



Accountability and Transparency Review Team Proposed Recommendations

The Coalition Against Domain Name Abuse (CADNA) welcomes this opportunity to submit its comments on the Accountability and Transparency Review Team's (ATRT) proposed recommendations.

Recommendations:

1. Benchmarking Board skill-sets against similar corporate and other governance structures

CADNA applauds ICANN's efforts to address the ICANN Board of Directors governance, performance and composition but would like to see further clarification as to how ICANN plans to benchmark Board skill-sets against similar corporation and other governance structures. ICANN is a unique organization; therefore, it is of ultimate importance to CADNA that ICANN ensure that, as stated in the ATRT's recommendations, the Board is capable of overseeing ICANN operations in a manner that is consistent with global public interest and delivers best practice in corporate governance.

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.

CADNA supports the ATRT's recommendations to improve ICANN's transparency, but is concerned that further clarification and details are lacking. It is important to provide more information on the process and who will be involved in deciding exactly what type of material would be redacted and under what set of circumstances – after all, certain redactions could be counter to the transparency and accountability that ICANN should be held to. Transparency and accountability are important components in order for ICANN to gain the trust and confidence of the ICANN community in its abilities to make decisions. CADNA acknowledges that there are circumstances under which some measure of confidentiality is required, which is why it is important to understand when and what material should be redacted in order to strike an appropriate balance. However, CADNA urges ICANN to strictly limit its ability to redact materials.

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.

CADNA agrees that ICANN needs to do more to improve upon its relationship with the GAC and that the GAC’s advice and input are important in matters that affect public policy concerns. With this in mind, CADNA is concerned that the strict constraints on the GAC’s power could impede efforts made to hold ICANN accountable for its actions. The language that the Board must “request” GAC’s input and that puts a limit on the GAC’s influence by requiring a complete consensus view to trigger a Board obligation is troubling. The Board should be required to accept more concrete oversight from the GAC.

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.

It is important that the Board and the GAC work together to ensure that GAC advice is taken into account, but it is difficult to see how this would necessarily add to transparency considering that the GAC only meets face to face three times a year. As stated in an earlier recommendation, the GAC must come to a consensus in order to trigger a board obligation. Language should either be added to define what it means for the GAC to come to a consensus or the rules should be modified to take into account the infrequency with which the GAC meets, such as further clarification on what other proposed mechanisms could be used to prepare and reach agreements in a more timely manner.



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.

CADNA is in strong agreement that this recommendation be adopted. The Board, by identifying the public comments that were persuasive in reaching its decision, will allow the public to better gauge how their comments are contributing to ICANN's policy development process (or if they are at all). The implementation of this recommendation will allow the public to determine whether ICANN is fulfilling its obligation of being responsive to its various constituencies. Such a measure would also give public comment periods a sense of credibility, which they have lacked in the past.