October 26, 2006

GoDaddy.com's Response to ICANN's Request for Input on the Development of Transparency and Accountability Management Operating Principles

Time Allowed for Community Input
The principles of Transparency and Accountability are key immediate issues for the ICANN Board and Staff, especially in light of the serious lack of confidence in those principles expressed by growing numbers of stakeholders. We appreciate the Board's desire to resolve this lack of confidence quickly but we are concerned that the timeline proposed by the Board may not allow enough time for all interested stakeholders' views to be fully expressed and considered.

We would like to suggest the Board not consider the proposed timeline as written in stone. Perhaps the Sao Paulo meeting could be used as an opportunity for public consultation and a final set of Principles approved at the January or February Board meeting.

How would you define "transparency" in the ICANN context? What standards of transparency are appropriate in ICANN operations and activity?

All stakeholders should have access to documentation that provides a clear understanding of how and why decisions are made by the Staff and Board. This documentation should include:
- Relevant background;
- The location of any public comments that were made;
- Relevant details of other consultations that may have taken place;
- An analysis of how the Staff or Board reached its decision. The analysis, if applicable to a Board decision, should include statements from Board members who choose to submit them, and such statements should be encouraged.

Meetings of Supporting Organization Councils and their policy development Task Forces and Working Groups should be audio recorded and/or transcribed. The recordings and/or transcriptions should be clearly posted and easily accessible to all stakeholders.

Board meetings should be recorded and/or transcribed and made publicly available on ICANN's website. The public disclosure exceptions described in sections 5.2 and 5.3 of ICANN's bylaws would be exempt and could be dealt with during a closed portion of the meeting.

All of the above should be well organized and publicly accessible for no less than three years, which will allow newly interested stakeholders to acquire any necessary background to be more effective participants in the ICANN process.

How would you define "accountability" in the ICANN context? What standards of accountability are appropriate in ICANN operations and activity? What specific processes and activities need to be included to ensure these standards are met?

Clearly, there must be appropriate mechanisms for appeal and review of Board decisions. These mechanisms should be accessible and understandable by all stakeholders. There are currently two primary mechanisms for appeal and review provided for in ICANN's bylaws, Reconsideration and Independent Review.

Reconsideration – This is basically the Board reviewing itself. It may be an appropriate first step, but the conditions under which a Board decision may be Reconsidered are too stringent, in particular item 2.b of Section 2 which states, "one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act."

The fact that the submitting party could have submitted material information but did not should not limit the Reconsideration Committee's ability to act on the request. The fact that there is material information that was not considered should be of primary importance. In addition, the fact that the Reconsideration Committee is made up of a subset of Board members who voted or who were otherwise involved in the original action or inaction should give them latitude to enforce a reconsideration of inaction or a revote of an action that takes into account any material information not previously considered.

The primary concern of the Board, and any review of its own actions or inactions, should be that the Board has acted in the best interests of the Internet Community as a whole as required in Article 4 of its Articles of Incorporation. Not how material information is gathered or comes to light.

Independent Review – ICANN should require that international arbitration providers selected under section 3 of ICANN's bylaws post clear and easily accessible instructions on how to engage the arbitrator for the purpose of Independent Review of ICANN Board decisions. Following the links on ICANN's website for Independent Review leads the user to http://www.adr.org/international. For the typical individual internet user, and even some of us more savvy users, it is a fairly daunting task to figure out how to request an Independent Review of an ICANN decision or action from the information at this site. Even typing "ICANN" into the search box provides no help.

Are there any innovative ideas on transparency and accountability that you believe have not yet been implemented that might apply to ICANN?

Section 4 of ICANN's bylaws should be amended to require a periodic third party review of the Accountability mechanisms within ICANN's bylaws and require appropriate action be taken based on any recommendations that result from the review.

Tim Ruiz
Vice President
Corporate Development and Policy
GoDaddy.com