DANISH BUSINESS AUTHORITY

17 May 2013

DANISH BUSINESS AUTHORITY
Dahlerups Pakhus
Langelinie Allé 17
DK-2100 Copenhagen
Denmark

Tel. +45 35 29 10 00
Fax +45 35 46 60 01
CVR-no. 10 15 08 17
erst@erst.dk
www.erst.dk

Danish Comments to the Accountability and Transparency Review Team 2

Denmark would like to thank for the opportunity to provide input to the *Questions to the Community on Accountability and Transparency within ICANN.* All the questions that were raised in the ATRT2 call for input deserves further analysis, however, in our reply Denmark will focus its comments on issues related to the role and participation of governments in the multistakeholder model rather than providing an answer for every question from the ATRT2.

Affirmation of Commitments Reviews

First of all, Denmark believes it is essential to ICANN's credibility and legitimacy that accountability and transparency is institutionalised into all parts of ICANN's operations and by all actors involved, including the Board of Directors and staff. ICANN´s accountability and transparency should be assessed and improved continually and the AOC reviews are instrumental in achieving this.

The reviews are mandated by the AOC and as such the reviews are at the core of ICANN's governance mechanisms and the multistakeholder model as well as instrumental in ensuring that ICANN is accountable to the global public. It is from this instrument that ICANN derives its legitimacy to act in the global public interest. Therefore, the ICANN leadership, staff and stakeholders should treat the recurring AOC reviews and the elected teams with due respect and ensure that the resulting recommendations are duly implemented.

The engagement from the global internet community should be further promoted and we encourage the ATRT2 and ICANN to consider how to improve the visibility on the topic and in general improve the engagement in AOC reviews.

The Role of Governments

The ATRT1 focused in depth on the GAC/Board relationship and how GAC could get involved in decision-making processes earlier. This work is still on-going and highly relevant. But recently there has been much talk about the level of government involvement in ICANN's policy-making process. Some think that GAC advice is too prescriptive and

forces ICANN to move beyond its original scope of work. Others have argued that governments have been given a bigger role in ICANN at the expense of other stakeholders. This criticism is a sign that ICANN lacks a common understanding of the role of governments and other key stakeholders in ICANN and this negatively affects the accountability and transparency of ICANN.

Rather than focusing just on processes we suggest the ATRT2 discuss the institutional relationship between the Board, the GAC and the GNSO or at least provide guidance to how the institutional set up can be analysed further. Especially in light of the expanding agenda of ICANN from strictly technical matters related to DNS to broader issues with large public policy consequences. The role of the GNSO was well understood in a framework where policy-making was mainly focused on technical issues related to the day-to-day administration of the DNS and as a consequence the role of the Board and the GAC was also fairly well-defined. The gTLD programme has made the policy-making roles more complex and mutually dependent as the GNSO policy-making is no longer strictly technical in nature but more directly affect public policy, business matters and consumer choice. It seems there is not a common understanding of the different roles of the Board, the GAC and the GNSO in this new paradigm and this can result in a lack of understanding and in worst case respect for the input of the various stakeholders.

But ICANN and its stakeholders must also consider that the legitimacy of the policy-making process cannot just be judged by ICANN's active stakeholders. There is a larger Internet community and governments around the world that look critically at ICANN to see if the multistakeholder model is able to provide sound and responsible outcomes that benefits all nations and their citizens. In this aspect the GAC advice plays a special role because the reaction to GAC advice directly affects the legitimacy of ICANN in the larger Internet governance debate.

Denmark supports the multistakeholder approach for Internet governance and as such we do not share the view that governments need to be given greater formal influence. But the criticism must be tackled and we believe that ICANN has a task in clearly signalling and communicate to the world that the advice of governments is respected, carefully considered and responded to according to ICANN's bylaws. We strongly recommend that the ATRT2 discuss why a great majority of governments do not share the view that government input is respected and appropriately responded to.

Outreach and Sustaining Active Participation

Denmark acknowledges the many initiatives ICANN has introduced to engage and support the larger Internet community including outreach to non-participating governments. These are very important initiatives for the internationalisation of ICANN and we look forward to see the full effect. Meanwhile we encourage the ATRT2 to discuss and analyse other

aspects that may contribute to raise the level of participation in ICANN and thereby strengthening the legitimacy of the multistakeholder model.

There is a core of recurring ICANN participants familiar with ICANN's rather informal processes and diffuse agenda. But increasingly other stakeholders find that they need to participate in the multistakeholder process – primarily due to the new gTLD programme – but they find it extremely difficult to navigate in the ICANN model as the multistakeholder process is not self-explanatory and the level of information is massive and highly complex. These are obvious barriers for all participants and especially for participants with limited time and resources to process the necessary information to participate effectively. To fully reap the benefits of a bottom-up driven multistakeholder model there must be low barriers for participation. Any barriers will be perceived as a problem of accountability and transparency for the very actors that we need to engage.

We recommend that the ATRT2 discuss how ICANN can provide simple, focused and high quality information rather than mainly producing information on an ad hoc basis. ICANN participants rarely suffer from lack of information but rather information overload.

ATRT2 could also discuss measures to provide further support for newcomers.

The GAC also has a role to play in assuring continuous participation. An effective GAC secretariat is a fundamental prerequisite for providing support and to navigate through the volumes of information for both newcomers and representatives with fewer resources. The recent efforts of the GAC to establish an independent secretariat is a very positive contribution to this purpose.

The ATRT2 should not refrain from providing recommendations to the role of governments in ensuring active participation.

Accountability and Transparency in ICANN's Financial Operations

Denmark believes that an important issue to be looked at by the ATRT2 in order to further improve ICANN's accountability and transparency is ICANN's financial operations and reporting. These matters of ICANN's operations were not part of the first AOC review.

There has been a recurrent request for further transparency in ICANN's financial operations and reporting. This lack of transparency leads to criticism related to overspending, including large expenses on remuneration of ICANN´s own staff and a large amount spent on external consultants, which are almost 1:1.

ICANN is a not-for-profit organisation mandated to act in the global public interest and ICANN's financial reporting is an important tool for

ICANN's stakeholders and the global internet community to have insight into ICANN's prioritisations and whether they are effective and efficient.

On this basis, it is our belief that the ATRT2 should employ independent experts to analyse how to improve the accountability and transparency related to ICANN's financial operations from the perspective of the special needs of the multistakeholder model.