

4 June 2010

Mr. Janis Karklins, Chair  
Governmental Advisory Committee  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

Dear Mr. Chairman:

As you know, under Section 9.1 of the Affirmation of Commitments (AoC) signed by ICANN and the Department of Commerce, the Accountability and Transparency Review Team (Review Team) is responsible for assessing ICANN's progress on its commitment to continually assess and improve:

- a. ICANN Board of Directors (Board) governance, including Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;
- b. the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;
- c. the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- d. the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and
- e. the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

The Review Team appreciates the opportunity to meet with the GAC on Sunday, 20 June 2010, between 16:00 and 18:00 in Brussels to discuss the review process. We would, of course, welcome any formal input the GAC is willing to provide, but it is our hope that the meeting in Brussels will provide an opportunity to receive informal input from members of the GAC on these topics.

We are interested in the GAC's perspective on all of the areas listed above, but would like in particular to focus on progress regarding improving the role and effectiveness of the GAC, and its interaction with the Board and other ICANN stakeholders. To facilitate our discussion, the Review Team has developed the following list of suggested questions. We would, of course, welcome input on other questions you think it is useful to discuss.

1. Annex A summarizes the provisions of ICANN's Bylaws related to the role of the GAC in the ICANN process. The Bylaws also lay out a specific mechanism designed to ensure that ICANN fully take into account GAC advice on "*public policy matters in the formulation and adoption of ICANN policy.*"
  - What is encompassed within the phrase "public policy matters in the formulation and adoption of ICANN policy"? Can you provide some examples of GAC statements that constitute advice on public policy matters on the formulation and adoption of policy? Can you provide some examples of GAC input that falls outside this category?
  - Sometimes GAC communiqués include statements of minority views. How would the GAC expect ICANN to handle those under the Bylaws?
  - Is a more formal means of demarcating GAC input that constitutes "advice" from more general GAC inputs and comments desirable? Would something like this enhance or detract from the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community?
  - Do members of the GAC think there is a shared understanding between the GAC and Board on the circumstances in which ICANN is obligated to affirmatively notify the GAC of a pending matter raising public policy issues?
  - How well does this mechanism work? Can you provide specific examples of circumstances in which this advice-consideration-discussion-explanation mechanism has worked well? Can you provide specific examples of situations in which the Board did not follow the required procedures? In each case, why do you think the process worked or failed to work?
2. Annex A also lists Bylaws provisions designed to ensure that the GAC is in a position to flag issues that raise public policy considerations in the early stages of policy development. For example, the GAC has a non-voting Board liaison, and has the right to appoint non-voting liaisons to the ICANN supporting organizations and other advisory committees.
  - Do these mechanisms provide adequate transparency about the policy formulation and adoption process so as to ensure that the GAC is able to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues"? Please provide specific examples where these mechanisms failed to provide adequate transparency to the GAC.
  - Has the GAC appointed non-voting liaisons to ICANN SOs and advisory committees? If not, why? If so, has this worked as an "early warning" system to identify issues that may raise public policy concerns?
  - Considering these mechanisms, does the GAC have any obligation to proactively identify issues that may raise public policy concerns in the early stages of discussion?

3. What informal mechanisms have developed over time to improve the role and effectiveness of the GAC, particularly in its interactions with the Board and staff? For example, has the work of GAC-Board Joint Working Group, which was chartered in Sydney, been helpful? What specific changes or improvements have been implemented as the result of Working Group recommendations?
4. How would you evaluate the role and effectiveness of the GAC, the quality of the GAC's interactions with the Board, and the consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS? We are interested in hearing from GAC members both with respect to how they rate the role and effectiveness, and what metrics one might use to evaluate whether ICANN is fulfilling its commitment to evaluate and improve the role and effectiveness of the GAC.
5. What suggestions do you have for improving the role and effectiveness of the GAC, and its interactions with the Board, staff, and other members of the community?
6. We are aware that the GAC and the ccNSO have collaborated in the early stages of policy development, for example, with respect to developing shared principles for the IDN fast track, and in the ongoing discussions about delegation and redelegation. Are enhanced cross community deliberations of this sort underway involving the GAC and the GNSO, for example, and if so, have they resulted in more effective and timely policy development?
7. We understand that some ccTLD's are not members of ccNSO, but the relevant governments are involved in the GAC; in other cases a ccTLD participates in the ccNSO, but the relevant government does not participate in the GAC. We are interested in the GAC's view whether this adversely affects the policy development process and/or the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community.

The Accountability and Transparency Review Team appreciates your willingness to meet in Brussels, and your consideration of these questions in advance of that discussion. As noted above, we would welcome formal responses as the GAC deems appropriate on these and any other issues relevant to the work of the Review Team.

Sincerely,

(signed)

Brian Cute, Chair

Sincerely,

(signed)

Manal Ismail, Vice Chair

## Annex A

### ICANN Bylaw Provisions Relating to the Government Advisory Committee

8. The role of the Governmental Advisory Committee is to: “consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.” Bylaws Article XI, Section 2
9. In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with its Bylaws, and with due regard for the core values in the Bylaws, including the core value which requires ICANN, “[w]hile remaining rooted in the private sector,” to recognize “that governments and public authorities are responsible for public policy and duly taking into account governments’ or public authorities’ recommendations.” Bylaws Article IV. Section 1
10. The mechanisms designed to ensure that ICANN complies with its obligation to take into account the recommendations of governments and public authorities include:
  - Appointment by the GAC of a non-voting liaison to the ICANN Board of Directors;
  - Timely notification to the GAC via its chair of any proposal raising public policy issues on which it or any of ICANN’s supporting organizations or advisory committees seeks public comment, and due consideration by the Board of any timely response by the GAC prior to taking action;
  - The ability of the GAC to put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
  - A specific procedure for consideration of GAC advice on public policy matters, both in the formulation and adoption of policies, which requires the Board to (i) determine whether or not an action it proposes to take is consistent with GAC advice; (ii) inform the GAC of, and explain any decision to take an action that is inconsistent with GAC advice on public policy matters; (iii) negotiate in good faith with the GAC to identify a mutually acceptable solution; and (iv) where no such solution can be found, state in its final decision the reasons why the Governmental Advisory Committee advice was not followed.
  - In addition, the GAC is authorized to appoint a non-voting liaison to ICANN supporting organizations and advisory committees if it so chooses.