really consider cyberspace as a place where the boom economic years of the early Clinton administration could be amplified and extended. While political history best knows Ira Magaziner as the point person on the eventually disastrous Clinton push to overhaul American health care as we knew it, he was also a central figure in the federal government's attempt to bump the Internet into its next stage of growth. Magaziner was the Clinton White House's Internet policy guru. (Magaziner would look back on his effort to corral and negotiate the strong personalities and strong interests at play in the early Internet into some sort of consensus as "every bit as daunting as creating national socialized medicine.")

A point of concern for the Clinton administration was that, somewhat amazingly, the Internet had gotten to the middle part of the decade running on a fairly ad hoc system for keeping track of numbers and names. In Virginia, a company called Network Solutions was contracted by the National Science Foundation to handle the bulk of domain name registrations on major top-level domains (.com, .org, etc.), through an entity called InterNIC. At the University of Southern California, a computer scientist named Jon Postel kept track of which Internet protocol address was tied to which computer server, under a contract with the Defense Department's R&D shop, DARPA. "It was a system," said Magaziner, in a 2006 interview with Internet archivist Carl Malamud, "that had been set up when the Internet was much smaller."

Clintonites were worried that the Internet was weak at a physical level. Business interests complained that the Internet wasn't nearly as secure and robust as it needed to be. Magaziner says he conducted an informal experiment. He visited the university basements housing some of the network's root servers. "I could have disconnected them [or] blown them up," said Magaziner, "and nobody would have noticed. So they had a point."

But perhaps more daunting, from the federal perspective, was how fragile and sometimes contentious the Internet's governance was. Network Solutions charged far too much for domain names, some critics argued, and it was getting rich off of providing a public service. There were those in Congress who said that the U.S. had to keep a firm grasp on the Internet for it to be secure and stable. Others argued that the Internet would only really benefit the economy if it became a truly global network. DOD's role at the center of Internet governance weirded some people out. Commercial interests fretted about whether their trademarks would carry any weight when it came time to register domain names.

At the heart of the controversy, says Magaziner, was a culture clash. On the one hand, business interests were wary of the "quote-unquote hippies," as he puts it. Channeling the former, Magaziner said in his Malamud interview, "we can't commit our money based on their sort of anarchistic view of the world." As for the Internet people, including those self-appointed wise minds at the Internet Society, they held the flip side of that view. "These business types," said Magaziner, reflecting his take on what the early Internet community was thinking, "don't get the Internet [and] they're going to kill what's important about it."

In those mid-'90s years, said Magaziner in 2006, it wasn't at all clear that the Internet would turn out to be the global network where nearly any bit of information can be accessed and nearly any commercial transaction processed that we've come to take for granted. And in his sit-down with Malamud, Magaziner pointed out one example of why that future was in doubt: a now-forgotten service called AlterNIC run by one of those Internet-lovers, Eugene Kashpureff.

At the time, Kashpureff was an early-30s high-school dropout "doing computers and tow trucks," he said in a recent phone interview from San Jose. Perhaps he cut an unlikely figure to challenge to the global Internet, but he had the chutzpah and technical know-how to cause trouble. Kashpureff came to see that the Internet was coming increasingly under the control of a tiny "cabal" of academics, industry figures and government entities. And he wasn't going to just stand by and watch while the establishment took over.

Kashpureff chose DNS as his arena of protest. Every website, every e-mail, every embedded picture, every transaction--heck, nearly everything that happens on the Internet gets plugged into the domain name system, which went by the name InterNIC. At the time, thirteen root servers labeled "A" through "M" were scattered around the globe. Managed by small teams, they cascaded Internet traffic to an array of local registries. Together, those registries function as the global network's directory system. Without it, it would be nearly impossible to navigate a network of the Internet's complexity.

What Kashpureff did was launch something of a rogue registry, calling it AlterNIC. Kashpureff stayed away from registering websites on the big three "cabal"-run top-level domains: .com, .org and .net. Instead, for a small fee, anyone in the world could register a website on Kashpureff's alternative top-level domains, or TLD, like .alt., .biz., .news and .xxx. The new domains would be listed in Kashpureff's directory, and those of his allies on the Internet. It was a bid, he says, to boost the freedom of choice available to Internet users. "More names," he says when we talk, "just sounded like a good idea." And

when you think about it: why should domain name registration be controlled by some random for-profit company appointed to do the holy work of maintaining one of the Internet's most basic functions?

In the summer of 1997, Kashpureff decided to ratchet things up. He opted to go a step beyond simply registering sites on alternative top-level domains, and hijacked traffic intended for InterNIC.net. He pointed the domain to his own site, where he lodged a note of protest over how the domain name space was being controlled, and then offered visitors the option of continuing on to Network Solution's site. This was, you'll recall, at about the same moment that the federal government was attempting to make the case to the business community, to the world, that this Internet thing was no digital Wild West. Did that give you pause?, I ask Kashpureff.

"Yeah, I thought twice about hitting that button," he says. "It was 4 o'clock in the morning on a Saturday, and I had probably been smoking all night long. Can you imagine it? I'm sitting in the middle of nowhere Washington [State] on a T1 line to the Internet, and I'm hitting that damn button?"

It might have been, in practice, the simple mashing of a button, but it had the effect of triggering a major moment in the evolution of both the Internet and Eugene Kashpureff. Kashpureff sat, he recalls now, and watched as the hit came in from the Virginia computer of the CEO of Network Solutions, who expected to turn up his own site and instead found AlterNIC's. Eventually, the Feds brought wire fraud charges against Kashpureff, holding that he diverted traffic from InterNIC to AlterNIC twice, once between July 10 and 14, and again between July 21 and 24.

Kashpureff had been spending time in Canada, and on Halloween of 1997, the Mounties came knocking. I asked Kashpureff why he thinks the might of law enforcement in both Canada and the U.S. came crashing down on him. "He was some yahoo," he says of himself, "who had the keys to the Holy Grail." That is, this random guy had the ability to manipulate the structure of the Internet's domain name system.

Network Solutions claimed hundreds of thousands of dollars in lost registration fees. Kashpureff spent months in Canadian prison fighting extradition. The March 1998 press release from the U.S. Attorney's Office announcing Kashpureff's eventual guilty plea noted almost gleefully that they'd punished the "self-described 'webslinger.'" Kashpureff apologized. He never, he says now, intended for his escapades to be turned into, well, a federal case. "Back then, everything was supposed to be a model. We were supposed to be having fun," he says with a wry laugh. "And people want to come arrest me for that?"

Indeed they did. And more. AlterNIC earned Kashpureff some fans and many enemies. During the AlterNIC years, Paul Vixie ran the Berkeley Internet Domain Name software, a.k.a. Bind, the digital infrastructure that powered much of the DNS system. It was a weakness in BIND, it seems, that Kashpureff exploited to take over the InterNIC domain name. For decades, Vixie has been a major figure in the Internet numbering and naming world. AlterNIC drove Vixie mad in the '90s, and still does. As Kashpureff faced prosecution, a note went out on the mailing list of the North American Network Operators, asking for contributions for his legal defense fund. Vixie's response: "How much do I have to pay to keep him in jail forever?"

Vixie contends that it wasn't just Kashpureff's hijacking of the InterNIC domain that was offensive. It was the indulging in propagation of alternative domains outside the consensus of the Internet community itself. Splintering DNS forks the Internet so that Internet users might never know where to go to get

domains, or what they might get. If they connected to some DNS directories, they might enter Coke.com and get Pepsi. Chaos could ensue. All for what Vixie sees as not a noble question to uphold the free spirit of the Internet but instead a self-serving marketing stunt intended to promote Kashpureff's own business. Some things, writes Vixie, should just work, and DNS is one of them. The domain name system can't be subject to "the law of the jungle or the survival of the richest," he wrote to me. Because an Internet with a fractured domain name system doesn't much resemble the global Internet anymore.

There are two funny things in this preview of our more contentious Internet age.

The first: the Eugene Kashpureff of today seems to agree, in large part, with the Paul Vixie of yesterday and today, at least as far as the necessity for stability and security on the Internet goes. Kashpureff says that the attacks of September 11, 2001, helped to trigger something of a change of heart. He now works widely in the Internet engineering field, often to build up secure online spaces. "People have no clue what debt we owe people like Paul Vixie," says Kashpureff. "Nowadays, I make sure that no one gets away with what I did ever again."

The second: the DNS threats of today don't seem to be coming as much from the Eugene Kashpureffs of the world--solo hackers and coders--as they seem to be coming from world governments, particularly the United States government.

This is a reversal for a country that did so much in the modern Internet's early days to unite constituencies around the importance of integrity when it comes to the Internet's domain name layer.

During and after Kashpureff's protest, slowly, and perhaps improbably, a U.S.-led working consensus about the management structure of the domain name system emerged. Eventually, the Clinton administration's Commerce Department would lay out what became known as the Green Paper, which, with feedback from a wide range of people and bodies in the U.S. and abroad, set out a plan for how the modern Internet would function. Central to the plan was the creation of something that came to be known as the Internet Corporation for Assigned Names and Numbers, or ICANN. A California-based non-profit officially established in 1998, ICANN still today governs the Internet's technical operations, under an agreement with the U.S. Department of Commerce.

Closer to home, various parts of the United States government have, in recent days, shown an increased eagerness to enlist DNS in their political and legal battles. The Department of Homeland Security's ICE division and the Justice Department have been teaming up on DNS targeting initiatives called things like "Operation In Our Sites" and "Operation Protect Our Children." Sites thought to engage in offensive behaviors, from distributing child pornography to connecting people to downloads of music and movie files protected by copyright, have been shutdown at the domain name level, their normal contents replaced by a banner reading "This domain has been seized." Cyber Monday after this most recent Thanksgiving saw more than 80 domains thus disappeared. Last week, DHS and DOJ had to admit that they had inadvertently caused the pulling down of more than 80,000 "innocent" websites that had been co-located with sub-domains that were targeted in their operations. "A higher level domain name and linked sites were inadvertently seized for a period of time," read the joint release, though the feds assured that they quickly allowed the sites back up.

And then there's COICA, the Combating Online Infringement and Counterfeits Act introduced by Sen. Patrick Leahy (D-VT) at the behest of the music and movie industries. At least in its initial draft, the bill

would empower the U.S. Attorney General to blacklist domains found to be offensive for "infringing activities." The Washington-based Center for Democracy and Technology argues that in its bid by the Senate to ensure that the Internet is safe for commerce, Washington threatens to signal to the world a reversal of years of American policy, under both Democratic and Republican administrations, that has worked to "reassure the global community that the United States would not abuse its position of oversight over the DNS."

If COICA is enacted, writes CDT in its analysis, the bill would mark "a significant step towards the balkanization of the Internet." What happens, suggests Vixie, when Bollywood decides that it wants the same power to demand domain takedowns as Hollywood seems to have?

With the U.S. government's recent domain name power grabs, ICANN's continued position at the heart of the Internet has become part of an ongoing global debate over whether the U.S. has far too much power over how the Internet works. There's been a considerable push to transfer power away from ICANN and towards an internationally accountable organization, like the International Telecommunications Union. At the World Summit on the Information Society in Tunisia in 2005, a last-minute agreement emerged that affirmed ICANN's central role, but it was and remains a shaky consensus.

The next year after the Tunis agreement, China, for example, began to make noises about setting up its own DNS registries for the .com domain, so that "Internet users don't have to surf the Web via the servers under the management of the ICANN of the United States," as the Communist Party's *People's Daily* put it. In March of last year, ISPs around the world reportedly began inadvertently using Chinese DNS servers that had been configured to enforce the so-call Great Firewall. Internet users in the United States and Chile suddenly found themselves unable to get to sites like Twitter, YouTube and Facebook.

The question for the short term is whether the federal government of the United States, so long the cultivator and protector of the Internet's domain name system, might turn out to be a greater threat to it than Eugene Kashpureff ever was. For his part, Paul Vixie is taking the long view. All we have to manage to do, writes Vixie, is to not completely screw up the Internet's domain name system for another fifty years or so. By that time, we'll likely have moved to the next world-changing way of doing things.

Kashpureff is less sanguine, casting his old work as a battle against precisely the kind of intrusions that we're seeing today.

"[AlterNIC] was about literal United States government control of the Internet, and that still exists today," he said. "It ain't never gonna change."

Why the Internet Will Have Plenty of Space

Although the Web has nearly exhausted its available addresses, the coming transition to a new system will provide far more room

By Samuel Bucholtz | Feb. 24, 2011

The Internet, as we currently know it, has run out of room. The roughly 4 billion destinations—a zoo of porn and retail, gambling, Justin Bieber, and conspiracy fantasists—have now fully colonized the Web. The International Corporation for Assigned Names and Numbers (ICANN), the Net's governing body, [reported](#) on Feb. 3 that it had distributed the last of its addresses. But don't worry—this won't cause calamity for the average person or business.

Plenty of people have long known that the Internet would eventually run out of room. When it was launched decades back, the Internet was still an "experiment" to computer scientists. They provided enough room for only about 4 billion addresses. That might sound ample, but in today's hyperconnected world, especially with the soaring use of connected mobile devices (all requiring their own IP addresses), it is simply inadequate.

To fix this situation, the Internet is about to undergo a major transition—one of the biggest changes ever to hit the Net—as it evolves from the current version, known as Internet Protocol version 4 (IPv4), to the futuristic IPv6. In a nutshell, this means that the Internet Protocol—the backbone of the Internet, the computer-to-computer language system that enables the Internet to exist—will migrate from the current 32-bit addresses to 128 bits, allowing for 11 "undecillion" new IP addresses. How many is that? Well, to put it in perspective, there will now be enough addresses for every person who's ever lived each to have 1 trillion IP addresses. In other words, it's a lot of addresses—and plenty more space for the Web to expand.

The upgrade to IPv6 will present some challenges, but expect it to be more easily managed than some recent logistical conundrums, such as Y2K. It should not be seen as a "crisis," "IPocalypse," or serious problem for anyone.

Get Ready for June 8

ICANN has been urging Internet service providers to begin the transition to IPv6 for years, but only recently have companies taken the request seriously. The upgrade to IPv6 is just now beginning and could take until 2021 before the entire transition is completed. The Internet Society has scheduled a World IPv6 Day for June 8, 2011, when such major companies as Google ([GOOG](#)), [Facebook](#), Yahoo ([YHOO](#)), and Verizon Communications ([VZ](#)) will start IPv6 trials. As for financial cost, the upgrade to IPv6 should be relatively painless. The cost of any new equipment, servers, hosting plans, networking devices, etc. will be defrayed over the period it takes for IPv6 to become the most supported protocol.

Is IPv6 secure? Technically, IPv6 is probably less secure than its predecessor, IPv4. The reason: IPv4 has been around for 30 years, so its strengths and weaknesses are fairly well known. IPv6 is still, in many respects, an unknown quantity in terms of security. We do not yet have enough data on it to know where all the weak points are. Unfortunately, Internet security is a process of trial and error and the verdict is still out on IPv6.

IPv6 is coded, however, to require support for various security measures that were completely optional with IPv4. It automatically works with IP Security protocols or IPSec. This will allow for authentication and/or encryption of data packets at the IP level—meaning you can secure your data at every step of their movement through the Internet.

If all goes well, this historic transformation will be completely and utterly invisible to the average person and business. Of course, some accommodation will be required. In a few years, as the Internet has more fully shifted to IPv6, consumers will need to replace their Wi-Fi routers and older operating systems, such as Windows 98. These will experience operational troubles with the new Net. The day to watch is June 8, when several major Internet players will initiate full-fledged IPv6 trials. Should any unusual problems occur at that time—slowdowns or security failures—we'll know the transition may not proceed trouble-free. But it is highly unlikely that such problems will occur at any significant level. Like Y2K, the transition from present to future should occur with most of us Web surfers none the wiser.



International - New gTLDs: trademark owners pray for last-minute government aid

By Adam Smith | Feb. 24, 2011

This is it. Years of negotiation over trademark protection mechanisms for the new gTLD space will come to a head in Brussels next week. The city is due to host an unprecedented meeting at which ICANN's board will receive counsel from its Government Advisory Committee (GAC) regarding the controversial rights protection developed over three years by the ICANN community. Insiders are predicting that it could get messy.

ICANN has not yet published an agenda for the two-day meeting, but topics of debate have been [assigned to individual GAC representatives and board members](#). As stated previously on this blog, the United Kingdom's Mark Carvell will be leading the GAC's positions on trademark protection, supported by Sri Lanka's Jayantha Fernando and the United States' Suzanne Sene. Carvell told *WTR* that he intends to ensure trademarks take centre stage at the meeting. That certainly seems to be the feeling of other planned attendees: while other items are on the agenda, trademarks are the most contentious. *WTR* understands that a number of brand owner representatives will attend, including those on [the team that designed the original rights protection mechanisms](#) two years ago. Since the plan for a GAC-board meeting was decided in December, trademark owners have continued to liaise with their governments' representatives on the GAC – and are criticised by other members of the ICANN community for doing so.

"I truly hope that ICANN does not give in to the pressure of governments, which have been heavily lobbied by the big brand owners," says [Konstantinos Komaitis](#), who has followed the policy development for years and is now chair of the Non-Commercial Users constituency (but spoke to *WTR* in a personal capacity). "If this happens, then I think we will face two problems: first, we will again be talking about a non-inclusive process that saw the trademark community exercising all its political and economic power upon governments to get what they failed to achieve through legitimate channels, like [the Special Trademarks Issues review team](#); and, second, ICANN will be in jeopardy of getting trapped by governments, abandoning the model that has sustained its very existence for more than a decade."

It is not likely that ICANN will abandon its model of policy development. The chair told *WTR* earlier this month that [the meeting is only a forum for the board to receive advice from the GAC](#), in accordance with ICANN's structure. "The GAC is going to give us advice [and] we'll listen to it," Peter Dengate Thrush said. "We're either going to accept it or not and explain why."

So what are ICANN's latest thoughts on trademark owners' remaining concerns? The answers were published this week in the [163-page summary of public comments](#) submitted to ICANN with regard to December's Proposed Final Applicant Guidebook. Trademark owners will be relieved to see that ICANN acknowledges room for debate on a number of concerns. "It is clear that the trademark interests have continued to raise the globally protected marks list," says the summary. "While this discussion may

continue, no further progress or decisions have been made.” The document also indicates that complaints under the Uniform Rapid Suspension system may be slimmed to 500 words from the burdensome 5,000 on the table at present.

However, the trademark lobby may find that ICANN will prove less flexible on one central protection mechanism: the trademark clearinghouse. “Subject to further refinement through the GAC consultation and other comments received to date, the positions in the clearinghouse proposals will be finalised substantially similar to as it was in the Proposed Final Applicant Guidebook,” ICANN states.

Perhaps the most fascinating aspect of Brussels will be watching the tensions inherent in ICANN’s multi-stakeholder model. While trademark owners have participated, some have also argued that the model is not appropriate for developing new global policies around trademarks, which are established legal rights granted by sovereign governments. At the same time, it can be said that those governments, through the GAC, will make arguments in Brussels as a proxy for the IP community. For their part, governments can argue that their advice is given as a way to protect both business and the public – the dual function of trademark protection. Within ICANN’s bottom-up policy development method, this top-down advice takes on a new character entirely.

WTR will report from the meeting, which takes place on Monday 28 February and Tuesday 1 March.

Policy update-feb11-en



POLICY UPDATE

Internet Corporation for Assigned Names and Numbers

<http://www.icann.org/topics/policy/>

Volume 11, Issue 2 – February 2011

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[**ICANN Policy Update statement of purpose**](#)

Send questions, comments and suggestions to: policy-staff@icann.org.

Policy Supporting Organizations and Advisory Committees

Address Supporting Organization	<u>ASO</u>
Country Code Names Supporting Organization	<u>ccNSO</u>
Generic Names Supporting Organization	<u>GNSO</u>
At-Large Advisory Committee	<u>ALAC</u>
Governmental Advisory Committee	<u>GAC</u>
Root Server System Advisory Committee	<u>RSSAC</u>
Security and Stability Advisory Committee	<u>SSAC</u>

Across ICANN

Issues Currently Open for Public Comment

Numerous public comment periods are open on issues of interest to the ICANN community. Act now for the opportunity to share your views on such topics as:

- [Proposed Process for Recognition of New GNSO Constituencies](#). To address concerns about the clarity and timing of the original New Constituency petitioning procedure, the SIC has completed development of a replacement "Process for Recognition of New GNSO Constituencies." The proposed process significantly modifies the original procedure. The comment period for the new proposed process ends 4 March 2011.
- [Interim Report of the Internationalized Registration Data Working Group](#). The IRD-WG Interim Report summarizes previous discussions, provides preliminary recommendations, and seeks input from the community on questions relating to internationalized registration data. Commentary has been extended to 14 March 2011.

For the full list of issues open for public comment, plus recently closed and archived public comment forums, visit the [Public Comment page](#).

ccNSO

ccNSO Welcomes Three New Members

At a Glance

Three new ccTLDs have joined the ccNSO, representing Azerbaijan, Bulgaria and Moldova.

Recent Developments

Three new ccTLDs — .AZ (Azerbaijan), .BG (Bulgaria) and .MD (Moldova) — joined the ccNSO recently. The ccNSO now includes 111 members, up from 100 at the end of 2009.

Background

The ccNSO was established in 2003 as the body responsible for developing global policies relating to country code Top Level Domains and making recommendations on these to the ICANN Board. Since its creation, the ccNSO has provided a forum for country code Top Level Domain (ccTLD) managers to meet and discuss topical issues of concern to ccTLDs from a global perspective.

The ccNSO provides a platform to nurture consensus, technical cooperation and skill building among ccTLDs and facilitates the development of voluntary best practices for ccTLD managers. Membership in the ccNSO is open to all ccTLD managers responsible for managing an ISO 3166 country-code top-level domain.

More information

See the complete list of [ccNSO members](#).

Staff contact

[Gabiella Schitteck](#), ccNSO Secretariat

GNSO

GNSO Improvements Move Briskly Ahead

Request for Input on New Constituency Recognition; Positive Comments for Not-for-Profit; and Toolkit Requests Due

At a Glance

Members of the Generic Names Supporting Organization (GNSO) community are working to implement a comprehensive series of organizational changes designed to improve the effectiveness and accessibility of the organization.

Recent Developments

SIC Seeks Input on Recognition of New GNSO Constituencies

ICANN Board's Structural Improvements Committee (SIC) opened a 30-day public comment forum, from 2 February through 4 March 2011 on a proposed new "[Process for Recognition of New GNSO Constituencies](#)" [PDF, 206 KB] including procedures, steps, forms, tools, and evaluation criteria to be used when a group applies to be a new GNSO Constituency.

The group developed the replacement process to address SIC concerns over clarity and timing. The proposed process significantly modifies the original procedure and is designed to accomplish four goals:

1. Prescribe a streamlined sequence of steps and objective, fair, and transparent evaluation criteria for a new GNSO Constituency proposal, with many opportunities for community input.
2. Delegate more authority to each GNSO Stakeholder Group in evaluating new Constituency proposals while maintaining the Board's oversight role.
3. Manage the entire process to a flexible, but specific and limited, timeframe.
4. Provide a partial set of criteria for use during the periodic review of the GNSO.

Background on New GNSO Constituencies

The original process for petitioning to become approved as a new GNSO Constituency, acknowledged by the Board in October 2008, involved submission of (1) a "Notice of Intent to Form a New GNSO Constituency" (NOIF) followed by (2) a formal Petition/Charter.

To date, five prospective Constituency groups have submitted formal New GNSO Constituency petitions in accordance with the process; however, the Board has yet to approve any of those applications.

The Public [Forum Announcement](#) provides a broader discussion of the background leading to the Public Forum as well as a brief overview of the proposed process.

More Information on New GNSO Constituencies

- [Process for Recognition of New GNSO Constituencies \(including 3 Appendices\)](#) [PDF, 206 KB]
- [Process Flowchart](#) [PDF, 146 KB]
- [Application for Candidacy \(AFC\) as a New GNSO Constituency](#) [PDF, 165 KB]
- [Request for Recognition \(RFR\) as a New GNSO Constituency](#) [PDF, 261 KB]

GNSO Toolkit Services Request Checklists due 15 February 2011

The GNSO Council has approved a set of community [recommendations](#) (a "Toolkit" menu of services) to assist eligible GNSO organizations with operations and policy development. The Staff circulated a checklist to GNSO Stakeholder

Group and Constituency leaders asking them to indicate specific Toolkit services they want to use in Fiscal Year 2011 (ending 30 June 2011) and FY12 (beginning 1 July 2011). Those checklists were due back to the GNSO Secretariat by 15 February 2011 and will be used by the Staff in resource planning and FY12 budget development efforts.

See [the implementation plan](#) for the delivery of specific Toolkit services — including general specifications, budget implications and availability information for each Toolkit menu service —and an outline of procedures for requesting, modifying and evaluating the various Toolkit services.

Comments Support NPOC’s Petition and Charter

The 60-day community public forum on the Not-for-Profit Organizations Constituency Formal Petition and Charter concluded on 30 January 2011. Of the 16 community submissions to the Public Comment Forum, 15 expressed unqualified support for the NPOC’s petition to become a new GNSO Constituency within the Non-Commercial Stakeholders Group (NCSG).

See the [Staff Summary/Analysis](#) for a roundup of the comments submitted to the forum. Copies of the relevant charter and other up-to-date documents describing the proposal are on the [New Constituencies Process page](#), which is linked with the GNSO Improvements Information page.

No Comments Submitted to Public Forum for Permanent CSG Charter

No community comments were submitted during a 53-day community public forum proceeding (see [forum description](#)) on a permanent charter for the GNSO’s Commercial Stakeholder Group. The comment period closed on 23 January 2011.

GNSO Web Site Improvement Enters Next Phase

The ICANN Staff is working on the new GNSO web site, based on improvements approved by the GNSO Council last year. ICANN’s web team received the new site’s design and code from its contractor, and verified that it works perfectly. Staff is now working on moving and creating content for the new site, using the designs debuted in Cartagena (see a copy of the presentation, including screen shots of web frame design pages, [here](#)). The redesigned site will feature more help for new GNSO visitors than the previous site. Review of the new site content will start soon. Meanwhile, a clickable demo of the site (using placeholder content) will be available at the ICANN Silicon Valley Public Meeting in San Francisco this March.

Background

- To understand the GNSO's new structure and organization, see the discussion and diagrams on the [GNSO Improvements Information Web Page](#)
- For the reasons and history motivating the improvements, see the [Background page](#).
- For a quick review of implementation activities see the new “dashboard” pages: [Status page](#) and the [Timeline Page](#) connected to the GII webpage.

More Information

- [PDP Work Team wiki](#)
- [Working Group Work Team wiki](#)
- [Constituency Operations Work Team wiki](#)

Staff Contact

[Robert Hoggarth](#), Senior Policy Director

IRTP (Part B) WG Reviews Complimentary and Contentious Comments, Starts on Final Report

At a Glance

The aim of the Inter-Registrar Transfer Policy (IRTP) is to provide a straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another. The GNSO Council established a series of five working groups (Parts A through E) to review and consider various revisions to this policy.

Recent Developments

Following the review of the public comments received on the [Initial Report](#) [PDF, 764 KB], the IRTP Part B Working Group is now finalizing its recommendations and report for publication.

Next Steps

The WG expects to publish the proposed Final Report in time for the ICANN Silicon Valley Public Meeting in San Francisco in March and will post it for public comment prior to submitting it to the GNSO Council. The proposed recommendations in the Initial Report were changed substantially following a review of the public comments and continued deliberations. The WG also plans

to organize a session during the ICANN Silicon Valley Meeting during which it will present the proposed recommendations and allow for Community questions and discussion. For further information, please consult the [IRTP Part B WG Workspace](#).

Background

The IRTP Part B PDP WG published its Initial Report last year, presenting several preliminary conclusions and recommendations for community input, including a proposed Expedited Transfer Reverse Policy (ETRP). The ETRP is a fast "reverse transfer" process to return a recently sold domain name to its original owner if it is hijacked, and is designed to correct fraudulent or erroneous transfers. It does not address or resolve disputes arising over domain control or use.

The IRTP Part B PDP is the second in a series of five PDPs addressing areas for improvement in the existing Inter-Registrar Transfer Policy. The working group addresses five issues focusing on domain hijacking, the urgent return of an inappropriately transferred name, and lock status. For further details, refer to the group's [Charter](#).

More Information

- [IRTP Part B PDP Initial Report](#) [PDF, 764 KB]
- [Inter-Registrar Transfer Policy](#) web page
- [IRTP Part B Status Report of Ongoing Progress](#) page
- [IRTP Part B Issues Report](#) [PDF, 256 KB]
- [PDP Recommendations](#) [PDF, 124 KB]
- [Summary and Analysis of Public Comments received](#)
- *ICANN Start* podcast: [audio explanation of IRTP Part B](#) [MP3, 18 MB]

Staff Contacts

[Marika Konings](#), Senior Policy Director

RAP Recommendations Approved; GNSO Wants Report, Paper and Compliance Input

At a Glance

Registries and registrars lack uniformity when dealing with domain name registration abuse, and questions persist about what activities constitute "registration abuse." The GNSO Council launched the Registration Abuse

Policies (RAP) WG to examine registration abuse policies. After reviewing the RAP WG's proposed approach, the GNSO Council is moving ahead with several RAP recommendations.

Recent Developments & Next Steps

The Registration Abuse Policies (RAP) Implementation Drafting Team (DT) developed a matrix categorizing the RAP WG [final report](#) [PDF, 1.7 MB] recommendations in order of priority, expected complexity and required resources. In November 2010, the group submitted a [letter](#) [PDF, 184 KB] to the GNSO Council outlining a recommended approach for its consideration. The GNSO Council reviewed and discussed the proposed approach at its [working session in Cartagena](#) then decided at its meeting on 3 February 2011 to move ahead with a number of the RAP Recommendations, including.

- Request an Issue Report on the current state of the Uniform Domain-Name Dispute-Resolution Policy (UDRP).
- Request a discussion paper on the creation of non-binding best practices to help registrars and registries address the abusive registration of domain names.
- Move forward on two recommendations that will require input from ICANN Compliance:
 - Whois Access recommendation #2 requiring the ICANN Compliance Department to publish more data about Whois accessibility, at minimum, annually. This data should include a) the number of registrars that show a pattern of unreasonable restriction of access to their port 43 Whois servers, and b) the results of an annual audit of compliance with all contractual Whois access obligations.
 - Fake Renewal Notices recommendation #1, which suggests that the GNSO refer this issue to ICANN's Contractual Compliance department for possible enforcement action, including investigation of misuse of Whois data.

The GNSO Council has instructed ICANN Policy Staff to “add the remaining RAP Recommendations to the GNSO Project List so that the GNSO Council can keep track of the remaining recommendations and address these as appropriate.”

Background

The RAP WG [presented its final report](#) [PDF, 1.7 MB] and recommendations to the GNSO Council in June 2010. The GNSO Council then formed a group of volunteers, the Registration Abuse Policies (RAP) Implementation Drafting Team (DT), to draft a proposed approach to implementing the report's recommendations. The RAP-DT remit can include the formation of groups to consider the report's recommendations and to consider how to deal with

recommendations that did not achieve unanimous consensus. See the web site for [further information](#).

A short history of the RAP WG is available on [ICANN's website](#).

More Information

- [Registration Abuse Policies WG Final Report](#) [PDF, 1.7 MB]
- [Registration Abuse Policies Issues Report](#), 29 October 2008 [PDF, 400 KB] and [translation](#) of summary
- [Registration Abuse Policies WG Charter](#)
- [Registration Abuse Policies WG Workspace](#) (Wiki)
- [Registration Abuse Policies Implementation Drafting Team Workspace](#) (Wiki)
- [RAP Implementation Drafting Team Letter to the GNSO Council](#) [PDF, 184 KB]

Staff Contacts

[Marika Konings](#), Senior Policy Director and [Margie Milam](#), Senior Policy Counselor

Post-Expiration Domain Name Recovery Final Report to Incorporate Broad Community Input

At a Glance

Should registrants be able to reclaim their domain names after they expire? At issue is whether the current registrar policies regarding the renewal, transfer and deletion of expired domain names are adequate.

Recent Developments

After completing its review of community comments on the initial [GNSO Post-Expiration Domain Name Recovery \(PEDNR\)](#) report [PDF, 1 MB] and the [accompanying survey](#) [PDF, 948 KB], the Working Group is updating the report and developing specific recommendations. Nine community comments from nine individuals were submitted, including comments from representatives of the Registrars and Registries Groups, ALAC, and the Commercial and Business Users Constituencies. More than 400 survey responses were received (see [summary and analysis](#)).

The WG is discussing numerous proposals to change the expiration-related practices and will publish the proposed recommendations and Final Report for

the ICANN Silicon Valley Public Meeting in San Francisco in March. Following publication, a public comment forum will allow community input before submission to the GNSO Council for its consideration.

Background

The PEDNR PDP WG published its Initial Report on 31 May 2010 – see the related community [public comment forum](#). In addition, a survey asked several specific questions about renewal and expiration practices.

For a history of the ICANN community's policy development activities related to Post-Expiration Domain Name Recovery, please refer to the PEDNR [background page](#).

More Information

- [PEDNR PDP Initial Report](#) [PDF, 1 MB]
- Details on [PEDNR Public Consultation Session in Brussels](#)
- [GNSO Issues Report on Post-Expiration Domain Name Recovery](#) [PDF, 416 KB]
- [Translations](#) of the GNSO Issues Report on Post-Expiration Domain Name Recovery
- [WG presentation: Registrar Survey Final Results](#) [PDF, 948 KB]

Staff Contact

[Marika Konings](#), Senior Policy Director

Fast Flux Recommendations Move to Implementation

At a Glance

The Fast Flux Hosting Working Group published its Final Report in August 2009, but did not make any recommendations for new consensus policy, nor changes to existing policy, but provided a number of recommendations for next steps. The GNSO Council adopted all of the recommendations made by the Fast Flux Hosting WG in their Final Report at its meeting on January 13.

Recent Developments

The GNSO Council reviewed and discussed the Fast Flux Hosting Final Report recommendations at its meeting on January 13 and adopted all six recommendations made in the Final Report. The recommendations and their proposed implementations are:

- Recommendation #1: To encourage ongoing discussions within the community regarding the development of best practices and/or Internet industry solutions to identify and mitigate the illicit uses of Fast Flux.
 - Implementation completed: The Registration Abuse Policies WG (RAP WG) Malicious Use of Domain Names Recommendation #1, has already recommended the creation of non-binding best practices to help registrars. Additionally, registries already address the illicit use of domain names.
- Recommendation #2: The Registration Abuse Policy Working Group (RAP WG) should examine whether existing policy may empower Registries and Registrars, including consideration for adequate indemnification, to mitigate illicit uses of Fast Flux.
 - Implementation completed: addressed by the RAP WG in its [final report](#) [PDF, 1.73 MB]
- Recommendation #3: To encourage stakeholders and subject matter experts to analyze the feasibility of a Fast Flux Data Reporting System to collect data on the prevalence of illicit use - as a tool to inform future discussions.
 - No action recommended: The RAP WG Final Report and the Fast-Flux Working Group Final Report indicated that fast flux is generally a domain use issue and not a domain registration issue, falling outside the purview of the GNSO and ICANN.
- Recommendation #4: To encourage staff to examine the role that ICANN can play as a “best practices facilitator” within the community;
 - Proposed implementation: Integrate this recommendation into the RAP WG Recommendation on “[Meta Issue: Collection and Dissemination of Best Practices](#)” which recommends that the “GNSO, and the larger ICANN community in general, create and support structured, funded mechanisms for the collection and maintenance of best practices.”
- Recommendation #5: To consider the inclusion of other stakeholders within and outside the ICANN community for any future Fast Flux policy development efforts.
 - Proposed implementation: If the RAP WG’s Malicious Use of Domain Names Recommendation #1 is adopted by the Council, subsequent efforts will be open to participation from both within and outside the ICANN community.
- Recommendation #6: To ensure that successor PDPs on this subject address the charter definition issues identified in the Fast Flux Final Report. To form a Drafting Team to work with support staff on developing a plan with set of priorities and schedule that can be reviewed and

considered by the new Council as part of its work in developing the Council Policy Plan and Priorities for 2010.

- Proposed implementation: No action needed at this point, but should be included if any future PDPs are initiated on this subject. The Council deems the Drafting Team work to be completed in conjunction with the previously outlined implementation proposals.

Background

Fast flux attacks *refer to techniques that cybercriminals use to evade detection by rapidly modifying IP addresses and/or name servers. Though fast flux is notorious as a technique used maliciously, it also has legitimate uses.*

Following an SSAC Advisory and an Issues Report on Fast Flux Hosting, the GNSO Council launched a Policy Development Process (PDP) on the issue in May 2008 to explore appropriate action. The Fast Flux Hosting Working Group published its Initial Report in January 2009, which discusses questions about fast flux hosting and the range of possible answers developed by Working Group members. The Working Group submitted its [Final Report](#) [PDF, 5.06 MB] providing answers to the questions posed by the GNSO Council. The report also includes a definition of fast flux attacks, to distinguish these from legitimate uses of fast flux, and fast flux metrics

For more details, see “[Background on Fast Flux Hosting](#).”

More Information

- [Fast Flux Hosting Final Report](#)
- [SSAC Report 025 on Fast Flux Hosting](#), January 2008
- [Issues Report on Fast Flux Hosting](#), corrected 31 March 2008 [PDF, 61.6 KB]
- Limited [translations of the Issues Report on Fast Flux Hosting](#)
- Limited [translations of the Executive Summary of the Initial Report on Fast Flux Hosting](#)
- [Fast Flux Public Comment Forum](#)
- [Fast Flux Workspace](#) (Wiki)

Staff Contacts

[Marika Konings](#), Senior Policy Director

Global IPv4 Address Reclamation Pool and Allocation Plan Moves Forward with RIRs

At a Glance

Regional Internet Registries (RIRs) are discussing a proposed global policy for handling IPv4 address space returned from the RIRs to Internet Assigned Numbers Authority (IANA). Under the proposal, IANA would establish a Reclamation Pool of returned address space and, as the free pool of IANA IPv4 address space is depleted, allocate IPv4 address space from this Reclamation Pool to the RIRs in smaller blocks than previously.

Recent Developments

The proposal to establish a Reclamation Pool of returned IPv4 address spaces and allocate them in smaller blocks to the RIRs was discussed by all RIRs at their most recent meetings. American Registry for Internet Numbers (ARIN) has adopted the proposal. It is in the discussion stage of the policy development processes in the other RIRs.

Next Steps

When the proposal has been adopted by all RIRs, the Number Resource Organization Executive Committee (NRO EC) and the Address Supporting Organization Address Council (ASO AC) will review the proposal and forward the policy to the ICANN Board for ratification and implementation by IANA.

Background

IPv4 is the Internet Protocol addressing system used to allocate unique IP address numbers in 32-bit format. With the massive growth of the Internet user population, the pool of unique numbers (approximately 4.3 billion) is depleted and a 128-bit numbering system (IPv6) will need to take its place.

The proposed global policy replaces an earlier two-step proposal that did not garner global consensus. The Reclamation Pool will be declared active as soon as the first RIR exhausts its inventory of IPv4 address space, according to threshold criteria defined in the proposal. IANA will, once each quarter, allocate available address blocks from the Reclamation Pool evenly to all RIRs that are eligible for allocations at that time.

More Information

- A [Background Report](#) is posted on the ICANN website - [Proposal for Recovered IPv4 Addresses](#)

Staff Contact

[Olof Nordling](#), Director Services Relations

Other Issues Active in the ASO

- [Transition to 32-bit ASNs](#)

Joint Efforts

Geographic Regions Review WG Considers Community Input for Final Report

At a Glance

The Geographic Regions Review Working Group is working to: identify how ICANN's Geographic Regions are used; determine whether the Geographic Regions framework meets the requirements of community members for geographic diversity; and consider making recommendations on the current and future uses and definitions of the ICANN Geographic Regions.

Recent Developments

The community-wide Geographic Regions Review Working Group posted its [Interim Report](#) for community review prior to the ICANN Cartagena public meeting. The Public Comment forum closed on 30 January and the comments received raised a number of issues that the Working Group will tackle as it considers what, if any, recommendations to make to the ICANN Board.

Several commenters encouraged the Working Group to take an active role in making recommendations to adjust the ICANN Geographic Region framework. One category of comments addressed the “scope” of the Working Group’s potential recommendations. A number of comments said the WG should not feel constrained to recommend adjustments to the geographic regions framework. A second category of comments focused on the types of adjustments the WG should recommend. See the [Staff Summary/Analysis](#) of the submitted comments for a complete list.

The Working Group also held a community workshop at the ICANN Cartagena public meeting. Community comments during that workshop were included in the Public Forum for the Interim Report. The Working Group hopes to hold a similar session at the ICANN Silicon Valley Public Meeting in San Francisco.

Next Steps

The Working Group has begun drafting the Final Report to be published later this year.

Background

The Interim Report focused on general principles, specific considerations and some of the critical issues that the Working Group plans to address in its Final Report document. It (1) offered a review of the underlying history, objectives and general principles of ICANN's Geographic Regions Framework; (2) raised a number of fundamental strategic questions for further community consideration; and (3) expanded on a number of specific matters identified in the Initial Report that are likely to be addressed in the group's Final Report.

[Background](#) on Geographic Regions Working Group.

More Information

- ICANN Board Resolution [authorizing the Working Group](#)
- [Geographic Regions WG Charter](#)
- [Initial Report](#) published in July 2009
- [Announcement](#) of Interim Report availability
- Interim Report [Public Comment Forum](#)
- Interim Report in all six UN languages:
 - [العربية](#) [PDF, 325 KB]
 - [English](#) [PDF, 356 KB]
 - [Français](#) [PDF, 281 KB]
 - [Русский](#) [PDF, 380 KB]
 - [中文](#) [PDF, 275 KB]
 - [Español](#) [PDF, 206 KB]

Staff Contact

[Robert Hoggarth](#), Senior Policy Director

New Charter to Inform Registrants of Their Domain Related Rights and Responsibilities

At a Glance

The GNSO Council approved the creation of a Registrant Rights and Responsibilities Charter. Acting upon Recommendations from a Joint Community Effort, the approved Charter will serve as an informational resource for Registrants.

Background

In 2009, the GNSO Council embarked on a collaborative process with the At-Large Advisory Committee regarding the Registrar Accreditation Agreement (RAA). As part of this process, a joint GNSO/ALAC drafting team was formed (known as the RAA Drafting Team) to work on improvements to the RAA. The Drafting Team reviewed proposals from stakeholders wanting to enhance the RAA, including the law enforcement community, and Intellectual Property Constituency.

The Final Report to the GNSO Council included a proposal for a Registrant Rights and Responsibilities Charter, to help registrants understand their domain names rights and obligations. The Report also identified topics for proposed additional amendments to the RAA, as well as next steps for the GNSO Council to consider in determining whether to recommend a new form of RAA.

Recent Developments

The GNSO Council approved the form of the Registrant Rights and Responsibilities Charter, and recommended that ICANN consult with Registrars to finalize the Charter for posting. The Charter, when posted on a Registrar's website, will serve as an easy reference for registrants seeking to understand their domain-related rights and responsibilities. The GNSO Council is expected to vote soon on the next steps for producing a new RAA, based upon the recommendations in the Final Report.

More Information

- [Final Report](#) [PDF 6.7 MB]
- [Non-Lawyers Guide to the RAA](#).

Staff Contact

[Margie Milam](#), Senior Policy Counselor

Other Issues Active as Joint Efforts

Increasingly, individual ICANN Supporting Organizations and Advisory Committees have pursued bilateral and multi-lateral discussions regarding matters of common or overlapping interest in recent years. Some of the current issues being discussed include:

- [Single-Character IDN TLDs Report Published for Discussion in Cartagena](#)
- [Internationalized Registration Data WG Releases Interim Report](#)

At-Large

ALAC Submits Several Substantive Policy Development Statements

At a Glance

The At-Large Advisory Committee (ALAC) has started 2011 by focusing on policy development. This year, ALAC has already submitted five statements ranging from contributions to the [2011-2014 ICANN Strategic Plan](#) to comments on the Interim Report of the Geographic Regions Review Working Group. The ALAC statements include direct contributions from the five Regional At-Large Structures (RALOs) and their At-Large Structures (ALSes) — adding their global grassroots perspectives to the strength of the At-Large policy statements.

Recent Developments

The ALAC statements submitted to date in 2011 are:

- [ALAC Statement on Accountability & Transparency Review Team Final Recommendations](#)
- [ALAC Statement on the Interim Report of the Geographic Regions Working Group](#)
- [ALAC Statement Regarding the Current Situation in Egypt](#)
- [ALAC Statement on Draft 2011 – 2014 Strategic Plan](#)
- [ALAC Statement on the Draft Final Report on Policy Aspects Regarding Introduction of Single Character IDN TLDs](#)

More Information

The [At-Large Correspondence site](#) lists all ALAC statements.

Staff Contact

[ICANN At-Large Staff](#)

At-Large Work Teams to Complete Improvements Project Next Month

At a Glance

Four At-Large Improvements Work Teams (WTs) have been implementing different aspects of the [13 recommendations](#) that compose the At-Large Advisory Committee (ALAC)/At-Large Improvements project. These WTs are dedicated to:

- ICANN Bylaw changes reflecting ALAC's and At-Large's continuing mission (Work Team A)
- Enhancing ALS participation (WT B)
- ALAC's strategic, operational, and budgetary planning processes (WT C)
- ALAC/At-Large's policy development processes (WT D)

Following the Board's approval of the [ALAC/At-Large Improvements Project Plan](#) in August 2010, these WTs, including members from all five RALOs, began meeting in September 2010. Now, just six months later, the WTs are nearing the completion of their work. This is a major milestone in the evolution of both At-Large and the voice of individual Internet users.

The Improvements project is on schedule for completion at the end of March 2011.

Recent Developments

The most visible success of the Improvements project was the seating of At-Large-selected Director, Sébastien Bachollet to a voting position on the ICANN Board.

In this final stretch of the Improvements project, the WTs have begun to translate their implementation plans into tangible proposals for the ALAC. They will present their proposals to the ALAC and At-Large Community during ICANN's Silicon Valley Public Meeting in San Francisco next month.

Highlights in the WTs' proposals include:

- Clarification within ICANN's Bylaws of At-Large's role as the ICANN home of individual Internet users.
- Creation of a technology task force from the community to assist ALSes in their use of collaboration and communication tools.
- Calls for more direct involvement of the RALOs and ALSes in ICANN's strategic and budgetary planning.
- Overhaul and clarification of the At-Large Policy Advice Development process, featuring more direct responsibility for the regions.

More Information

The mission and progress of each Improvements WT is available on the main Confluence workspaces:

- [WT A Workspace](#)
- [WT B Workspace](#)
- [WT C Workspace](#)
- [WT D Workspace](#)

Staff Contact

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SSAC

SSAC Appoints New Chair and Vice Chair

At a Glance

Dr. Stephen Crocker, Chair of the SSAC, and Ray Plzak, Vice Chair resigned their positions in December 2010.

Recent Developments

In January, the SSAC elected Patrik Fältström as its new Chair and Dr. James Galvin as its Vice Chair. Mr. Fältström is currently a Distinguished Consulting Engineer with Cisco Systems in the Office of the CTO. Dr. Galvin is Afilias' Director of Strategic Partnerships and Technical Standards.

The ICANN Board of Directors formally appointed Patrik Fältström as SSAC Chair and acknowledged the SSAC's choice of Dr. James Galvin as Vice Chair on 25 January 2011.

Background

The ICANN Board of Directors appointed Dr. Crocker as Chair soon after the SSAC was formed in 2002. Plzak served as Vice Chair for many years. Dr. Crocker was appointed Vice Chair of the ICANN Board of Directors on 10 December 2010, at which point he stepped down as SSAC Chair.

More information

- [Biographical details](#)
- [Resolutions](#)

Staff Contact

[Julie Hedlund](#), Director of SSAC Support