

**From:** Marilyn Cade [<mailto:marilyncade@hotmail.com>] **Sent:** Tuesday, January 03, 2012 5:21 PM **To:** [btrwg-final-report@icann.org](mailto:btrwg-final-report@icann.org); Olof Nordling **Subject:** comments from Marilyn Cade

## Comments to the ICANN Board Technical Relations Working Group (BTRWG) Final Report

I am pleased to provide comments regarding the BTRWG Final Report.

First, I would ask that the Public Participation process recognize that ICANN must simply recognize that certain holidays are 'close down' periods not only for ICANN, who closed its offices for a full week but for the broader community. Public Comment periods should not close during such periods. And, public comment process should recognize that for at least 10-12 days around an ICANN meeting, the travel of both the community, and the staff and Board deserve a 'rest' on closing public comment processes. It is truly offensive for ICANN to be closed during the Christmas holidays, but publish a public comment period that closes during that period.

I did not post my comments during that period because we must be reasonable, and respectful of the true priorities of the community – not only the ICANN internal processes.

It is my view that we need to reform our thinking about the role of technical experts, and change the standing of not just the TLG, but other technical advisors to ICANN's Board, and extending into the community. The TLG is a first discussion, and my comments mix both topics, because they are so inter related.

At the launch of ICANN, in 1998, and 1999, three Supporting Organizations; the PSO, ASO, and DNSO formed fundamental 'legs' to

the architectural structure of the organization, along with certain advisory committees. Each of the SOs was responsible for election of three ICANN Board directors. A 'reform' of ICANN resulted in a change that made major changes, including closing the PSO and moving selection of those voting Board members to a Nominating Committee. The former entities who made up the PSO became the four members of the Board Technical Liaison Group (TLG) as an alternative to the PSO. The changes were recommended after a review of the purpose and role of the PSO.

When we established ICANN, we understood that commitment and participation *within ICANN* was a key component for different entities who were earlier conducting their roles with expertise but who lacked a space to interact regarding the Internet's unique identifiers. Liaisons or technical advisors from a number of such entities were invited to join the Board as 'technical advisors', but also with an assumption that they carry a liaison or 'ambassador' role back into their various organizations, and would effectively engage and deepen, over time, the interactions and mutual involvements.

The initial PSO provided a space to bring together four of the *then* key players in the broader environment that I now call the "Internet's ecosystem". Having coined the phrase, and introduced it to ICANN's CEO, I am both gratified to see that it is being embraced, but note that a more fulsome, and community oriented dialogue is needed to fully examine how 'our' world has changed, and is changing, and who makes up the constellations of our galaxy needs broader and broadened understanding. In short, it is important to acknowledge that many changes have taken place in the 13 years since the founding of ICANN. The earlier and limited model of who can or should be available as a technical expert should evolve.

It is not clear that the approach of non voting Board technical advisors/liaisons is the best approach for ICANN to receive neutral, and focused technical advice on key issues that are facing the

community, and ICANN going forward. These comments are focused on the TLG, but are relevant to the broader issue of the importance, and potentially a change in how technical advisors are identified, held accountable, and participate with the Board and Senior staff, *and* with the broader stakeholder community.

To first address the TLG: The new model of a TLG created a revolving door of one year liaisons, drawn only from the four entities that originally made up the PSO, and without an apparent mechanism to expand the base of entities who should best act as technical advisors. In addition, the seat rotates on an annual basis, thus in effect limiting, or even eliminating the match of particular technical expertise with a particular challenge that faces ICANN at a particular time. The so called liaison focuses on the Board, and has not as yet, acknowledged, or engaged with the SOs/SGs/ACs, although that is where the action is.

This by nature, without any criticism of any of the annual representatives of the TLG raises several challenges, including an inability to establish any accountability *to* ICANN, or any measurement of effectiveness for ICANN, or even to measure how the four entities themselves improve their own members understanding and acceptance of ICANN, and become involved as well at a more fundamental level in various relevant activities. And it lacks a mechanism to ensure that the entities who participate in the TLG are fully engaging, and interacting within ICANN's broader processes, as needed. For instance, as the recognizes priority of IDNS developed, why did ICANN's TLG not reach out and embrace inviting UNESCO into its membership? And, as fraud, abuse, and trademark/domain names grow, why did the TLG not reach out to WIPO?

The TLG has remained frozen in a short self reinforcing cycle – not their fault, perhaps, but also not bringing in the breadth of 'expertise' that can best advise the Board. It is time to change the make up of the TLG, should it be continued in any way, to include UNESCO and

WIPO. It might be time to include IEEE. Or GMSA. Or the IGF Executive Secretariat.

Today, the rotational aspect of the TLG is particularly challenging, as it ignores what is needed when, e.g. in the introduction of new gTLDs, it could be that a prolonged term for W3C, for example, would have benefitted and better informed discussions within the Board about the implications of such major changes on software and applications. Without regard for what is 'on', the seat rotates, and someone new comes into ICANN. It is not clear that the four players consider themselves responsible for coordination across even their own limited numbers, or that they interactively share information and engage in shared dialogue in the technical advice that they provide.

Yet, we should value a mechanism and methodology to interact with those four entities, add in UNESCO, WIPO, and possible CSTD, OECD, APEC, CITELE, and IGF.

My comments propose a different approach for the TLG, and of more significance, propose a major change in the role of all technical advisors/liaisons overall, focused initially on the TLG. Technical advisors/liaisons should be treated as independent experts, and afforded the critical, but limited role that this would entail. An exception is appropriate for the GAC Chair and possibly for the Root Server Advisory Group.

ICANN's Board [and community] deserve independent experts – whether in economic studies, where ICANN has not yet distinguished itself; legal advice, where ICANN's Board needs a truly independent advisor on what its role is in acting in the public interest, and in technical areas that it 'affects' in its decisions. The Board is not a surrogate for retained, independent, accountable expertise. That should become a standard. The Board is not a surrogate for understanding the issues of the SOs/ACs/SGS, but should have routine and substantial access to the leadership from such organizations.

At present, the technical liaisons act as non voting Board members, not as independent, and accountable technical experts.

That can be changed, and that will improve the capacity of both the technical experts and the Board.

It is arguable that ICANN's Board deserves to have retained, and thus independent, and subject specific technical advisors that they can expect to fulfill standards of competence, and independence – e.g. technical advisors should in fact become real technical experts to the Board, and Stakeholder Groups.

We should treat separately how to best liaison and improve sustainable, and positive relationships with key Internet Eco System players –this deserves further discussion, inclusive of the stakeholders who already work within those groups – drawing from the GNSO's Constituencies/SGs, and the ccNSO, in particular. Today, many stakeholders within ICANN actively interact in these adjacent entities. ICANN's staff are both reluctant to engage, and from various budget proposals, seemingly proposing that 'staff' can do best. A modified approach will best serve ICANN.

In short, a different role for technical advisors is needed now; ICANN has already evolved beyond the present approach. These changes deserve discussion within the broader community, but should center around what liaison and what technical advisory roles with both independence, and with accountability for both may be, in advising the ICANN Board, and broader community.

As a priority, it is already clear that in fact, given the number of technical advisors/liaisons who are routinely declaring 'conflicts' that the Board cannot assume independence of technical advise.

And, in my view, in understanding ICANN's broader challenges, the

technical advice ICANN needs is not limited to the present entities now holding non voting seats on the Board.

Technical advisors need to be – technical experts who provide advice, not nonvoting Board Members. This deserves further examination, by the broader community.

ICANN does need independent, and expert technical advise – Who and which organizations, and how technical advisors interact with the Board, what their accountability is, what transparency is back to any chartering organization, and what compensation is appropriate needs examination.

In the immediate topic of the TLG, my comments address some of these topics, but note that the Board must begin to understand its need for transparent, independent advice, and understand more fully, what players [in the eco system –pronounced e-co-system ] belong as insiders, and which players are co-players, and which are competitors for ICANN’s functions. While interactions and engagement is needed with all, not all belong on the ICANN Board in any role.

But, the immediate concern about the TLG, specifically, is that today’s approach is not delivering either broad and independent, or transparent technical advice to the Board, and to the community. When confidentiality is needed, that can be respected. Technical advice must be more transparent to enable more interaction with the broader community.

*Recommendation: ICANN should consult with the AC/SGs/SO’s regarding technical or other entities that ICANN should maintain an ongoing relationship with. In addition, and as a priority, ICANN should also invite leadership from the present participants in the TLG to engage in reflective dialogue not only with the Board and Senior staff, but also with the broader community at an ICANN meeting about what relationship and involvement in cross exchange mechanisms is*

*appropriate for the respective Organizations, and any new organizations. Organizations such as UNESCO, WIPO, OECD, APEC, CITEEL, [and potentially more] should be invited to this dialogue with the present players, and with the leadership of the Stakeholders/constituencies/ACs. Community consultation could take place in a public forum, chaired by the appropriate ICANN Board committee, and supported appropriately by ICANN staff.*

Explanation: The role of the non voting technical advisors/liaisons within the Board is unclear.. They are also at present demonstrating the need to declare conflicts of interest in their advise, which creates a severe challenge for the Board, who is thus denied actual independent expert advise. The ‘technical advisors’ limit their focus to the Board, yet their technical advise is highly relevant to the fuller group of stakeholders.

It is not clear that the original four founders are actually the only relevant experts to be involved, especially considering IDNs and conflicts and issues regarding trademark/domain name collisions. However, providing advise only to the board is minimizing the role of the Stakeholder groups/SOs/ACs, and this must be addressed as we reform the TLG, and consider the role of any technical advisors/liaisons to the Board.

Accountability: Proposals about ‘reciprocity’ of appointment of liaisons is inadequate, and does not address the question of what function and role technical experts/liaisons play within ICANN’s decision making. Consideration of any appointment of liaisons *from* ICANN to any entity should include first understanding of the purpose, and what authority such a liaison would carry, and to whom the liaison reports.

*Recommendation: ICANN could continue the TLG during 2012, but focus on concluding consultations and discussions with the community*

*during the first two public meetings of ICANN. Focused attention on these discussions, and on interactions with the present TLG members and possible additional participating organizations should take place between public meetings. A report for public comment should be provided of proposed changes.*

*Recommendation:It is unclear that today's technical liaison approach still fully meets the needs of ICANN's Board, or its various constituent entities, who do not benefit from the technical liaisons information and expertise, except very indirectly. Thus, the discussion of the TLG needs to reflect other considerations, such as major changes in the role of technical advisors. And whether liaison's roles can be defined, and improved, taking into account the stakeholders already actively interacting with the various groups that ICANN needs and wants to deepen interaction with.*

*Technical liaisons should play a different role, rather than being completely eliminated. Neutral, non biased, and non conflicted technical advice is needed—the present approach – for the TLG, and for all technical experts/liasons is not fully adequate and presents very strong challenges.*

*Recently, not only board members, but technical liaisons are recusing themselves from discussions on the Board, due to conflicts. If not only the voting members, but the technical advisors have conflicts of interest, and must recuse themselves from discussions and advice, ICANN is denied unbiased input and advice. We can fix that with retaining independent and accountable technical experts, and we should examine that closely, and expediently, as an improvement to the present approach, both for the TLG, and for all technical experts now sitting on the board, as non voting Board members.*

*Staff are not a substitute for independent experts drawn from, and accountable to the community. There has been a growing tendency under the present structure to try to substitute that in a variety of*



*areas, including proposing that staff take over recruitment and outreach; staff act as sole providers of technical advice, etc. A collaborative approach is more effective for ICANN, and this issue needs reflection and discussion more broadly within the ICANN community.*

*Recommendation: It appears that technical advice on specific matters that are relevant to ICANN's activities and decisions should be maintained. However, the process and manner for such technical advice needs re examination, and this includes the role and purpose, and organizational approach of the TLG. Certainly the present four participants must play a role, but probably along with others, in developing an approach that enables improving the input and advice from the four entities, and examines how to improve the acceptance and understanding of ICANN within their organizations, and enables openness to including other key potential participating organizations, such as UNESCO, WIPO, etc. This may require a substantial change in how the TLG conducts its consultations, and how it may be effective within ICANN and its broader community of stakeholders.*

In today's methodology, it is possible that the Board and Community assume that ICANN Board Liaisons are ambassadors to advance acceptance and understanding of ICANN within their organizations. At present, that ambassador role is both valuable, and not apparent to the broader ICANN community. I would propose that active interaction involving multiple players, and shared work activities deepens understanding and acceptance between entities.

*Recommendation: Originally, the PSO elected three board members; this has been replaced with a bi-modal approach of having the Board seats selected by the Nominating Committee, but without a requirement of any specific technical background for board members.*

*The Nominating Committee* is responsible for selecting Board members with diversity and experience. It is probably inappropriate to task them to select highly competent technical Board members. From a business perspective, in general, Board members should not be selected to substitute for procured expertise from economists, legal advisors, executive management, or technical expertise. A certain percentage of the Board must understand the core business of ICANN, and it may be time to return to election of up to 8 Board members from the community, lowering the number of Nominating Committee appointments slightly. But any such change should include a clear understanding of accountability, and what it means to act in the public interest.

Just as it would be inappropriate to task the NomCom to select Board members who are economists, marketing executives, software engineers, or affiliated with specific government blocks, it is inappropriate to task the NC with selecting Board members with specific technical expertise. The function of technical advice belongs in a neutral space that is 'procured', and which can be broadened, or flexibly addressed. That means that the TLG's role needs to be reformed, along with all other technical advisors.

2012 is in place – during this year, more creative, and more responsible, and responsive discussions about who should participate in any continued TLG, changes in membership, changes in function and interaction should occur. And inclusion of SG/SO/AC representation should be included.

Summary:

It is not clear that the TLG with only four entities, and with a rotating non voting seat on the Board is in fact, the best approach to procure neutral and broadly diverse technical advice to the ICANN Board or community as ICANN has evolved and as the external Internet

governance issues have matured. The present approach limits the ability to be present as a technical advisor/liaison, at a particular time when issues of most relevance to any of the four entities' expertise area is influenced by the rotational nature of the appointments. As ICANN moves to introduce new gTLDs, it may even be time to expand who and what entities would fit into a 'technical' advisory function.

Of more significance, it is not clear that the present approach of providing technical advisors overall to the Board is best served by having a group of liaisons who act as non voting Board members, but who are not available to the more bottom up approach of policy development.

The TLG needs significant change – including possibly moving it outside of the Board, and expanding it to a more inclusive model. This will be resisted by the four entities, undoubtedly, and it is important to recognize that they are significant players as key allies in the Internet eco system – but it isn't clear today how the present approach fully advises ICANN, and is actually improving the relationships and interactions from ICANN back into the four entities.

Overall, technical advisors, and Liaisons should have clearly defined roles and accountability with the clear expectation that they provide advice and serve as ambassadors between their organizations. There are possibly better approaches to improved technical [and fully independent and accountable] advice, and then separately, liaison interactions into critically important organizations in the Internet's eco-system.

While recognizing the dedication and interest of individual representatives, we must do more-- and we must find a way to have truly independent technical advisors available to the Board, and to the community. I personally struggled with this topic, as I so value all the

individuals, and the entities now engaged, and count on them and their involvement, and expertise... but, I believe...

It is time for a change. Technical advisors probably aren't actually suitable as non voting Board members. They are perhaps something else, and are undoubtedly valuable. But we don't seem to have yet perfected how, and who they are, and that includes the TLG.

Marilyn Cade