Review of the At-Large Advisory Committee

Final Report
of the ALAC Review Working Group on
ALAC Improvements

9 June 2009

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1. Background and Chronology

As part of its program of reviews, ICANN has undertaken a review of the At Large Advisory Committee (ALAC), which is the Advisory Committee to the Board and the representative body for "At Large" comprised of "At Large Structures" organized into Regional At Large Organizations (RALO).

These reviews are part of ICANN's program of continuous improvement and are intended to ensure an independent examination of the role and operation of key elements of ICANN. They are conducted in an objective manner by independent reviewers, under guidance from the Board on each review's terms of reference, and with the opportunity for public comment on the results of the reviews and any proposed improvements.

As specified in Article IV, Section 4 of ICANN's Bylaws, the "goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness."

In January 2008, the ICANN Board appointed Westlake Consulting Limited to undertake the independent external review of the At-Large Advisory Committee. The report summarizing findings from the independent review and containing proposals for action was published in July 2008.

Following a Board resolution at the Lisbon meeting in March 2007, the Board Governance Committee (BGC) adopted a Working Group model to facilitate the review process. The Working Group draws on the expertise of current Board members and former Board members to undertake this task.

In January 2008, the BGC selected, and the Board approved, the following individuals to serve on the BGC's ALAC Review Working Group (WG): Harald Alvestrand, Karl Auerbach, Vittorio Bertola, Tricia Drakes (Chair), Thomas Narten, Nii Quaynor and Jean-Jacques Subrenat. In April 2008, the BGC recommended and the Board approved the Charter for the Working Group. The Charter is included as Appendix 1.

According to the Charter, the ALAC Review WG has been formed to help ensure that the evaluator's final report (independent review) contains the data and information needed to conduct the work of the BGC and the WG, and (primarily) to advise the BGC on whether any change is needed for At-Large. The WG will consider the Independent Reviewer's final report, Board input, and comments from stakeholders and the public, and will:

- Advise the BGC whether, in general, the ALAC has a continuing purpose in the ICANN structure; and

- If so, consult broadly and advise the BGC whether any change in structure or operations is desirable to improve its effectiveness -- and recommend to the BGC a comprehensive proposal to improve the involvement of the individual Internet user community in ICANN.

In October 2008, the WG presented its "Mid-point Consultation Report" for discussion with the ICANN community. This mid-point report presented the WG's "initial thinking" on the questions under review following the publication of the external review report including a discussion of areas of emerging agreement, possible recommendations, and questions that need to be addressed. It did not reach any definitive recommendations or conclusions at that time. A summary of the consultations undertaken is contained in an appendix to the report.

In November 2008 the Board approved the formation of a new "Structural Improvements Committee" with responsibility for the oversight of the Reviews as required under the ICANN ByLaws.

In February 2009, the WG presented its draft Final Report of the ALAC Review Working Group on ALAC Improvements for discussion and consultation with the ICANN Community, including at the ICANN Meeting in Mexico in March 2009. The period for consultation and public comment closed on 30 April 2009.

This is the WG's Final Report (dated June 2009) which will now be issued and submitted to the Structural Improvements Committee for consideration and submission to the Board for decision.

This Final Report reflects the unanimous consensus of all members of the WG. One member of the WG requested that a statement of his personal views be included in the Report. This statement is included in the Appendix with the unanimous agreement of all members of the WG.

The WG is aware that there are other reviews currently underway and that there may be some interdependencies between these reviews. However, the WG is very strongly of the opinion that almost all of the recommendations in this report should be able to be implemented without having to wait for the outcomes of other reviews to be finalised.

In particular, the WG believe that Board approval for ALAC to select a voting member or members of the ICANN Board is of paramount importance.

Below is an extract from the "Preliminary Report of the Board Resolutions of its meeting on 21 May 2009: Item 7 (c) At Large Seat :

> The Board discussed the request of the Structural Improvements Committee to agree in principle with the proposal for the At Large Advisory Committee to select a voting member or members of the ICANN Board. The Board noted that while the Board is not opposed to the principle of having civil society given a voting voice on the Board, the Board is concerned about assuring that

> implementation could be achieved in a careful and systematic matter. The Board requests the Structural Improvements Committee to provide detailed scenarios and options for such implementation prior to formally agreeing to this principle and considering measures for implementation. The Board thanks the Structural Improvements Committee for its continuing work on the ALAC review

Another key issue to be agreed is the mechanism by which the proposed ALAC selected Board members will be chosen.

The ALAC Review WG page is http://www.icann.org/en/reviews/alac/

2. Summary: Final Report - Key Points

1. The ALAC has a continuing purpose in the ICANN structure. This continuing purpose has four key elements:
    - providing advice on policy;
    - providing input into ICANN operations and structure;
    - part of ICANN's accountability mechanisms
    - an organising mechanism for some of ICANN's outreach

   The section of the ICANN Bylaws that deals with ALAC should be changed to reflect this purpose.

Organisation

2. At Large should be allocated two voting seats on the ICANN Board
3. The ALAC-RALO-ALS structure should remain in place for now

Effectiveness and participation

4. Educating and engaging the ALSs should be an immediate priority; compliance should be a longer term goal
5. ALAC should develop strategic and operational plans (including performance criteria and cost information) as part of ICANN's planning process
6. More effort needs to be put into developing accurate cost models for At Large activity
7. ALAC should be encouraged to make its own choice of tools for collaborative work
8. The public comment period should be kept at 30 days except in special circumstances, in which case ALAC may request an extension to 45 days
9. ICANN should strengthen its translation and interpretation processes

Relationship with other ICANN entities

10. ALAC as the representative body for At Large is the primary organisational home for the voice and concerns of the individual Internet user in ICANN processes, although ICANN's multi stakeholder model provides opportunity for individual users to choose to participate in many other ways in the ICANN process.
11. The WG suggests that there needs to be a clear statement from the Board that recognises the place of At Large as the primary organisational home for individual Internet users, and that clarifies the relationship between ALAC and the User House currently being developed within the GNSO

12. ICANN should develop a mechanism for allowing the voice of those recognised bodies who represent consumer interests to be heard at critical points in key decisions and to provide input into policy processes.
13. As the provision of advice on policy is part of ALAC's purpose, ALAC should strive to provide policy advice on any issues that affect individual Internet users. Processes for providing advice on policy should be strengthened within ALAC for the development of policy advice, within SOs for requesting input from ALAC on policy issues and from SOs, ACs and the Board to provide feedback on how ALAC advice has been used.

3. General comments

3.1. Does the ALAC have a continuing purpose in the ICANN structure?

The WG has developed its response to the Westlake report with the underlying principle that ALAC does have a continuing purpose in the ICANN structure as the primary organizational home for the voice and concerns of the individual Internet user in ICANN. There has been considerable debate about whether the "individual Internet user" is the appropriate focus of ALAC attention. In the context of this document, the WG believes that an Internet user is a human being who is materially affected by the Internet either directly through use of an Internet browser or similar interface, or indirectly through the use of services that run over Internet protocols. With another two doublings of Internet usage, every human being will be an Internet user and therefore the terms "Internet user" and "human being" are converging. The WG has adopted this broader definition (rather than, for example, registrant) because it believes that many of the policies developed through the ICANN process, while often technical in nature, have an impact on individual users of the Internet. It is their voice and their concerns that need to be included and heard in the ICANN process.

The ALAC serves the following four purposes within the ICANN structure: advice on policy development; input into ICANN operations and structure; as one aspect of ICANN's accountability mechanisms; as an organizing mechanism for some of ICANN's outreach activity.

Providing advice on policy is a critical aspect of ALAC's role. This is the role of ALAC as described in the ICANN Bylaws. The WG absolutely supports this view as ALAC's primary role. For this to be successful, there must be robust processes within ALAC for providing policy advice which accurately reflects the views of individual Internet users. In addition, the policy development processes in other parts of ICANN must be structured in such a way that the views of the individual Internet user are requested and acknowledged. There are multiple policy arenas where the voice and concerns of the individual Internet user need to be heard. The GNSO Policy Development Process is probably the area where the ALAC is most likely to be providing input. However, there may well be occasions where ALAC may wish to provide advice on matters before the ASO and ccNSO.

The second important aspect of ALAC's role is providing input into ICANN's operations and structure. ICANN is now a much larger organization with more developed institutional processes than was the case at the time of the formation of ALAC. ICANN's planning processes, while still evolving, are now reasonably well established. As the vehicle for the voice and concerns of the individual Internet user, ALAC needs to have input into these planning processes. Similarly, ALAC needs to contribute to the organizational structure discussions that are taking place as ICANN

undertakes reviews of the Board and the Supporting Organizations and Advisory Committees. The voice of the individual Internet user is an important input into this process.

The third aspect of ALAC's role (although in some senses the most important) is as part of ICANN's accountability processes. As the key representative of the individual Internet user in the broader ICANN process, ALAC should have a voice in the mechanisms being developed through the President's Strategy Committee and other mechanisms to provide greater accountability. Although the exact shape of these mechanisms is not yet decided, the voice and concerns of the individual Internet user need to be included as an important part of any mechanism that is developed.

The fourth purpose that ALAC serves is as the organizing mechanism for some of ICANN's outreach activity. Through ALAC's interactions with the ALS structures, ICANN is able to reach out to thousands of Internet users across the globe. As such, ALAC has an important role to play in coordinating and facilitating some of ICANN's outreach activity. The At Large Summit being held in conjunction with the Mexico meeting is an excellent example of this type of activity. This outreach may also extend to capacity building as At Large activity coordinated through ALAC educates Internet users on the issues that underlie policy and other debates in the ICANN arena.

This discussion of purpose focuses on the needs and interests of the individual Internet user, and ALAC through the RALO and ALS structure is the primary organizational home for those voices. In addition to individual user voices, there are in many places organized groups which represent the interests of consumers, in some places with official standing or government support and usually with a mission focused on consumer protection. While the ALAC does not represent these voices, there may be merit in including them more formally in ICANN's processes.

3.2. What changes in structure or operations are desirable to improve ALAC's effectiveness?

In discussing changes in ALAC's structure or operations that might improve effectiveness, the WG has considered two aspects: changes within ALAC and At Large and changes in broader ICANN structure and processes. All of these changes are intended to improve the effectiveness with which the voice of the Internet user is heard in ICANN, particularly as it pertains to the four purposes outlined above.

In preparing this document, the WG is very mindful of the excellent work that has taken place in recent times to improve the efficiency and effectiveness of ALAC and the At Large generally. The WG would like to commend this work. It positions ALAC extremely well for the successful implementation of the recommendations contained in this report.

3.2.1. Changes within ALAC and At-Large

3.2.1.1. At Large structure

The current structure of the At Large was part of the design of the 2003 evolution and reform process. However, the last of the RALO agreements was signed in June 2007. The complete At Large structure has in effect only existed since that date. Furthermore, the ALAC has made significant changes and improvements over the past 12 months and the effects of these are yet to be fully realised.

Many members of the WG feel that the current system does impede the flow of information to and from the individual Internet user on some occasions. However, on balance, the WG believes that the RALO structure needs to continue as an important part of ALAC's organizational framework.

At this stage of ALAC's development, the ALAC-RALO-ALS structure provides a mode of organizing activity that is showing signs of working well, especially in some regions. This model needs more time to develop and mature. The challenge for At Large during the time until the next review is to build on the successes of the current structure to focus on providing timely advice on policy matters and input into ICANN operations and structure that is representative of the voice and concerns of the individual Internet user.

The WG recommends that the current ALAC-RALO-ALS structure be retained until the next review. The WG encourages ALAC and the RALOs to continue to explore ways that individual users can be involved in the process without having to become part of an ALS.

3.2.1.2. Development of policy input

The effective provision of advice from an individual Internet user perspective into ICANN policy development processes is an essential function of ALAC.

With regard to the policy input processes within At Large, the WG believes that it is absolutely fundamental that At Large processes capture the concerns of the individual Internet user and at the same time acknowledges that gathering input on often very technical policy issues from a globally distributed audience of individual Internet users is no easy matter. There are many elements that need to be put into place for the At Large policy advice process to be successful. The first step is to acknowledge that the provision of advice is a critical aspect of ALAC's role and to organize activity and effort around that. Another important component is education. Staff have an important role to play here in helping to develop material that explains policy issues in ways that make sense to the individual Internet user. While this is not a trivial task, it is

critical to the success of the At Large process and this aspect should be considered when the allocation of resources is being considered. The WG believes that ALAC should be empowered to make its own decisions and conduct its own experiments about the best way to reach out to individual Internet users on policy issues, knowing that the success or failure of At Large will be judged mostly on its ability to provide representative policy advice.

The WG also believes that there is a need for substantial improvement in the levels of participation by ALAC members in ALAC policy processes and operational matters. Under the current Chair, significant improvement has taken place and the WG wishes to commend and support these. However, there is still a long way to go based on data from recent ALAC activity. ALAC and At Large must focus their efforts on consistently providing representative views of individual Internet users into ICANN policy processes and operational debates.

3.2.1.3. Planning

The WG remains supportive of the recommendations about planning contained in the Westlake report. Planning both at a strategic and an operational level is extremely important for the ongoing success and improvement of ALAC. In the view of the WG, it makes sense that this planning effort be aligned to the broader ICANN planning process. There may of course be some planning activities that are separate, outside or beyond the ICANN process, but as part of the ICANN community, ALAC must take part in ICANN's processes. This is particularly relevant where ALAC is seeking resources for particular initiatives as discussed in the following section.

From the feedback received during the consultation process, it seems that ALAC has had some degree of frustration in its previous attempts to engage with the broader ICANN planning process. This is an area where staff support (both ALAC staff and senior management) has an important role to play in guiding the ALAC input through the process.

The WG recommends that as part of ICANN's annual planning cycle, ALAC work with ICANN staff to prepare input to the strategic planning process and an ALAC budget which best contributes to the achievement of ICANN's goals.

With regard to the implementation of the WG recommendations on ALAC and At Large involvement in planning, the WG recommends that this commence as soon as possible. If feasible, the ALAC should be involved in the development of the 2009-10 Operating Plan. Staff should work with ALAC to involve ALAC fully in the development of the July 2010 – June 2013 Strategic Plan. Work on this will start in July 2009.

3.2.1.4. Resourcing and staff support

The recommendation in the Westlake report focused on the provision of extra staff for the ALAC. In the consultation process that the WG has undertaken starting at the Paris meeting in June 2008, it became clear that while staff (and possibly extra staff) had a valuable role to play in improving the effectiveness of ALAC, the underlying issue was that of resources in a broader sense. The WG believes that ALAC should be provided with additional resources, but that need not necessarily mean more staff. Particularly in terms of its outreach activity, it may be the case that additional funding (for example for travel and publications) might be more useful in some circumstances than additional staff.

If the value of this approach is to be realised, it is critical that extra resources be tied to clear deliverables through a well detailed planning process. The section above treats the planning process in greater depth.

Where staff are employed to support ALAC, the WG recognises that they will be ICANN employees and will therefore have a reporting and management line within the ICANN staff structure. However, the WG is also supportive of the idea that the staff support for ALAC should be done in close collaboration with ALAC itself. If more staff are to be put in place, consideration should be given to employing some of those staff in regions so that they bring the required cultural understanding and are best able to support outreach efforts.

Over the past few years, the ALAC has developed a stronger working relationship with the policy staff and specifically a new trusted relationship with those that directly support their work. Relationships with other ICANN staff and with the community generally also continue to develop as the ALAC structure and processes mature and ALAC, ALS and RALO Members become more directly involved in ICANN briefings, activities and policy development processes and as the community comes to understand that ALAC has an important contribution to make to ICANN. It is important for the ongoing health of ICANN as a whole that all parties work to build solid levels of trust that allow tasks to be undertaken together in an effective manner.

In considering funding for initiatives, ALAC should examine how it can leverage its volunteer force to help advance ICANN's mission in cost effective ways. Staff and Board should also be open to the possibility of cost effective ways of leveraging ALAC resources for overall ICANN benefit.

The WG recommends that consideration be given to increasing resources available to ALAC based on initiatives proposed through the planning process. These resources may involve extra staff and/or extra funding, depending on the particular initiative and the desired outcomes.

In cases where the budget involves employment of staff, the priority should be to employ staff so that they are able to work in the language, culture and timezone of the region. The WG suggests that these staff be employed and located on the ground in the regions wherever possible.

3.2.1.5. Tools for communication and other needs

As a culturally and linguistically diverse volunteer organisation, ALAC has need of a range of tools to assist with communication for its operations and policy development. This is a field where technologies change quickly and new developments appear often. The WG is of the view that the best judges of the tools that would be most appropriate for the ALAC are ALAC themselves. Clearly, any such decision needs to be made within budget constraints and in consideration of the technology platforms used in other places within the ICANN community. Staff support will be very useful in this area.

The WG recommends that ALAC should be allowed to choose communication and other tools that it believes will best meet its needs within budget constraints and in consideration of technology that is already in place in other parts of the ICANN community.

3.2.1.6. Compliance, education and engagement

The key to the effective involvement of end users in the ICANN process is outreach to engage end users in ICANN issues combined with education about the ICANN process and issues that are ICANN's concern.

The WG supports measures to further improve accountability and transparency with the At Large, and acknowledges the good work that ALAC has already undertaken in this area. Compliance reviews have merit, but in the first instance, effort should be put into educating ALSs about ICANN issues and encouraging and supporting them to contribute to policy debates.

3.2.2. Changes within the broader ICANN structure

3.2.2.1. Changes to the policy process

With regard to the way that ALAC inputs into policy development are dealt with in ICANN policy development processes, the WG is of the view that the current processes need to be strengthened. There is no point in developing robust processes for collecting and synthesizing the views of individual Internet users inside At Large if those views are not properly considered as part of policy development processes. The WG therefore recommends that the policy development processes of the GNSO, the

ccNSO and the ASO be changed so that these organisations are responsible for reaching out to At Large in the early stages of their policy development processes. In their policy processes, the Supporting Organisations should demonstrate that they have obtained the views of At Large and that this input has been taken into account. One way of dong this would be to require the inclusion of some form of "environmental impact statement" early in the policy development process that, amongst other things, describes the impact of the policy on Internet users.

This is not to say that whatever advice At Large provides must be followed, but rather that the advice should be considered. If the advice is not followed in the development of the policy, a response should be sent to At Large with an explanation, or an explanation should be provided in the policy document or in the minutes of the policy discussion.

Similar acknowledgement and explanation of how advice has been considered should come from the Board when ALAC presents advice to the Board.

3.2.2.2. Comment periods

The WG acknowledges that gathering representative comments from a global community on policy issues in 30 days is not an easy task and notes the work undertaken by ALAC and staff in June 2008 which suggested that development of a policy position takes between 9 and 11 weeks. However, the WG is also mindful that increasing all comment periods to 45 days would slow down ICANN's policy development processes unnecessarily. There are two approaches which could help ensure that representative advice is provided on issues that matter most.

The first is that At Large needs to be involved as early as possible on policy issues. If ALAC only begins to educate the At Large community at the start of the public comment period, there is little hope of getting representative advice from a global membership in 30 days. Education about issues should start as early as possible. Where feasible, early drafts of documents could be shared so that At Large members can begin considering their response before the public comment period begins. While the ALAC will be an important part of this process, other parts of ICANN also have a responsibility. In particular, Supporting Organizations should work more closely with ALAC to inform them of upcoming policy issues and of the status of issues currently under debate. In this way, ALAC could begin preparations and education efforts in advance of the comment period. Staff who support the ALAC and various other parts of ICANN could play a useful role in assisting communication across groups, as could the ALAC liaisons.

Once this first step is in place, much of the pressure on collecting responses from the At Large network will be relieved. However, there may well still be some issues where an extension of time could be valuable. On these (hopefully rare) occasions, ALAC should have the power to request an extension of the comment period to 45 days when they believe that the individual Internet user concerns are particularly important in an issue. This will allow ALAC to gather more extensive input or take the additional time to develop consensus positions on difficult topics on a smaller number of issues where this really matters, rather than having a blanket increase to 45 days for all comment periods.

The WG recommends that ALAC begin work on policy issues as early as possible so that its members are educated about issues before the commencement of the formal comment period. The WG encourages ALAC to work with other SOs and ACs, through its liaisons and other wise, so that it is aware of upcoming issues.

The WG recommends that ALAC should be allowed to request that comment periods on policy issues and operational issues be extended to 45 days in critical situations where the ALAC believes that the issue is of sufficient importance that it needs to develop a true consensus position. The Board should monitor the frequency of such requests to ensure that it is not misused.

3.2.2.3. Voting seats on the ICANN Board

At the present time, reviews are underway for the Nominating Committee and the Board. At the time of writing this report, the outcomes of these reviews have not been finalized. The discussion and recommendations in this section will need to be considered in the light of any conclusions reached in these two other reviews. However, the WG is strongly of the view that implementation of most aspects of the recommendations in this report should be able to commence without having to wait for other reviews to be finalised.

The Westlake report argued that the current liaison role provided the opportunity for ALAC views to be advanced at the Board table more strongly than would be the case if ALAC had a voting seat on the Board. While the WG understands this rationale, it is equally attentive to the argument presented in some of the community comments which suggested that the same logic could be applied to the voting seats of the Supporting Organizations.

Having considered a range of perspectives, the WG believes that At Large should be given two voting members appointed to the Board through the At Large process. (The mechanism and timing for this are outlined

below.) As the review of the Board is currently underway, it is possible that the number of seats on the Board may change as recommended in the independent review report. Should this occur, the WG suggests that the At Large be given the same number of seats as the GNSO and the ccNSO.

There are several reasons behind this position. In developing these suggestions for further consultation, the WG has tried to put in place measures to improve the representation of the individual Internet user in the ICANN process. Voting seats on the Board are one important aspect of this improved representation, although the WG is very aware that the Board members who are selected through the At Large process will, like all Board members, have responsibility to ICANN as a whole and will not be representatives of the At Large. In this sense, Board members have a very different set of responsibilities from liaisons.

The WG is aware of the approach proposed in the establishment of ICANN and in the Evolution and Reform process where it was recognized that the voice and concerns of the user needed to be represented around the Board table. The Nominating Committee appointments to the Board fill this need at present as previous attempts to elect user representatives onto the Board were held to be ineffective. At Large has now established the ALAC-RALO-ALS structures that were set out in the Evolution and Reform process. While these processes are not fully mature and many improvements are possible, the WG believes that the success in establishing this framework should be acknowledged. ICANN now has a mechanism through which individual Internet users can participate in an organized way in ICANN processes. As these processes are now in place, it seems only reasonable to extend this representation to fulfil the intention of the original design by allowing At Large to elect members to the Board. The WG is also conscious that other parts of ICANN were not required to have perfect representation nor perfect processes before they were given seats on the Board. Indeed, the WG believes that providing voting seats to the ALAC will be an incentive for further improvements in representativeness and effectiveness.

The WG also sees that there is value in having At Large Board members as this will raise awareness in At Large of the work that the Board undertakes and it will allow At Large to participate in all aspects of the Board's work, including in committees.

The WG acknowledges that there are many in the ICANN community who believe that At Large is not yet ready for a voting seat on the Board. Indeed there were some members of the WG who were of this opinion. The rationale for this position is often that the ALAC and its processes are not yet mature. Some argue that levels of participation in ALAC are not at a high enough or consistent enough level for the provision of a voting

seat to be considered. Others are of the opinion that ALAC and the RALOs are too preoccupied with internal process debates rather than substantial issues of policy. On balance, the WG believes that providing a voting seat will be an incentive for ALAC to continue to mature and to focus on its primary task of providing advice on policy issues and input into ICANN operational matters. The WG also looks forward to improved levels of participation at all levels of the At Large process.

The WG can also see the benefits in having a representative of the At Large participating fully and actively in all of the Board activities of ICANN, including its committees. This will provide At Large with a broader perspective of ICANN activity and allow the perspective of the end user to flow through to all parts of ICANN activity.

Designing a mechanism to place At Large members on the Board is a complicated task and the WG recommends that ALAC working with the RALOs and the ALSs (and with staff support) develop that mechanism. As an initial proposal, the WG suggests that Board members be elected through a process that involves ALAC, RALOs and ALSs, rather than just ALAC or the RALOs. This will provide the best representation of the voice and concerns of the individual Internet user. The first Board member could take a seat at the AGM in 2009, at which time the ALAC Liaison position would be removed from the Board. The second Board member could take a seat at the AGM in 2010. In placing these At Large representatives on the Board, consideration will need to be given to the number of Nominating Committee appointments that need to be made. The WG can see the argument that the number of Nominating Committee appointments should be decreased, but would like to leave a decision on this until the outcomes of the Board and Nominating Committee reviews are clearer.

3.2.2.4. Involvement of individual users in other parts of ICANN

The WG believes that ALAC is the primary organisational home for the voice and concerns of the individual Internet user, although individual users may choose to participate in many other ways in the ICANN process.

The WG acknowledges that an individual may have several perspectives on ICANN issues and therefore may wish to participate in ICANN in several ways. One individual might wish to contribute to ICANN processes as a business owner through the Business Constituency, through the IP constituency as a lawyer and as an individual Internet user, through the ALAC. It is important not to confuse the possibility for an individual to contribute in several places because of these different perspectives with the need for the individual's participation as an individual Internet user to have an organisational home.

The WG also believes that there is a difference between the inclusion in the ICANN process of input reflecting the concerns of individual users (for which the primary organisational home is At Large), and the inclusion of input from organisations that operate on behalf of individuals. Bona fide consumer protection groups are an example of such an organisation. In the opinion of the WG, ICANN should seek to include in the ICANN process such organisations whose mandate is to protect the interests of individuals. Such groups might choose to be part of the At Large as an ALS. Another logical place for including them might be as a constituency or part of a constituency within the GNSO

Implementation of significant GNSO Improvements is now under way, including the consideration of the role of individual Internet users in the GNSO, and those efforts should be coordinated with the ALAC leadership. It is possible that the creation of a User House within the GNSO may create competition for membership of individual users. One of the strengths of the ICANN multi-stakeholder model is the freedom it creates for individuals to choose how they would like to participate. The WG supports this principle and encourages users to participate in the ICANN process in the way that best meets their needs.

The WG suggests that there needs to be a clear statement from the Board that recognises the place of At Large as the primary organisational home for individual users, and that clarifies the relationship between ALAC and the User House currently being developed within the GNSO.

3.2.2.5. Travel policy

The WG supports the general principle that ICANN should reimburse selected individuals for reasonable travel expenses related to ICANN's mission according to its travel policy. It also supports the idea that participants funded by ICANN have a responsibility to actively participate in all aspects of the meeting. However, ICANN resources should only be used to support those who are active in ICANN policy and operations issues. The WG supports and acknowledges the steps being taken within ALAC to approve accountability and transparency of the activity of members of the ALAC and RALOs and suggests that this information be utilized when considering travel support.

The WG acknowledges that ICANN meetings are complex events that require an enormous amount of organization and that at times some participants will have more or less desirable accommodation than others. To ensure fair treatment of all funded participants, the WG recommends that At Large representatives be treated equally with other funded participants when accommodation is being organized.

The WG also notes that ICANN released a new travel policy in August 2008 and suggests that this be reviewed at the end of 2009. ALAC should be given the opportunity to provide input at that point. As part of this 2009 review, it would be worthwhile to consider allowing ALAC to have a greater role in determining how ALAC travel support money might best be spent. As long as appropriate governance and control structures are put in place, such an approach might improve the effectiveness of the money spent.

3.2.2.6. Translation and interpretation

The WG strongly supports the need for efficient, effective translation and interpretation processes in ICANN. At least as much as any other group in the ICANN community, efficient, effective translation is critical to the success of the ALAC and At Large. The WG also recognises that at the present time, it is essential that members of ALAC have proficiency in written and spoken English to allow the committee to function effectively.

The translation system needs to be far more reliable than it is at present. Establishing clear accountabilities (including some form of Service Level Agreement) with staff and contractors is crucial if higher standards are to be developed and maintained. The WG recommends that the Board ask staff to review the efficiency and effectiveness of current translation practices with a view to implementing better translation processes and increasing funding to provide a wider range of translation services. This is an area where ICANN should strive for continuous improvement.

4. Specific responses to the Westlake recommendations

In this section the WG addresses each of the recommendations made in the Westlake report. In some cases the recommendations have been moved out of numerical order where the WG believes that it can respond most appropriately to an issue by addressing several recommendations at once.

Recommendation 1

That the number of NomCom appointees to the ALAC should be increased from five to seven, and that this structure should specifically be revisited at the next triennial review taking account of the then existing Geographic Regional Structure of ICANN.

The WG does not believe that it would be appropriate to make changes to the regional balance of ALAC alone without addressing the issue of regional balance for ICANN as a whole. The WG therefore encourages the ICANN Board to move quickly to undertake a review of ICANN's regional structure with a view to creating a structure that better reflects the distribution of Internet users across the globe.

The WG does not see the need to change the number of Nominating Committee appointments to the ALAC at this point in time, subject to the points discussed in Section 3.2.2.3.

Recommendation 2

That all members of the ALAC (and, ideally, of the RALOs) should be given clear position descriptions.

The WG is very supportive of the idea of creating clear role descriptions for members of ALAC and of the RALOs. In particular, having these available when individuals consider nominating for ALAC and RALO positions would provide clear guidelines on what is expected. However, rather than these role descriptions being given to ALAC, the WG recommends that ALAC and the RALOs develop these themselves and present them to the ICANN Board for approval. The WG acknowledges the good work that is already underway in ALAC to provide better transparency and accountability for Committee members and believes that the development of role descriptions is a logical continuation of this work.

Recommendation 3

That the current distribution of the RALOs be left unaltered until at least the next ALAC review.

The WG supports this recommendation. See Section 3.2.1.1 for a more detailed discussion.

Recommendation 4

That ICANN should implement an activity-based costing system in order to improve resource management.

The WG supports this recommendation as it believes that better financial information will improve ICANN's ability to effectively evaluate its performance. However, the WG also acknowledges the improvements that have already taken place in recent years in ICANN's financial reporting systems and encourages the Board to continue to support this work.

Recommendation 5

That ICANN should provide further resourcing to support the ALAC, to the extent of (up to) one new employee per region.

The WG agrees with further resourcing to support the ALAC. However, further resources are not necessarily best spent on more staff. See Section 3.2.1.4 for a more detailed discussion.

Recommendation 6

That the ALAC Chair negotiate an annual support agreement with ICANN staff, setting out agreed expectations and performance indicators.

The WG supports this recommendation and believes that it is an important component of improving planning, accountability and transparency within At Large. See Section 3.2.1.4 for a more detailed discussion.

Recommendation 7

The ALAC position on the Board should remain that of a Liaison, with rights to full participation and information, but no voting rights.

The WG does not support this recommendation, but instead recommends voting seats appointed from the At Large.

Recommendation 8

That the term of appointment of the Board and other Liaisons be extended to two years, subject to the ALAC retaining the 'right of recall' under the Rules of Procedure, Rule 11 - Recall Votes.

Given the comments on recommendation 7 above, the recommendation concerning the Board Liaison is now irrelevant. The WG supports this recommendation for other ALAC Liaisons.

Recommendation 9

That ICANN staff should create a brief and multi-lingual guide to ICANN and the ALAC, aimed at individual Internet users and ALSs.

The WG supports the development of material that allows individual Internet users to better understand ICANN and the role of the individual Internet user in ICANN. However, the WG recommends that ALAC develop these materials (with staff assistance as necessary) so that they most effectively serve the needs of individual Internet users across the globe. The WG also acknowledges that a substantial amount of material has already been prepared.

Recommendation 10

That the ALAC should develop:

- *A simple annual Statement of Intent which specifies the current issues and priorities, objectives and activities for the next 12 months, and defines measures of success for each of the activities and objectives. This document should be strongly aligned to ICANN's Strategic and Operational Plans and be published on the ALAC website;*
- *Before the next ICANN annual planning cycle, the ALAC should develop a Strategic Plan of its own (complementing the broader ICANN Strategic Plan).*
- *Following the development of this Strategic Plan, the ALAC should then generate an annual Operating Plan which cites the activities and resources required to support the Strategic Plan during that year (also complementing the corresponding broader ICANN Strategic and Operating Plans and fitting the same planning cycle).*

The WG supports this recommendation. It is important that all parts of the ICANN structure contribute to the planning process. The WG reinforces the need for the ALAC planning effort to be closely tied to the ICANN planning cycle. Staff support should be utilized as needed to assist with these planning efforts. See Section 3.2.1.3 for a more detailed discussion.

Recommendation 11

That the term of appointment of the ALAC Chair should be extended to two years.

The WG supports this recommendation, subject to the "right of recall" according to the ALAC Rules of Procedure.

Recommendation 12

That the ALAC should explore ways to differentiate between organizations that genuinely represent individual Internet users, and are therefore ALS candidates, as opposed to those which may be a better fit with the NCUC.

. Implementation of significant GNSO Improvements is now under way, including the consideration of the role of individual Internet users in the GNSO, and those efforts should be coordinated with the ALAC leadership.

Recommendation 13

That the ALAC should publish on its website trends in the average time taken from receipt of an ALS application to decision.

The WG supports the development of performance measures for ALAC as part of a regular planning process as discussed in Recommendation 10. Prompt decisions on ALS applications are important for maintaining the interest of ALS's in the ICANN issues and their faith in the ICANN process. The WG strongly recommends that ALAC include a measure such as this when it develops its performance measures. The WG also supports the publication of a scorecard of all measures on the ALAC website, with staff supporting as necessary. However, given improvements in this area in recent time, this is not a high priority.

Recommendations 14 and 15

That regular ALS compliance reviews be conducted and the non-compliance provisions be applied as appropriate.

That ICANN should develop clear sanctions for non-compliance. These might include: ineligibility for ICANN travel funding; loss of voting rights; or being suspended until the matter is remedied.

The WG supports measures to further improve accountability and transparency with the At Large, and acknowledges the good work that ALAC has already undertaken in this area. Compliance reviews have merit, but in the first instance, effort should be put into educating ALSs about ICANN issues and encouraging and supporting them to contribute to policy debates.

Recommendation 16

That any outstanding issues relating to Ombudsman reports 05-1090 and 06-317, should be dealt with as soon as possible by the ICANN Board or the ALAC (as appropriate).

The WG believes that this recommendation is a matter for the ICANN Board to deal with.

Recommendation 17

That the ALAC should develop a clearly defined process for the engagement of the At-Large community in developing policy positions.

The WG strongly supports this recommendation. The effective provision of advice from an individual Internet user perspective into ICANN policy development processes is an essential function of ALAC. See Section 3.2.2.1 for a detailed discussion.

Recommendations 18, 21, 23,24

That the ALAC should use multi-lingual wikis rather than the current email lists to allow the At-Large community to more easily observe and participate in the development of policy positions.

That private email lists should be used only for appropriate non-public discussion.

That ICANN staff should manage and maintain content of the various ALAC wikis.

That the ALAC should replace email lists with wikis for policy discussions in particular and continue the evaluation of Web-based tools to facilitate discussion and collaborative working.

The WG supports the use of collaborative tools in ALAC's work. It also supports the idea that ALAC encourage transparency in its policy discussions. However, the WG believes that ALAC and other At Large members should be left to make the decisions about which tools are most suited to the needs of participants at various times.

Recommendation 19

That ICANN should increase the public comment period to 45 calendar days in order to allow a greater time period for At-Large community consultation in all regions.

The WG recommends that the standard public comment period be left at 30 days except in special circumstances, in which case ALAC may request an extension to 45 days. See Section 3.2.2.2 for a detailed discussion.

Recommendation 20

That the ICANN Board should amend the Travel Policy to pay for accommodation expenses (including breakfast and internet access fees) and where practicable accommodate At-large members at or very near the main conference venue. The per diem amount (to cover other appropriate daily expenses) should also be available as a cash advance for those that require it.

The WG supports the general principle that ICANN should reimburse selected individuals for reasonable travel expenses related to ICANN's mission according to its travel policy. It also supports the idea that participants funded by ICANN have a responsibility to actively participate in all aspects of the meeting. However, ICANN resources should only be used to support those who are active in ICANN policy and operations issues. The WG also notes that ICANN released a new travel policy in August 2008 and suggests that this be reviewed at the end of 2009. ALAC should be

given the opportunity to provide input at that point. As part of this 2009 review, it would be worthwhile to consider allowing ALAC to have a greater role in determining how travel support money might best be spent. As long as appropriate governance and control structures could be put in place, such an approach might improve the effectiveness of the money spent.

Recommendation 22

That ICANN should continue to work on its language policy, including translation and other services.

The WG strongly supports this recommendation. Efficient, effective translation is critical to the success of the ALAC. The WG recommends that the Board ask staff to review the efficiency and effectiveness of current translation practices with a view to implementing better translation processes and increasing funding to provide a wider range of translation services. The translation system needs to be far more reliable than it is at present. Establishing clear accountabilities (including some form of Service Level Agreement) with staff and contractors is crucial if higher standards are to be developed and maintained.

Appendix 1: BGC ALAC Review Working Group Charter (approved by the Board on 30 April 2008)

The purpose of the working group is to:

1. Monitor (along with Staff) the independent evaluator's progress through periodic progress updates from the evaluator, and provide an independent focal point for stewardship and guidance on issues relating to the review;
(Note: Staff will provide review updates to the BGC, Board, and public, as needed; Staff also will help ensure the evaluator has access to information relating to past ALAC and At-Large activities; and Staff will ensure that the evaluator fulfills his contractual obligations);
2. Help ensure that the evaluator's final report (independent review) contains the data and information the WG and the BGC needs to carry-out their work;
(Note: Staff will assist in identifying WG and BGC needs and will liaise with the evaluator to help ensure these needs are met; this will include Staff and WG review of a draft final report);
3. Consider the (independent evaluator's) final report, Board input, and comments from stakeholders and the public, and advise the BGC whether, in general, the ALAC has a continuing purpose in the ICANN structure; and
4. If so, consult broadly and advise the BGC whether any change in structure or operations is desirable to improve its effectiveness -- and recommend to the BGC a comprehensive proposal to improve the involvement of the individual Internet user community in ICANN.

The working group will:

- (Along with Staff) Receive periodic progress reports on the ALAC review to help ensure that the evaluator's work is progressing appropriately, and that the evaluator's final report (independent review) contains the data and information the WG and the BGC needs to carry-out its work, as well as provides the independent evaluation required;
- Develop (with Staff assistance) and submit to the BGC a process and schedule to create and publicly consider proposals for change – ensuring that the final report, and input from the Board, the At-Large community, ICANN stakeholders and the public is taken into consideration;
- Develop (with Staff assistance) draft and final comprehensive proposals for ALAC improvement for BGC consideration and public comment; a comprehensive proposal should include specific recommendations addressing all improvements and changes deemed necessary for the effectiveness of the ALAC and related At-Large structures; and
- Post draft and final proposals (after BGC consideration) for public comment to help ensure transparency and participation, and provide ample public opportunity for input, discussion, and advice on proposed changes to the ALAC and At-Large community involvement in ICANN.

Staff will provide support for the working group. The working group will notify the BGC if additional information needs to be solicited to complete a comprehensive proposal. Upon receiving the working group's recommendations, the BGC will consider them and recommend Board action as deemed appropriate.

Appendix 2: ALAC Review WG - Brief summary of consultation and feedback

1. The WG conducted a session at the Paris meeting where Westlake presented their recommendations and members of the community were able to ask questions of clarification on the key issues. The transcript of the session can be found at https://par.icann.org/files/paris/Paris-ALACReviewWorkshop-23JUN08.txt

Main topics of discussion were:

- Regional representation issues, including NomComm appointed versus elected members
- Why is voting seats on the Board out of scope?
- Advantages and disadvantages of increased staffing

2. The WG conducted a second consultation session at the Paris meeting on issues raised by the Westlake report. The transcript of this session can be found at https://par.icann.org/files/paris/Paris-ICANNBCGAt-LargeReviewWorkingGroup-25JUN08.txt

Main topics of conversation were:

- Need for more time before undertaking a review
- Advantages and disadvantages of voting seat on the Board and difficulties in building a valid voting process
- Difficulties in getting real user participation
- Need for budget at the regional level
- Change through a process of continuous improvement
- Need for ALAC advice to be taken seriously
- Issues rather than geography may be the best way to organise
- Regional approach valuable as it allows for cultural difference
- Need to acknowledge lessons from ALAC history

3. The WG met with ALAC during the Paris meeting. The discussion covered general comments about the report and the desire of both sides to cooperate in the next stage of the review process.

4. An online public comment forum was opened for comments on the issues raised in the Westlake report. The forum (now closed) can be found in the archive at http://forum.icann.org/lists/alac-final-2008/

Comments were received from ISOC-AU, Danny Younger, Sylvia Caras, ISPCP, Alan Levin, Olivier MJ Crepin-Lebland, Alan Greenberg, ALAC.

Topics covered in the forum included:

- Ongoing purpose of ALAC

    - Some support for the ongoing purpose
    - Suggestion that ALAC needs more time
    - One suggestion that ALAC has no continuing purpose and does not represent the views of users
- Regional issues
    - Representation should be proportional to number of users
    - Suggestion that two additional non-voting Asia Pacific representatives could be appointed
- At Large structure
    - Support for current structure
    - RALOs need more time (and one clear suggestion that they should be shut down if not working)
    - Need to clarify the ways that end users can participate
    - Need outreach to grow ALS numbers
- Resourcing
    - Support for extra resourcing based on clear plan
    - Staff not always the answer; resources could be deployed in other ways
    - Centralised staff needed for coordination of activity
    - ALAC should have control over staff
    - Regional budgets are needed
- Relationship with other ICANN entities
    - Need to clarify roles
    - Perceived overlaps are not an issue
    - At Large voice is relevant beyond GNSO issues
- Voting seat
    - Support for a voting seat for accountability to end users
    - Support for maintaining liaison
- Planning
    - Support for better ALAC planning, linked to ICANN planning
    - Support for planning, but should maintain independence
    - Planning necessary for improvement
    - Should be “light” so that process does not become the focus
- Tools
    - Support for use of better tools
    - Need to remember accessibility issues
- Consultation periods
    - 45 days is too long
- Translation
    - Support for continuing and better translation, but need to be mindful of costs
- Westlake report
    - Some opinions left out
    - Not historical

5. Members of the WG attended the Africa RALO meeting on 3 September 2008.

The main topics covered were:

- Support for increased NomComm appointments to ALAC; need to develop a mechanism for determining the number (size of region, number of ALSs,….)
- Support for ALAC voting rights on the Board

Minutes of this meeting can be found at:
https://st.icann.org/afralo/index.cgi?meeting_summary_03_september_2008

6. Members of the WG attended the GNSO teleconference on 4 September. Main topics of conversation were:

> The ICANN bylaws are very explicit in that no one is prohibited from being part of a GNSO constituency because they belong to another constituency. All constituencies should have the opportunity to engage in an Advisory group and as ICANN grows, there is more of this overlap with the same individuals being in different groups, thus the necessity to take a closer look at the structures. The recommendation is pertinent but should be viewed in a different light given the acceptance of the bicameral proposal, which is predicated on the concept of a Non Commercial group that is going to be a radically reformed with the NCUC as a central starting point and some part of the At Large as yet unspecified. However, the ALAC made it quite clear that it, as a body, was not looking for any indirect participation in the GNSO but wanted the opportunity for individual users to participate in the GNSO in their own capacity.

A recording of this meeting can be found at
http://audio.icann.org/gnso/gnso-council-20080904.mp3

7. Members of the WG attended the NARALO meeting on 8 September 2008. The main topics of conversation were:

- Purpose of ALAC
  - as a guardian of interests of Internet users
  - ALAC has no continuing purpose
- Organizations may choose to join either NCUC or ALAC or both
- ALAC needs a stronger voice as advocate of the Internet community

Minutes of the meeting can be found at:
https://st.icann.org/naralo/index.cgi?summary_minutes_08_september_2008

8. Members of the WG attended the ALAC meeting on 9 September 2008. The main topics of conversation were:

- Membership of more than one ICANN constituency:
  - Some in agreement, encouraging flexibility
  - Others suggesting that groups should be “Business” and “others”
- ALAC should be able to manage its own budget
- Concern that not all opinions were reflected in the Westlake report
- Difficulty in engaging people in the current structure as they could not see what difference their participation would make
- Notice that responses would be sent to the online comment forum

Minutes of the meeting can be found at:

https://st.icann.org/alac/index.cgi?09_september_2008_summary_minutes

9. Advance distribution of a draft of the ALAC WG report to the Chair of ALAC. Comments were received in a teleconference.

10. Advance distribution of a draft of the ALAC WG report to the Chair and Deputy Chair of the GNSO. Comments from the GNSO Chair are included here:

> On 8 Oct 2008, at 07:14, Tricia Drakes wrote:
>
> > The ALAC Review Working Group wanted to let you have this courtesy "advance copy" for information.
> >
> Thank you very much for this advance copy. While there are things I quibble with (when aren't there?) I find myself in agreement with most of the recommendations. The comments below reflect a few of those quibbles. And yes, I know you did not ask for comments, so please forgive this rude reaction to your courtesy.
>
> A recommendations that gives me slight pause is the call for an increase in the size and power of ICANN's policy staff. I have a perpetual concern that the larger this staff gets, the more likely it is to have its own policy drive as opposed to being focused on assisting the volunteers in their policy related activities. I understand the need for more assistance all too well, but the larger the staff gets, the more the volunteers need to oversee what the staff does - this can become a lot of work. Finding the right balance between volunteers actually working and the staff doing the work is crucial. I think recommendation 6 from Westlake was important in that it creates some accountability of the ICANN policy staff to the Chair of ALAC - I would hope this responsibility also includes mandatory input into staff, including senior staff, reviews. I worry that the things I think are important may be in conflict with some of the WG's recommendations in relation to this recommendation.
>
> I very much support the creation of two Board seats elected by the ALS's. This will help redress some of the overcorrections that occurred in the move from ICANN rev 1 to rev 2.
>
> Re 5.11, I personally believe this is easy, ALAC is about users and the GNSO/NUC should be about registrants - but I believe I am in the minority with this viewpoint in the GNSO. I believe this is the crux of the

differentiation, not necessarily the requirements for organizational membership in the NCUC.

Re: the requirement for acknowledgment of ALAC advice, I believe this is critical. I would add that the Board should also be required to provide the same sort of acknowledgement it is required to provide to the GAC. Of course if they have two Board seats this may be less essential - though given the requirement of Board members to be for the good of all, they might not be able to adequately represent the ALAC at all times.

Thanks again

a.

11. Consultation at the Cairo meeting, including sessions with the GNSO Council and the ALAC in addition to the public session on the WG Mid-point Report. The main points made were:

- Support for voting seat on Board (although the role of Directors is not well understood)
    - Board seat
        - has symbolic value
        - will allow active involvement of ALAC in Board and on Committees
        - is important for engaging consumers in the ICANN process
    - little input into the mechanism for selecting Directors
- Support for user involvement in the NCS House of the GNSO; mechanism unclear; drafting around "sole channel" needs to be improved
- Support for planning; recognition that any further resources must be tied to plans
- Better use can be made of volunteers and regional/subregional structures to support ICANN's work
- Recognition that more work needs to be done to better represent users; engagement and education are key
- Capacity building is very important (esp in Africa and Latin America)

12. An online comment forum was opened when the Mid-point Report was published and closed on 12 December. A summary of the comments can be found at http://forum.icann.org/lists/alac-mid-consult/ This comment forum includes a draft of the comments from ALAC. A final version of their comments was approved in January 2009.

13. A public session was held at the Mexico meeting. The audio files of that session can be found at http://mex.icann.org/node/2661

14. A public comment forum was opened on the ICANN website on 11 February and closed on 30 April. The forum can be found at http://www.icann.org/en/public-comment/#alac-review and contains a summary of comments.

Appendix 3: Concurrence from Karl Auerbach, member of the ALAC Review WG

I concur with the report of our working group. Yet, while I agree with nearly all of our recommendations, I am not satisfied. I would like more. But knowing that progress is achieved by small steps more often than by great leaps I see our report as a step towards a destination and not the destination itself.

Our report is a complex work of many hands; the Westlake Group, those who commented, the staff who helped put together the text, and ourselves, the working group members. I was impressed by the remarkable degree of open dialog, open minded consideration of ideas, and the total absence of any self-interested agendas.

What I write here may appear to stretch beyond the charter of our working group. Perhaps. But it is necessary. ICANN's at-large Advisory Committee is a facet of the central issue of ICANN: the operation of the internet's domain name and IP address systems so that they serve the public interest. Artificial constraints on our inquiry would lead to artificial results. I chose to err, if I err, on the side of a more synoptic treatment.

I watched ICANN before and as it was created; I have not forgotten some of the promises[1] that were made. These promises should be remembered and honored.

The current ALAC was a step backwards from the system that it replaced. That prior system self-organized and self-funded itself into a vibrant system of debate and information exchange. ICANN merely ran the election machinery. In that system the public itself nominated and elected people onto the ICANN Board of Directors, a far cry from the thickly insulating committee upon committee upon committee intricacy of the present ALAC. Today's ALAC, even after six years of funding and intensive management by ICANN, has not approached the vibrancy or scope of its predecessor.

It is my view that ICANN ought to scrap the ALAC in its entirety and return to the status quo ante.

But I do not feel that there is, as yet, adequate support within ICANN for such a move.

So I am forced to accept incremental improvements to the ALAC.

Much as I agree with the incremental improvements that our working group is recommending, the result is not even a shadow of its predecessor.

Rather than suggesting more minor adjustments, I will focus here on one particular principle, that of accountability of ICANN to the public.

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[1]For example of one such promise see the statement of Esther Dyson, Chairman of ICANN, made the before the US House of Representatives Committee on Commerce, Subcommittee on Oversight and Investigations, July 22, 1999.

To my mind all other issues are subordinate to this question of public accountability.

Someone or something must have the power to require ICANN to meet its obligation to serve the public benefit.

Who or what ought to have that power? My answer is simple: ICANN should be answerable to the same public for whose benefit ICANN was created.

ICANN is already accountable to the people of the State of California through its publicly elected Attorney General. My thesis is that it is better to vest that accountability into the community of internet users than into a government official.

ICANN's structure is so complicated that it is nearly impossible for any group, much less the public, to hold ICANN accountable.

Moreover, ICANN's Board of Directors has exercised only weak authority over the activities of their chosen executives and their staff. This has created a highly imbalanced situation in which ICANN and its decisions are largely driven by a freewheeling ICANN staff. The Board has the authority to remedy this problem but it shows no signs of doing so. As long as the Board allows this imbalance to continue, it matters little whether the Board of Directors or the ALAC become more strongly representative of the public: *As long as ICANN's Board allows ICANN staff to "run the show", effective oversight of ICANN, and thus accountability of ICANN, will not exist.*

Our working group was constrained; we could not deal with the larger issue of ICANN structure. And we were faced with an ambiguity whether our charter allowed us to go beyond the Westlake report. As a consequence the best we can do is to try to cure some mild symptoms of the ALAC's weaknesses.

There are two causes of that weakness:

The ALAC is excessively complex.

The word "byzantine" was not invented to describe the ALAC, but it does apply. The ALAC is simply too complicated and inserts too many layers between internet users and the policy making engines of ICANN. At a minimum the "RALO" layer of the ALAC serves little purpose and should be eliminated.

The ALAC is unlikely to be an effective source of accountability or advice as long as it retains its labyrinthine form. And internet users will feel that the layers of the ALAC operate to insulate and isolate ICANN from their opinions.

The ALAC has too little authority.

I am pleased that our working group partially remedies this lack of authority by recommending two at-large filled voting seats on ICANN's Board of Directors. I wish that number were significantly larger and that the number of other seats were reduced.

It is important that the public's choice of Directors not be filtered and diluted through the nominating committee.

The ability to fill voting seats on ICANN's board will give the ALAC some much needed actual credibility. But that credibility will be pointless unless it can be well exercised – which requires that the ALAC push more resources out to its edges.

Our report recommends that more resources be made available at the edges of the ALAC. I strongly agree. In addition, I also believe quite strongly that the edges should be as autonomous and independent as possible, even to the degree of allowing the edges to engage in decisions to hire, or discharge, people. (The legal implications of this to ICANN could be significant.)

Such autonomy and independence could lead to some waste and possibly even to misuse. I believe that such risks are worthwhile. ICANN can minimize these risks by imposing good and timely cost tracking and accounting on any resources that ICANN makes available.

In addition, the ALAC is not really independent. The ALAC depends on ICANN for money and resources. The ALAC resembles a "company union", a form that has a checkered reputation and has even been outlawed in some locales.

Nor does it help that the ALAC's job is widely perceived in a narrow way, that the ALAC's role is to do little more than be a source of advice that others within ICANN might chose to consider, or not.

These problems make the ALAC ineffective. And that, in turn, diminishes the perceived value of ALAC participation by people who might consider joining.

The ALAC is further weakened by its context. The ALAC is structured as a polite debating society. Yet it most operate in the middle of a maelstrom.

ICANN is a political battlefield on which economic and social forces engage in ways that are not necessarily pretty. The position and structure of the current ALAC doom it to be little more than a defenseless waif lost on this battlefield.

Can that waif ever grow-up to be a titan in that battle? ICANN's system of permanent structural preferences for selected "stakeholders" makes that very unlikely.

We have been asked to overlook the ALAC's flaws on the grounds that it is new and needs time. I do not agree.

The ALAC was created six years ago. The ALAC has had six years and hundreds of thousands of dollars, if not more, of direct ICANN funding and staff support. While one can say that that the ALAC has achieved some formal structure and a small cadre of active adherents, it can not be said that the ALAC has obtained a wide following, particularly when compared to the hundreds of thousands who tried to participate in ICANN's year 2000 elections.

The ALAC is not a new system and there is no reason to excuse its faults on the grounds that the ALAC is new and needs more time.

And finally, I am disappointed that even after a year since we first began asking, ICANN has not been able to produce current or historical data on the cost of the ALAC.

It is my belief that our report would have been different, in detail and in gross, had historical and present cost data for the ALAC been available.

This lack of financial data is particularly ironic given that the system of elections that preceded the ALAC was dismantled in large part because it was considered too expensive.

Even in the absence of financial data it is very clear that the ALAC system, including the ICANN staff that manages it, is very expensive. It is quite apparent, simply by looking at the number of staff members involved and the few visible funding numbers, that the ALAC is much more expensive then the elective system that it replaced.

ICANN Is A Regulatory Body; Its Debates And Decisions Are Political, Not Technical

There seem to be many within ICANN who feel that ICANN is above the fray of politics, that ICANN is some kind of higher creation in which ideas are weighed on unbiased scales and discussed by purely disinterested minds.

That is a beautiful idea. But it is is not consistent with actual practice.

The real ICANN is a body of internet governance. The real ICANN does not do technical coordination. The real ICANN engages in economic and social engineering.

The real ICANN is a full fledged regulatory body.

The impact of ICANN's regulations are significant. ICANN's policies have an impact upon the community of internet users that is measured in multiples of billions of US dollars ($1,000,000,000 US) each and every year. ICANN's decisions are life or death sentences to completely lawful innovations on the internet.

We should not expect the debates about ICANN policy to be pretty set pieces or Victorian tea parties. We should recognize the interest groups will confront one another with a full armory of political weaponry.

ICANN can, at best, create a playing field and rules of engagement; ICANN can not stop the battle.

The ALAC is at a disadvantage. With the ALAC being largely an ICANN dependency, structured, funded, staffed, and operated by ICANN, the ALAC is a weak pawn while ICANN's stakeholder constituencies are rooks, bishops, and knights.

ICANN's long term goal should be to engender an independent at-large or ALAC that is able to act on its own behalf, manage (and fund) its own affairs, and have a direct and significant role in the actual process through which ICANN makes decisions.

Accountability to the Public

To avoid misconception, I am not proposing anything like an ALAC or at-large plebiscite on every ICANN matter. Rather I am suggesting that accountability to the public requires that the public, via its arm, the ALAC, be able to have a reasonable ability, over a period of time, to induce ICANN to more closely track the public

interest. This can be realized in concrete terms by several techniques, the most direct being a majority of voting seats on the Board of Directors. But there are other means. For example perhaps objections by the ALAC on a matter would trigger supermajority voting requirements before the Board could adopt that matter.

It is reasonable that there be dampers and constraints on this power to hold ICANN answerable, but those dampers and constraints should be impediments that bring caution and inhibit rash actions, they should not be insurmountable barriers that moot the reality of accountability.

There is a theory that ICANN's Board of Directors represents the public and forms the bulwark of accountability. Clearly the Board has the authority to take the helm and change ICANN's course should ICANN's course veer from the public interest. However, ICANN's Board members are chosen by means that are too remote from the public. So while it is the case that ICANN's Board members are people of great integrity and have great concern for the public's interests, those people are not chosen by the public, they do not serve at the pleasure of the public.

(This insulation from the public is also a problem for the ALAC, which is why I strongly believe that that ALAC can not itself be considered an effective means of public accountability until its structure is significantly streamlined and some of its layers removed.)

The Public's Role Is Not Primarily To Give Advice

To be an effective voice for internet users the ALAC must have a seat at the table where decisions are made. An advisory role is not sufficient.

Many consider the proper public role in ICANN to be largely passive. That view holds that ICANN will be wise and just, and, if provided with enough public comments, ICANN will create the best of all possible answers.

There are two problems with this:

First, much as we may wish otherwise, ICANN is not a college of wise and disinterested philosopher kings. Experience with ICANN has shown that in practice ICANN is typical; it emits results that mirror the forces that industrial and technical interests bring to bear and the public interest is often overlooked.

Second, whether advice is well formed ought not to be a precondition on the person giving of that advice but rather a measure of credibility that is applied by the one hearing that advice. In a political forum, such as ICANN, the measure of quality of advice is very subjective and often depends on which side of an issue the speaker and listener happen to be on.

The ALAC and the public have a self-interest in making their advice as cogent and persuasive as possible; we ought merely to support the ALAC in that effort but not expend too much energy trying to coerce the ALAC in that direction.

An Error In The Westlake Report

Our report corrects a flaw in the Westlake report. That report contained a

recommendation that the ALAC be permitted to designate two people who could observe and speak to the board but who would not have the rights, particularly voting rights, and duties of full board members. That recommendation was based on a presumption that presence of full board membership would deny the ALAC's choices freedom to consider the interests of the public.

In this the Westlake report misapprehended the fiduciary obligations of ICANN's directors. In actuality, because ICANN is a "public benefit" corporation, ICANN's directors, all of them no matter how they obtained their seats, are required by law to consider the impact of their decisions, whether for or against a matter (or even to abstain), on the public interest. In other words, the public interest is a material element to be considered when deciding whether a matter is in ICANN's interest.

Thus, whether or not an ALAC director has a vote, he or she may, indeed he or she must, take the public interest into account when evaluating what position to take on a matter before the board.