Comments on ICANN's draft proposal on AoC review requirements and implementation processes

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.au Domain Administration Ltd (auDA) is the not-for-profit organisation endorsed by the Australian Government to administer the .au domain space under an industry self-regulatory regime.

auDA welcomes the opportunity to comment upon ICANN's draft proposals for the structure, methodology and execution of review processes called for in the Affirmation of Commitments. auDA's comments focus upon general issues relating to the review processes and the most immediate review into transparency and accountability.

auDA is a long-standing, active participant in ICANN's country code Names Supporting Organization (ccNSO). Many of the review processes outlined in the discussion draft released by ICANN require the participation of, and impact upon, ccTLD managers.

Review Timeframes

As a general comment, auDA observes that the timeframes for comment and for the initiation of AoC-mandated reviews are very compressed. This is especially true for the first review on Transparency and Accountability that must be concluded by the end of 2010. ICANN only posted a call for review team Expressions of Interest on 13 January and the T&A membership window will close on 17 February. These timeframes do not allow for the broad promotion of these opportunities, the development of considered candidacies, nor processes for candidate selection / endorsement within the SOs and ACs.[1]

ICANN's accountability to its stakeholders has always been – and remains - a key priority for ccTLD managers. The goal of improved transparency and accountability is as critical as it is complicated. It was a key topic during the conclusion of arrangements with the US Department of Commerce and is addressed at length in ICANN's By-Laws, Strategic Plan and Operating Plan. It was also addressed by the President's Strategy Committee, in its efforts to Improve Institutional Confidence. Given ICANN has devoted much time and effort in improving accountability, allowing less than 12 months to plan, schedule and execute an organisation-wide review is a sub-optimal timeframe.

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[1] See "Expressions of Interest for Review Team" section for additional commentary

Review fatigue

auDA acknowledges the importance of these reviews and the broader goal of ensuring that ICANN is delivering the best possible service to its stakeholders and the broader Internet community. However, ICANN already has a dense schedule of reviews required under its By-Laws, as well as the previously-mentioned IIC work of the PSC. auDA believes that ICANN must make every effort possible to avoid confusion, duplication of work and adverse impact upon stakeholders during the introduction and conduct of the AoC review processes. While the draft AoC review proposal calls for numerous rounds of public comment, it would be prudent for ICANN to critically analyse the impact this could have on the workloads of stakeholders that already have limited resources to dedicate to ICANN process, and whether this review-fatigue could result in poor stakeholder buy-in, or un-representative review outcomes.

Review schedule and terms-of-reference coordination

In preparing for the AoC reviews, ICANN should be streamlining and co-ordinating existing review processes. A simple, publicly-available diagram charting all of the reviews would be a good first-step to assist stakeholders, but this should then be used to improve the efficiency of review schedules and terms-of-reference that may conflict over the next 12 months. One example is the current work of the Board Review Working Group – the WG's draft final report proposed no structural changes at Board level until 2014. This recommendation appears inconsistent with ICANN's obligations under the AoC.[2]

Review Team composition

auDA acknowledges the need to keep review teams small and agile while also ensuring appropriate representation from across the ICANN community. Given the experiences of innumerable previous ICANN review, panel, working group and policy development processes, the selection of an agreed cross-section of stakeholders will be very difficult and ICANN should exercise caution in prescribing and forcing set Review Team structures. While auDA supports the identified need for RT selectors to factor in gender, geography and skill-set considerations, these requirements will only serve to further complicate efforts at achieving balance.

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[2] http://www.icann.org/en/announcements/announcement-30sep09-en.htm#affirmation : 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 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;

ICANN should also expend all possible efforts to make abundantly clear that RT participants are volunteers from across the community – and that, while they will be "endorsed" by their constituency, they are not "representatives", promoting the particular interests of their section of the community.[3] Mechanisms to protect against such lobbying behaviour should be codified within the AoC review processes.

External independent experts

The draft proposal expands upon the AoC's broad call for the involvement of external experts in each RT. While the facilitator for each group will be remunerated, there is (appropriately) no budget allowance for the experts. Although ICANN may end up having no difficulties attracting volunteer experts, it should have clear contingency plans in place should a shortage eventuate.

Role of the "Selectors"

While the GAC Chair and ICANN CEO (or Board Chair for the Accountability and Transparency review) have significant and clear responsibilities for the selection of review team members, ICANN has offered less detail on their roles within the review process. ICANN should make it abundantly clear that the review teams will operate independently and that while the selectors may play a facilitation role, they will not be involved in the decision-making process and will not exert influence on the review team's decisions.

Expressions of Interest for Review Team

auDA notes that ICANN's draft proposal foresees a volunteer selection process that closely involves SOs and ACs. Specifically, it is proposed that a call for candidatures will be issued **to** each of the SOs and ACs.[4]

However, on 13 January 2010, ICANN issued a call for Expressions of Interest directed to the entire community, without consultation with the SOs and ACs. This step is premature given the SOs and ACs are yet to finalise their own internal mechanisms for the identification and endorsement of volunteers.

Each supporting entity will undertake some form of internal decision-making, rather than simply allowing an unlimited, unfiltered number of their members to volunteer. As noted in the draft proposal, *"the process for endorsing candidates should be left to the governing rules and practices of each SO/AC".*

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[3] It is noteworthy that the draft proposal document refers to SO/AC "representatives" on pp15.

[4] Affirmation Reviews – Requirements and Implementation Processes – Draft Proposal. Section 3.1.1 pp15.

While one SO may endorse only the required number of candidates, another may choose to endorse a panel of candidates or even leave nominations open to its membership.

Each constituency will be undertaking a *de facto* selector role. ICANN should clarify its intentions regarding the involvement of SOs and ACs in volunteer selection and, given this process is to include constituency endorsement, how requirements for gender, geography and skill diversity will be factored in.

Irrespective of the selection mechanisms that are eventually chosen, ICANN should not have sought expressions of interest before the role of the SOs and ACs was clarified and process decisions taken and must not rush towards the final selection of review teams before these issues are resolved.

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