

Comments to the Accountability and Transparency Review Team
By Kathy Kleiman
In her personal capacity

I welcome the Accountability and Transparency Review Team process, and deeply appreciate the great time and energy you are devoting to this effort.

I would like to submit these comments in my personal capacity, as I have worked within the ICANN system for many years.

Since the founding of ICANN, we have devoted considerable energy to building the policy-development and consensus processes of ICANN. Brussels shows the success of that work: the days of committees and working groups engaged in pre-meeting meetings, the many working groups, the public forums in which the working groups present their work and findings to the community for discussion and debate, and the growing list of reports and comment periods testify to a robust and dynamic system. Overall, our process of policy-development and decision-making, in my opinion, has become much more transparent and open over time.

Thus, a break in the process becomes all the more noticeable, all the more concerning.

In these comments, I raise two recent areas in which I found a distinct break from ICANN's open policy-making process – two discrete times when policy processes were not open and transparent, and where groups within ICANN, and outside of ICANN, were distinctly disadvantaged by opportunities provided to some, but not all equally.

1. *The Implementation Recommendation Team (IRT).*

I understand you have already received numerous comments about the IRT process. Thus, I will not present a detailed overview. Overall, many in the ICANN community found the IRT process deeply disturbing. It vested a single constituency with the tools and staff normally reserved to the full GNSO policy process of all constituencies and stakeholder groups.

Specifically, the Board of Directors of ICANN requested the Intellectual Property Constituency (IPC) to convene a team to "develop and propose solutions to the overarching issues of trademark protection in connection with the introduction of new gTLDs." The Board directed the team to "solicit input from the interested constituencies" but the team in fact was composed largely of the IPC's own members and officers. The IPC selected one representative (and an alternate) from the registrars and from the registries to participate; however, it rejected timely, even immediate requests for inclusion from other groups, including the Noncommercial Users Constituency. ICANN provided the staff for this team, some travel funds, and facilities. The meetings were closed; no minutes were provided or shared.

After completion of its report, the team did not present its findings to the GNSO, normally the manager of policy making processes. Instead, the IRT report/results were presented in full

directly from numerous formal panels at the ICANN meeting in Sydney organized by ICANN staff. On those panels, the only presenters were IRT members and their invited guests. There was no formal inclusion of any other voices: no balance, no formal response and no opportunity for formal dissent on these panels. Thus, the presentation was skewed in favor of the presenters: the IRT members received time for lengthy powerpoint presentations of their views. In contrast, those raising questions, concerns, and legal analyses questioning basic premises of the complicated new right mechanisms, received only moments at the microphones.

Further, ICANN financed public forums around the world, including New York and London, which featured the same format: the IRT members presenting formal, detailed and lengthy presentations; those responding had no similar opportunity to analyze, respond or debate in the same detailed, planned and organized manner – those raising concerns were limited to moments at a microphone.

This was hardly an open and transparent process, and all communities and constituencies not included by the IRT, in its sole discretion, were distinctly disadvantaged. It was certainly not the bottom-up way in which ICANN policy should be developed. ICANN policy making is designed to be inclusive, bottom-up and open as well as to review and discuss major new steps along the way.

As a precedent, this is not one that the ICANN community would do well to follow. It was deeply unfair to those constituencies and individuals who participate regularly and fully in the ICANN Community. It further proved to be deeply disturbing to members of the public, including some who attended their first ICANN public forums, and then wrote strong, pointed, public comments severely criticizing ICANN and its policy process. That is not the way we want the public to perceive ICANN; this is not the way ICANN policy should be prepared.

II. DNS-CERT

Much has already been said and written about DNS-CERT, and the top-down way in which it began, and the invitation-only, closed-door manner in which it continued. I raise it here as another example of a distinct departure from ICANN's bottom-up process (and a note that ICANN has already taken steps to reverse the process, and be more inclusive, open and accountable on this issue).

Concern: A Rush to Experts and Efficiency

Policy making is a lengthy, time-consuming and frustrating process. There is a desire to rush to experts – trademark experts, security experts, others – who offer clear answers and alternatives. But these experts do not necessarily have full vision or knowledge of the ICANN and Internet community in mind as they present their case; they may not know the many diverse elements of our community or the history and rationale for existing situations.

For example, recently in the Vertical Integration Group, we had world-class economists present studies to us on new gTLD competition, but found they had no knowledge or interest in ICANN's Equivalent Access policy (equivalent access by all ICANN-accredited registrars to a registry's data and services). This policy turned out to be very important to the Working Group and, given the economist's/expert's presentations to us in our working group setting, we were able to talk about the weight we wanted to accord this expert information -- in the context of our overall policy work.

Expert input belongs as a part of the ICANN process – a critical and important presentation to existing policy-making structures, not a replacement of them.

Conclusion

Thank you for working with ICANN to continue with the progress, and process, of open, transparency and accountable policy-making. Ultimately, it is this process that serves well both the ICANN Community, and the Internet as a whole.