

Accountability and Transparency Review Team

Thursday, May 6th 2010 Open Session – Minutes

The RT retains the authority to determine that an interaction will be held under "Chatham House Rules." Where invoked, members are expected to refrain from public reporting for the specified period. Record to reflect the general nature of the issue discussed under such rules.

RT Selectors and Members

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

Assistants invited by RT Members

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

Supporting Staff

(AJ) Alice Jansen
(JS) Jesse Samora
(CS) Cory Schruth

The open session of Thursday, May 6th focuses on three work streams prepared by RT Members and is composed of 4 sections: 1) the conceptual framework: working definitions and key review methodology; 2) the review methodology and timetable; 3) the performance metrics; 4) the list of action items and volunteers.

1) Conceptual Framework: Working Definitions and Key Review Methodology

On basis of (WC) and (OM)'s work stream – please refer to the document and PPT presentation

Presentation

(WC) and (OM) provided a paper on conceptual frameworks for assessing institutional accountability which analyzes definitions and frameworks that could be used to perform the review.

Please refer to the matching PowerPoint which entails a first section of thorough concept definitions and a second session composed of frameworks. Values and remarks submitted during the presentation are enclosed in the following minutes.

The following definitions and linkages are provided:

- Two *definitions of Accountability* - certain resonance with AoC when it invites analysis of the question of public interest
- The *traditional and dynamic approaches* -
- The *distinction between internal and external stakeholders* – over simplistic approach for ICANN (OM)
- *Linkage between the traditional and dynamic approaches* – good linkage as sanctioning tends to be retrospective in nature after a review while learning and participatory aspects tend to be ongoing and embedded in practices of organizations

Different frameworks assessments of Accountability:

- ❖ The *Institutional constellations framework* – stresses the issue that an international organization is often caught up in a set of constellations, hence the need to take into account of the organizations that surround it as well as the institutional diversity involved in the decision/regulation-making process. The hierarchy and centralized or decentralized relationships of power have an impact on outcome of the decision.

Value: This framework is interesting in the sense that institutions are not free-standing with full policy autonomy but are embedded in constellations of institutions which overlap and constantly influence policy processes. Applicability to ICANN in terms of decentralization (US Department of Commerce, U.S. congress, international United Nations institutions...) - however many institutions to be analyzed would be inside ICANN (governments within GAC, interest within GNSO) which leads to believe that this framework would be more applicable to a regulator who does not have its constituencies within its own walls.

- ❖ The *Governance of Common Pool Resources (CPR)* framework – work of Elinor Ostrom, Nobel Prize for Economics (2009) and Bertrand de la Chapelle's suggestion at the Nairobi meeting. The *ICANN connection* lies within the common pool of resources (DNS) and self organized frameworks in setting ground rules for participation in the access and utilization of these resources. Elinor Ostrom established eight *Design principles*.

Value: It would be useful for the RT to explore insights proposed by Elinor Ostrom especially the first four design principles so as to grasp the sort of institution ICANN is.

- ❖ The *Global Accountability Framework* (GAP - One World Trust) – within this lateral framework would be possible to see ICANN as a non-governmental organization. From the

adaptive markets hypothesis, as opposed to efficient market hypothesis, it tries to get the notion of ecosystem which is often used within ICANN or internet as a whole (Cf. RSSAC document). Species are seen as groups of participants or financial markets in the case of Internet governance. This approach induces a law of the jungle and pursuit of stakeholders' interests.

Value: It breaks accountability into four manageable dimensions - transparency, participation, evaluation, complaint and response mechanisms - that can be relatively easily assessed. It is useful in the sense that it concludes an Accountability evaluation as part of the process (ongoing dynamic). Moreover ICANN has already undertaken a GAP review in 2007 that could be used as a baseline. Even though adaptive markets hypothesis represents an interesting ecosystem analogy, if one gets deeper, it might be shown that the framework stretches the biological method too far. Hence it may be inappropriate at this stage.

❖ *The Corporate Governance Framework –*

Value: It can assess decision making processes particularly of the Board in relation to other stakeholders and to which extent they match the best practices of corporate governance in private sector. Difficulty however, lies within the fact that ICANN does not have shareholders.

- The initial framework – History of different dimensions of ICANN activities as regards Accountability
- ICANN's Accountability Framework 2008.

Definitions of reference

The Review Team will consider and further develop the following definition for the unique organization that is ICANN:

- A non for profit corporation submitted to Californian law;
- A contracting entity for the IANA contract with Department of Commerce which has specific obligations as a vendor;
- A facilitator for PDPs and a policy advocate for policy implementation;
- A global coordinator for Internet DNS whose decisions should reflect the public interest;
- A public policy function for some of its activities and therefore expected to be transparent and accountable to the community (Cf. 2008 report on Accountability).

The definition of Accountability proposed by (WC) and (OM) is based on the global accountability framework (One World Trust). However ICANN already has a framework for the A&T Review in the 2008

document and it is suggested that the RT review this document first without excluding the possibility that this framework might be reviewed by the next RT (JK).

(CLO) ICANN staff also brainstormed on definitions of Accountability within framework of 2008 report – table of definitions to be sent to the RT.

So as to capture the dynamics of the exercise, (WC) and (OM) requested to change the content of the definition as follows: “Accountability refers to a process by which individuals or organizations are answerable for their decisions and processes on an ongoing basis”. The RT decides to adopt the amended definition of (WC) and (OM) subject to modification as the RT determines and to merge it with the enablers/details provided by the One World Trust definition which was submitted by (BB).

Frameworks of reference

The GAP approach has already been tested via the 2008 report, has proved to be efficient and has 4 potential dimensions. The RT could use it as a baseline and adapt it or hire One World Trust as their consultant.

The corporate approach should also be emphasized in its relationship to the Board’s responsibilities (WC).

Nevertheless it would also be interesting to have a more prospective view with CPR approach – contact Charlotte Hess who could either be drawn in group as external expert or conduct a study. The work is captured in something that Elinor Ostrom calls an “institutional analysis and development framework” and such an approach might be interesting from a conceptual point of view, in understanding how ICANN is perceived by economics institution in terms of resources (WC). Should the RT decide to opt for this framework, the RT would have to initiate a dialogue with Charlotte Hess and conduct further analysis so as to determine whether this type of frame would be relevant in the context of ICANN.

(CLO) suggests exploring this CPR approach in parallel for next steps. Ecosystem of ICANN relationships has evolved as opposed to Accountability framework which calls for a fresh mechanism so as to identify themselves. RT should not spend too much time creating a model to measure as no comparison and makes it difficult for understanding outside of those who have gone down that pathway. To bring everyone up to speed in a new concept might be more difficult in short term but would enable the community to explore and be part owner of changes. Also suggestion from the chat room to check the utility of CPR with other TLDs.

(JK) RT should be as practical as possible: 1) identify framework; 2) evaluate framework; 3) further reflections on framework itself; 4) submission to Board and community to work on this in the future.

The RT decides to take into account the approach chosen by ICANN in 2008 and to direct an enquiry to One World Trust and Charlotte Hess on values of the GAP and CPR approaches for this particular review. Contact task assigned to (LS), (WC) and (OM).

2) Review Methodology and Timetable

On basis of (BB) and (MI)'s work stream – please refer to the document

❖ Definition of transparency and public interest submitted by (MI) and (BB) -

(EI) stresses the importance to distinguish the concept of public as in community, common and public as in government/administration. RT to clarify terminology: whether public interest or interest of the public.

The RT shall also need to determine whether these definitions will apply to their framework. Moreover, important for RT to cast a fresh look on these definitions in light of changes brought by the AoC (BC).

❖ Work Methodology

(FC) believes it is important to know where the RT is headed prior to agreement on methodology. End product should be series of recommendations on five provisions of paragraph 9.1 but beforehand, need to establish what the problem is and prepare introductory paragraph that would acknowledge efforts but yet mention that improvements need to be made. To this end, questions should be asked so as to determine whether there is a problem or not and collect evidence. RT is to determine an enquiry focus (management review etc) and to pinpoint pursued end result. On the other hand, (MI) believes the RT should start evaluation before drawing conclusions, (LS) stresses that the RT should not have preconceived ideas.

After discussion, the RT decides to start the review process without operating assumptions, to identify and move accordingly.

Some members believe the RT requires the help of an external consultant so as to shed light on whether ICANN is structurally organized in a way that leads to A&T while others are convinced that this a necessity which will need to be determined during the process. The issue of budget, timeline and public acceptance of the review are also raised.

Review of management is defined as one of the key items of the process by some members whereas others believe only evaluations will indicate whether such a particular review is necessary. JK believes the RT should not restrict itself to areas of focus at this stage of the process.

As a result of the discussion, (LS) and (FC) are to draft Terms of Reference for a Request for Proposals for the external consultant to conduct review on AoC provisions and management.

(CLO) in favor of recording of private sessions for internal reference; (PDT) on the other hand is against as different categories of recording lead to increased chances of confusion.

RT is to adopt methodology assumption in favor of maximum transparency while less is the default:

- Members' right to go off the record (Chatham rules)

- F2F streams subject to Chatham rules
- Scribe private session
- Summary highlights within 24 hours, bullet points and agenda
- Detailed minutes within 4/5 days
- Recordings and streams to be posted as soon as possible

❖ Public Input

The RT agrees in favor of:

- Prompt publication of input and supporting material for Q&A session with executive staff in MdR
- Proposed Questions to the Public at the Brussels ICANN meeting to be drafted by (WC) – (CLO) – (OM)
- Questions to ICANN staff on ICANN’s current practices, procedures and proposed changes to be posted for public comments on May 15th so as to review input during the F2F in Brussels

❖ Board Input

The RT’s resolutions in terms of Board input are as follows:

- Meet the Board in Brussels
- Provide focused list of discussion topics

❖ Decision-making within the RT

- The RT has adopted the common practice to reach consensus on recommendations but will not be determined as a requirement. To the extent that the RT is unable to achieve consensus with respect to any such recommendations, its reports and recommendations will reflect the dissenting views.

❖ Meetings

- Invitation to SO/ACs to provide the RT with their own recommendations and RT to make itself available to dialogue during SO/ACs structured meeting.
- Should all RT members not be able to participate, may arrange for a subset delegation or remote participation. However will need to make sure that agenda, questions and SO/ACs responses are well prepared so as to avoid misconceptions (PDT). Outreach activity to be undertaken by (CLO) and (MI)and (BB) to set up meetings so that no time clashes

- Brussels Meeting: consultation session with staff on Monday afternoon (90 minutes)
- RT to attend GAC-Board joint WG meeting on Sunday 20 June 09:00-12:00
- Invitation from GAC Chair to have meeting with RT accepted
- RT Members are free to report back to their constituencies
- The RT will retain the authority to determine that an interaction will be held under "Chatham House Rules." Where invoked, members are expected to refrain from public reporting for the specified period. Record to reflect the general nature of the issue discussed under such rules.
- Members of the RT are volunteers, and each will assume a fair share of the work of the team. Where appropriate, and with the consensus of the RT, ICANN staff will be used to provide administrative support services related to travel, meeting logistics, and technology. To preserve the independence and integrity of the RT, however, ICANN staff will not be asked to perform the analysis of public comments, in opposition to minutes where recordings are available.

❖ Participation

- Members can be assisted when necessary (e.g. for translation purposes). As RT Members were individually selected, Assistants should not intervene themselves, nor should they be able to substitute for a member. Remote participation to be provided for Members unable to attend the meeting.
- The Chair and Vice Chair are to serve as full participants.

❖ Calendar

- **May 15 2010** Deadline to post questions to staff
- **June 18-19 2010** F2F meeting in Brussels
- **June 20-25 2010** Public forum session with SOs/ACs, joint Board-GAC WG and Board
- **September 14-17 2010** IGF meeting in Vilnius – RT not to attend as a group as agenda of meeting and workshops are closed. [RT informed that agenda is not closed.] However Members who intend to participate in this meeting and in any regional IGF meeting will make themselves available to dialogue and seize the opportunity for outreach and input – (JK) to provide list of meetings and Members to indicate their presence or not so as to initiate a discussion on material to present
- **September 2010** F2F meeting in Beijing; the driver force is to determine whether management review needed (LS) – external analysis would be handed out and review of public comments in response to a set of questions – Doodle to be circulated (BB)

- **October 8-10' 2010** F2F meeting in Egypt – (MI) to confirm and Doodles to be circulated (BB) – Finalize draft recommendations–
- **December 5-10 2010** F2F meeting in Cartagena, Columbia – Public consultation process completed and last minute community enquiries and comments
- **Post Cartagena** – refining recommendation on basis of last public interventions
- **31 December 2010** – Deadline to submit recommendations to the Board

Geographical balance, periods of public comments (45 days in line with ICANN Bylaws) as well as a period of 5-10 days to analyze public comments were taken into account when establishing the calendar.

(CLO) suggestion to pro-actively think of layouts, formats, contents (summary) so as to ease the process of analysis. The RT states its intention to make justice to all comments received and to use common data gathering tools and methods. Question of translation is also raised.

❖ Social Media and Means of Communications

- Enhance Adobe Connect Rooms
- Twitter

❖ Indicators

- The RT acknowledges that their work is a template at some level.
- Concerns expressed by stakeholders are a very important measure indeed but the list should also refer to a list of criteria (MI)

❖ Deliverables

- RT will post draft recommendations in October so as to solicit public comment
- RT will conduct the process so as to build greater trust among members of the ICANN community and to establish an open, candid debate on enhanced accountability
- Recommendations to demonstrate the rationale of the RT
- Develop recommendation on frequency and panels of reviews – ON HOLD. Suggestion (MI) to share lessons learned with next RTs
- Endeavor to produce a next iteration of deliverables for final comments

3) Performance Metrics

On basis of (CLO) and (BC)'s work stream – please refer to the document

(CLO) and (BC) provided a paper on evaluation criteria, performance measurements and KPI's (Key Performance Indicators).

Objectives

Please refer to the matching document which entails a thorough list of the *objectives*.

The RT agrees:

- to adopt a set of measurable performance indicators which address each of the AoC paragraph 9.1 provisions;
- that performance indicators should be aimed at better measurement of ICANN performances in the future;
- that performance indicators should be specific, tailor-made;

RT discusses that, in some cases, qualitative measurements may be needed and metrics may be difficult to apply.

CLO Qualitative information can be processed in a quantitative way.

Areas of review in the AoC

The main *area of review* is embedded in paragraph 9.1 provisions however the paper proposes that the RT determine whether *other areas of review* fall within the purview of this work, namely paragraph 7 and 8 of the AoC. The RT decides to adopt paragraph 7 and to drop paragraph 8 as it is identified as out of scope.

In addition to the contents of the AoC, the RT underlines the relevance of two points mentioned in the ICANN staff paper.

The RT believes that the Board resolutions database contains meaningful measurements of relevance for the RT mandate; further evidence can be obtained through the ICANN community and multistakeholder model. (BB) reminds the RT of the public/private interest dichotomy in this context. Moreover ICANN is to continually improve its A&T as it is parts of its DNA.

Data collection

The RT agrees to divide the data into periods:

- 30 September 2009 – present

➤ AoC

- 1 October 2006 - 30 September 2009

- Final JPA, ICANN A&T frameworks and principles, JPA mid-term review – President’s Strategic Committee (PSC) = Potential for metrics

- Prior to October 2006

- For consistency capture relevant documents to be captured; not a metrics exercise but recognition.

The RT agrees that:

-it should not focus its work on history and it should map out relevant resources;

-to keep trail of progress;

-to take the mid-term review as one of the major starting-points.

Identification of Performance Indicators

Given the unique nature of ICANN, to pick up metrics and IoP used by other organizations would not allow the Team to obtain meaningful indicators and measurables.

The paper suggests selecting SMART indicators:

- **Specific**
- **Measurable**
- **Achievable**
- **Relevant**
- **Time bound**

On basis of its experience with the SMART metrics, (BC) describes it as a system that is very effective, that eliminates grey areas and that creates, for the evaluated party and evaluator, a clear understandable opportunity to measure.

(EI) suggests using ICANN metrics as indicators so as to demonstrate whether they are efficient or not and then issuing a recommendation accordingly. As underlined by (CLO) Board indicators are not publicly available.

(JK) submits the perspective of hiring a professional reviewer in drafting metrics. (FC) stresses the importance to have a professional who is familiar with ICANN processes. Moreover (CLO) reminds the

RT that pre-package mechanisms do exist for not for profit organization if the RT wishes to consider them.

So as to engage with the community, the RT adopts a resolution in favor of a survey tool that would enable them to have a set of measurables and baseline from a RT to another. The RT acknowledges that it is essential for them to 'select appropriate devices so as to open the black box'. Moreover (WC) suggests having a case study where subjects are deconstructed.

Key points to consider

The paper puts forward a set of key points to consider. Please refer to matching document.

(JK) suggest analyzing a portion of AoC provisions rather than all: *3 out of 5. The RT however, disagrees with this suggestion as the scope of the review lies within the content of paragraph 9.1.*

List of Action Items and Volunteers

- (MI) and (BC) to draft a list to (DB) or requested documents and questions
- (OM) – (WC) and (CLO) to deliver questions/survey for public input (Brussels meeting)
- (BB) to communicate with SO/ACs and to set up meetings for the Brussels event
- (BB) and (LL) to draft questions to SO/ACs and an agenda as well as preparatory questions/work. Should also establish the time requested for discussion and signal the RT's availability for discussion
- (PDT) to touch base with Board as to inform RT's intention to intervene during Board retreat session on June 20th (afternoon) (90 min)
- Following (PDT)'s request, (BC) and (EI) to prepare questions for the Board so as to submit discussion papers as soon as possible for their consideration
- (JK) to arrange for a 120 minute session with the GAC on Saturday 19th afternoon and a discussion with GAC-Board joint WG on Sunday 20th 11:00 – 12:00
- Following (JK)'s advice, (BB) and (FC) to develop questions for the GAC
- (JK) to provide list of IGF meetings and Members to indicate their presence
- Following (PDT)'s request, RT is to create a central repository by copying Chair (BC) and Vice-Chair (MI) on all exchanges of emails so as to enhance coordination and communication
- (LL) is to take on the role of webmaster
- (WA) in charge of Twitter communication and (EI) of Facebook

- (BC) to present the RT and status of the review to the community At-Large during the Brussels meeting on Monday afternoon (time to be confirmed)
- (LS) and (FC) to submit draft ToR for RfP to the RT as soon as possible in terms of hiring an external consultant to perform the management review. Should be completed with a view to having RT's feedback prior to the Brussels meeting. The RfP would then be sent out to consulting firms who would present a plan of campaign in June. After delivery of consultant firm's project, RT to decide whether to proceed with this process or not. Report of the management review would have to be performed by September. In the meantime RT to discuss the issue raised by (JK) namely: the redundancy in having a management review while a Board review was released in March. (LS) believes the review should first and foremost be focused on the 5 provisions of paragraph 9.1 of the AoC.
- (MI) to coordinate with Egypt for a meeting early October (8th-10th)
- (XZ) to analyze whether a meeting in China in September is feasible
- Presenters of work stream to present updates of the documents, to synthesize content and reflect elements of discussion
- (BB) to create Doodles for the next conference call and meetings ahead
- (BC) and (MI) to develop an agenda of the Brussels meeting
- RT to make better use of the Adobe Connect Room during the upcoming conference calls and meetings
- (OM) and (WC) to contact Charlotte Hess and to examine the applicability of CPR frameworks
- (LS) to set up a call with One World Trust so as to discuss ToR for RfP and conceptual frameworks with (FC), (WC) and (OM)'s attendance.
- (AJ) to list and archive Members' Declaration of Interest