Comments on the Accountability and Transparency Review – Community Feedback

The Coalition Against Domain Name Abuse (CADNA) appreciates the opportunity to comment on the Accountability and Transparency Review Team – Community Feedback. CADNA submitted these comments in response to the ATRT's Questions to the Community request for public comment, but the points made hold true for this comment period as well. While they address the specific questions posed by the ATRT, CADNA feels these comments are worth re-submitting in this context because they apply to the broader issues of accountability and transparency within ICANN.

1. One distinct example where ICANN has not been accountable to all of its stakeholders is the rollout of new gTLDs. After dismissing the Expression of Interest Model, ICANN never proposed another means of measuring demand for new gTLDs and rather continued on with the initiative, ignoring those stakeholders who may have objections to it.

   Additionally, the structure of the GNSO is another area where ICANN is not equally accountable to all stakeholders. Registrars and registries, whose interests in terms of ICANN policy decisions are frequently aligned, make up 50 percent of the voting power. The non-contracted parties house is comprised of a much more diverse set of representatives with varied interests who never all align. This essentially creates a voting bloc that forces 50 percent of Internet stakeholders to go unheard. In the case of the gTLD rollout, it is not hard to imagine that the contracted parties house would ever be in favor of policy that could restrict the number of domains that could be registered.

2. Almost all of ICANN's accountability mechanisms come from within the ICANN organization. It is almost too obvious to mention that this system, in which ICANN reviews itself, is clearly biased. ICANN answers to no one but contracted parties.

   A most recent example of this situation can be found in ICANN's request for an "independent expert" for its AoC Accountability and Transparency Review. ICANN is choosing its own researcher to assess its decision-making to determine if it is aligned with the principles of the AoC. Doing this creates an inappropriate relationship between ICANN and the experts involved.

3. ICANN's process and decision making has not been transparent in the past, but it has made efforts recently to improve the level of transparency. For one, it has begun to publish detailed minutes from every board meeting. While the ideal would be to provide recordings of these meetings for maximum transparency, minutes are a significant step in the right direction.

4. In terms of ICANN's commitment to the interests of global Internet users, it is worth mentioning gTLDs again. Without measuring demand for new gTLDs, it is difficult to say that the rollout represents global users' interest. Regardless, it is clearly not in the best

interest of global Internet users to introduce new gTLDs in a way that could create confusion or jeopardize their security online. Most importantly, global Internet users have no voice in ICANN. How can the organization be committed to their interests in that format?

5. As stated in number 2, a system wherein an entity is responsible for reviewing itself is inherently biased and goes against the commitment to accountability. ICANN's Board of Directors includes a Board Governance Committee comprised of Board members, and it is this group that is charged with reviewing the Board as a whole. Intentionally or not, ICANN is the Internet's governor, and like any other government, its leadership must be accountable to an outside party, not simply to itself.

6. Because there are no oversight mechanisms in place to ensure that the ICANN Board follows the recommendations provided by the GAC, it is difficult to assess the interaction between the two, and difficult to determine whether the GAC is indeed the best body to represent the public interest. However, given that the GAC is comprised of government officials, not all of whom represent the citizens of their respective countries in equal or comparable ways, it most likely should not be the only body that advises ICANN on the public interest. An additional body that could supplement any areas where the GAC lacks is a restructured version of the GNSO that reduces the power of contracted parties to set their own policy. As previously stated, the GNSO needs to set policy in a more balanced, even-minded way.

7. A reliable oversight mechanism would ensure that ICANN effectively considers the suggestions made by the GAC regarding the public policy aspects of DNS coordination. In order to determine the best way to create an unbiased overseer, ICANN should consider participating in an outside audit that's operator is chosen by those unbeholden to ICANN. Among other things, this audit should consider foreign governments' relationships to ICANN.

8. Overall, ICANN needs to be more responsive to public input. As an organization that regularly submits comments, CADNA cannot always confirm that ICANN has read our submissions, let alone taken them into account in developing new policies.

9. ICANN does a very poor job at explaining which comments are heeded, which are disregarded, and why. For example, the latest version of the Draft Applicant Guidebook (DAG) for new gTLDs includes certain sections that claim to have been altered based on comments received. Yet there is no explanation of how the process by which the opinions and recommendations made in comments are translated into the changes in the DAG or how the authors determined which comments to follow. Who gets to decide what is included and how?

10. One standout example of an instance where the public did not embrace ICANN's decisions was when it failed to perform a study to measure the demand for new gTLDs. The common sentiment regarding the EOI was that the model was flawed, but the goal of quantifying

public demand for gTLDs was valid. The public called for a different study to measure that demand, but ICANN did not deliver.

11. While ICANN claims to be a top-down, bottom-up type of organization, it is not effectively facilitating cross-community deliberations. ICANN may give various Internet stakeholders the ability to advise it on various issues through comment periods and committee membership, but as mentioned and exemplified throughout this paper, ICANN is not taking this cross-community input into consideration when ultimately making decisions.

Additionally, ICANN is too concerned with "timely policy development" when it comes to preparing new gTLDs. It appears that rather than taking necessary precautions, like performing a study of demand for gTLDs, ICANN is rushing to produce new gTLDs because it was mandated in an outdated agreement with the United States government. It is difficult to imagine that the US would want new gTLDs to be introduced if it were at the cost of the safety and security of consumers, businesses, and governments.