Department of Policy and Business Practices

ICC Task Force on Internet and Telecom Infrastructure and Services (ITIS)
Informal input on ICANN Board reform recommendations

ICC, the International Chamber of Commerce, is a global business membership organization, with companies and associations from across sectors and geographies, and of all sizes. ICC's Internet and Telecoms Infrastructure and Services task force (ITIS) is pleased to submit informal input on the review of ICANN's Board of Directors, and the reform recommendations contained in the Colin Carter & Associations/BCG report of November 2008.

The ICANN Board is an essential component of the organization's overall transparency, accountability and responsiveness to the range of relevant stakeholders in its activities. ICC believes that the Board reforms can have significant impact on the organization's functions and decision-making processes, and thus the recommendations and their potential ramifications must be carefully considered.

Process concerns regarding overlapping and disconnected reviews/implications for ICANN's stability
ICANN is at an important juncture in its growth and evolution. The overall predictability, capability and stability of the organization itself must be a primary objective of any structural changes. ICC's members are concerned about the number and complexity of changes that continue to emerge for ICANN via the various Review processes, including the Board Review Recommendations.

Changes in any of the structures (GNSO reform implementation, Board reform, reviews of other structures) have implications for all ICANN stakeholders, and are interlinked to each other. ICC strongly supports a holistic approach to ICANN structural reforms, including the Board. Thus, taking an approach to the reviews and proposed reforms that recognizes the interdependencies and reflects a holistic understanding of proposed changes is essential. ICC members do not presently see such an approach at ICANN and consider this a major concern that also poses risks to the stable, predictable, and accountable functioning of the organization.

Timing and interdependency
The current number of substantive and structural issues that are in the consultation processes, and the lack of synchronicity of the comment periods creates a major challenge for the ICANN community, leadership and staff.

Ability to provide meaningful and informed input

ICC is concerned that there are too many issues being tackled at once, and this leads to reduced constructive input from members of the community. Given the complexity of the Reviews, and the implications for trying to implement complex changes to an organization that must also function effectively and efficiently during the Reviews and during any period of major change, ICANN's Board should prioritize the Review processes and their proposed changes, and determine which essential changes can be implemented, while an evaluation of the interdependencies of other changes are evaluated, and consideration is given to how to address the next stage of changes.

Overall Board review

- Unclear that the independent review report was based on adequate information about how ICANN functions, and its unique qualities. ICANN is a non-profit public corporation, whose decisions significantly impact every stakeholder, including business operations.
- The Board Review in general contains highly controversial recommendations that do not have the support of the ICANN community, such as reduction in the size of the Board; as well as other recommendations that are enjoying support from commentors. The ICANN Board should request that the less controversial improvements, including paying the Board; strengthening independent staff support, etc. be pulled out of the full set of recommendations, and implemented on a 'fast track' basis, with a further process to examine and consider other recommendations.
- Future reviews of the Board must be considered in a longer timeframe, and overall review of ICANN structures should be done in a holistic manner (GNSO, Board, ALAC etc.)

Structure

- ICC members do not support reducing the size of the board at this time. We understand the emphasis in the recommendations on efficiency, but do not believe that a smaller board will reach this objective
- ICC has stressed in other inputs that the need for broader business representation, expertise and involvement in all ICANN structures and processes is essential to the continued growth and evolution of the organization
- Reducing the size of the Board risks diminishing the critical geographic, professional, and stakeholder diversity that is part of ICANN's credibility and accountability

Reducing meeting frequency and Board focus

- Board meetings should facilitate the work of its members. In order to improve support to the Board, staff who are directly responsible for independent preparation of Board materials should be identified
- Moving to fewer but longer Board meetings could be effective if the overall work schedules of the Board committees, policy development processes, and other ICANN activities are synchronized and a measure of discipline is introduced to allow for adequate preparations by all
- In our experience, well prepared Board meetings with materials prepared and distributed well adequately in advance, accompanied by executive summary materials are essential

- The recommendation to change the number of Board meetings is too rigid at this stage, as ICANN addresses overall structural and substantive issues that may require the Board's concerted attention. ICC suggests delaying a rigid change at this time but focusing on the improvements in structural and materials summary/supporting documents that can lessen burdensome analysis time for the Board members and the community as such documents are presented for public review and consultation
- ICC members do not believe that the fireside chats or invitations to company executives or board of directors is the best approach to expanding ICANN Board engagement with the broader business community. ICC agrees that creating more interaction between Board members, and the community at the meetings should be a priority; and acknowledges that having sub-groups of the Board meet with specific communities/constituencies for fuller discussions may also be a way to increase the interactions of the Board. ICC stands ready to work with ICANN to identify the best mechanisms for achieving this shared objective.
- ICC would welcome a group of Board members to its next Commission meeting in Paris.

Board Committees

ICC's members support the changes that have been made in the Board sub-committee restructuring in general; however, ICC would like to see a broader reliance on input from the stakeholders into the work of the committees, to avoid a top-down imposition of proposed changes, such as in restructuring proposals.

Broaden the skills of the board

While some degree of informational/support to Board members is suitable, such as perhaps financial reporting; it is not clear that actual professional development lies within the responsibility of an organization such as ICANN. ICC has similar questions about the proposals made elsewhere to 'create the next leaders' of ICANN and suggests that this needs more discussion and clarification of what is being proposed.

Make board membership more sustainable

- ICANN Board members should serve no more than two full three year terms, with the option for completing one partial term if appointed to fill a term of a Board member who retires/resigns.
- Board members should not be elected/appointed for four year terms. The community who selects/elects Board members should be able to exercise their choice of selection every three years.
- Paying the Board: ICC supports paying the Board Chair, who must dedicate a substantial amount of time to those responsibilities, a reasonable amount on an annual basis. ICC supports consideration of paying Board members a reasonable amount on an annual basis, recognizing that the level of time commitment is significant. ICC supports consideration of these minor changes which would be consistent with the need for further holistic analysis of the other recommendations regarding Board reforms, the IIC consultation, GNSO reform implementations, and other structural and organizational reviews underway.
- Adding further services to support and strengthen the materials analysis that is provided to the Board can also assist in making board membership more sustainable.

- ICC does not support payment to other levels of volunteers in ICANN, as raised in the public session in Mexico City, other than travel/per diem support to those who fulfil certain elected functions at the policy development level.

Strengthen strategic focus of the board

- ICC supports the need for the board to focus more on strategic activities, for instance, individual Board members should avoid taking on individual and personal involvement in the development of solutions, retaining their strategic and overall focus.
- ICC agrees that there are circumstances regarding governance of the organization when the Board will need to be able to get involved in details and staff issues as necessary

Appropriate accountability procedures for the Board

The Board must continue efforts to enhance the transparency of its deliberations. These should include:

- Transparency of the agendas and comprehensive minutes of the Board are important for the community. The comprehensive minutes should be maintained.
- Board decisions should be based on methodical decision-making processes in order to promote a sense of due process and fairness in Board actions. They should include an analytical component of decisions that explains how stakeholders', staff's, and experts' comments were taken into consideration and how and why such inputs were or were not followed in a final decision.
- The Board input documents [except for those dealing with personnel matters] should routinely be posted to the fuller ICANN community, including staff briefing materials.
- Outputs and delegation of work or authority to different constituencies or groups in the community are essential
- Further discussion is needed in the context of the Improving Institutional Confidence consultation process on this matter as well

ICC urges ICANN to substantiate its commitment to transparency by incorporating all relevant changes within its Bylaws.

More meaningful reforms are also needed to increase the Board's accountability to ICANN stakeholders. Some options worth considering include:

- o Amending the mechanisms to remove a Board member(s)
- o Revising the mechanisms to challenge a Board decision. The reconsideration process, Independent Review Panel (IRP), and Ombudsman are all insufficient in their current formats, and are only advisory to the Board and an opportunity for the Board to affirm its own decisions. ICANN needs to develop accountability procedures for the Board that are independent of the Board and ICANN staff.

ICC recommended principles for the Board review and reform

ICC believes that the Board review and reform should carefully be considered and should ultimately ensure the following:

1. Multistakeholder representation, bringing a range of expertise and viewpoints, including broader business representation
2. Governance processes that ensure that the Board is empowered for adequate oversight of ICANN'S functioning. This will/should prevent distancing of the Board.
3. Clear structure and processes for Board representation or reporting to the Board for all Committees. Board governance procedures should ensure accountability to the CEO and ultimately to the Board who should be able to intervene if necessary
4. Processes should include providing executive briefs of key decision-making processes as they happen to Board members according to their responsibilities so that this does not have to wait until massive documents are provided just before board meetings.
5. Delegation of authority that is clear cut and defined is key
6. Maintaining the availability of the full Board for meaningful participation in public forums at the ICANN meetings is essential

Separating the essential elements of the Board recommendations into two phases for decision

ICC members found the initial Board Review and the subsequent report by the Board sub-committee contained both controversial and non-controversial recommendations from the perspective of the ICANN stakeholders who have provided comments.

ICC members believe that many of the recommendations need further consideration to understand how their implementation is linked to other reforms and structural changes, and whether they are appropriate for a unique organization like ICANN. The overall Board reforms should not be pushed forward at this time. Instead, the Board should approve some of the less controversial elements of the recommendations, including paying the Board Chair and consideration of paying the Board members, instituting some of the improvements to publishing the staff reports on policy matters in particular; maintaining the detailed reporting of minutes, and increasing the staff support to the Board's work.