



Internet Society Responses to Questions to the Community on Accountability and Transparency within ICANN

The Internet Society (ISOC) is pleased to offer the following comments and responses to the first set of questions posed to the ICANN community by the Accountability and Transparency Review Team (ATRT) as a part of their work in support of the Affirmation of Commitments between ICANN and the United States Department of Commerce.

Before turning to the specific questions, ISOC would like the ATRT to consider the following points about the nature of accountability and transparency in Internet organizations in general, and ICANN in particular. ISOC believes the Review Team must start from the understanding that accountability and transparency are not things that ICANN owes *to* the community. Accountability and transparency arise *from* the Internet model. That means using open, bottom-up processes where, depending on their expertise, anyone who wants to contribute to developing policy can contribute. If that is done, and there is a clear link among the policy development process, decision-making and implementation, accountability and transparency are guaranteed. Accountability and transparency are *not* achieved by getting together an invited group of experts to decide the best way to do things, or to provide accountability and transparency *for* the community. The prerequisite is creating an environment that respectfully encourages participation and taking action that flows directly from the policy development processes. Thus, ISOC recommends that the ATRT should not create a set of check boxes to be ticked as a way to measure ICANN's accountability and transparency.

We believe the approach the Review Team is taking is a good one, and we are pleased that the Team has decided to ask the community some fundamental questions about their experiences in ICANN. In conducting this review, the challenge for the ATRT is to shape the discussion to get answers to its question, while making sure that they are not themselves doing anything that would shape or bias inputs to the perspective of any specific group or selected few. If they can succeed at that, and if the community takes the time to get involved and provide inputs, then the ATRT will be performing a great service to ICANN, and to the Internet community more broadly.

Turning to the ATRT's questions, ISOC acknowledges that our responses are general in nature. We believe this is appropriate, given the nature of our organization and the fact that our members and staff are involved in many of ICANN's constituencies. ISOC consulted with our global membership as we prepared these comments, and we have encouraged our members to respond directly to the Team's questions where they have their own specific experience to draw upon.

1. Do you think ICANN is accountable to all stakeholders? Can you identify a specific example(s) when ICANN did not act in an accountable manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in an accountable manner.

As ISOC stated in our [response](#)¹ to the 2009 Notice of Inquiry "Assessment of the transition of the technical coordination and management of the Internet's domain name and addressing system," ICANN must act with the best interests of the public in mind, while being accountable to all stakeholders and not simply the most influential or active constituencies. We reiterate the need to balance accountability to any particular stakeholder group against ICANN's central responsibility to function as the steward of a vital and shared global resource, which is the domain name system.

2. Do ICANN's accountability mechanisms, including the Ombudsman, the Board reconsideration procedure and the Independent Review Panel provide meaningful accountability and, if not, how could they be improved?

As stated at the outset, meaningful accountability should be the result of ICANN's creating the conditions for the Internet model to work, rather than post hoc appeal procedures. However, if a situation arises where part of the community does not believe ICANN's processes have worked, remedial steps must be made available, and the community must have confidence in those steps. ICANN's mechanisms provide a range of options, and the Board shows a commitment to seeing that they are respected as, for example, in the recent case of the Independent Review Panel's decision on ICM's Request for XXX Sponsored Top Level Domain.

3. Can you identify a specific example(s) when ICANN did not act in a transparent manner. If so, please provide specific information as to the circumstances and indicate why you believe they were not taken in a transparent manner. How could they be improved?

No comment.

4. What is your general assessment of ICANN's commitment to the interests of global Internet users? Can you provide a specific example(s) when ICANN did not act in the interests of global Internet users? If so, please provide specific information as to the circumstances and in a manner consistent with the interests of global Internet users.

This is a key issue for ICANN, referring again to ISOC's response to the 2009 Notice of Inquiry. Consistent with the Internet's collaborative model, ICANN is responsible for the activities outlined in the DNS Project, and must be accountable to the Internet community and direct ICANN participants, as well as overall, to the global community of Internet users, for their responsibility to preserve the stability and security of the Internet's unique system of identifiers. While progress is being made, a better balance is still required here.

5. What is your assessment of the ICANN Board of Directors' governance with respect to the following factors:

- ongoing evaluation of Board performance,

¹ See <<http://www.isoc.org/pubpolpillar/docs/ISOC-NOI-comments.pdf>>

- the Board selection process,
- the extent to which Board composition meets ICANN's present and future needs, and
- whether an appeal mechanism for Board decisions is needed?

The Internet Society believes that an ongoing real-time evaluation of Board performance is best achieved through open and transparent processes, and that it is a useful part of ICANN's organizational learning. However, we do not think that periodic formalistic performance evaluation studies are particularly helpful, because they tend to be static, time bound and focus on specific cases rather than continuous learning and improvement.

As to the Board selection process, ISOC strongly recommends that more consideration be given to identifying and recruiting highly competent people who have experience in one or more of the stakeholder groups to be Board members. The emphasis needs to be squarely on recruiting on the basis of quality, rather than to meet political considerations, as sometimes happens now. But that is not enough; we also recommend that ICANN contract with recognized external experts to provide a compulsory Director education process, to ensure that Board members understand their roles and responsibilities, and to ensure they are able to carry them out appropriately.

6. What is your assessment of the role of the GAC and its interaction with the Board?
How do you view the role of the GAC within the overall ICANN process?

- What is your assessment of the interaction between the GAC and the Board?
- Should the GAC be viewed as the body best placed to advise the Board on what constitutes the "public interest" regarding the coordination of the DNS?

The Internet Society believes ICANN's Governmental Advisory Committee should remain advisory. At the same time we urge currently active GAC members and ICANN itself to continue to encourage more governments, particularly from developing countries, to participate actively in the GAC and in other ICANN processes. The GAC must be seen to provide advice to the Board and to ICANN more broadly that genuinely reflects their citizens' interests and desires regarding the shared global resource that is the DNS. GAC advice needs to be stated clearly, and must be appropriately recognized in the balance with the ICANN communities' views of their constituent parts' more specialized interests. For example, supporting organizations such as the GNSO and ALAC bring different perceptions of the public interest to the table, which should also be taken into account in the policy development process.

That said, the interaction between the GAC and the Board would benefit from more focused and respectful dialogue about the nature of governments' advice to the Board. As we have seen in recent meetings, some fundamental mis-understanding appears to have developed on both sides as to what constitutes advice, and as to whether GAC advice has been accepted. This needs to be cleared up in order that the GAC and the Board can properly carry out their responsibilities.

7. Are additional steps needed to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS? If so, what specific steps would you recommend?

The Internet Society suggests that the GAC's contribution to ICANN, and GAC-Board interaction could be improved by developing and updating a joint work plan, to help

understand priorities and to improve the timeliness of governments' contributions to ICANN's processes. The expanded interaction between the GAC and other ACs and SOs recently has contributed to the GAC's integration into the ICANN process, as has the commitment to opening GAC meetings for community attendance.

8. What is your assessment of the processes by which ICANN receives public input? What is your assessment on how ICANN receives input of English-speaking and non - English speaking communities? Can you identify a specific example(s) when ICANN did not adequately receive public input from English or non - English speakers? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate public input.

ICANN has taken many steps to improve the processes by which it seeks and receives public input since its inception, and continues to do so. At this time, ISOC considers the major remaining problem is the number, frequency, and level of detail of the consultations. The sheer volume of work results in consultation fatigue, actually reduces the input available, and threatens the credibility of the process. ISOC recommends that ICANN needs to engage in fewer and higher level, more strategic public consultations, while at the same time making greater use of the ACs and SOs to seek input at a more granular level. If this route is taken, ICANN should establish a robust and low-cost reconsideration process to allow the community to inform the organization in cases where the public might have more than expected interest.

It would also help if pre-meeting communications (policy information papers, recommendations, etc.) were delivered with enough lead-time to allow participants to review items of interest before the meeting itself. ISOC recognizes that ICANN has made efforts to establish deadlines, but improvement is still needed. This is fundamental to the success of the open, bottom-up processes of the Internet model.

9. Does ICANN provide adequate explanation of decisions taken and the rationale thereof? Can you identify a specific example(s) when ICANN did not provide adequate explanation of decisions taken and the rationale thereof? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate explanation of decisions taken and the accompanying rationale.

ISOC believes that advice sought through public processes in ICANN sometimes receive somewhat cursory treatment. One example is the recent report on consultations regarding the draft proposal on "Affirmation reviews requirements and implementation processes." Advice from ISOC and other interveners in that consultation was only partially summarized, with the result that many key points were overlooked. This results in a growing sense of skepticism about the consultative process. It may be challenging for staff to avoid this in the current situation where so many consultations are underway with deadlines close to decision points or meetings, but that merely reinforces the need to take a more strategic approach to the gathering of input to ICANN's processes.

10. What is your assessment of the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community? Can you identify a specific example(s) when ICANN decisions were not embraced, supported and accepted by the public and the Internet community? If so, please provide specific information as

to the circumstances and indicate why you believe ICANN's actions were taken without adequate support and acceptance by the public and the Internet community.

ICANN's decisions have not always adequately taken into account their public stewardship role (over a global shared resource), instead seeming to favor the competitive market views of current and potential registries and registrars.

11. What is your assessment of the policy development process in ICANN with regard to:

- facilitating enhanced cross-community deliberations, and
- effective and timely policy development

Can you identify a specific example(s) when the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development? If so, please provide specific information as to the circumstances and indicate why you believe the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development.

The Internet Society believes it is vital for ICANN to encourage more cross-constituency dialogue about issues. Many issues ICANN faces have implications for more than one Supporting Organization or Advisory Committee, yet the existing processes do not sufficiently promote real discussion among the constituencies nor do they drive those involved to agree on the basis of what is best for the Internet or best for end users. Instead, they often seem to be used to support expedient decision-making. To fully execute on ICANN's stewardship responsibilities, steps must be taken to bring all the necessary experts and interests together to try to reach mutually acceptable recommendations to the Board – topic by topic and freed from their individual silos. On occasion, success in this respect will require ICANN to actively reach out to organizations that do not regularly participate in ICANN and its processes. A recent example is the initiative to create a global DNS CERT, as ISOC pointed out in [a letter to the ICANN Board of Directors](#)².

ISOC emphasizes that it is vital to remember that the multistakeholder model means having all stakeholders talking and working together, at the same time, on the same issues, and toward a common purpose, not having all stakeholders dealing with the issues in their respective silos.

For further information, please contact:

Bill Graham
Strategic Global Engagement
Office of the President
Internet Society
graham@isoc.org

About the Internet Society

Founded in 1992, the Internet Society (ISOC) is a professional membership society with more than 100 organizations and over 36,000 individual members in over 90 chapters

² See < <http://www.isoc.org/pubpolpillar/docs/letter-icann-20100414.pdf>>

around the world. It provides leadership in addressing issues that confront the future of the Internet, and is the organizational home for the groups responsible for Internet infrastructure standards, including the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB). In 2002, ISOC was given the privilege of operating the .ORG domain name as a result of a competitive open bid process conducted by ICANN; and a separate organization, called Public Interest Registry (PIR), was established for this purpose.