ICC Input

Prepared by ICC Commission on
E-Business, IT and Telecoms

ICC input on the ICANN implementation Plan for Improving Institutional Confidence (IIC)

(Draft issued by ICANN 26 February 2009)

Highlights

- Key principles and considerations regarding ICANN's transition
- Safeguarding against capture
- Accountability to the multistakeholder community
- Meeting the needs of the global Internet community of the future
- Financial and Operational Security
- The role of Governments

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Introduction

On behalf of the members of the International Chamber of Commerce (ICC) and, in particular, the members of the Commission on E-Business IT and Telecoms (EBITT) and the Task Force on Internet and Telecoms Infrastructure and Services (ITIS), we are pleased to provide input on the Implementation Plan for Improving Institutional Confidence (IIC) prepared by the President's Strategy Committee (PSC) (posted by ICANN 26 February 2009).

ICC's EBITT Commission is composed of hundreds of companies and business associations from all sectors including business users, service providers, hardware and software developers, content providers, communications operators, mobile operators, Internet Service Providers (ISPs) and registry/registrars. With national committees and groups in 130 countries, ICC's members span the globe and are involved in all of ICANN's business related constituencies. Given the composition of its membership from all sectors and geographic regions, ICC is uniquely placed to provide a truly global business perspective at this important juncture in ICANN's development.

ICC previously responded to ICANN with comments on the ICANN Transition Plan and remains fully committed to the continued transition of ICANN towards becoming an independent, private sector-led consensus-building organization. We continue to fully support the goal of strengthening ICANN as the private sector-led multistakeholder body responsible for coordinating the global Internet's system of unique identifier.

ICC welcomes the 'Implementation Plan for Improving Institutional Confidence' (Plan) but notes that the document contains a set of high level recommendations that address key issues but does not actually set out how those recommendations would be implemented.

ICC appreciates that the delivery of more detailed descriptions regarding how the proposed recommendations would address key issues is essential in order for ICANN stakeholders to fully assess the effectiveness of the proposed recommendations. ICC notes from the "plan" that a timeline for these recommendations will be proposed in due course. ICC requests that these detailed recommendations be posted as soon as possible, and that a full opportunity for review and public comment be provided.

Key principles and considerations regarding ICANN's transition[1]

These principles and considerations are reiterated from ICC's contribution to ICANN in February 2008.

ICANN should ensure that the principles and considerations outlined below are integrated in the transition towards an independent ICANN organization with the completion of the Joint Project Agreement (JPA):

- Stability and security, of the various technical parameters of the Domain Name System (DNS) including among others IP-addressing, to ensure the consistent functioning of the Internet;

- Stability of ICANN as an organization such that it can, on an ongoing basis, meet the obligations within its limited mandate in an inclusive, accountable and efficient manner;

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[1] *http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/ICC%20views%20on%20ICANN%20JPA.pdf*

- Continued work by ICANN and its Board with the ICANN community on the transition of ICANN as an independent organization and its structure going forward;

- Continued commitment to accountability and transparency;

- Developing and ensuring an accountability mechanism that is responsive to the ICANN community and independent of governments and inter-governmental organizations and where appropriate ICANN Board and staff;

- Creation of a structure and environment that remains flexible enough to encourage continued creativity and innovation on issues pursuant to ICANN's management needs;

- Ensuring multi-stakeholder participation within ICANN;

- Continued and strengthened private sector leadership which includes business and the ICANN community, especially building of the relationships between business users, the Board and ICANN to ensure the voice of business is respected and considered in decision-making in shaping the structure of the organization going forward, and on all policy areas since the interests of business users and business in all sectors are broadly affected;

- Creating innovative mechanisms to improve business user input to the organization and policy development processes;

- A continued role for governments that is advisory and consistent with the multistakeholder structure; and

- ICANN's focus should be on its core mission and tasks directly related to the management and coordination of the unique technical indicators of the Internet - names, numbers, root servers, protocols.

Safeguarding against capture

ICC applauds the PSC's recognition that safeguards against capture are critical elements for ICANN's success both in the short term, and in the longer term future for ICANN's ongoing success. ICC recognizes that ensuring adequate safeguards against capture are in place will be an ongoing task, as are continual efforts to broaden and strengthen participation in ICANN. ICC appreciates ICANN's recognition of these two elements as being inextricably linked. However, ICANN's present processes are increasingly overwhelming. A way forward must be found to allow informed participation in policy development processes. The array of issues in play makes it difficult to substantively engage on particular issues, which can thus hinder general participation. Whilst apathetic capture poses potential problems, another pressing concern includes incohesive or unsuitably structured policy development processes. The current frenetic pace of sometimes competing and confusing policy development processes, as well as ICANN Reviews and restructuring, prevent meaningful participation by even the most dedicated of ICANN supporters.

Caution is urged over the opinion that large and diverse interest groups within the Supporting Organizations in and of themselves prevent capture. There is already experience within the GNSO structure that allowing the easy creation of numerous interest groups can actually dilute and weaken the organization's structure, whilst enabling strong allegiances to form that can be just as threatening when it comes to organizational capture. ICC recognizes the importance of broadening participation in ICANN processes, but we also recognize that as the GNSO develops, ICANN should be cognizant of how participants interact within processes in ways that might undermine goals to prevent capture, and if necessary, consider adequate safeguards.

Concerns have been expressed previously by ICC about the need for increased certainty of the processes and balanced outcomes, both in policy development and overall decision-making. Those concerns are even more relevant now that ICANN is going through a period of intensive review and reform of the Support Organizations and the ICANN Board. Business continues to be concerned over the need to ensure it is adequately represented within ICANN in order to protect broader business interests.

Continued efforts to broaden the participation within the Governmental Advisory Committee (GAC) is critical in order to deflect criticism of the ICANN process, particularly from those who do not engage, and to prevent capture by any group of governments, or inter-governmental entities. Broadening the participation of governments in the ICANN process is also important to ensure that the views and perspectives of governments are taken into account in ICANN's policy development and other processes. The recommendations to provide further resources for translations and to initiate a unique travel support programme for the GAC representatives from the 50 Least Developed Countries (LDCs) are commendable.

ICC supports the recommendation that the professional code of conduct for staff should be strengthened. Global businesses often rely on such codes of conduct to provide essential guidance not only to their staff, but to those who interact with staff, especially when contractual matters or contract compliance and policy development are concerned. As ICANN evolves in its global functions, a code of professional conduct is an essential tool and safeguard for staff, the community, and the Board to ensure the broader ICANN community's respect and certainty that all staff activities are underpinned by impartiality and independence.

Accountability to the multistakeholder community

Legitimacy that is derived from decisions that reflect full and informed public comment and the development of consensus by the community must also be judged against the need for balanced participation within ICANN at all levels of the structure. The importance of this point for business cannot be over stressed, and ICC urges further consideration of how to fulfill the stated commitment to increase and strengthen business involvement, among others, when undertaking reviews of the organization and its structures.

Many of the PSC's recommendations seem to be efforts to strengthen the present level of functioning. For instance, recommendations that would strengthen the consultation process by providing detailed analysis of comments are welcomed, as is the proposal to make responses to GAC advice or statement of principles publicly available. ICC can see no reason why such advice should not be in the public arena. The production of executive summaries for substantive documents and established timelines for dealing with them would be welcomed. ICC urges ICANN to substantiate their commitment to this approach by incorporating relevant changes within its Bylaws.

ICC has earlier supported the need for improvements in accountability mechanisms and had expected to see further progress on this key area in the latest report. ICC supports the PSC's recommendation that a group of independent experts be convened to undertake improvements in existing, and development of further enhanced, accountability mechanisms. Some proposals worth considering include additional requirements for super-majority voting; providing for the potential to veto a Board decision by the community; and amending the mechanisms to remove Board members. ICC will be interested in contributing toward recommendations for improvement.

ICC notes that the proposed threshold for a 'challenge' to a Board decision is unnecessarily cumbersome. Whilst the need to ensure easy challenge cannot be made every time a party disagrees with a decision, ICC suggests that a two thirds majority vote of two of the three Councils of the three Supporting Organizations would be sufficient, and perhaps with agreement, a mechanism for support by at least one policy orientated Advisory Committee. It is not necessary to add two thirds of the members of all Advisory Committees.

It may also be useful to explore the development of an appeals process that exists outside direct Board control, to provide stakeholders a means to seek redress in the instance of Board decisions that cause significant harm to one or more stakeholder groups. It would be useful to investigate whether other organizations may have any such provisions in place that could be assessed and perhaps adapted to ICANN.

With regard to the GAC, the proposal that a consensus statement from all members at a physical meeting would suffice appears to offer a sound approach, noting that consensus does not require total support of all members.

The need for an extraordinary mechanism by which the community could remove the Board in exceptional circumstances is worth examining more closely, and may be supported in principle, but there is still a clear need to articulate under what circumstances this would occur. Until that clarification is provided ICC would not offer support for this recommendation.

In previous responses to ICANN consultations ICC has asked the question 'what other accountability mechanisms has ICANN considered?' That question has still to be answered.

ICC is concerned that further accountability measures have not been offered at this late stage of the IIC process. Section 5 of the implementation plan cites the United States Government's midterm review of the Joint Project Agreement (JPA), stating that the bulk of ICANN's stakeholder community believed ICANN to have largely met the goals of the Memorandum of Understanding (MOU). But for ICC members who represent much of the global business community, the goal of establishing appropriate accountability mechanisms remains an open question where we would like to see clearer decisions.

Meeting the needs of the global Internet community of the future

The need to maintain global diversity remains an essential element of the bottom-up process, yet a number of changes proposed within other ICANN reviews, particularly where the size of the Board or Supporting Organizations are being discussed appear to make this challenging. The regional offices and liaisons provide useful functions and opportunities but having offices in other parts of the world does not negate this requirement.

Global outreach remains of paramount importance but the wisdom and conditions that would govern the advisability of establishing a separate legal ICANN presence under another/other jurisdictions raises many questions. Regional offices are one thing and legal presence is another. A key factor that demands serious consideration prior to any decision being taken is whether any such scheme facilitates 'contract shopping' or potential exploitation through a less onerous legal jurisdiction. Maintaining ICANN's current headquarters and operational presence in California has to be the way forward for the time being. Before any decisions are taken on establishing additional subsidiary legal presence it is essential that full public consultation occurs and the results are carefully considered. At present, the information provided is not sufficient for full legal assessment of the risks and benefits.

Financial and Operational Security

ICANN must continue to strengthen its business and financial processes, along with the stakeholder participation in the processes. Special regard should be given to the effects of the economic recession on ICANN constituents and the potential impact that could have on the policy development processes. With regard to discussions over the use of surplus funds, full transparency and accountability is of paramount importance, as it is for discussions concerning the operating plan and budget. It is unclear to ICC at this point what impact 'surplus funds' may have on the not for profit status of ICANN and ICC's members suggest that this needs further examination.

Noting that it is proposed that ICANN should consult the community on alternate sources of revenue, ICC maintains its earlier stance that further information is required on how any proposals would be handled, including the approval process.

Security and stability of the Internet's unique identifiers is of critical importance to ICC members. ICANN should continue to refine how it provides for the security and stability of the DNS.

ICC inherently champions measures that improve operational efficiency in a qualitative manner. The earlier discussions between ICANN, VeriSign and NTIA regarding the IANA procurement agreement appear to offer such improvements and further dialogue between ICANN and the United States Department of Commerce is encouraged.

The role of Governments

The interaction between the Governmental Advisory Committee (GAC) and other parts of the ICANN structure has undoubtedly improved, resulting in tangible benefits being realized within the public policy development process. The continued willingness of the GAC to engage in discussions with the Board and other parts of ICANN with the aim of further improving efficiency and responsiveness is commendable and ICC offers full support for the continuation of that process.

The important role that governments play within the multistakeholder environment is fully recognized and appreciated by ICC and efforts to strengthen and improve their participation within the GAC can only bring additional benefits to the whole community.

The International Chamber of Commerce (ICC)

The International Chamber of Commerce is the largest, most representative business organization in the world. Its hundreds of thousands of member companies in over 130 countries have interests spanning every sector of private enterprise.

A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2,000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

The United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC.

For more information please visit: www.iccwbo.org

ICC Commission on E-Business, IT and Telecoms (EBITT)

Business leaders and experts drawn from the ICC membership establish the key business positions, policies and practices on e-business, information technologies and telecommunications through the EBITT Commission. With members who are users and providers of information technology and electronic services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade. ICC has also led and coordinated the input of business around the world to the World Summit on the Information Society, Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda through its initiative, Business Action to Support the Information Society (BASIS http://www.iccwbo.org/basis)