



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

May 1, 2013

Ms. Alice Jansen
Strategic Initiatives Manager
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

VIA ELECTRONIC TRANSMISSION

Re: Questions to the Community on Accountability and Transparency within ICANN

Dear Ms. Jansen:

The US Council for International Business (USCIB) is pleased to respond to ICANN's April 2 solicitation of comments on the activity of its second Accountability and Transparency Review Team (ATRT2). USCIB is a trade association composed of more than 300 multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members therefore welcome this opportunity to offer the business community's perspective on the issues and questions posed by the ATRT2 to the community.

After careful review and consultation, USCIB members have decided to focus on selected questions and to keep their comments "high level" rather than assigning specific numerical ratings. We respectfully request the ATRT2 and ICANN to consider the following:

1. ICANN Board of Directors Governance
 - Specifically with respect to question 5 concerning whether the Board takes the necessary care and dedicates enough time for discussion related to GAC advice, USCIB members are of the view that while the interaction has improved a lot in recent years, it still has a way to go and could be improved.
2. GAC's Role, Effectiveness & Interaction with ICANN Board of Directors
 - USCIB members believe the process through which GAC members serve on the GAC is entirely opaque and the community would benefit greatly from a better understanding of how things work. Further, there is little understanding about broader Internet governance coordination between members of the GAC and their government counterparts in the International Telecommunications Union (ITU), the Internet Governance Forum (IGF), and other international forums.
 - A greater understanding of the role of the leadership of the GAC would be beneficial. Are they serving in governmental capacities or in their own individual capacities?
 - In general, the GAC does an excellent job, but there is almost no interaction between the GAC and the community. At times when there is an important decision to make,

the GAC closes its doors to debate in private. Consequently, when the GAC faces a potentially controversial decision, the community has virtually no ability to engage in open dialogue with its members. This makes it incumbent upon individual members of the community to try and lobby individual GAC members in order to make their voices heard. This is not the way the multistakeholder process was envisioned.

- If the GAC is unable to reach consensus, it tends to produce composite advice. This often is difficult to interpret and puts undue burden on the Board of Directors to try and understand how to implement the advice of the GAC.
- The GAC occasionally deliberates on matters relating to a particular entity (versus on broader policy). This will happen with more frequency given their review of new gTLD applications. Specific entities that are likely to be subject to GAC advice should be given the opportunity to present to the GAC as a whole, prior to deliberations, and to answer questions, to prevent (1) one-sided characterizations, and (2) lobbying of individual GAC members.

3. Public Input

- In order for groups to take better advantage of the entire public comment period window, ICANN should do a better job of publicizing opening comment periods and clearly outlining deadlines. In addition, staff work in processing the topics varies by topic.
- The sufficiency and transparency of communication between the different Supporting Organizations and Advisory Committees (SO/AC) on public inputs also varies, depending on the SOs and ACs involved. For the GNSO and ALAC, the sufficiency and transparency of this communication is quite high because the ALAC's liaison function works well. The same cannot be said for the quality of communication between the GAC and GNSO.

4. Policy Development Process

- Overall, the current process does not provide sufficient guidance concerning what constitutes policy development versus policy implementation. To improve the process, ICANN should focus on ensuring greater predictability, so that stakeholders have a sense, *ex ante*, of which decisions will be subject to the Policy Development Process (PDP).
- Specifically with respect to whether the policy development process facilitates cross-community deliberations, this may have less to do with process than behavior. The GAC presents a good example, as it typically does not participate in GNSO processes until it is too late. A community Working Group (WG) should be established to develop a process for cross-community WG communications.
- ICANN staff does a pretty good job of adhering to policy decisions, especially if there are not too many implementation issues. By the same token, there also are recent examples (e.g., the New Registry Agreement) where staff has not been very accountable to the community and staff actions have not been transparent even when community members have asked direct questions.
- Regardless of whether decisions are characterized as policy or implementation, any rules that give rise to new obligations on stakeholders should be the subject of a

rigorous, predictable notice and comment process. This process should include the following elements: (1) a clear description of the rule, standard, or obligation being proposed; (2) a meaningful opportunity to comment; and (3) a fulsome, reasoned explanation of the decision reached.

- In cases where discussions have stalled and realizing a consensus is proving difficult, ICANN should consider creative approaches to breaking a stalemate, including professionally mediated or facilitated discussions between key stakeholders.
- The Board uses ICANN staff summaries of public comments in its deliberations. For purposes of transparency, the summaries should be posted after delivery to the Board, and not open for separate public comments, so the community knows what the Board is reviewing and on which it is basing its decisions.
- USCIB appreciates ICANN's recent increased focus on the Whois issue as well as the meaningful strides that ICANN has taken in creating guidelines for better compliance -- the inclusion of the Whois Accuracy Program Specification in the Registrar Accreditation Agreement, for example. However, USCIB realizes that ICANN is also looking to reexamine the very purpose of Whois, and in doing that, we would like to point out how important it is for businesses to be able to pursue bad actors that in the current space can now hide behind inaccurate or incomplete Whois information. USCIB looks forward to continuing the conversation about Whois policy and reaching a point where it is a useful tool for combating crime online.

USCIB appreciates this opportunity to provide input to the ATRT2 process and asks that our comments receive ICANN's due attention in shaping the scope, road map, and work program that ultimately will produce final recommendations by the end of the year.

Sincerely,



Barbara P. Wanner
Vice President, ICT Policy

cc: Peter Robinson, President
Robert Mulligan, Senior Vice President, Policy and Government Affairs