

Accountability and Transparency Review Team

Wednesday, May 5th 2010 Open Session – Minutes

The RT held an open session with ICANN staff and with ICANN's CEO. The RT held a subsequent closed session with ICANN staff and a meeting with only the RT to review the work of the day.

RT Selectors and Members

(PDT) Peter Dengate Thrush
(JK) Janis Karklins
(MI) Manal Ismail, Vice Chair
(LS) Lawrence Strickling
(WA) Warren Adelman
(BB) Becky Burr
(FC) Fabio Colasanti
(WC) Willie Currie
(BC) Brian Cute, Chair
(EI) Erick Iriarte
(CLO) Cheryl Langdon-Orr
(LL) Louie Lee
(OM) Olivier Muron
(XZ) Xinsheng Zhang

Assistants invited by RT Members

(FA) Fiona Alexander
(JM) James Bladel
(GF) Guo Feng

Executive Staff

(RB) Rod Beckstrom
(DB) Doug Brent
(JJ) John Jeffrey
(DM) Denise Michel

Supporting Staff

(DC) David Closson
(AJ) Alice Jansen
(JS) Jesse Samora
(CS) Cory Schruth

The session of Wednesday, 5 May consisted of: 1) a discussion of agenda items; 2) discussion of Conflicts of Interest; 3) election of the Chair and Vice Chair; 4) a presentation by ICANN Staff and a Q&A session; 5) a speech delivered by ICANN CEO, Rod Beckstrom and a Q&A session; 6) a closed session with staff.

1) RT Discussion of Agenda Items

Agenda approved.

Conflict of Interest Policy

The RT adopted a resolution in favor of a modified version of the ICANN Board of Directors Conflict of Interest (Col) policy and substantially agreed on Articles 1, 2 and 3. The suggested amendments do not change in anyway the standards or substance of the text. The RT noted that the Col policy may be amended and reviewed as deemed necessary during the team's activities.

The RT also voted in favor of a Declaration of Interest form derived from the At-Large form with an additional paragraph derived from the Board declaration.

The RT agreed that RT members' Declarations of Interests should be made public and the RT will review and resolve conflicts issues as they arise. Any RT member who may have a Col policy concern may approach either the Chair or the Vice-Chair to raise the concern.

RT Members believe the openness of their deliberations is in the interest of the community and should demonstrate that one group of stakeholders cannot be favored over another. However, a main issue lies with the community's concern about the extent to which Members of the group are linked to ICANN (contracts).

Election of Chair

The RT elects Brian Cute as Chair and Manal Ismail as Vice-Chair. Both Members provide the Team with a verbal statement of their Col in addition to their subsequently submitted Col declarations.

Order of Business

ICANN COO, Doug Brent presents an overview of ICANN organizational charts; strategic and budget planning processes; and answers questions from the RT concerning the policy making and implementation processes as well as Staff prioritization and performance procedures.

ICANN CEO, Rod Beckstrom speaks about the AoC review goals framework and specific activities that Staff has undertaken to satisfy the AoC. He also answers questions from the RT concerning forward looking efforts of ICANN Staff to ensure the elements of the AoC are satisfied. In closed session, Denise Michel, Accountability & Transparency Advisor to the CEO, John Jeffrey, General Counsel and Secretary and Doug Brent, COO, address remaining questions from the RT. The RT also asks Staff to provide written responses in addition to their verbal responses. ICANN staff may also submit their concerns about the inquiry to the RT.

On basis of staff presentation, the RT will identify a list of information requests and action items. The RT notes to Staff that a constructive dialogue between the RT and Staff is desired.

The RT decided to order its review according to the following time frame breakdown:

- 1 October 2009 until the present: discreet time period under the AoC that should be analyzed in terms of actions completed or in terms of progress;
- 3 years prior to AoC: period of last revised JPA when large A&T undertakings were made;
- Time period prior to 1 October 2006: constitutional documents (Bylaws).

Review Team Support

The RT agrees that there is a dividing line between facilitation tasks (data collection and organization) and veracity work (completeness and responsiveness).

As regards facilitation, existing ICANN staff can be helpful in the sense that it is familiar with acronyms, ICANN process and documentation. The veracity issue on the other hand, may be resolved by the diversity, backgrounds, knowledge and access to information of the RT members. However the team puts forward the following suggestions:

- Verification model responsibility to be shouldered by Chair and Vice-Chair with the support of the team;

- Outsource function to third party (budget);

- Librarian role;

- Facilitation/coordination work.

Despite the team's concern to play a role model for the subsequent RTs, Members stressed that there was no urgent need to create official positions or Secretariat structures at this time as such assistance may be required when it becomes necessary. After discussion the RT passes the resolution to have staff seconded for collection of data and to assign the veracity tasks to the Chair and Vice-Chair (with support of Members).

As regards external support, the RT notes that budget constraints may be a factor and that decisions made will need to be accountable to the community; issue to be further discussed.

2) Staff Presentation (DB – JJ – DM)

JJ - Staff welcomes this Review and acknowledges the adoption of the Col policy. Community based RTs present a certain number of issues that are of concern:

- Confidential documents received from contract parties;

- Privileged and confidential information in relation to documents are not public yet.

As there are natural conflicts within ICANN, staff needs to make sure that it is not presenting unique advantages to market players and information to the RT that is unknown to the community. Hence it strongly advises the RT to keep their sessions as open as possible with recording. The RT reiterates its wish to have a full transparent process.

DB - Staff states its wish to engage with the community at a deep level of detail. Denise Michel has prepared an inventory, currently at draft stage, which lists Affirmation provisions and maps out ICANN's current or future activities. Requests for additional detail from the RT will be folded into this inventory before publication and all presentation material used will also be made public along with the recordings.

Presentation of the ICANN organizational Charts and its dynamics.

Global partnerships' focus is more operational than international relations focused; one of its functions lies within the regional outreach (e.g. liaison for small country codes) – while international relationships

are focused on senior advisor, Nick Thorne, who provides CEO with advice on strategic issues (e.g. IGF, ITU).

Within the ICANN world, SOs are the starting-point while staff has the task to facilitate the PDP process through three support positions:

- Secretariat function designed to facilitate the process (GNSO, ccNSO, At Large, SSAC);
- Senior policy office support (facilitation role with PDPs) – WHOis studies;
- Nascent group of technology advice – combination of policy and technical.

The RT states its interest in mapping out where Affirmation 9.1 provisions fall on ICANN's organizational chart and enquires about the respective roles of Kurt Pritz (VP of Services) and David Olive (VP of policy development) in the PDP process.

PDPs are supported out of the policy group, (e.g. major IDN PDP in ccNSO). The essence of Kurt Pritz's responsibility revolves around implementation. In 2006, a more integrated framework for policy development efforts came into force that uses cross-functional staff WGs. The WGs provide the community on an ongoing basis with proposed policies and staff notes so as to obtain clarifications on the community's ideas and make sure that the PDP could be implemented on the basis of a collective confidence. This entails an extensive amount of collaboration with many departments.

The bottom-up approach determines issues to become PDPs. The organization is experiencing an overload of PDPs which raises the question of prioritization (the GNSO votes for PDPs). The policy development VP and staff do not initiate policy work. One of the key instances where staff has a direct stake is compliance (e.g. current RAR discussion within GNSO: ICANN executing in its compliance role).

Even though each SO has very specific processes to develop PDPs, policy discussion is generated by the community in all constituencies with the exceptions of advisory committees (Bylaws provision) and Board authority who are entitled to request that a PDP be considered or initiated by a SO. Bylaws provisions are very specific on PDP submission to Board: before Board consideration, the PDPs are posted for public comment and Board proceeds with consideration of background report and in interaction with community and staff.

There is an active action between stakeholders via working Liaisons (ALAC is a great example) to start early in process so as to obtain a better outcome and thus hope that by the time the PDP is presented to the Board, concerns are accommodated. ICANN also has a formal process which consists in posting comments so that PDP is not driven by one group. Whenever a potential global procedure is underway, the ASO sends the SO/ACs encouragements to participate even before it gets to public comment (LL).

The Board on the other hand, has a role of overseer – its duty is to see that the PDP is properly resourced. Board members would also enquire whether specific stakeholders or community have been consulted or not and are offered minority reports where dissent stated (staff to provide the RT with this). RT also invited to refer to Bylaws on how vote is considered by Board.

RT suggests exploring the post public comment phase and the transparency of public comments submitted to the Board. The language issue has also been identified by the RT as a hindering factor to information access. It is noted that ICANN has gone from small investment to a million dollar budget commitment in translation business.

The RT also wonders whether a consensus or a certain number of comments are required for a public comment session to close. Staff has made funded effort in participation and engagement under guidance of public and participation Committee (plus budget); a plan which staff is to provide the RT with. One needs to master a great level of details to engage in ICANN which raises the issues of efficient tools.

The typical period of time allocated to public comment periods is 45 days with exceptions dictated by urgent timelines. They may also be extended based on stakeholders' judgment that time period is not accommodated to them.

The Board determines whether consensus has been reached based on number of comments received, on interests involved; it is a matter of management.

An area of focus would also be to determine how different points of views are expressed and taken into account among Board Members.

In order to frame their analysis, the RT wishes to:

- Obtain an articulation from Staff of policy, implementation and grey area;
- To understand flowcharts on how a PDP occurs in SOs and works its way into the hands of staff;
- To be provided with the performance indicators and metrics currently used by ICANN.

The team intends to overlay on those developed organizational charts where responsibility lies for ICANN staffers who are to handle inputs in a neutral way. The first goal would be to map out the policy implementation, process flows and try to pinpoint metrics, responsibilities. Staff is to provide the RT with these charts as well as with a monthly update on policies (communication pieces).

3) The CEO's Speech and Q&A Session

1. CEO stresses importance of this RT for Internet users and ICANN's focus to serve the global public interest. Staff is committed to work collaboratively with the RT and groups engaged. ICANN also looks forward to establishing sustainable practices to use for ongoing reviews or reviews to come. RT to be mindful of staff's tremendous daily amount of work and hope to come to agreement that will need to continue its activities during the process.
2. Significant and concrete achievements since Affirmation and areas for further improvement:
 - Continually assessing and improving performance of Board of Directors (Cf. Board Review);
 - Board selection process: changes in SO/ACs' processes and NomCom selection process revised;

- Extent to which Board composition meets ICANN's present and future needs – an assessment such as the one lead last fall by (PDT) so as to provide the NomCom with the skills set needed;
 - Consideration of an appeal mechanism for Board decisions – process have been streamlined, publicized and public input has been sought on a potential new mechanism;
 - Assessing the role and effectiveness of the GAC as well as its interaction with the Board while making recommendations for improvements so as to ensure an effective consideration by ICANN of GAC input on public policy aspects of the technical coordination (global DNS). Board-GAC joint WG to propose a set of recommendations at the Brussels meeting;
 - Continually assessing and improving processes by which ICANN receives public input including rationale of decision. Public comments forms online and in meetings have been enhanced as to match users' needs;
 - Continually evaluating to which extent ICANN's decisions are embraced, supported and accepted by the public/Internet community. Ongoing feedback on ICANN's issues/actions and published online;
 - Assessing PDP to facilitate enhanced cross-community deliberations and effective and timely process development.
3. The One World Trust 2000 assessment and recommendations – staff, community and Board looking forward to demonstrate the A&T mechanisms already in place in the organization and hope to develop more robust metrics to help measure the effectiveness and reach a even greater level. Often asked during meetings what model of organization could be used. ICANN strives to find objectives metrics and to provide fair baseline in comparison to other organizations. ICANN has made significant progress since March 2007. The One World Trust report, an objective third party, deems ICANN to be very transparent and gave it high marks in comparison to other organizations. Its participatory decision-making commitment can by matched by few others worldwide. The One World Trust also acknowledges ICANN's extensive processes for ongoing evaluations and procedure for complaints/response. The Affirmation and this RT thus are significant milestones in the A&T advancement. The report also provides ICANN with improvement recommendations; a large majority of them have been implemented including:
- Greater coherence across and better communication about ICANN's complaint functions;
 - Increased support for Board and more communication about its meetings;
 - A new robust code of contact for staff and volunteers;
 - More effective communication to outside world about ICANN's missions;
 - Enhanced representation of Internet individual users on the Board;
 - More accessible documentation and processes throughout the ICANN structures;

- More user-friendly online access to information;
 - Guidance to the NomCom on skills needed and Board self-assessment;
 - ICANN community to identify organizational goals and objectives.
4. Post-Affirmation execution – when the AoC was signed, CEO instructed staff to evaluate accomplishments and activities and to brainstorm on way to achieve even greater results. Top down and bottom up effort was initiated. Among achievements, the following highlights:
- CEO discloses all information regardless of some parties' discomfort as a leader should embody the values for them to be true. Rod Beckstrom initiated the US government's Twitter practice including web2.0, gov2.0, facebook, google, yahoo, Craigslist - significant commitment to promulgate use of social media;
 - Encouraged staff to analyze AoC documents: Staff members (with managers) had to individually interpret one paragraph each, define and explain to coworkers what it meant. This process enabled to spread education on document and personalize ownership across staff level;
 - Denise Michel, one of most experienced senior officers, appointed A&T Advisor to the CEO. 100% task focused on data collection, processes and organizational procedures. Denise Michel has three main undertakings: 1) folding every single Board resolution since 1998 into a wiki so as to draw link to actions taken or not, funded or unfunded in order to produce a statistical inventory. This database will induce a discussion with Board on where they stand in accomplishments of resolutions; 2) analysis of Present strategic Committee Reviews (2007); 3) documenting per criterion of the ongoing or future AoC activities;
 - ICANN adopted a transparency practice from the Getty foundation (best financial disclosure) for executive compensation with help from legal as involves personal information and was made available in a broader way than it is usually required in public reporting;
 - ICANN immediately shared news on ICM via Twitter and published full document (with minor changes to protect privacy of other parties) even though it contained adverse information. Other example: Nairobi security – some parties were sensitive to this announcement but pursuant to Accountability and Transparency vow;
 - ICANN also launched a web2.0 project to integrate operating information across the enterprise internally in order to facilitate greater information sharing and cross-functional communication;
 - Board process for considering the different ICM paths forward so that community could participate in that decision-making process;
 - ICANN approved a Bylaw change on posting resolutions within 24 hours and staff proposed conducting more studies on economics and user impacts;

- An understandable strategic plan was also developed organized in very clear areas in opposition to previous format, not only trying to integrate it not into the operating and budget plan but also into organizational processes so that community may know where ICANN is headed;
- Active online surveys and public sessions to further enhance A&T;
- Shifting the values of the organization;
- Hiring a VP of communication from Transparency International which is an organization that analyses/audits transparency within international organizations. CEO also reached out to the Sunlight organization which is regarded as one of the major transparency bodies in the US so as to require assistance and advice and to encourage them to engage with ICANN.

5. Necessary steps for a successful review: staff to help RT tackle overarching issues so as to launch a productive review; that includes establishing a proper framework for the review with assessments processes, standards, benchmarks... Denise Michel main point of contact.

ICANN stands by the commitments it made by signing the AoC and believes it has made significant progress since baseline in 2007. To conclude, ICANN hopes to receive an objective, third party community analysis that provides useful tools that the staff, board and community can implement.

➤ What specific metrics did you find in place when you came into ICANN and what specific metrics did you recommend to have adopted? (BC)

The prime metrics lie within ICANN's dashboard which entails an extensive set of metrics: financial indicators, registrar process etc. First reaction was: which are most relevant and can we distill those? Executive staff and CEO produced a one-page sheet of metrics that is used internally to assess performance on a monthly basis (RT requests to be provided with this sheet). IANA metrics are also available online. As regards finance, the more ICANN discloses, the more it received requests of disclosure. CEO invites RT to put forward metrics that organizations might be using and which ICANN should consider implementing. Extra help was brought on evaluating metrics and difficulty was mainly to find quality metrics.

➤ Even though ICANN has been congratulated on its level of A&T, the AoC listing of this review shows that there is a certain lack of satisfaction within the community. How could this gap be explained? Is it not a problem of accountability rather than transparency? Accountability entails explanations which must not be advised by legal staff as the more you explain the more you expose yourself to challenges. (FC)

Attempt to explain reasons of this phenomenon: 1) Economics, self-interest of parties and countries (reputational interest) in relation to the scarcity of resources constitute the main explanation. Even though the ASO, Regional Internet Registries and NRO deal fantastically with the scarcity equation, ICANN is still confronted to very scarce resources: IPV4, limited number of IPV6s, valuable domain names... Decisions as a result impact on values of business, domain names. ICANN, in its multistakeholder position of global coordinating body of DNS, has the obligation to dialogue with

stakeholders, to represent their economic interest and to engage the best General Counsel, attorneys... Economic game in which there is not always a winner or where there is a winner and a loser dynamic. Every decision made within ICANN is questioned by losers who claim that it was not accountable. Recent Board resolutions have a great impact on economy and domain name industry structures so if we do have an environment where open-process is current practice and appeals are possible, the system is currently used by parties who have economic interest. It is very specific of ICANN to have clear-cut lines in favor of publication, public comment and third parties. In such a context, ICANN would get perpetual feedback of negativity and it is currently criticized as a constant body of discussion. 2) Fundamental intellectual property dilemma: no one for one matching between domain names and trademarks. Every domain name must be unique so as to have a global unified domain name system. No simple solution possible to resolve this issue as countries have different trademark regimes. 3) ICANN has not been disciplined enough in terms of how accountability-made decisions should be dealt with.

- How does the AoC change the accountability relationship given that AoC has shifted from US government accountability to Internet community and that participatory review becomes part of that process? 2008 mechanisms do not reflect these changes, should amendments be made in light of the AoC? (WC)

Initial goal of the MoU was to make of ICANN a multistakeholder model – next evolution is to be accountable and transparent to these stakeholders.

- ICANN is a very complex ecosystem which raises the question of accessibility of information and understanding of ICANN issues and thus limits the number of people deciding (vertical debate). How could ICANN enhance this? (OM)

Fronts ICANN is working on: 1) the language issue (translation); 2) the gtlds: introduction of non-latin characters via the IDN approval with ccTLD delegations – commercial interest; 3) the ICANN Board accountability: structure that is highly representative of communities.

- Did CEO seek outside external advice when he first arrived? Regarding the process to internalize AoC provisions, have changes been observed since? Have employees made individual commitments and would it be possible to have a sample of commitments (anonymized)? (LS)

No external consultant retained instead tried to understand the driving forces of this very complex organization where numbers of issues and variety of cultures/values... First areas of focus were: 1) make sure baseline was covered (finance operations and control); 2) Thinking of problems from an economic standpoint and strategies of players; 3) understanding legal framework and technology of DNS. Also tried to obtain advice from insiders (Denise Michel) on how to gather ICANN accountability data and how well the review processes work, how well decisions and questions are addressed.

In terms of staff commitment, should refer to EOI effort for new gtlds which fosters transparency. AoC also stipulated that ICANN needed to perform more economic studies. Along with open public sessions during ICANN meetings, there is also random selection process of ICANN staff to meet with CEO every week so that may ask specific questions.

- Have examples of performance indicators been found to reflect the ICANN complexity? (BB)

No overall example has been proposed. What is the best model ICANN could follow? What are their specific practices? Very few examples were put forward. Issue submitted to the Getty foundation who has been identified as a leader in transparency on financials and executive compensation. ICANN also established contact with RIRs so as to investigate on their policy documentation. Hope to get more examples via the A&T Review exercise.

- How is ICANN accountable to external stakeholders who are not regularly present at ICANN meetings? Suggestion to consider an “ICANN at a glance” section for beginners in light of its very complex system. (MI)

In the case of the EOI, staff tried to think of the global public interest and not of the stakeholders whose input had to be taken into account nevertheless, in light of the economic interest. ICANN’s main focus was to determine the benefits for the public (mostly) and PDPs. Another example would be the approval of the IDN program. AoC has contributed to the improvement of ICANN’s decision-making process.

4) Final Open Session with Staff (DB – JJ – DM) and Exchange with RT Members

Suggestion to take into account listeners’ feedback as might be helpful in evaluating metrics (CLO).

Intention to address how recommendations from RTs are handled; how A&T goals are established for responsible staff; how progress by staff is measured– how A&T issues are included in strategic and budget planning; what are the resources to support PDP work.

Public Community Processes

Even though strategic, operating and budget planning are staff supported processes, they endeavor to remain in line with the community’s objectives.

- The strategic plan is created every year (three-year planning horizon) at the July meeting and includes public consultation (polls etc). An area of improvement in this sense would be: how to obtain an enhanced engagement and an early build-up from the SOs/ACs involved in ICANN’s planning processes. The strategic plan inspires to identify the priorities and deliverables in clear language.
- The budget plan (Fiscal year July 1st – June 30) is introduced in February for public input and approved by the Board in June which leads to the beginning of operating plan year. Even though consultative process, an area of improvement would be to obtain even more input from SOs and ACs. ICANN also provides SOs/ACs with a version 0 of the budget early in the process so as to encourage feedback and give them a preliminary idea of numbers.
- After an ICANN meeting, Staff assesses its performance with the previous operating plan and sets objectives for the next operating plan. ICANN has an online system where initiatives are identified (140 in typical period) for staff to execute within a four-month period along with a

monthly tracking system of advancement. In this management system, the objectives are driven down to each individual and are linked to the compensation system (trimester goals).

Public Reporting

As ICANN is a corporation, there is a set of compliance-oriented publications: annual report, financial audit and tax reporting. ICANN also produces a budget document (with detailed accounting) and a monthly web-based reporting (dashboard).

Proposal for RT Recommendations

This RT is to issue a set of recommendations – might not be implemented in one-year period – which will be submitted to public comment period. Debate will be on how these get factored into the resources and execution plan.

Q&A

- The 2008 Accountability framework makes provision for an annual review – have those been taking place since framework was placed and what proportion of budget was allocated to this project? (WC)

Do not believe that performed a thorough review in calendar year 2009 due to activity with US Department of Commerce and community around expectation of AoC. However strategic committee widely consulted on A&T and large portion of its work was integrated into the AoC. Moreover there is a budget proposed for various reviews starting July 1st.

- What mechanisms exist to provide Board with staff input/recommendations? (CLO)

Different levels of interaction with the Board:

- Board as a whole;
 - Board committees supported by staff who provide oversight on some issues (Board Risk Committee for instance) and have significantly increased their activities in the recent years. The Board recently revised Committee charters so as to enhance their interaction with the community. Committees hold 4 to 5 meetings per month and introduce public input to Board. Staff may provide slides on how Committees are structured;
 - A standard Board book provided by staff with short summary of agenda items, paths recommended by staff and supporting documentation. Staff memos do not tend to be published;
 - On basis of these exchanges, Board interacts with the community.
- Remark that documents submitted often are very voluminous and hard to digest which is very problematic as decision-making should be completed in a relatively short period of time. How are Board decisions taken? Does ICANN have a tracking system of Board Members' exchange? (FC)

Contentious issues are to be submitted at least a month before a decision is required and there is also Board email list where Members can exchange. Moreover before a motion gets to the Board, there often has been months of discussion within community.

- Summaries are useful to share decisions with the community. The question here does not focus on Board mechanisms but rather on community's support mechanism in favor of decisions which are made without the correct information being at hand. (EI)

Every item begins with a summary – papers have been structured so that they may have different levels of information intensity. There is also a Board portal where Members can log to obtain information about ongoing processes (Board Vantage).

The RIP? IRP? decision constitutes a rather good example of Board transparency efforts: rather than having Board workshop, Members decided to post a proposed process for public comment. There is also an ongoing analysis on the layout of information in Board papers.

- Does ICANN have a database of advice received from the ACs and other public bodies? (FC)

It is certainly possible to have a database and would be useful to obtain additional ideas on its content/layout etc. However staff would first need to determine what constitutes advice (email, formal statement in open ICANN meeting...).