

Questions to the Community on Accountability and Transparency within ICANN July 29, 2010

The Canadian Internet Registration Authority (CIRA) is the not-for-profit corporation responsible for operating the .ca country code top level domain. CIRA is a member of ICANN's country code Name Supporting Organisation (ccNSO) and a member of CENTR, an association of Internet Country Code Top Level Domain Registries. CIRA is pleased to have the opportunity to provide responses to the Affirmation of Commitments Accountability and Transparency Review Team (ATRT) Questions to the Community.

- 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.**

While an extensive framework exists at ICANN in an effort to remain accountable, many stakeholders continue to be concerned that ICANN is not accountable to all stakeholders. With time ICANN should be able to earn the trust of its stakeholders by being true to its promises.

An element of accountability is transparency. ICANN makes many decisions without adequate transparency. For example, at the FY 10 mid-year review it was determined that the fiscal year actual expenditures would likely end up over budget by nearly US\$3.0 million primarily due to significant legal expenses, new facilities, the need to execute rapidly on senior-level hires and strategic consulting contracts, and the costs associated with additional work in key programs such as the New gTLD Program. With oversight of the Board Finance Committee, an aggressive cost containment effort was initiated, and then presented without opportunity for comment, suggestion or protest to the community several months later in the Draft of the FY11 Operating Plan and Budget. ICANN's mid-year review should be shared with the community who should be provided with the opportunity to comment prior to decision being made about how and when to spend or withdraw spending.

As well, ICANN's Expense Area Group View shows expenses associated with cc support and the ccNSO near USD 10 million. In order to increase accountability and transparency, ICANN should have provided far more detail on what this price tag consists of. This is particularly relevant since the members of the ccNSO are consistently asked by ICANN to increase or provide a commitment on ccTLD contributions, without being given the opportunity to adequately analyse the costs driving the requests for contributions.

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?

I would suggest the following improvements:

- Continue to work towards ensuring expertise, independence and diversity on the board of directors. By ensuring diversity of expertise and background on the Board of Directors, the various viewpoints of stakeholders can be heard and maintain weight at the decision-making level. This could be further entrenched in the nominating committee's guidelines.
- Make accountability a performance measure of success among staff and ensure it is measured.

3. Do you think ICANN's processes and decision making is transparent? 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 ICANN's actions were not taken in a transparent manner. Are ICANN's transparency mechanisms robust and how could they be improved?

As indicated in question number one, not all ICANN decision-making is transparent.

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 indicate why you believe ICANN's actions were not taken in a manner consistent with the interests of global Internet users.

ICANN's commitment to global internet users appears to be well established. ICANN's commitment to global internet *stakeholders*, however, could be improved, by ensuring that documents open for comment are translated prior to being released, by conducting meetings in a manner which encourages participating from all, not just Western, stakeholders. As well, feedback on policy development documents open for comment should be directly solicited from stakeholders from countries in development. As well, the importance of other stakeholders,

such as ccTLDs who operate the DNS in their respective countries, should be better recognized and consulted by ICANN despite smaller financial contributions than others.

The Public Participation Committee urges SO's/AC's to garner participation from their members in developing nations, and yet ICANN could do a lot more by following CIRA's recommendations and seeking input from global stakeholders on how to make its own processes more multi-cultural.

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

- **ongoing evaluation of Board performance**

Formal self-assessments, as well as assessments conducted by an expert, on the Board of Directors, the Chair, the Board Committees, Committee Chairs, and individual Directors are required. Ongoing evaluation of Board performance should include whether Board is being as transparent as possible, and whether Board is conducting its meetings in as transparent a manner as possible.

- **the Board selection process**

The Board selection process is lengthy.

- **the extent to which Board composition meets ICANN's present and future needs**

Board composition should move towards further Director expertise and competency.

- **whether an appeal mechanism for Board decisions is needed**

I believe that an appeal mechanism is required for Board decisions. It should permit appeals of Board actions which are contrary to ICANN's by-laws and policies.

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?

- **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?**

No. A multi-stakeholder body, not limited to only members of the GAC, should be considered to advise the Board on what constitutes the "public interest." That said, when the GAC offers formal advice, it should be considered very seriously.

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?

GAC (and all ACs/SOs) recommendations should be considered seriously and if not followed, there should be transparency as to why not.

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 should ensure that documents are posted in all languages at the same time in order to ensure that the same number of days is provided to all communities for comment.

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.

ICANN has not provided sufficient explanation nor transparency with respect to expenditures it made/cut back on following the FY10 mid-year review.

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.

While many of ICANN's developments and decisions are very well received by the Internet community and the public, a number of items are not. For example, ICANN accounting and financial reporting, including the size of ICANN's reserve fund, remain issues which do not always meet with community support.

As well, the initial DNS-CERT proposal was not prepared with adequate community support.

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

- **facilitating enhanced cross-community deliberations, and**

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- **effective and timely policy development**

ICANN policy development process, when proceeding in a bottom-up, multi-stakeholder manner, is successful. However, it is in the event that ICANN does not follow this process that the policy development process fails. For example, ICANN developing the DNS-CERT proposal without adequate input from or consultation with the community did not follow the appropriate model.

12. 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 initial proposal for a DNS-CERT at the ICANN meeting in Nairobi led many to believe little effort appears to have been made to consult with existing security stakeholders and analyse where the gaps are in current response mechanisms. Unilaterally forging ahead with an ICANN-centric solution did not facilitate cross-community deliberations or result in effective policy development.