

Accountability & Transparency Review Team Draft Proposed Recommendations Executive Summary

In keeping with the Affirmation of Commitments (AoC), the Accountability and Transparency Review Team (ATRT) provides the following report to the ICANN community for input and comment. The ATRT specifically seeks comment on the draft proposed recommendations included below so as to produce Final Recommendations to the ICANN Board of Directors no later than December 31, 2010. The report also contains information on the background, structure and methodology of the review as well as the reports of the four working groups created by the ATRT to progress its work. Comments on the draft proposed recommendations are due 30 days after publication of this report.

Request for Public Comment - Draft Proposed Recommendations

The draft proposed recommendations developed by the ATRT listed below are based on the public comment received to date, interactions with the ICANN Community at the 37th ICANN meeting in Brussels, interviews, fact-finding and analysis by the ATRT as well as consultation between the ATRT and the Berkman Center. The ATRT's analysis is not yet complete and the recommendations will continue to be refined, taking into account the public comments received. In some cases the ATRT is considering recommending specific timelines for the recommendations to be implemented. Those discussions are ongoing and indicated below with bracketed text. The recommendations are grouped according to the four work streams established by the ATRT followed by one overarching recommendation.

Recommendations

ICANN Board of Directors (Board) governance, performance and composition

1. Pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, ICANN should establish [by INSERT DATE] 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. Publishing the outcomes and requirements as part of the Nominating Committee's call-for-nominations.

2. Recognising the work of the Board Governance Committee on Board training and skills building, the Board should reinforce and review on a regular basis, (but no less than every INSERT NUMBER OF YEARS) the training and skills building programmes.

3. Subject to the caveat that all deliberations and decisions about candidates must remain confidential, (as soon as possible but no later than the 2012 selection process,) 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 already done, continue to expedite reforms to Board meetings and work practices.

5. Follow the recommendations of the Boston Consulting Group and expeditiously implement the compensation scheme for Board Directors.

6. Clarify, (as soon as possible but no later than INSERT DATE,) which issues are considered at Board level in order to improve visibility among stakeholders of the work the Board undertakes in steering ICANN's activities.

7. Develop complementary mechanisms for consultation with SOs and ACs on policy issues that will be addressed at Board level.

8. Promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing provided by staff and detailed Minutes, and Directors' statements relating to significant decisions or votes. The redaction of materials should be kept to a minimum, limited to matters clearly associated with litigation and staff issues such as appointments and remuneration

9. Produce and publish a document, (as soon as possible but no later than INSERT DATE,) 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.

10. Publish a detailed explanation at the conclusion of each decision-making process, including:

- why the matter was considered by the Board;
- what consultation occurred;
- what input was received from the ICANN community; and

- how this input was considered and how and why it was adopted or discarded.

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

11. The Board and the GAC, (as soon as possible but no later than INSERT DATE,) 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.

12. ICANN should, (as soon as possible but no later than INSERT DATE,) establish 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 input in writing. At the same time, the GAC should agree that only a “consensus” view of its members constitutes an opinion that triggers the Board’s obligation to follow the advice or work with the GAC to find a mutually acceptable solution. The GAC can continue to provide informal views but these would not trigger any obligation on the Board to follow such input. In establishing a more formal process, ICANN should develop an on-line tool or database 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.

13. 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.

14. The Board, working with the GAC, needs to develop and implement a process to engage the GAC earlier in the policy development process.

15. 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 to the GAC and whether the Board and the GAC would benefit from more frequent joint meetings.

16. 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 on a timely basis and at a sufficiently authoritative level. To the extent member representatives attending GAC meetings are prepared and authorized to speak on behalf of their countries and organizations, the process by which GAC develops and submits consensus opinions to the Board should take less time and should lead to a more authoritative work product. Second, the Board 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. Third, the Board, working with the GAC, should consider establishing a process by which ICANN engages senior government officials on public policy issues on a regular and collective basis.

C. Public input processes and the policy development process

17. The Board should, (as soon as possible but no later than INSERT DATE,) direct the adoption of public Notice and Comment processes that are stratified (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.

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

19. Timelines for public Notice and Comment should be reviewed and adjusted (as soon as is possible but no later than INSERT DATE,) to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

20. [With recognition of Recommendation WG#1, Area 2, number 5.] The Board should, in publishing decisions, (as soon as possible but no later than INSERT DATE), adopt the practice of articulating the basis for its decision and identify the public comment that was persuasive in reaching its decision. At the same time, the Board should identify the relevant basis and public comment that was not accepted in making its decision. The Board should articulate the rationale for rejecting relevant public comment in reaching its decision.

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

22. The Board should publish its decisions in a multi-lingual manner to the maximum extent feasible.

23. The Board should ensure that all necessary inputs have been received to the respective policy making processes are accounted for and included for consideration by the Board to ensure effective and timely policy development. The ATRT recommends that the Board consider adopting a template or checklist that can accompany documentation for Board decisions that certifies what inputs have been accounted for and are included for consideration by the Board.

24. The Board should ensure that forecasted ICANN work programs should be published and regularly updated to facilitate public input and effective and timely policy development.

D. Review mechanism(s) for Board decisions

25. The ICANN Board should implement (as soon as possible, but no later than - DATE WILL BE INSERTED IN THE ATRT FINAL REPORT) Recommendation 2.7 of the 2009 Improving Institutional Confidence Implementation Plan 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, their inter-relation, if any (i.e., do the three processes provided for a graduated review process) determining whether reducing costs, issuing timelier decisions, and covering a wider spectrum of issues would improve Board accountability.

26. The operations of the Office of Ombudsman should be assessed and, to the extent they are not, should be brought into compliance with the relevant aspects of internationally recognized standards for an Ombudsman function such as International Ombudsman Association⁸ and its Standards of Practice⁹ (as soon as possible, but no later than - DATE WILL BE INSERTED IN THE ATRT FINAL REPORT).

27. (as soon as possible, but no later than - DATE WILL BE INSERTED IN THE ATRT FINAL REPORT), 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.

28. (as soon as possible, but no later than - DATE WILL BE INSERTED IN THE ATRT FINAL REPORT) the 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.

29. The Committee of Independent Experts should also look at the mechanisms in Recommendation 2.8 and Recommendation 2.9 of the IIC.

Overarching Recommendation

30. ICANN should establish a regular schedule of internal review (distinct from the AoC review and to facilitate the subsequent ATRT review) to ensure that transparency and accountability performance is maintained throughout the organisation and, where necessary, to propose measures for improvement. Reviews should be overseen by the Board and should assess whether: standards for the publication of briefing materials related to Board decision-making are being met; mechanisms for redaction of materials are being appropriately utilised; the work program stemming from Board decisions is being implemented effectively and transparently; ICANN's senior staffing arrangements are appropriately multi-national and multi-lingual, delivering optimal levels of transparency and accountability to the community; appeal mechanisms provide a graduated inter-related cost-effective framework and as a whole, appropriate levels of transparency and accountability are being realised.