# Accountability and Transparency Review Team

Monday, August 30th 2010 - Tuesday, August 31st 2010
Beijing, China
Preliminary Report

**RT Selectors and Members**
(PDT) Peter Dengate Thrush
(MI) Manal Ismail, Vice Chair
(LS) Lawrence Strickling
(WA) Warren Adelman (*remotely*)
(FC) Fabio Colasanti
(WC) Willie Currie
(BC) Brian Cute, Chair
(CD) Chris Disspain
(EIA) Erick Iriarte Ahon
(CLO) Cheryl Langdon-Orr
(LL) Louie Lee (*remotely*)
(OM) Olivier Muron
(ZX) Zhang Xinsheng

**Assistants invited by RT Members**
(FA) Fiona Alexander
(JM) James Bladel (*remotely*)
(FG) Feng Guo

**Berkman Center** (*remotely*)
(JC) John Coates
(RF) Robert Faris
(UG) Urs Gasser
(LM) Laura Miyakawa
(CN) Caroline Nolan
(JP) John Palfrey

**Supporting Staff**
(CS) Cory Schruth
(AJ) Alice Jansen

This was the third face to face meeting of the Accountability and Transparency Review Team (ATRT).

**On August 30th, the RT undertook the following:**

**a) Adoption of the agenda**

The ATRT approved the agenda circulated by the Chair:
http://www.icann.org/en/reviews/affirmation/agenda-atrt-30-31aug10-en.pdf

**b) Brief presentation of the Berkman working documents**

(CN) provided the Review Team Members with an outline of the three documents that were forwarded to them prior to the meeting: Progress Report; Feedback on the ATRT Survey; Preliminary Annotated Bibliography.

**c) Discussion about the ATRT Calendar**

The ATRT identified the following calendar for their upcoming activities:

- In light of the recent entry into force of the contract, the Review Team decided to extend the initial deadline (8 September) for the mid-term report to the third week of September. As data-

gathering constitutes a time-consuming phase, the RT expressed the wish to ensure that the report be sufficiently substantive and well-founded to issue recommendations upon.

- The ATRT identified mid-October as the deadline to publish its proposed recommendations for public comment

**d) Berkman update on its interactions with ICANN staff**

Berkman built its questionnaire based on fact-finding and has reached out to Denise Michel, Rod Beckstrom, John Jeffrey and Amy Stathos so as to introduce their Team.

Berkman articulated its questionnaire method into two steps: a form to be completed and follow-up phone interview.

In order to ensure that results reflect a broad range of parties and balance of interests, (BC) invited Review Team Members to assist Berkman in this process by putting forward names of potential interviewees. In order to avoid recommendations impacting decisions that have been taken, June 17th 2010 was flagged as a boundary date for Berkman's investigations.

Given that the outcome of GAC reviews (Joint GAC-Board WG etc.) is to be tentatively delivered in Cartagena, (WC) - Chair of the WG2 - raised timeline issues inherent to completion of this sub-team's assignment.

The Chair reiterated Rod Beckstrom and staff's intention to cooperate with Berkman as much as possible and shared concerns raised by the General Counsel regarding the questionnaires' content – issues to be reported to the Team and Berkman by John Jeffrey .

**e) Update on the status of document management**

A spreadsheet listing outstanding documents required by the RT and a request for clarification on documents' status (confidential or not) was submitted to Denise Michel. (BC) is to relay new material or information to RT Members as soon as received.

**f) Discussion about the Berkman Progress Report and interaction with the Consultants (update on working hypotheses and public input review) : http://www.icann.org/en/reviews/affirmation/progress-report-berkman-28aug10-en.pdf**

Berkman underlined that this was a draft document and welcomed any feedback Review Team Members may have.

To date, the Berkman Team has endeavored to deepen its factual understanding by collecting and reviewing material: ICANN publications, previous reports, public channels (blogs etc.). Its working hypothesis directed the consultants to not include analysis yet but to test methodology before moving forward while ensuring that all parties taking part in this review process are on the same page. The Berkman Center furthermore reiterated that all staff listed on the contract were highly solicited and deeply involved in the project.

The Review Team clarified that the Berkman scope was not limited to the three case studies analysis and encouraged consultants to work hand in hand with the WGs and RT Members. It furthermore underscored the necessity to have important dynamics of feedback and exchange with a view to issuing concrete recommendations in Boston.

The Review Team resolved to have Berkman consultants participate in the WG calls.

In response to (EI)'s inquiry, Berkman announced that although the consultants intended to adopt an international approach, a multilingual report was not foreseen due to time constraints.

Members of the Review Team drew the external consultants' attention to certain points and areas of research such as: how GAC advice is incorporated into Board decisions and policy development processes; how public participation fits into decision-making processes etc.

Berkman resolved to adopt a method that explores and comprises all public participation tools revolving around cross-sectional issues so as to obtain an approach and identify research gaps.

**a) Update on WG1's progress and interaction with the Berkman consultants**

With a view to providing input and feedback on initial thoughts, the WG1 circulated a working document that may be found at: http://www.icann.org/en/reviews/affirmation/atrt-wg1-discussion-document-30aug10-en.pdf

The WG1 Chair – (OM) reported that overarching topics emerged from the reading of the public input provided in Brussels, MdR and via the forums, namely:

- Underrepresentation/overrepresentation issues;
- Board composition: skill-set;
- Board decision-making: lack of transparency and integration of public input.

Following an exchange with Berkman, the Review Team agreed that Board Members do not represent the SO/AC they emerge from, but bring the knowledge and skills of their respective constituency while being accountable to the community itself.

The following issues were also raised by ATRT Members:

- Board capture by staff
- Obligations to vote: lack of adequate investigations, time constraints, discussion papers too voluminous.

**b) Update on WG2's progress and interaction with Berkman consultants**

The Chair of the WG2 – (WC) presented a set of questions for Berkman to take into consideration:

http://www.icann.org/en/reviews/affirmation/questions-to-the-gac-30aug10-en.pdf . These questions result from an effort that consisted in deepening the data-collecting phase in light of the responses received at the Brussels meeting as well as the new gTLD and .xxx processes.

In addition, (WC), Chair of the WG2, circulated a document compiling issues analysis: http://www.icann.org/en/reviews/affirmation/wg2-issues-analysis-30aug10-en.pdf

The WG2 underlined the fact that a review effort was currently being carried-out – namely the joint GAC-Board WG and an ad-hoc committee revising GAC operating principles) and that conclusions could be reached at the Cartagena meeting.

**c) Update on WG 3's Progress**

The Chair of the WG3 – CLO – reminded Review Team Members of the data-mining effort inherent to the Review Team's past and present requests for input, and reiterated the necessity to avert the Berkman and the WG's activities overlap so that no duplication is possible.

Outreach mechanisms, PDP process and cross community joint discussions were also identified as areas of focus as articulated in the working document provided by the WG3 report: http://www.icann.org/en/reviews/affirmation/wg3-discussion-paper-30aig10-en.pdf

Additional issues were drawn to the attention of the RT Members, namely:

- weighing and value of public comments;
- management of diverging views;
- use of benchmarks/methods.

The WG4 also stressed the importance of identifying why community Members do not necessarily seize the opportunity to provide their input despite their views being solicited as well as determining whether the mechanisms currently in place are adequate in this respect.

**d) Update on WG4 's Progress**

The WG4 presented an Evaluation Metrix and framework along with a timeline (subject to change) to the Review Team for discussion. Please refer to WG4 Evaluation Matrix and http://www.icann.org/en/reviews/affirmation/wg4-framework-30aug10-en.pdf

The WG's intention is to review each of the mechanisms on basis of evaluation criteria and to establish their validity while involving definitional work in terms of time, expense or resource commitment. A

third step would consist in gauging their efficiency and the extent to which they are legally binding for the Board to compel to.

In this respect, ICANN provided a document specifying Californian Law limitations on third party review of Corporate Board actions: http://www.icann.org/en/reviews/affirmation/third-party-review-of-board-actions-31aug10-en.pdf

The WG4 also reiterated its wish to obtain further information on the office of the Ombudsman as gaps were identified in their data-collecting, hence the Request for Information relayed to ICANN: http://www.icann.org/en/reviews/affirmation/wg4-rfi-30aug10-en.pdf

**e) In-depth discussion of the Berkman Progress Report**
**http://www.icann.org/en/reviews/affirmation/progress-report-berkman-28aug10-en.pdf**

The ATRT reviewed the content of the Berkman progress report in light of the contract's stipulations in order to ensure that their way of proceeding matched the scope of the review process and tasks assigned by the agreement.

The academic tone of the report and the absence of focus on ongoing activities in the accountability section caused Members to express concerns.

It furthermore appeared premature to issue recommendations without the problem having been clearly pre-identified. The ATRT thus reiterated the necessity that all possible recommendations be factually based.

Members judged questionnaires to be too generic for staff interviewees and required more specific questions.

The ATRT endeavored to assist Berkman in reorienting its questionnaire and data collection efforts. During this session, both WG1 and WG2 drafted a framework with a view to providing Berkman with guidance. WG3 and WG4 were to submit their document the following day.

(BC) is to relay the caveats pinpointed by the Members to the external consultants in anticipation of the August 31st discussion.

**On August 31st, the RT undertook the following:**

**a) ATRT Chair's recusal from the .xxx case study**

(BC), Chair of the Review Team is to no longer participate in .xxx discussion as Affilias recently signed an agreement with ICM registry with regard to backend registry services.

**b) Berkman's response regarding questionnaires**

Berkman shared its draft questionnaires with ICANN's General Counsel so as to ensure that no pending legal issues were raised in the questionnaires.

The consultants confirmed their intention to engage with different types of stakeholders so as to obtain a diverse range of opinions and perspectives and that more targeted questions would be developed. They furthermore asserted that questionnaires would be refined and reshaped according to respective target interviewees: staff Members, stakeholders etc.

Berkman explained that the questionnaires included a confidentiality provision so as to ensure that interviewees would provide frank feedback. Moreover consultants informed the ATRT that the questionnaires' input would be included in the report in an aggregated and synthesized form. The Review Team underlined the fact that attribution constitutes an important factor within the ICANN community.

The ATRT invited Berkman to present the criteria developed for selecting interviewees during its upcoming conference call.

**c) Reiteration of the ATRT's expectations and discussion about the report**

In light of the conflicting views provided by the constituent, the ATRT reiterated the necessity to receive an objective and factually-based assessment from Berkman so as to issue recommendations.

The ATRT also underlined the fact that Berkman was not to review ICM applications – Berkman to change the formulation.

Berkman informed the ATRT that the mini case examples included in the case studies illustrated the public comments associated with processes around key policy decisions.

**d) Document Management**

The Review Team identified Denise Michel as the staff person responsible for handling document requests and reiterated the necessity to synchronize the ATRT and Berkman inquiries in order to avoid duplication.

**e) Discussion about public comment input and working group frameworks**

The ATRT resolved that each working group would need to circulate a framework that highlights references to the Affirmation of Commitments.

The Review Team Members discussed the role of public comment and its integration in the respective WGs. While Members agree that public input constitutes a significant database as it highlights the inconsistencies between perception and reality, the ATRT also acknowledges that there is a much wider ember to be reviewed – namely: Bylaws, procedures and practices.

### f) Discussion about the schedule and logistics of the Boston and Cartagena meeting

The ATRT decided that working groups would submit their respective recommendations in Boston. In light of the Berkman report (to be analyzed upon arrival) Review Team Members will test each of the proposed draft recommendations.

In Cartagena, Review Team Members target to meet on Sunday morning so as to prepare the afternoon session with the Board. In addition to this consultation, the ATRT shall meet on Monday so as to discuss pending issues and sign-off recommendations. A session with the ICANN community will either be scheduled for Monday or Tuesday.

The ATRT resolved to take the translation issue into consideration by postponing the release date to October 20.