



International Chamber of Commerce

The world business organization

Policy and Business Practices

ICC Task Force on Internet and Telecoms Infrastructure and Services (ITIS)

ICC input on:

Affirmation of Commitments

Accountability and Transparency Review Team

Questions for the ICANN Community

13 July 2010

On behalf of the members of the International Chamber of Commerce (ICC) and, in particular, the members of the ICC Commission on E-Business, IT and Telecoms (EBITT) and the EBITT Task Force on Internet and Telecoms Infrastructure and Services (ITIS), we are pleased to provide comments on the *Accountability and Transparency Review Team Questions to the Community on Accountability and Transparency within ICANN* (the “Consultation”).

ICC’s EBITT Commission is composed of hundreds of companies and business associations from all sectors including business users, service providers, hardware and software developers, content providers, communications operators, mobile operators and Internet Service Providers (ISPs) and registry/registrar. With national committees and groups in 120 countries, ICC’s members span the globe and are involved in all of ICANN’s business related constituencies. Given the composition of its membership from all sectors and geographic regions, ICC is uniquely placed to provide a global business perspective at this important juncture in ICANN’s development.

ICC has long supported improvements to the organizational transparency and accountability within ICANN. We believe firmly that such procedural improvements will lead to increased confidence among the ICANN constituencies and improved substantive results. We applaud the Accountability and Transparency Review Team (ATRT) for taking the initiative to address these issues as part of its mandate through ICANN’s agreement under the Affirmation of Commitments (AoC). ICC views this process to be a positive step that will promote ICANN’s accountability to stakeholders.

The questions in the Consultation serve as a good starting point for the ATRT work. It will be an important opportunity for the ATRT to review all the comments submitted in this Consultation, and to then provide a decision that documents

International Chamber of Commerce

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 28 59

E-mail icc@iccwbo.org Website www.iccwbo.org

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specific planned reforms and the timeline in which ICANN will implement such reforms. To optimize confidence in ICANN, it is essential for there to be decisions and a timeline against which the multi-stakeholder constituencies can measure ICANN performance.

With this background, we submit the following comments in response to the ATRT's questions.

1. Do you think ICANN is accountable to all stakeholders? Can you identify a specific example(s) when ICANN did not act in an accountable manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in an accountable manner.

ICC recognizes ICANN's positive efforts to engage the Internet community on the critical issues involved in improving organizational accountability. We recognize a serious effort is being made to address what is one of the most important elements in ICANN's evolution. Procedural improvement that will increase accountability and transparency at ICANN is a necessary component for it to function successfully as a fully independent, private sector led and multistakeholder organization.

We remain concerned that previous efforts to enhance ICANN accountability have not progressed with sufficient focus or speed, and that the proposed improvements suggested as part of these various efforts do not provide Internet stakeholders the full measure of accountability needed from ICANN. For example, the current status of ICANN's proposed accountability enhancements on which it solicited public comment in November 2009 remains unclear.

Furthermore, stakeholder confidence in ICANN is closely related to accountability and transparency. Confidence will increase when decisions reflect full and informed public comment, the development of consensus by the community, and that explain the rationale for decisions. Stakeholder confidence will also increase with balanced participation within ICANN at all levels of the structure. The importance of this point for business cannot be over emphasized. ICC urges further consideration of how to fulfill ICANN's stated commitment to increase and strengthen business involvement, among other constituencies, when undertaking reviews of the organization and its structures. Accountability within ICANN must be applied to the broader community impacted by ICANN decisions.

Security and contract enforcement are important accountability issues for business and all stakeholders. Appropriate handling of these two issues requires focus and adequate funding.

2. Do ICANN's accountability mechanisms, including the Ombudsman, the Board reconsideration procedure and the Independent Review Panel, provide meaningful accountability and, if not, how could they be improved?

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.

ICANN should move forward in its consideration of various new mechanisms to enhance organizational accountability, such as the Community Vote Re-examination and the Independent Review Board. ICC also encourages ICANN to proceed with the recommendations from the President's Strategy Committee to convene a group of multistakeholder experts to explore and recommend independent accountability mechanisms, with an open, transparent and robust community consultation process across all stakeholders. We acknowledge that any such activity should be undertaken with an expectation to implement an effective and independent accountability structure as quickly as possible.

3. Do you think ICANN's processes and decision making is transparent? Can you identify a specific example(s) when ICANN did not act in a transparent manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in a transparent manner. Are ICANN's transparency mechanisms robust and how could they be improved?

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.

ICANN's role in effectively informing the community requires that it do so in a way in which Internet stakeholders can adequately analyze the issues under consideration, participate and positively contribute to ICANN's work, and understand (and perhaps challenge on appeal) the substantive basis of ICANN decisions.

Complete and accurate summaries of comments allows stakeholders to follow the policy development processes, effectively contribute and also contribute to building stakeholder confidence as they see their comments explained and adequately taken into consideration.

For example, there is some concern about the transparency of the process for DNSSEC root signing, specifically about the selection of trusted community representatives whose announcement was not made until after the signing ceremony in June. ICC appreciates the need for specific processes [that may not always be open to direct community input], but ambiguity about the process itself fosters uncertainty and can hamper trust in ICANN.

Regarding the ICANN Board, it is an excellent progress point that the non-confidential parts of the briefing materials provided to the Board will now be published. It would also be desirable for the resolutions and minutes to be published in a more timely manner, and its decisions better justified and explained to the community.

4. What is your general assessment of ICANN's commitment to the interests of global Internet users? Can you provide a specific example(s) when ICANN did not act in the interests of global Internet users? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in a manner consistent with the interests of global Internet users.

The need to maintain global diversity in ICANN proceedings remains an essential element of the bottom-up process, yet a number of changes proposed within other ICANN reviews, particularly where the size of the Board or Supporting Organizations have or are being discussed appear to make this challenging. The regional offices and liaisons provide useful functions and opportunities in this regard, but having offices in other parts of the world is not equivalent to improving global diversity. Global outreach remains of paramount importance. We have confidence that ICANN acts with the best intentions for global Internet users, though it may not always be aware of the interests of certain groups of global Internet users. ICANN will better ensure that it takes decisions in the interests of global Internet users by actively promoting an inclusive global diversity in all ICANN proceedings.

ICC which represents a global constituency of business believes ICANN will best reflect the global Internet user community if ICANN itself through staff and board members is comprised of a globally diverse set of individuals.

ICANN can further promote global diversity by expansion of its Fellows program to provide assistance to business and other stakeholders participate and contribute to ICANN processes. Adequate funding and support is needed to strengthen participation and outreach efforts.

Continued progress on the introduction of internationalized domain names (IDNs) will also demonstrate increased commitment to the interests of global Internet users. ICANN could also work to ensure fair, open, and competitive global processes for its various undertakings and contracts.

5. What is your assessment of the ICANN Board of Directors' governance with respect to the following factors:

- *ongoing evaluation of Board performance,*
- *the Board selection process,*
- *the extent to which Board composition meets ICANN's present and future needs, and*
- *whether an appeal mechanism for Board decisions is needed?*

ICANN's bylaws attempt to ensure a balance of experience, sectors, and geographies. ICC maintains that broader business expertise is essential for the ICANN Board in meeting current and future challenges facing the organization. Gender diversity is also a significant consideration. Both of these areas merit effort by ICANN, and will improve the governance of ICANN.

Developing and implementing an accountability mechanism by which actions of the ICANN Board and staff can be measured against an agreed upon standard in the event of a dispute with ICANN policy is critical. It is essential to have an appeal mechanism for review of either substantive or procedural defects of a material nature in a Board decision.

It is particularly important to provide stakeholders a means to seek redress in the instance that a Board decision causes or could cause significant harm to one or more stakeholder groups. Such an appeal mechanism should be responsive to the ICANN community, trusted, and independent of governments and inter-governmental organizations, and independent of ICANN Board and staff. ICC's members maintain that any such mechanism should also have binding authority, with the power to overturn Board decisions, in order to help ensure independence. It would be useful to investigate whether other organizations may have any such provisions in place that could be assessed and perhaps adapted to ICANN.

6. What is your assessment of the role of the GAC and its interaction with the Board? How do you view the role of the GAC within the overall ICANN process?

- *What is your assessment of the interaction between the GAC and the Board?*

The interaction between the Governmental Advisory Committee (GAC) and other parts of the ICANN structure, including the Board, has improved and resulted in benefits being realized within the public policy development process and its important overall advisory role. ICC supports the continued willingness of the GAC to engage in discussions with the Board and other parts of ICANN with the aim of further improving efficiency and responsiveness. Timely GAC input into ICANN proceedings is important in realizing these goals. The important role that governments play within the multistakeholder environment is fully recognized, supported, and appreciated by ICC.

- *Should the GAC be viewed as the body best placed to advise the Board on what constitutes the "public interest" regarding the coordination of the DNS?*

All stakeholders can raise important perspectives on public interest matters, and the GAC is one of the important voices on these matters. We feel that all constituencies should have a role in representing the public interest – no one body is necessarily better placed than another.

7. Are additional steps needed to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS? If so, what specific steps would you recommend?

As suggested in our comments directly above, all stakeholders have a role in discussing the public policy aspects of the technical coordination of the DNS. GAC is an important voice in this regard, and its current advisory role provides the GAC a strong platform for government input. ICC supports enhancing dialogue between the GAC, the business community, and other stakeholders in order to facilitate further collaboration.

8. What is your assessment of the processes by which ICANN receives public input? What is your assessment on how ICANN receives input of English-speaking and non-English speaking communities? Can you identify a specific example(s) when ICANN did not adequately receive public input from English or non-English speakers? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate public input.

ICANN has made progress in developing its processes to receive public input, such as increasing and standardizing the amount of time for comment periods when ICANN is considering a new initiative. However, ICC continues to be concerned about the number of simultaneous substantive issues out for review and comment; the multiple comment periods that often converge right before meetings and the limited number of community members that actually comment on the work in

progress. Various stakeholders, including the ICC, have urged ICANN to reduce the number of substantive issues posted for review and comment at any given time, to ensure an adequate period to prepare comments on complex issues, and to create a more predictable road map for the upcoming flow of work that will enable a broader range of community members to contribute.

ICC and many other associations have a diverse network of participant experts to consult, and a consensus building process internally that ensures the quality of our contributions. This process of building consensus from a diverse stakeholder community means that often we cannot contribute to ICANN processes because of the number of simultaneous comment periods and the close deadlines.

We also welcome ICANN's efforts with regard to both the GNSO Council Work Prioritization Process and Communication and Coordination Team (CCT) Recommendations. ICC strongly encourages a more rational approach to increasing the range and quality of substantive participation in ICANN's deliberations.

9. Does ICANN provide adequate explanation of decisions taken and the rationale thereof? Can you identify a specific example(s) when ICANN did not provide adequate explanation of decisions taken and the rationale thereof? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate explanation of decisions taken and the accompanying rationale.

ICC supports the recent CCT Recommendations to encourage the ICANN Board of Directors to provide rationale for its decisions. It reflects best practices of procedure for a decision to summarize the range of comments submitted, and to explain the rationale for the decision. This aids the community in understanding the Board's analysis and reasoning on complex policy issues. Such communication also helps foster trust and understanding between ICANN and the community it serves, and promotes further and more informed engagement by stakeholders. Most importantly, such a process promotes well informed and well reasoned substantive results that can be implemented in a sustainable manner.

10. What is your assessment of the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community? Can you identify a specific example(s) when ICANN decisions were not embraced, supported and accepted by the public and the Internet community? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate support and acceptance by the public and the Internet community.

There have been significant substance and process concerns in the new gTLD draft applicant guidebook process. Global businesses have raised significant concerns with ICANN regarding the demand for and unintended consequences arising from the introduction of new gTLDs. Numerous global stakeholders have consistently asked ICANN to complete its promised impartial empirical study demonstrating the need for new gTLDs and the costs for consumers, businesses and for the security and stability of the Internet. That study has yet to be released yet ICANN continues to move the process forward. The economic assessment published just before the ICANN Brussels meeting, and the root scaling study provide useful information that could have been beneficial to the discussions, and development of the Draft Applicant Guidebook and the new gTLD process earlier on.

Furthermore, the Expression of Interest (EoI) proposal, for instance, did not recognize broad support from the community, though ultimately the decision taken by the Board in Nairobi did reflect the lack of community support and act accordingly.

ICC recognizes the challenge to find full community embrace and support for any particular policy decision. However, some actions find much more broad support than others. For example, the proposal to expand the DNS to include Internationalized Domain Names (IDNs) was broadly supported by the Internet community, including the ICC, whereas consensus on other issues like WHOIS policy remains more elusive. Such disparity largely reflects the wide expanse of interested stakeholders within the Internet community. Enhanced transparency and accountability in process and decision-making will help with community acceptance of ICANN decisions and ensure greater trust in the organization.

11. What is your assessment of the policy development process in ICANN with regard to:

- *facilitating enhanced cross-community deliberations, and*
- *effective and timely policy development*

Can you identify a specific example(s) when the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development? If so, please provide specific information as to the circumstances and indicate why you believe the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development.

There are several policy development processes in the recent past where a broader range of stakeholder inputs would have strengthened the discussions and decisions. There is a direct link between ICANN's outreach efforts to improve the range of participation in policy processes, the schedules for policy processes and stakeholder

ability to develop substantive contributions, and the ability of ICANN to facilitate cross-community deliberations.

ICC would reiterate our concern regarding numerous and simultaneous public comment periods on various important issues, which undercuts the ability of stakeholders to focus on all the issues and give them the attention they deserve.

For example: Consultations that were open just before the last ICANN meeting in Brussels (in order of comment closing dates)

1. FY2011 Operating plan and budget (incl \$400K for Whois studies) (25-Jun)
2. Business case & requirements for ICANN's own DNS-CERT (2-Jul)
3. Initial report on amending the Registrar Accreditation Agreement, plus a new "Registrant Rights and Responsibilities Charter" (9-Jul)
4. Draft Advisory on proxy/privacy service liability for domain name abuse (RAA 3.7.7.3)
5. Accountability & Transparency Review Team query (14-Jul)
6. Initial report on the new process for GNSO policy development (15-Jul)
7. Designing ICANN meetings for the "next decade" (19-Jul)
8. Budget for new gTLD program (21-Jul)
9. New draft guidebook for gTLD Applicants (21-Jul)