Network Solutions submits these comments in response to the call for public input on the Draft Implementation Plan for Improving Institutional Confidence ("Plan") offered by the ICANN President's Strategy Committee ("PSC"). This proceeding is important to realizing ICANN's core mission to ensure the stable and secure operation of the Internet's Domain Name System.

We appreciate ICANN's efforts to address this matter and believe it has appropriately identified many of the key elements that influence institutional confidence. The proposed Plan, however, does not address certain key transparency and accountability measures necessary to actually instill institutional confidence into ICANN and its processes and decision making.

We also note that for well over a year we have called for ICANN to establish a community-based task force to address these issues from the bottom-up. The PSC Plan is yet another top-down process that has not adequately answered the calls of the community for ICANN to establish true accountability and transparency requirements as outlined below.

Transparency Issues

ICANN has made progress to date improving the transparency of its operations. None of the transparency improvements, however, has been codified in the Bylaws. Absent such Bylaw changes, the transparency improvements may be reversed as easily as they were made. We do not know where a new CEO will take ICANN. The hope is that ICANN does not revert to an era of opaque decision-making, but the community would take great comfort in knowing that there would be hurdles against such actions.

In addition to memorializing recent improvements, additional progress still is needed in order to instill community confidence. For example, most recently the ICANN Board missed an opportunity to show its transparency by failing to consult with its stakeholders on the search criteria for a new CEO. Community input should have been sought on the most desirable attributes for ICANN's next leader. Instead, we saw a top-down process where the criteria finally were posted in an obscure part of the ICANN website without an announcement and long after the search began in earnest. We do not consider this the right actions of a bottom-up transparent organization.

We also make the following recommendations regarding transparency issues:

- ICANN must adopt procedures that promote the validity of the Board's decisions. Specifically, ICANN should codify in its Bylaws a requirement that the Board employ methodical decision-making processes subject to meaningful community review. We support Recommendation 2.4.1[1] of the Plan requiring ICANN to provide 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. By utilizing mechanisms that are more transparent, a predictable system could be realized that generates consistent results and improves community confidence in ICANN's decisions. This also will promote a sense of due process and fairness in Board actions.

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[1] Draft Implementation Plan for Improving Institutional Confidence at 6.

- ICANN must develop regular financial reporting standards and processes. Currently, there do not appear to be such reporting standards or transparency in certain information regarding ICANN's expenditures. As such, we support Recommendation 4.3[2] of the Plan as long as it requires ICANN to implement improvements in financial practices and reporting to the community. Moreover, relevant stakeholders also should be involved in the budget process at more meaningful levels to directly impact budgeting issues. By including stakeholders on an expanded Finance Committee or a reformed Budget Advisory Group, ICANN would promote community input and instill confidence that available resources are being used in a manner that promotes ICANN's core mission consistent with the community's needs and desires.

- ICANN must develop consistent review mechanisms for its contract approval process. ICANN was justly criticized for never publishing for public comment important changes to the .net Registry Agreement prior to ICANN's execution of that agreement. Although ICANN since then has published most important contracts for review, it has never amended its Bylaws to make it clear that all material contracts **must** be published for public review and comment.

Accountability Issues

The current lack of sufficient oversight and checks on the Board has been well documented over the past two years. The possibility remains that a simple majority, eight out of fifteen, of Board members could vote in a way that is inconsistent with ICANN's mission, ideals, goals, and the will of the community – and there are no effective mechanisms to counter this action.

We continue to support proposals requiring a super-majority Board vote on key decisions. Issues of paramount importance should not be decided by a mere simple majority of only eight Board members, thereby protecting ICANN from capture of a slim majority of the Board.

Moreover, in order to instill confidence, there must be an effective way to challenge and review Board decisions. Boards of corporations answer to its shareholders and boards of non-profits typically answer to its members. The ICANN Board answers to no one. The current processes for Reconsideration, Independent Review, and complaints to the Ombudsman all are advisory to the same Board that made the decision in the first place. As such, there is no binding oversight of ICANN Board decisions. ICANN needs to adopt measures to ensure that the Board is accountable for its actions and that there are sufficient oversight mechanisms to address important Board decisions.

This is a most untenable situation that undermines ICANN's institutional confidence. Unfortunately, the PSC Plan fails to address adequately this core ICANN deficiency. Whether it is allowing a super-majority vote of the Supporting Organizations to veto a Board decision or instituting binding independent review, we continue to encourage ICANN to work with the community to recommend a true accountability measure in this regard.

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[2] Plan at 31.

Conclusion

ICANN should address these specific issues to improve institutional confidence by formalizing recent transparency improvements, adopting additional transparency requirements, and formulating a system of true Board accountability. By doing so, ICANN would instill confidence in the organization and show sufficient progress towards realizing its commitments in its Bylaws[3] and in the Joint Project Agreement with the United States Department of Commerce.[4]

Network Solutions looks forward to working with ICANN as it addresses these issues.

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[3] Bylaws, Article I, Section 2, "10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness" and Article III, Section 1, "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness."

[4] JPA, Annex A, no. 3. "Accountability: ICANN shall continue to develop, test, maintain, and improve on accountability mechanisms to be responsive to global Internet stakeholders in the consideration and adoption of policies related to technical coordination of the Internet DNS, including continuing to improve openness and accessibility for enhanced participation in ICANN's bottom-up participatory policy development processes."