Answers to
"Questions to the Community on Accountability and Transparency within ICANN"

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Thank you for the opportunity to address issues which have arisen, or which were not addressed, during the Improving Institutional Confidence (IIC) sessions. At the Geneva IIC session I commented on the absence of technical bodies as supporting organizations since 2003 in the composition of the Board, and in the formation of policy recommendations through supporting organizations.

1. On the question of whether there is accountability to all stakeholders, my answer is broadly no.

    Stakeholders outside of the OEDC countries, and stakeholders outside of the for-profit corporate sector of the information society are accounted to less than stakeholders within the OEDC countries and stakeholders within the for-profit corporate sector of the information society.

2. On the question of whether the existing accountability mechanisms are sufficient, my answer is these cannot be improved to offset the systemic preference of OEDC domiciled for-profit stakeholders over all other stakeholders. Symptomatic effect responses do not affect systemic causes.

3. On the question of transparency, again, broadly, no.

    The absence of transparency goes not merely to acts taken, but to acts not taken.

    We have no transparency, no means to discover, the rational for the absence of acts reducing, or removing completely, the necessity in the fall of 2001, for

authoritative servers for the correct resolution of labels in Chinese, necessarily administratively disjoint from the L root server, and therefore all of the A-M root servers.

We have no transparency, no means to discover, the rational for the absence of acts resulting in the accreditation of hundreds of shell registrars, and only two actual registrars in the North Africa and the Middle East, only three actual registrars in Africa, and only six in Latin America, or the absence of non-governmental registries outside of North America, other than the .cat, .coop, .museum, and initially the .aero registries.

4. My general assessment is that the interests of basic service, providing, through the IANA function, the means for stateless peoples, and for peoples poorly served by states, and for peoples poorly served by for-profit corporations, to associate coherence to resources located through the globally routed ipv4 and ipv6 address spaces, is overlooked.

   In conceptualizing "IDN" as primarily a requirement for non-Latin scripts, the interests of populations which have accommodated the imposition of languages using Latin script are ignored.

   We cannot point to a specific act by the Board directing Staff to commence substantive programs of work to deliver correct name service for the CJK, Arabic, Hindi or Cyrillic scripts until quite recently. We cannot point to a specific act by the Board directing Staff to commence substantive programs of work to develop registry operations competency in Latin America, the Middle East, Asia or Africa until quite recently. The developments in these areas of technical work and competency development have happened more in spite of, than because of, ICANN's commitments to the interests of the global internet.

5. An assessment question presupposes adequacy of accessibility and transparency. To date, the Board has not acted to systemically address the limits of ICANN's comfort. There are individual liaisons to regions, and therefore, to under-served regions, but no program of institutional development in Latin America, Africa, West Asia, South Asia, Eastern Europe or East Asia. Evaluation of performance, selection, composition and appeal all exist comfortably within Board's existing limits, without diminishing those limitations.

6. The conceptualization of the GAC as the source of "public interest" is unfortunate. First, it relieves ICANN of the symbolic obligation to make the "public" half "public-private" equal in importance with the "private" half. Second, it

overlooks the actual existence, from the pre-ICANN period to the present, of institutions dedicated to the public interest. The cooperative movement is not present in the GAC, but it is present in ICANN. The non-profit, public interest corporate form is not present in the GAC, but it is present in ICANN. Third, it prevents ICANN from acting in the public interest, from conceptualizing the public interest as being within ICANN's ability to affect, either positively, or negatively.

A contracting body formed under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes and operated exclusively for charitable, educational, and scientific purposes, that defines public interest as external to its purpose is peculiar.

Returning to the issue common to questions 1 – 4, the Board rejected a proposal for urban areas to form a Constituency or Stakeholder Group within the supporting organizations[1]. Therefore the GAC is a choice of venue for public administrations representing half of humanity, and more than half of the users of computer and data, or voice technologies, attempting to engage in interaction with the Board.

7. Yes. I recommend that each of the supporting organizations undertake as an prioritized agenda item the specific statements on the public policy aspects of the technical coordination of the DNS (a phrase I would like to see much more often) arising from the GAC.

   I recommend greater openness of communications between the supporting organizations and their Constituencies and Stakeholder Groups and the GAC, in the form of a persistent, print and online periodical, journal form, with abstracts in the six languages of the UN. The coherence of the fundamental technical and policy communications over the first decade of ICANN's institutional existence exist tenuously in an untidy mess of hyperlinks.

8. In an assessment of the process by which ICANN receives public input I offer the contemporanious example of the Vertical Integration Policy Development Process Working Group, created by the GNSO in response to a Board Resolution taken at the Nairobi meeting.

   It is quite impossible for non-native English speakers to keep up with the volume and terms of art and artifice on the Vertical Integration PDP Working Group,

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[1]see: http://gnso.icann.org/en/improvements/ctldc-petition-charter-redacted-01jun09.pdf

and this situation is repeated when this Working Group uses on-line tools, conference calls, and meets physically. Not only is everything conducted in English, but there is no limit on the verbosity or tangential flights by the native English speaking participants.

The VI PDP WG is attempting to make recommendations that will affect the structure of non-governmental DNS provisioning and affect the basic competition issues present since the NIC contract was first awarded competitively, and the NIC function privatized[2]. The topic is therefore of the first importance, not merely to commercial entities incorporated in North America, but to non-commercial institutions and commercial entities through out the developed, and the developing regions of the world.

To make it possible for the VI PDP WG to be less narrowly informed, it must be more than fictively open to participants who's means of expression in English is less than fluent, the staff support, and the co-chairs, must restrict non-essential, non-communicative, use of the primary means of communication. Substantive discussion, in Chinese, in Arabic, in Russian, in Spanish, must happen in parallel with, and not as a secondary summary, the English dominated communications channels.

To receive public input on the issue of Vertical Integration policy, the means to facilitate representative input have to be provided. Absent that, ICANN is without adequate public input.

9. I don't know why the Board voted on a registry-registrar separation resolution. I don't know why Staff decided not to certify or contract registry services (aka "backend technical") providers. I could continue to enumerate.

The list of sua sponte decisions by Board and Staff is non-negligible, and these are all issues of some consequence. From the Cairo meeting to the present moment, parties with, or seeking, registry agreements have expressed concern for, and lack of satisfaction by, a unilaterally amendment power in future registry contracts. Three years of public comment without an adequate explanation or rationale for capricious and arbitrary reserved rights is simply inadequate.

The Board is less predictable today than at any point previously.

10. My assessment is that ICANN's decision not to accept and act upon competently drafted and adequately provisioned requests by linguistic and cultural institutions, municipal governments, and treaty organizations for basic service is

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[2] 1 May 1991, DDN NIC contract transfered from SRI to GSI

not "embraced, supported and accepted" by any public or the internet community.

There is no public support for not accommodating the needs of North American Indians, or the residents of the City of Paris and their elected government, and many, many others. None.

The better question, the honest question, would be to ask Paris Mayor Bertrand Delanoë and Paris Deputy Mayor Jean-Louis Missika if they supported ICANN not accepting an application for .paris in 2010, and if they support ICANN's continuing to decline to accept and act upon an application for .paris so long as issues unrelated to its application are unresolved.

11. I've commented at #5 and #8, above, on the regional-preference and English-preference problems, and at #6, above, on the exclusion of urban aggregations of users from the constituency/stakeholder model, and at #7, above, on the lack of persistent, journaled communications between the supporting organizations and the GAC, each of which detract from cross-community deliberations.

Lack of communications can only hinder effective and timely policy development. To take the contemporanious example of the VI PDP WG, there are individuals supplying "interpretations" of the issues and process to communities excluded in fact from participation. This is not a substitute for inclusion of those communities.

I have, for every ICANN meeting since Paris, asked for a room slot to be made available so that communication — *by the community, for the community, and of the community* could take place, on topics ranging from how municipal administrations may use the new gTLD process, how linguistic and cultural groups may use the new gTLD process, how cultural property protection may be added to the trademark-centric rights-protections regime, etc. Other than that one slip up, at the Cairo meeting, where we got a room and were able to sit a panel and discuss and extend on the IPC's Paris meeting presentation on IPR to a standing room audience of trademark managers, and applicants, ICANN has made certain that there are no possible time slots for any meeting rooms in the venue property. This is simply obstructionist.

These remarks are offered in my capacity as an individual involved in the policy and technology issue surrounding the NIC and IANA functions since 1986 and are not made on behalf of, or with the prior knowledge of, any client with a business interest in relations with ICANN.

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