



*Comment of Donuts Inc. Co-Founder Jon Nevett on Enhancing ICANN Accountability*

ICANN's evolution over the past decade—and particularly within the past five years—has been breathtaking. In terms of size, scope and dynamism, today's organization bears little resemblance to the ICANN of ten years ago. But while ICANN has grown and improved in many significant ways, some of the same systemic challenges that faced the organization a decade ago remain very much in play today. One of those challenges—the longstanding question of how to create real, functional accountability in a multistakeholder environment—has arrived at an historic crossroads.

While the ICANN community has worked hard to make incremental improvements to accountability and transparency over the past several years through the Accountability and Transparency Review processes, the U.S. Government's decision to complete the transition of the IANA functions to the multistakeholder community, has triggered a necessary reconsideration of that timeline.

The U.S. Government's real role in the IANA functions has been largely clerical; however, for many years, that role has, for better or worse, served as a security blanket for the community on the issue of accountability. While Donuts vigorously supports the transition of IANA functions to the multistakeholder community, we also recognize that the transition heightens the need to resolve longstanding accountability issues.

*Progress Has Been Incremental and Inconsistent*

The Accountability and Transparency Review process has been among the most valuable outcomes of the 2009 Affirmation of Commitments. The 27 recommendations provided by ATRT 1, and approved by the ICANN Board, helped to evolve ICANN's structure in several key ways, including the handling of public comments, availability of key policy documents, and the Board's relationship with the GAC.

But while these developments have been welcome and important, they have not resolved the central structural issues of ICANN accountability that have existed since the organization was created. More than six years ago, I [submitted a comment](#) on behalf of my former employer to the U.S. Department of Commerce as part of the midterm review of ICANN's Joint Project Agreement. In that comment, I said:

*“Currently, there is a lack of sufficient oversight and checks on the Board. The current mechanisms of reviewing an ICANN Board decision are also insufficient. Currently an affected person may now challenge a board decision through any of the following three alternative mechanisms (1) Reconsideration Committee (2) Independent Review Panel, or (3) the Ombudsman. None of these three options offer the Internet community the appropriate level of recourse to hold the Board accountable for its actions.”*

While ICANN has made meaningful strides since February 2008, that statement remains as true today as it was then. While the processes of those mechanisms have undergone small tweaks, their essential inadequacy as effective accountability mechanisms remains unchanged. While all three of those functions are good and useful tools, none is empowered to hold the ICANN Board to account in any meaningful way. At best, these processes can trigger the Board to reconsider its own previous decisions, and the bar for even that minimal level of redress is set prohibitively high.

What’s more, it appears that one of those core processes has actually taken a step back since 2008. In the wake of the Independent Review Panel’s highest profile challenge to the ICANN Board—its 2010 ruling on .XXX—ICANN actually makes IRP reviews more difficult to obtain. So while ICANN has made gradual changes, not all of those changes have advanced the cause of accountability.

ICANN is currently “accountable” to the U.S. Department of Commerce, in that that it requires continued renewal of the IANA functions contract, but that arrangement, as well as the Affirmation of Commitments between those two parties, provides virtually no functional recourse for ICANN stakeholders. So while the U.S. Government role may provide a psychological backstop, it is now, and always has been, a poor substitute for a functioning, accessible and truly multistakeholder accountability mechanism within ICANN.

To the extent that the IANA transition provides the triggering mechanism necessary for the ICANN to shrug off years of inertia and develop a sustainable, meaningful accountability process, it is doubly welcome. Donuts supports ICANN President Fadi Chehadé’s statement that the accountability process and IANA transition process should be “interdependent” and Donuts would further recommend that completion of the accountability process be made a prerequisite to completing the IANA transition process. If the two processes are linked casually, rather than formally, our fear is that the accountability process—which, unlike the IANA transition process, is not subject to external time sensitivity—would simply languish as it has in previous iterations.

The IANA transition presents a rare opportunity to not just improve, but actually fix, ICANN’s underlying accountability framework. It is an opportunity ICANN and its global community can ill afford to miss.

The ultimate form that ICANN's new accountability framework takes is less important than the assurances it provides. As I wrote in 2008:

*“Stakeholders should be able to understand fully a Board decision and to formally dispute it through meaningful mechanisms. Considering the magnitude and importance of a Board decision, the current mechanisms for understanding the rationale behind a decision, and for appeal, do not foster a level of accountability appropriate for ICANN. The board should be subject to a high standard to protect its integrity and to encourage confidence in its decisions. The organization must protect itself from the possibility of eight voting Board members – out of fifteen – acting inconsistently with ICANN’s mission, ideals, goals and the will of the community.”*

Donuts looks forward to engaging actively in building the framework that will fulfill those critical requirements. We appreciate the priority ICANN has dedicated to this effort, and urge that all effort be made to ensure that the policy development process around ICANN accountability be as inclusive as possible of the diverse views of the global Internet community. We stand ready to support this process in any manner possible.