



11 May 2009

Implementation Plan for Improving Institutional Confidence

Please accept the following comments in response to ICANN's publication of its (Draft) Implementation Plan for Improving Institutional Confidence (the "Plan").¹ Go Daddy reserves the right to future comments on this issue and our positions include, but are not necessarily limited to, the text herein.

With the release of its draft Implementation Plan, we are pleased to see ICANN giving extensive consideration to the issues surrounding Institutional Confidence, and appreciate this opportunity to submit our comments. In general, we support the five areas identified in the report, namely that ICANN must:

- I. Be safeguarded against capture
- II. Be accountable and responsive
- III. Meet the needs of the global community of the future
- IV. Be financially and operationally secure (and we would add, Fiscally Responsible)
- V. Maintain its focus on securing safe and stable operations relating to unique identifiers

However, we do not believe that the recommendations in the Plan go far enough. Our comments will focus on areas I and II of the Plan as we see those as the foundation upon which the other areas will rest and so underpin any successful effort to improve confidence in ICANN and its processes.

Safeguarding ICANN against Capture

The Plan states: "The PSC notes ICANN's existing Accountability Frameworks and Management Operating Principles and considers these a strong protection against capture." The Plan also refers to broadening participation (including active participation by governments), improving GAC working methods, ICANN's bylaws and other documents, consensus requirements, more diverse funding sources, anti-trust laws, transparency, Staff conduct, and best corporate practices – all as safeguards against capture.

Those are all excellent goals, but none of them either individually or as a group can serve as a guarantee against capture. All of the aspects mentioned are part of structures that under go periodic review and are subject to change, and/or the participants themselves change. This is unavoidable as the Internet is an ever evolving structure and tool.

We believe that an adequate protection from capture would be a structure or tool designed for and dedicated to that specific purpose. In addition, it would provide the accountability that is currently lacking.

Ensuring ICANN is Accountable

The Plan first mentions the three accountability mechanisms already in place – Reconsideration, Independent Review, and the Ombudsman. However, these mechanisms simply illustrate the need for true accountability since all three leave any final decision with the Board itself, ultimately leaving the Board accountable only to itself. The Plan proposes two new mechanisms.

The first is to allow the community to require the Board to re-examine a Board decision. This seems to be much like the existing Reconsideration process but can be invoked by either two-thirds majority vote of two-thirds of all the Councils or two-thirds of all the Advisory Committees. Such an onerous threshold is not likely to ever be met. In addition, the Board proposes to once again reserve the right to any final decision - it

cannot be forced to change its mind.

The second proposed mechanism is the “no confidence” vote. It isn’t clear what threshold would be required for this vote, and it isn’t clear if the pre-designated resignations of the Directors would be voluntary or required. If pre-designated resignations are voluntary, the mechanism actually holds no real value. If pre-designated resignations are required it does provide a so-called nuclear option that would result in replacing or reconfirming the entire Board. Again, a scenario that is highly unlikely to find wide support within either the Supporting Organizations or the Advisory Committees.

It is possible that both of these proposed mechanisms could be useful if properly defined. However, we believe an adequate mechanism that ensures accountability would be encapsulated within one that also guarantees against capture.

A Single Solution for Avoiding Capture and Ensuring Accountability

Recently, we have read with interest variations on the concept of an Oversight Board. The make-up of such a Board varies from one proposal to another, but in general we believe that this is a concept that has merit and should be carefully explored. If properly constituted, such an Oversight Board would serve both as a protection against capture and a mechanism for true accountability on the part of the ICANN Board.

We ask that the ICANN Board and Staff facilitate community consultations on this concept, starting with the meeting in Sydney, Australia. Failing that due to time restraints or other reasons, we call out to other interested stakeholders who would like to engage in further dialogue on this subject and arrange such consultations for Sydney.

Sincerely,
GoDaddy.com, Inc.



Tim Ruiz
Vice President
Corporate Development and Policy
GoDaddy.com, Inc.

1. <http://icann.org/en/announcements/announcement-12mar09-en.htm>