

ETNO Reflection Document - Input to the Review Team on Accountability and Transparency of ICANN



July 2010

General comments

The Association of European Telecommunications Network Operators (ETNO)¹ wishes to thank the Review Team on Accountability and Transparency (RTA&T) for giving the opportunity to all stakeholders and the community at an early stage of the review to provide input on accountability and transparency within ICANN, so as to ensure that decision making reflects the public interest and that ICANN is multilaterally accountable. ETNO believes that accountability and transparency issues are of utmost importance given the unique model of ICANN, but also due to the fact that ICANN needs to evolve to a truly international organisation, which constantly enjoys trust and confidence in its operations.

Prior to the Affirmation of Commitments (AoC) and specifically just before the expiration of the Joint Project Agreement (JPA), ICANN engaged in a process to improve its institutional confidence. Much input has been submitted by various stakeholders and the community. ETNO has provided comments in the framework of both 'improving institutional confidence'² and NTIA³ consultations. It is our understanding that the comments during those consultations will be considered. Having cleared that, we regard this consultation as an opportunity for further input or to update input. We are confident that the input from the community and the analysis provided by the

¹ The European Telecommunications Network Operators' Association (ETNO) is representing 41 major companies, which provide electronic communications networks over fixed, mobile or personal communications systems in 35 countries. ETNO is Europe's leading trade association and its member companies have substantial Internet operations. ETNO has joined ICANN's GNSO ISPCP and BC constituencies. More information about ETNO can be found at: www.etno.eu

² See <http://www.etno.eu/Default.aspx?tabid=2154>
<http://www.etno.be/Default.aspx?tabid=2111> and
<http://www.etno.be/Default.aspx?tabid=2075>

³ See <http://www.etno.eu/Default.aspx?tabid=2155>

Review Team will form the basis for recommendations, which will then be implemented by the Board in a timely manner.

As regards the specific questions to the community, ETNO is pleased to offer following additional input:

Replies to questions

- 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.***

ETNO recognizes that accountability within ICANN has progressively improved over its 12 years of existence. We particularly recognize the efforts made by ICANN in line with the expiration of the JPA. However ETNO is concerned about the lack of visibility regarding the implementation status of the mechanisms that were proposed and supported by the community and approved by the Board during its meeting in Mexico. ETNO expects the RTA&T will address this issue, clarify it, publish its findings and suggest actions. An important point to bear in mind is that accountability within ICANN must not be restricted to parties currently in contract with ICANN, but it must be applied to the broader community impacted by ICANN decisions, including users, ISPs and network operators.

- 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?***

ETNO believes that the existing accountability mechanisms need to be reviewed as to their performance so far but also as to identifying possible gaps and reinforced. Independent and binding ongoing review mechanisms are ways to be explored.

- 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?***

ICANN can be seen as extremely transparent and having improved transparency over its 12 years of existence simply by looking at its website and the extraordinary large amount of information published, as "One World Trust" concluded in 2007. But transparency alone does not solve the problem. We must see transparency towards effectiveness, not just transparency itself.

ETNO thinks that in order to help the stakeholders improve their understanding of issues, as well as the evolution and status of issues, but also help them to engage their participation, some synthesis is needed. A prioritisation of the ICANN work and longer time periods for comments are needed, especially for complex issues. Currently the workload just before the ICANN meeting is such, that it is clearly impossible for most members of the community to engage and contribute efficiently.

ETNO recognizes that most meetings are now open to all stakeholders, including most of the GAC meetings. This evolution has a very positive effect as to the understanding of the issues addressed by the various bodies, but also as to the functioning of the bodies. On crosscutting issues through different ICANN bodies, this evolution has improved ICANN because it allows a better and rapid understanding of concerns and positions coming from the diverse ICANN constituents. A few meetings are still closed and clearly announced as such. ETNO understands and accepts that on specific agenda points or on specific issues a constituency, advisory committee, or any organization, should be allowed to restrict attendance to its members; however in general ETNO urges for open to all meetings.

Regarding the ICANN Board, ETNO believes that some improvements are still needed. As examples,

- the ICANN Board resolutions and minutes should be published in a more timely manner.
- the Board decisions should be better justified and explained to the community.
- in particular, the Board's assessment of SOs' vs. individual input to the decision making process should be made transparent.

Regarding the supporting organizations, it seems that the ASO is becoming more and more invisible in the ICANN context. IP addressing is a key element and ICANN's responsibility in this area should never be forgotten. ETNO is concerned that as the IANA pool of IPv4 addresses will be exhausted as soon as 2011, no public session related to IP addressing was organised over the last years, nor any public meeting of the ASO. ETNO understands that a large part of IP addressing issues are addressed at regional level, and is fully aware of the role of the regional registries and related forum. But when issues become global by nature, when a global approach is needed, and when the IANA function is concerned, ICANN's responsibility is engaged. ETNO would like to draw the attention of the RTA&T to the fact that their analysis of accountability and transparency must cover all parts of the organization, and not be restricted to the Staff, the Board, and the GNSO.

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

ETNO would like to mention that ICANN commitment should be directed to all ICANN stakeholders, registries, registrars, users, and parties impacted by ICANN decision as ISPs and connectivity providers.

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

- ***ongoing evaluation of Board performance,***
- ***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?***

As regards the last, ETNO is of the opinion that a binding appeal mechanism is a way to explore.

Anyone from the ICANN community affected by a Board decision should have direct access to the appeal mechanism.

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?***

ETNO believes that the GAC has a fundamental role to play on issues related to public interest; however that should not be interpreted as the GAC being the only stakeholder group responsible for that. Most policies have a public policy aspect. Therefore, the GAC must be engaged in the policy development process in a timely manner and must establish strong links among the supporting organization, the staff and the Board, in order to improve the overall ICANN functioning. In this context more interaction with the community would be useful.

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?

ETNO believes that a better and timely dialogue and understanding of issues would be more efficient than a more rigid approach. Most policies have a "public policy" component, but a clear delimitation of public policies is not obvious.

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.

The consultation period many times is not adequate, given the difficulty or complexity of certain issues. In addition, the consultation period does not count international holidays and sometimes the deadline is on Sunday, which practically means on the Friday before.

Regarding the way public comments are considered by the ICANN staff and the ICANN Board, ETNO is concerned by the lack of analysis of the input received and of what has been accepted. The way comments are taken into consideration and their impact is not clear. In this context, the delimitation of the role of the staff should be clarified.

As regards language, we regret to admit that if someone does not speak English at an adequate level it is very difficult to understand the issues and participate in ICANN. We are aware that in various occasions it was not possible for non English speakers to express and be understood by the community even if some translation mechanisms were implemented. When some Board members do not care in using translation facilities, and when for technical or other reasons it is not possible to provide live transcript, it becomes challenging for non English speakers to understand but also to express in their language. ETNO appreciates that some Board members occasionally have used the opportunity to express themselves in their preferred language showing the way to their community. ETNO also appreciates that most Board members make tremendous effort to speak slowly and use international English easily understood by non English native speakers and believes that all ICANN participants should be recalled to make the same level of effort than most of the Board members.

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.

Further efforts for providing adequate explanation are necessary. The decision related to the rejection of the Expression of Interest (EoI) is a good example. ETNO believes that a large part of the comments and valid concerns expressed, were related to the way the EoI

implementation was proposed by the staff. The rejection of the EoI was not accompanied by sufficient explanation on the fundamental aspects of the EoI that could not be reviewed, thus artificially justifying a rejection of the proposal by the Board.

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.

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 ASO Policy Development Process is indeed complex, as a global policy must be submitted to all Regional Internet Registries and discussed at regional level, respecting all different PDPs. The process requires the proposer to attend all regional meetings worldwide. The proposed policy must be approved in the same terms by all regional bodies, before it can be endorsed by the ASO council, and then approved by the ICANN Board, after a public comment period at ICANN level.

ETNO believes that the absence of a forum for discussion of such issues at ICANN level and the absence of cross community open discussion at that level lacks transparency and makes the process even more complex. While respecting the necessity to discuss such issues at regional level, ETNO believes that some improvement is needed as regards cross-community deliberations.