

In Support of ICANN Reform

The gTLD constituency strongly supports ICANN and its continued existence. ICANN has provided a means of achieving a private sector, self-regulatory environment for the domain name space. However, the gTLD constituency recognizes, as Stuart Lynn pointed out, the inefficiencies - and often ineffectiveness - of current ICANN procedures for the development of policies and applauds Mr. Lynn for focusing attention on the issue.

While we do not agree with all of Mr. Lynn's recommendations, we respectfully provide these comments in the spirit of cooperation. Our comments track Mr. Lynn's proposal of 24 February 2002. We look forward to providing more detailed feedback on any of the concepts outlined below as the restructuring effort continues.

A Reformed ICANN Can Be Successful

ICANN's main objective and mission should be re-focused on the effective management and coordination of the higher-level elements of the Internet's naming and address allocation systems. These higher-level elements should be limited to those functions that require global management and coordination. However, ICANN should simultaneously encourage and foster the creativity and innovation that has made the Internet a dynamic resource.

ICANN should continue to endeavor to ensure a "level playing field" of competition amongst registries. In attempting to ensure such a level playing field, however, ICANN should avoid managing too closely the day-to-day operations of such entities. Registry operators, whether new to the business or otherwise, need the flexibility of running their businesses based on sound economic policies, rather than predominantly on policies created in the ICANN forum. ICANN's policy efforts therefore should not be focused on day-to-day operations or corporate policies of registry operators.

Confusion in the community has given rise to the use of ICANN's policy functions (specifically, the concept of consensus) as a forum for any and all interests which seek to influence the way that registry operators conduct their businesses. We believe that the ICANN policy-making process should not be the forum for those interests.

ICANN's mission, therefore, should be focused on:

- Issues for which central and coordinated resolution is necessary to assure stable interoperability of the domain name system.
- Issues directly related to the safety and integrity of registration data.
- Issues directly related to the availability of accurate Whois data.
- Issues directly related to the resolution of disputes regarding the registration of particular domain names (as opposed to the content distributed via such domain names) by particular parties.
- Issues concerning effective competition among gTLD registries and registrars.¹

Before any policy is evaluated or implemented, a decision must be made as to which parties are affected by a proposed policy ("Affected Parties"). The ICANN Board, policy councils and any Affected Parties should be empowered to propose new policies. With respect to any such proposed policy, once Affected Parties are determined, then, and only then, should the ICANN Board solicit comments, such solicitation being limited to those Affected Parties. ICANN's ineffectiveness in effecting policies is attributable in large part to its trying to appease too many "individual interests" which feel entitled to influence the way other entities' businesses are run. We believe that by limiting the solicitation of comments to Affected Parties, ICANN can streamline the existing consensus policy process.

¹ Both VeriSign Global Registry Services (.com, .net and .org) and DotCooperation, LLC (.coop) do not support the wording of this fifth point in the context of our proposed ICANN mission. Whereas they do fully support the need for fair and broad-based competition, they do not think that ICANN should duplicate functions already performed by government agencies around the world, such as anti-trust enforcement. At the same time, they both support the fact that in fulfilling its mission, ICANN should do so in ways that continue to foster expansion of competition, such as introducing new TLDs.

Core Values Should Be Preserved

ICANN's core values of openness and broad participation should be preserved; however these values need to be carefully balanced against the need for effective resolution of issues that fall within ICANN's mandate. To that end, ICANN should establish a results-oriented process which enables resolution of issues within a reasonable period of time.

This carefully delineated process must set forth clear timelines for resolution of issues. This process should be published and easily understandable for those who wish to participate, setting forth guidelines and procedures by which policies will be evaluated and adopted. In that regard, the following principles should be considered:

- ICANN staff members should be hired with the primary responsibility of evaluating issues submitted to the Board. These staff members would determine whether the proposed issues lie within ICANN's mandate and facilitate review by the relevant policy council and the Board, as relevant.
- Given the significance of the role of the ICANN Board, access to the ICANN Board should not be filtered. Policy councils should be able to provide opinions or advice to the ICANN Board, but should not filter comments made by forums (as suggested by Mr. Lynn) or other policy council members (ie the policy councils should not have the right to amend a resolution/proposal – all documents, to the extent that their substance falls within the ICANN mandate, should reach the Board via the ICANN staff person).
- Resolutions of questions and issues would follow a specified format (e.g. statement of issue, Affected Parties, and draft resolution).
- A specific timeline and procedures as to the resolution process should be implemented (ie, the relevant policy council would have 60 days in which to respond to any issues raised, with the response from the party raising the issue to be presented within 14 days, etc.).
- All determinations made by such staff should be done in an open and transparent manner (ie publishing determinations, together with the rationale behind such determinations).

In order to ensure that Affected Parties are not required to implement policies established without the benefit of feedback by such parties, there must be a process by which policies established by the ICANN Board can be appealed.² During the appeals process, the Board should implement a stay for a reasonable time period, during which any Affected Party should not be required to comply with the new proposed policy.

We support the idea of the multiple policy councils in Lynn's proposal, so long as the councils may not block access to the Board with a proposal as being within ICANN's mandate. Furthermore, we believe that such policy councils should be comprised of similarly situated stakeholders and that the entities under contract, which may be most directly affected by new policies, be given significant representation. In particular, we do not believe that Mr. Lynn's proposal which aggregates varying (and often opposing) interests into singular policy councils contributes to the spirit of effectiveness, as has been demonstrated by the existing Names Council. We make this suggestion in the interest of trying to avoid the zero sum game, which has been the root of the problem of the current DNSO.

We support the idea of a nominating committee (the "NomCom"), but we believe that members of the NomCom should not be board members and also should not be eligible to serve on the board for at least two years following their term on the NomCom. Moreover, we believe that the NomCom should not be responsible for selecting entire Board, but only certain members of the Board as described below.

A New Public-Private Partnership is Necessary

While it can be argued that government participation may enhance the value of ICANN (particularly through government financial contributions), more consideration needs to be given to the balance of the

² Like the process for proposing and evaluating new policies described above, the appeals process (including time limits on appeals, stays, responses, etc.) should be clearly delineated to ensure efficiency and to avoid abuse of the process.

public-private partnership. The current proposal by Mr. Lynn relies too much on government involvement. With five board members nominated by the Governmental Advisory Committee and additional five nominated by the NomCom (largely comprised of the Board and their agents - four members of the Board and three appointed by the Board), it would be a stretch to say that the Board is equally balanced between private and public interests.

The Board should be comprised of an array of “representative” voices. These voices should include Board members selected by (a) those entities bound by contract to comply with ICANN policies (“Provider Members”), and (b) those predictably and substantially affected by such policies (“User Members”). The Board should be constructed to assure that false claims of “consensus” are detected and prevented. We believe that the number of Board members should be determined with a view toward preserving a manageably small board while simultaneously assuring adequate representation.

As such, our recommendation for the Board structure would be as follows:

- Six (6) Provider Members, comprised of: two (2) ccTLD registry representatives (to the extent that ICANN comes to an acceptable solution as to their participation in ICANN), two (2) gTLD registry representatives, and two (2) registrar representatives.
- Six (6) User Members, comprised of at-large representatives (corresponding to the number of geographic regions and selected by the NomCom). These at-large representatives should be selected by the NomCom with an eye toward such individuals also representing the following communities: the technical community (the IETF), the non-commercial community, the intellectual property community, and the business community
- Three (3) other members – these seats on the Board should be available to reflect the views of those who are not represented in the groups described above and who are predictably likely to be substantially affected by ICANN policies (for example, ISPs, ASO members, PSO members), as well as the CEO/President of ICANN.

We support the geographic diversity efforts ICANN has made and urge that they be continued. ICANN is importantly a forum for an international community, and it is critical that the ICANN community continue to grow its efforts to recognize that.

Transparency and Accountability

We support the creation of the Ombudsman and the Manager of Public Participation positions proposed by Mr. Lynn, particularly if such individuals will provide public reports which will help bring to bear public pressure for needed changes and promote transparency and accountability. We believe that such positions should exist in tandem with an Independent Review Panel, which would deal with appeals by Affected Parties.

Why the Current Course Won't Work

Too Little Participation by Critical Entities

ccTLDs: We believe that the 243 ccTLDs should be strongly encouraged to sign contracts with ICANN in order for ICANN to achieve its mission of maintaining the interoperability and stability of the internet, as well as geographic diversity. We continue to believe that international participation by various members of the Internet community is a goal that ICANN should foster, and the ccTLD participation (individually and as constituents of a cc policy council) is essential in fulfilling that goal.

The ccTLD agreements would address global standards, by which all TLDs must adhere and which require the funding by ccTLDs of any services provided by ICANN for their benefit.

National Governments: We believe that government involvement will not aid in the ICANN policy-making process; it will likely rather slow the process down. ICANN was created in the spirit of trying to effect an alternative solution to governance by national governments; to revert to national governments will only create a less nimble entity and decrease the effectiveness of the organization.

Too Little Results-Oriented Process

We agree with the premise that the driving notion of ICANN should be effectiveness, rather than consensus, which renders it easy for parties to stymie progress and which, to date, has resulted in only two significant results - the UDRP and the introduction of new gTLDs. We do not mean to diminish the magnitude of these two accomplishments, but we do believe that given a more efficient policy-making process, many more meaningful results will emerge from the ICANN community. There has been little effort to make the current consensus process effective. We believe that our suggestions delineated above will help to make the policy-making process more agile and therefore more effective, using certain elements of the existing consensus process.

We believe that with a balanced board which follows the policy-making and appeals processes outlined above, there should be sufficient checks and balances to avoid "hasty, unsophisticated or foolish decisions," as characterized by Mr. Lynn. What has emerged from ICANN over the course of its existence is quite the opposite - a lack of movement due to over-analysis of virtually every issue presented to the ICANN Board.

Too Little Funding

We support the basic concepts outlined by Mr. Lynn's proposal regarding funding and would add two points:

- Entities using the services of ICANN should pay for such services or pay to support the existence of ICANN.
- We understand that additional funding will be needed to effectuate restructuring. However, we believe that additional funding requests must be evaluated in the context of a sufficiently narrowed ICANN mission.

In closing, we hope that the Evolution and Reform Committee finds the suggestions made within this proposal helpful in finding a path toward an improved ICANN. Our primary concern is that it is important to reform ICANN in a way that improves efficiency for essential functions while simultaneously avoiding an over-regulated environment that hampers the creativity and innovation that are such important parts of the Internet.