NetChoice Comments on the Final Recommendations
of the Accountability and Transparency Review Team
14-Feb-2011

First, I'll add my voice in support of the remarkable work done by the Accountability and Transparency Review Team (ATRT). The volunteers on this review – the first review required under the *Affirmation of Commitments* – labored under time and resource constraints and had to create a new process from scratch. The ATRT not only produced many substantive recommendations, it also showed the way for future *Affirmation* review teams.

It's now up to the ICANN board to implement the recommendations in the ATRT final report. However, even if the board adopts all the recommendations, there will be one missing element that's essential for the next ATRT in 2013 and for other reviews required by the *Affirmation*: a definition for 'public interest' in the context of ICANN.

At the core of the *Affirmation of Commitments* and its mandated reviews is a sharpened commitment by ICANN to act in the global 'public interest.' When terminating ICANN's transition and signing the *Affirmation* in 2009, Lawrence Strickling, Administrator of the U.S. National Telecommunications and Information Administration said, "this framework puts the public interest front and center and it establishes processes for stakeholders around the world to review ICANN's performance."

The final recommendations of the ATRT indirectly address this commitment, by identifying how ICANN can improve its processes as it works to serve the public interest. But missing from the ATRT document is a workable definition of what 'public interest' means for ICANN.

With all they had to deal with, it's understandable that the ATRT didn't also tackle the definition of 'public interest.' But until the ICANN community comes together on what 'public interest' means, we are flying blind in our efforts to meet this key imperative.

Leaving the term 'public interest' undefined leaves the floor open to conflicting and competing interpretations that serve the particular interests of ICANN stakeholders. Already, we see some in the ICANN community invoking 'public interest' to justify self-interested proposals and new programs. The longer the community goes without defining 'public interest' the more meanings it will take on, until ultimately, it means nothing at all.

The cost of failing to define public interest now – as an integral part of the *Affirmation* review processes – is that ICANN will continue to struggle with competing visions of that definition in future reviews and policy making processes.

Beginning last January, I made frequent suggestions to the ATRT to consider a simple yet powerful definition for global 'public interest 'in the ICANN context. In short, I said that public interest means ICANN must ensure the *Availability* and *Integrity* of registration and resolution services.

Availability:
- Name registrations must be available in any language and any script, both for generic and country-code top-level domains names.
- DNS resolutions must be available 24 hours a day, 365 days a year, from anywhere on the globe.

Integrity:
- Integrity means preventing falsification or redirection of DNS resolutions.
- Internet users and law enforcement require integrity of registrant data in Whois.

(see Jan 2010  http://forum.icann.org/lists/affrev-draft-processes/msg00000.html
Dec-2010 http://forum.icann.org/lists/atrt-draft-proposed-recommendations/msg00012.html )

At the very least, this proposed definition can be a starting point for community discussion of what should and should not be included in the definition of 'public interest'.

A structured community-wide discussion is the best way to institutionalize key *Affirmation* imperatives such as 'public interest' and 'consumer trust'.  But at the Cartagena meeting, some groups wanted to institutionalize these concepts by creating a new 'consumer' constituency group within ICANN. That's not surprising, since ICANN is organized as a constellation of special-interest stakeholder groups and constituencies. A newly chartered 'Consumers Constituency' would get a box on the ICANN org chart and its own seat at the table to advocate on behalf of the public interest and consumer trust.

As I said in Cartagena, "institutionalizing" consumer trust and public interest should not mean "creating a new institution," but rather ensuring that the entire organization is acting in support of its new mandate. And in order to do that, we must define our terms.
(http://blog.netchoice.org/2010/12/institutionalizing-consumer-trust-and-public-interest-at-icann.html )

Fortunately, ICANN's board saw this coming and adopted a resolution in Cartagena for a community-wide effort to develop definitions and metrics for terms in the *Affirmation* review of the new gTLD program:

> "Resolved, the ICANN Board requests advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer choice in the context of the domain name system, such advice to be provided for discussion at the ICANN International Public meeting in San Francisco from 13-18 March 2011."

The board's resolution is an essential first step for managing and measuring the success of new gTLDs.   Now, the board needs to request another community-wide effort to define 'public interest,' too.

ICANN will need a 'public interest' definition for upcoming Affirmation reviews – including the next Accountability & Transparency review due to begin just 23 months from now.

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