

## Comment on ATRT Draft Recommendations and defining Public Interest

By Steve DelBianco, executive director, NetChoice  
3-Dec-2010

I am disappointed that the ATRT did not explore or recommend definition of “Public Interest” in the ICANN context, despite using this term 17 times on 11 pages. Moreover, the ATRT report acknowledges the central role of public interest in ICANN’s bylaws and in the Affirmation of Commitments (AoC), citing in particular paragraph 4 of the AoC:

“To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.”

I would have thought that the ATRT would take a cue from AoC paragraph 4 and devote some of its time to define who are the ‘public’ and what are their interests. I first raised this in January 2010 when the ATRT was just getting started, hoping to stoke some interest in the public interest. I also suggested a definition of public interest in the ICANN context – the *Integrity and Availability of DNS registrations and resolutions*. (see my original comment below).

But at the start, ICANN’s leadership and the ATRT were consumed with the daunting work of putting the team together and defining scope and approach. Attention then turned to hiring researchers and dealing with distractions such as team turnover and budget negotiations.

When the ATRT met in Brussels, I tried again to stress the importance of defining public interest, instead of assuming that everyone had a common understanding of the term. I saw a glimmer of understanding by some ATRT members, but again there were multiple distractions and more pressing deadlines to attend to.

Still, I would have thought that at some point the ATRT would take the challenge of defining the true object of ICANN’s accountability – the public interest.

Instead, the term is left for anyone to interpret as they see fit. And just as I predicted, by allowing ‘public interest’ to mean anything and everything to anyone, it has become a catch phrase that means nothing at all.

Below is my original suggestion for defining Public Interest  
source: <http://forum.icann.org/lists/affrev-draft-processes/msg00000.html>

13-Jan-2010

*\*ICANN's new Public Interest Imperative\**

The Affirmation of Commitments (AoC) adds a new imperative: ICANN decisions must now meet a 'public interest' test. Public interest is part of AoC commitments 3 and 4, and is an explicit criteria in the Accountability Review. Accordingly, ICANN staff featured 'public interest' in the draft terms of reference for the Accountability review.

But neither the Affirmation nor the discussion draft has proposed what 'public interest' means for ICANN. Should we just let review panelists (and their consultants) set their own definitions of 'public interest'? I hope not. The broader ICANN community should define the public interest test for ICANN decisions.

*\*Recommended definition of 'Public Interest' for ICANN\**

First, I believe that the 'public' part of public interest is concerned more with users and registrants than with contracted parties and others who are deeply involved at ICANN. Commitment 4 of the AoC makes this point in calling upon ICANN to analyze and publish the 'effects of its decisions on the public'.

Second, I believe that the public interest in ICANN decisions is somewhat broader than just a secure and stable DNS. Namely, users and registrants want ICANN to make sure the DNS delivers two essential and measurable qualities: *\*Availability\** and *\*Integrity\**

Availability of the DNS is critical for global users who increasingly rely on the Internet for information, communications, and commerce. Domain name resolutions need to be available 24 hours a day, 365 days a year, from anywhere on the globe. Availability also means being able to use any language and any script for both generic and country-code domains and email addresses.

Availability can also apply to domain names sought by registrants: will domains in new gTLDs be available to the public, or will they be captured by insiders? That kind of availability should also be part of the public interest test for ICANN decisions.

Integrity of the DNS is vital to businesses and end-users of the Internet. Businesses rely upon the integrity of domain name registration to ensure that their brands are not misrepresented or misappropriated. E-commerce and Internet financial transactions absolutely require integrity in resolution of domain names and secure delivery of encrypted data.

Internet users depend upon the integrity of domain name services to provide accurate and authentic results when they look up a website or send an email. Integrity is undermined by deceptive practices such as redirecting users to fraudulent websites or providing false information about the true owner of a web domain.

It's true that ICANN decisions alone cannot directly address much of what undermines DNS integrity today. But ICANN can promote integrity by making

policy and enforcing rules that require contract parties to meet industry security standards.

For these reasons, I believe that Availability and Integrity are necessary elements in the public interest test that will be applied to ICANN decisions in the upcoming Accountability Review.

I encourage further community discussion on the concept of public interest in Affirmation reviews. This term is too important to leave undefined or let a few reviewers define it to fit their own agenda.

If we allow 'public interest' to mean anything and everything, it will end up meaning nothing at all.

--

Steve DelBianco

Executive Director

NetChoice

<http://www.NetChoice.org> and <http://blog.netchoice.org>

+1.202.420.7482