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DURBAN – ATRT 2 - Meeting with NPOC  
Tuesday, July 16, 2013 – 08:30 to 09:00  
ICANN – Durban, South Africa

MARIE-LAURE LEMINEUR: Okay. Good morning. My name is Marie-Laure Lemineur. I'm Chair of NPOC and I'll be chairing this session this morning. It's a pleasure to have the Accountability and Transparency Review Team Number 2 with us today. Since we only have half-an-hour to work with the ATRT-2 team, we might as well start right now.

We received a set of questions that we've been reviewing, so I don't know whether Brian wants to say a few words and then we can start answering the questions. Thank you.

BRIAN CUTE: Thank you. First of all, we don't have a long period of time this morning, so I'll be very brief. Thank you for the time. We are here in listening mode. We're in our data collection phase. These questions that we formulated, the first six are questions that are top-of-mind at this point in our work. The rest of the questions – seven on – are questions we developed after reviewing public comment that we've received to date.

We don't want you to be constrained by these questions. We realize you haven't had a time to form a position as NPOC. We're listening to you as individuals who participate in NPOC. Please feel free to respond to any of these or other issues that are top-of-mind.

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We're running an open process. If NPOC does want to develop responses to these questions, please feel free to do so and submit them to the ATRT-2 through our e-mail on our website. Other than that, the floor is yours and we're looking forward to your remarks.

MARIE-LAURE LEMINEUR: Thank you, Brian. I don't know if Klaus wants to speak out. Please, Klaus, go ahead.

KLAUS STOLL: First of all, I was closely following over the last month the work of your group. I want to just simply say I commend you for what you've done so far. I think it's very, very good. I think you are basically on the level between 95-98%.

Please, everything I'm saying now in the following [sees] that in that light. I think you are doing an extremely well [inaudible] and extremely good job.

I'm talking now for myself. When I received the 12 questions, being a good gentleman, I sat down in front of my laptop and started to answer them. After I finished page three on question one, I realized that is not quite conclusive with first my [employer], and secondly, with my brain power. But it should give you an indication. What you've got here is basically like a temperature chart of ICANN today. The questions say more about ICANN than maybe the answers.

That brings me to point number two. Maybe I'm getting infected by Fadi and Fadi is spreading around some kind of virus, but again, the word

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concern, concern, concern, concern. Can't we not also look on the things which are actually working?

A lot of [said] stuff which is in here is actually working very well, but it is subject to concerns because at the moment there is a topic that we should – I hope it's clear what I mean. We are concerned and the concerns are based on things which are just hot because of one issue or another at the moment, but it will be irrelevant when that issue is resolved, and it has not to do with the overall operation of ICANN.

I would like to make a comment now which many of you have heard again and again, and I apologize to anybody who has to listen to that again from me. As an issue that's still on the table, I want to mention it.

You are talking in question number six about ICANN's overall transparency and accountability and so on and you are asking is ICANN still relevant in a way. I think we need to do something in ICANN. We have to do with other organizations. Get the overall knowledge of Internet governance to the general public because we cannot claim legitimacy. ICANN cannot claim legitimacy and transparency and relevance if 99.9% of the people are affected by what ICANN does don't even know that ICANN exists. That's as simple as that.

We have to face the fact that now this is affecting everybody and we need to be transparent and accountable to everybody and you can't be that when nobody knows that you are there.

I know it sounds like very populist. I know it sounds a little bit even mechanistic. But it's something we, as Internet [governs] as a whole, have to face and do because if we go on and behave like the rest of the

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world doesn't exist and doesn't affect, the rest of the world will let us know sooner or later that we don't exist and [aren't] relevant. That's my contribution to these 12 questions.

The only recommend – [inaudible] recommendation – is maybe somehow this gets a little bit undensed because I think I've got the feeling a lot of people had the same question like me. You start answering the question then you suddenly oof! You jump from one question. "I should give..." But it's an excellent state of art. In a way, this is a state of art of ICANN [inaudible]. Thank you.

BRIAN CUTE:

Thank you, Klaus. Just a couple of thoughts to your points. In terms of highlighting what's working and hearing concerns, we have to review ICANN's implementation of the three prior review teams and we may make recommendations on new issues. In reviewing implementation of prior review team recommendations, we will highlight what's been implemented. Your word is working. We will highlight and analyze what's been implemented and comment on that.

What's also important to us is whether implementation has had an effect, a positive effect, in improving accountability and transparency. That's also something we'll be assessing and commenting on in the report.

So we will be noting where things have been done and done well. Effect is probably the most important aspect of that conclusion. And with respect to hearing concerns, we hear lots of concerns. As we say to most of our groups, "We hear your concern. Do you have evidence or

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facts to provide to us that substantiate that concern?” We have to make a fact-based assessment of the state of affairs. Those are just observations. Thank you for your comments.

MARIE-LAURE LEMINEUR: Thank you Brian and Klaus. Someone else? Rudi and then Cintra, please.

RUDI VANSNICK: Rudi Vansnick, actually the Chair of Policy Committee of NPOC and previous member of the At-Large. In fact, I have been sitting in the At-Large for almost eight years and I thought it was time to change and stop giving advice and try to do policy.

That brings me to one of my views on transparency and it fits in the question four, in fact. As Klaus was mentioning, 1% is knowing all about what ICANN is and how ICANN works; 99% doesn't know. That means that there is somehow a problem in transparency because if you are more transparent, more people would see and would know what you're doing.

What has been done in ALAC, for instance, they have been doing a lot of outreach to try to get to the 99% the message of what ICANN is, what ICANN does. I think they succeeded at that point. What I don't see is that other constituencies are reaching out at the same level – the more complex ones, like for instance, GNSO. Policy is rather boring. Giving advice is more pleasant than working on a sentence for two or three months, and again saying, “Well, we dropped that sentence. It's not a good one. We need another one.” And that makes it difficult.

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That's I think one of the issues that ICANN has in front of them. That is we're working on stuff that is not easy. The further we go, the more difficult it becomes. For instance, taking the sample of the New gTLD Program, the longer it takes, the more questions are raised. In that context, for instance to just give one sample where I'm missing a little bit, the good way of transparency and accountability is that the program was launched based on the Applicant Guidebook. It took several versions before having some final one, but at the end, at the implementation phase, we see that it's implemented in another way than it was written. [inaudible] sample, first example in that case, was the lottery was not in the Applicant Guidebook. That changes a lot in how the world is going to react on it because [inaudible] in the first queue of being launched or [inaudible] the lottery at the end of the queue, and they are perhaps no longer interested to be launched because the market could be [taken].

You see, for me – and I'm putting my [inaudible] at the outside of ICANN – these are questions where I don't get any answer today. I think that ICANN is accountable at that point that they have to illustrate that they have been sending out a kind of agreement document – agreement – which is the Applicant Guidebook on which you're basically agreeing with ICANN when you enter the application. That agreement has changed during the process of operations.

That's just one example I'm giving. I think everyone knows about that example now and it's worrying the world to see what's going on now. That's my concern. Having been in the advisory part of the body being now in the policy, I'm having a lot of questions that I've seen popping up as advice and I don't see answers to that advice. That's something I will

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try to work on during my mission in NPOC. I think that's one of the elements that I would like to see and to review report. How is this going to be tackled?

MARIE-LAURE LEMINEUR: Thank you, Rudi. Cintra, you have the floor.

CINTRA SOOKNANAN: Thank you. Cintra Sooknanan, NPOC Vice Chair. It's [inaudible] perhaps captured in question four, but I would like to see the ATRT speak a bit not just about the workings of the SOs and ACs, but also cross-community working groups because this is an area that hasn't really had much definition or working [groups]. So it's basically just left up to the Chairs to find a way for group charter and that kind of thing. [Group] charters. So I think that's an important area in ICANN moving forward since there's so many inter-related issues that we rarely focus on that.

MARIE-LAURE LEMINEUR: Thank you, Cintra. The last one. We have 10 minutes left. I have a [inaudible] comment. I've been hearing for the last two days we've been here that the PDP process is broken. Sitting in the GNSO Council meeting, it's very interesting because listening to Fadi and [inaudible] and other people and thinking about it, I came to the conclusion that I do agree with Fadi and other GNSO members that it's not broken. I don't think it's broken. I think it's multi-stakeholder model and it has the witnesses that you can expect when you have so many people in groups and interests involved. So it has weaknesses, but that's the price you have to pay if you want to have a multi-stakeholder model.

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Yesterday we had GNSO, ccNSO joint meeting. It was very interesting because we heard them saying that they have – since they exist, they have had one PDP issued and they've been working on the other one for six years.

So, you see, when you compare the GNSO and the average time that it takes for a PDP within the GNSO as [Maurica] said, in between roughly an average of two to three years compared to the ccNSO, we're not doing that bad. As Fadi said, when you see it's broken, you have to compare it to something to measure it whether it's broken or not. That's the overall comments.

Having said that, there are weaknesses and I can see that they're related to two aspects. The first one is a procedural aspect and the other one would be the structure of the GNSO. Regarding the procedural/process aspect, I do feel that there is a lot of time spent discussing processes versus discussing content during the meetings. It strikes me that there are such lengthy debates about how to do things instead of speaking about what we're talking about, about the contents.

So it's interesting. At least in my opinion, it's a sign that at least there is a perception that's the bylaws and the PDP manual is not at all clear or there are [loopholes], otherwise they wouldn't spend that much time speaking about how to do things. It will be all agreed on and things will move along much quicker. That's one aspect of it.

As far as the structure of the GNSO is concerned, we will know that's the way an organization – the company structured – has an influence on the decision-making process.



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So we also know that there are critics that the GNSO – right now the structure is imbalanced and there are other problems. I know that the [inaudible] is the product of the formal review, and probably at the time it was the best way to organize the GNSO. But right now maybe it would be important to review the way it's organized and how it affects and impacts the decision-making process in a negative way. I don't know exactly in what way and how, but I have a feeling that there is a relationship in here between the structure and the decision-making process that maybe some people and some groups are underrepresented. Maybe others are over-represented. Maybe the terms of the councilors are too long, too short. I'm not sure. But definitely there is a link between the structure and the way [they] work and the decision-making process and maybe the weaknesses of the decision-making process within the GNSO.

Finally, do I still have time? Is it too late? Regarding the question number six about the overall transparency and accountability, I came across a paper that was presented in Brussels in April and it was very interesting. It was an academy event. The lady, the author, who presented it, she analyzed actually the ICANN statistics about the new gTLD applicants.

When you read the paper, she highlights lots of errors, mistakes made, and contradictions in the statistics. It's very interesting. I'm not judging whether she's right or not and it looks like it's a legitimate paper, but when you read the paper, you have the impression that she has done good research work and it does make sense what she says and she proves it. She actually quotes and highlights where the mistakes are.

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So you have a feeling at the end of the paper that there is something wrong. I'm not talking about whether the contradictions, the information that has been put on the database, was on purpose or not. I'm just saying when you display information to the public like this, it flows suspicion. It gives a strange feeling that something is going on. Why so many mistakes? Why so many contradictions? Is there something behind it? I'm not saying there is, but it gives you the impression that there might be. So I don't think it's good for ICANN that this happens.

One explanation in the paper is that the information has been put in by the applicants. That's one of the [inaudible] because she interviews some of ICANN staff and GNSO and that was the explanation that was given. But still, she explains in the paper that it's not such a big database. It wouldn't have been hard work for ICANN staff to correct the errors and everything. That's all the arguments that she raises are very interesting. So that will be it for me. Thank you.

BRIAN CUTE:

Thank you. If you have a copy of that paper and you could send it along to the ATRT-2 e-mail list and any comments you have beyond that. How much time do we have? Five minutes.

Well, let me just walk you through our timeline of work, and then if there's any other questions after that, again we're all ears. We'll issue proposed draft final recommendations along with a draft report in the middle of October.

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In terms of data collection, I think if there's anything that you want to be integrated into that document mid-September at the latest would be a good time to get us any responses to questions, the paper you referenced or any other thoughts from the NPOC.

We have to – or we will provide a report on December 31<sup>st</sup> of this year. We will issue those draft proposed final recommendations for public comment in mid-October, take your comments and factor those into the final recommendations that we make in December.

So that's our timeline. And as I said, we're running an open process and we welcome any inputs you have. Any other final thoughts, questions, or suggestions to the review team?

MARIE-LAURE LEMINEUR: [inaudible] to add anything or are you okay? Thank you. I think we don't then. Thank you very much for sharing half-an-hour with us and good luck with the rest of the day.

BRIAN CUTE: Thank you very much. Thank you, all.

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