

ETNO Response to the public consultation on the draft proposed recommendations of the Review Team on Accountability and Transparency of ICANN



December 2010

Executive Summary

ETNO welcomes the opportunity to contribute to the consultation on the draft proposed recommendations of the Review Team of Accountability and Transparency of ICANN.

ETNO supports most of the draft recommendations and highly anticipates that the final recommendations will be implemented in a timely manner.

General Comments

ETNO¹ welcomes the opportunity to contribute to the consultation on the draft proposed recommendations of the Review Team on Accountability and Transparency of ICANN, in the framework of the Affirmation of Commitments. We would like to congratulate the members of the Review Team for the amount of work done in such a short period. Furthermore, we appreciate that the Review Team based its analysis on several sources: input from the community either in writing or in person during the Brussels ICANN meeting, interviews and fact finding, as well as the Independent Review of the Berkman Centre for Internet and Society, etc.

ETNO urges that the final recommendations of the Review Team be implemented in a timely manner, as they reflect the views of ICANN

¹ The European Telecommunications Network Operator' Association is representing 41 major companies, which provide electronic communications networks over fixed, mobile or personal communications systems in 35 countries. ETNO is Europe's leading trade association for the sector and its member companies have substantial Internet operations. ETNO has joined ICANN's GNSO ISPCP and BC constituencies. More information about ETNO can be found at: www.etno.eu

stakeholders and constitute areas where ICANN must improve, so as to ensure that decision making reflects the public interest and that ICANN is multilaterally accountable.

We continue to believe that accountability and transparency issues are of utmost importance given the unique model of ICANN, but also due to the fact that ICANN needs to evolve to a truly international organisation, which constantly enjoys trust and confidence in its operations. In this framework, ETNO finds most of the draft recommendations in the right direction and supports them. However, there are a few issues that could require additional consideration or refinement.

We find that the Review Team mainly focused its analysis on issues about the Board, the Governmental Advisory Committee and the GNSO. But these issues are only part of ICANN's mission and responsibilities. ETNO is concerned that issues related to the Address Supporting Organization were not deeply analysed. Particularly, the absence of ASO public meetings, the rejection of the Global Policy Proposal for the Allocation of IPv4 Blocks to Regional Internet Registries, which - while it was approved by 4 of the 5 regions (see: <http://www.icann.org/en/announcements/announcement-12may09-en.htm>) - it was rejected without any discussion within ICANN, are interesting examples where a public debate would have been very useful.

We understand that time for the Review was limited, and although we recognize the massive task of the Review Team and the work done, we sincerely hope that such examples as those above will be dealt with accordingly the soonest possible.

Detailed Comments on the draft recommendations

As regards the set of draft recommendations, ETNO would like to offer the following input (the original draft recommendations for comment are boxed):

Recommendation 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.

ETNO supports that formal mechanisms be established by a certain date for identifying the collective skill-set required by the ICANN Board. While ETNO recognises that benchmarking against similar corporate and other governance structures (point a) is a useful tool, it may not be as appropriate if applied isolated and not in conjunction with other criteria, due to ICANN's uniqueness. We believe that point b is more relevant and important. Furthermore, once skills are defined and tailored they could be considered by the Nominating Committee, as well as to the appropriate extend by the Supporting Organisations, when these select ICANN Board members.

Recommendation 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.

ETNO suggests the review of the training and skills building program to take place every 3 years.

Recommendation 5:

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

ETNO recognizes that a situation where only the Chairman of the Board be compensated could create an unbalanced situation. We believe that any evolution in this area must be progressive, carefully analysed and balanced against potential side effects. If a compensation scheme for Board Directors is implemented, it should be after full consultation with the stakeholders and subject to frequent review.

Recommendation 7

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

ETNO strongly supports this recommendation, which in practice should not be limited to policies developed by the GNSO, but it will also be equally implied to policies developed by ASO and ccNSO.

Recommendation 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

ETNO is calling for more and better transparency. However, this does not mean that everything needs to be published in all stages. Certain things need to develop before they become public. In this respect, we stress the importance of implementing this recommendation at the appropriate level (i.e. final positions etc.).

Recommendation 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.

ETNO considers this recommendation as an absolute necessity for transparency and for public trust. We strongly support this proposal and we believe that this recommendation needs to be applied the soonest possible and no later than a certain date.

Recommendations 11 to 16

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.

ETNO believes that these recommendations are essential to allow the GAC a better involvement in the policy development and decision processes.

Recommendation 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.

ETNO reiterates that prioritization is a key element, which will increase the meaningful involvement of all stakeholders in the ICANN activities.

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.

ETNO supports the idea of establishing a regular schedule of internal review distinct from the AoC review; however, clarification should be given on the difference with the existing independent reviews of the different ICANN structures, as defined by the bylaws and currently implemented.