

Accountability and Transparency Review Team:

Terms of Reference and Methodology

1. Background

The Affirmation of Commitments signed on September 30th 2009 between ICANN and the US Department of Commerce (the “AoC”) contains specific provisions for periodic review of four key ICANN objectives, including “ensuring accountability, transparency, and the interests of global internet users.” Under the AoC (¶ 9.1), ICANN has committed to: “maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by:

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

The AoC calls for a review of ICANN’s progress on the above commitments no less frequently than every three years, with the first such review on accountability and transparency to be completed no later than December 31, 2010. Accordingly, the first accountability and transparency review team (the “RT”) has been assembled consistent with the requirements of the AoC. This sets forth the terms of reference and the methodology that the RT will use to carry out its duties under the AoC to “consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. The goal of the RT is to balance internal and external stakeholder equities by providing a rigorous, objective assessment process for measuring progress and outcomes; deliver transparent, defensible results that enhance credibility of overall ICANN assessments, and establish a foundation from which ICANN can logically map, align, and champion future programs and initiatives

2. Framework

At its simplest, accountability refers to a process by which individuals or organisations are answerable for their actions and the consequences that follow from them. Accountability is not only a means by which individuals and organizations are held responsible for their actions. It is also a means by which organizations can take internal responsibility for shaping their organizational mission and values, for

opening themselves to external and/or independent scrutiny and for assessing performance in relation to goals. This includes both the sanctioning elements of accountability and the learning and participatory aspects.

What ICANN *is* – that is to say, ICANN’s role in the DNS ecosystem - *necessarily* affects the parties to whom ICANN must be accountable in any given situation, and the manner in which it should be accountable in any given circumstance. The RT is cognizant that ICANN is, as a legal matter, a California not-for-profit corporation, and acknowledges that ICANN must operate within the constraints imposed on such institutions. The RT, however, rejects the argument that such legal formalities dictate – and limit - the degree to which ICANN can be accountable to affected stakeholders.

ICANN is a unique institution, its accountability requirements cannot be captured by reference to familiar types of organizations (e.g., standards body, foundation, international organization, self-regulatory organization, private corporation). Accordingly, the work of the RT will therefore include an affirmative examination of the conceptual framework by which ICANN’s accountability should be assessed. The [<link to Framework>](#) attached is a working document, and refinement of the Framework is expected to be a key deliverable of the RT.

With respect to its work, the RT assumes that ICANN’s accountability should encompass at least the following three spheres:

1. Public sphere accountability which deals with mechanisms for assuring stakeholders that ICANN has behaved responsibly;
2. Corporate and legal accountability which covers the obligations that ICANN has through the legal system and under its bylaws: and
3. Participating community accountability that ensures that the Board and executives perform functions in line with the wishes and expectations of the ICANN community.

The RT believes that all of these forms of accountability must be considered – and balanced. In other words, the “public interest” and the interests of “individual stakeholders” are interdependent. The RT also believes that the public interest is served, ultimately, by creating an environment in which all stakeholders can be assured that the rules will be (i) debated; (ii) refined to reflect relevant input from the community, including the community of governments participating in the ICANN process; and (iii) honored.

3. Work Methodology

- a. The RT will operate with maximum transparency as a general matter.
 - i. Teleconferences will be recorded, subject to the right of a member of the RT to take the discussion “off the record.” Face to face meetings of the RT will be streamed, to the extent practicable and subject to the right of a member of the RT to take the discussion “off the record.” Wherever a meeting is taken “off the record,” however, the record shall reflect this decision, as well as the underlying considerations that motivated such action.
 - ii. The RT will endeavor to post (a) “summary minutes” within 24 hours of any telephonic or face to face meeting; (b) detailed minutes within 5 business days of any telephonic or face to face meeting; and (c) streaming video and/or audio recordings as promptly as possible

after any such meeting, subject to the limitations and requirements described in subsection (i) above.

- iii. The RT will maintain a public website <url>, on which it will post: (a) minutes, correspondence, meeting agendas, background materials provided by ICANN, members of the RT, or any third party; (ii) audio recordings and/or streaming video; (c) the affirmations and/or disclosures of members of the RT under the RT's conflict of interest policy; (d) input, whether from the general public, from ICANN stakeholders, from ICANN staff or Board members, governments, supporting organizations and advisory committees, etc. Absent overriding privacy or confidentiality concerns, all such materials should be made publicly available on the RT website within 2 business days of receipt.
 - iv. Email communications among members of the RT shall be archived via the AT-review email list and, subject to the right of any member of the RT to request that a thread be taken "off the record," published as promptly as possible but in no event later than [TIME PERIOD] following posting of such email to the AT-Review email list.
- b. **ICANN Staff Input:** The RT met with ICANN staff in Marina del Rey on May 5-6, 2010, and will meet with ICANN staff as needed in the view of the RT, to discuss staff's views on ICANN's implementation with respect to AoC transparency and accountability goals. The goal of the RT's initial exchange with staff was to establish a dialogue with ICANN staff regarding work on accountability and transparency, and to gather preliminary staff views on "next steps" in furtherance of the AoC goals. Following this initial exchange, staff may be asked to provide their answers and/or additional information to the RT in writing. Whether or not the RT requests written follow up, ICANN staff may provide written responses to any questions posed by the RT, and/or in connection with issues that the RT did not raise but which, in the estimation of staff, are relevant to the work of the RT. The RT has submitted an initial list of questions for the ICANN staff, which are posted on the RT website. Further questions may be added later and will be posted on the same website
- c. **Community/Stakeholders/Public:** The RT will issue a call for public comments regarding ICANN's current practices and procedures, and proposed changes to those practices and procedures, on or before 18 May 2010, with an initial deadline of -1 July 2010. The RT will review public comments in its face to face meeting in its meeting in Brussels in late June. In addition, the RT will meet in a public forum with members of the ICANN community in Brussels on Monday, 20 June 2010 to provide a progress report, to request further input from the community based on the public comments, and to solicit additional community comments. Further calls for public comments may be announced later during the process as necessary.
- d. **SOs/ACs:** Each ICANN Supporting Organization and Advisory committee is invited to submit its own set of recommendations and/or observations through its representative(s) on the review team. The RT will contact each SO and AC to offer a meeting with members of the RT in Brussels. The RT will provide a list of discussion topics for those meetings, which will be posted in advance on the RT website.
- e. **Board Input:** The RT will meet with members of the ICANN Board of Directors on June 20, 2010, on the margins of the ICANN meeting in Brussels. The RT will provide a list of discussion topics and questions for the Board, which will be posted in advance on the RT website.

- f. **GAC:** The RT will meet with the GAC on the margins of the ICANN meeting in Brussels. The RT will provide a list of discussion topics for this meeting, which will be posted in advance on the RT website.
- g. **GAC/Board Working Group:** The RT will meet with the GAC/Board Working Group on the margins of the ICANN meeting in Brussels.

Management Review: The RT has appointed a working group to consider issuance of a request for proposals to engage a management consulting firm to assist the RT. In particular, the management consultant will be asked to assist the RT in gathering data and assessing whether ICANN's processes and procedures are designed and executed in a manner that ensures accountability and transparency and reflects the interests of global Internet users.

4. Work of Review Team

a. Decision-making within the RT

- i. Under the AoC, the RT is to make recommendations regarding ICANN's accountability and transparency processes in services of the public interest, to be provided "to the Board and posted for public comment." The RT will seek, but will not require, consensus with respect to such recommendations. To the extent that the RT is unable to achieve consensus with respect to any such recommendations, its reports and recommendations will reflect the variety and nature of the RT member's views. Any conflicts of interest that may affect the views of an RT member will be disclosed and addressed in accordance with the conflict of interest policy discussed below.

b. Meetings

- i. **Face to Face Meetings:** The RT intends to hold its meetings in different geographical regions as feasible. The RT met in person in (a) Marina del Rey on 5-6 May, 2010; the RT will meet in Brussels on 18-19 June 2010; in Asia [TBD] in [September TBD] in Egypt on [TBD] October, 2010; and in Cartagena, Columbia on [TBD December, 2010].
- ii. **Telephonic Meetings:** In between these face to face meetings, the RT and/or working groups of the RT shall conduct telephonic meetings as necessary. All such meetings shall be publicly noticed on the RT website as far in advance as possible, and agendas for each such meeting will be published no fewer than [5] days in advance.

c. Reporting

- i. Members of the RT are, as a general matter, free to report back to their constituencies and others with respect to the work of the RT.
- ii. While the RT will strive to conduct its business 'on the record' to the maximum extent possible, members must be able to have frank and honest exchanges among themselves, and the RT must be able to have frank and honest exchanges with stakeholders and

stakeholder groups. Moreover, individual members and the RT as a whole must operate in an environment that supports open and candid exchanges, and that welcomes re-evaluation and repositioning in the face of arguments made by others.

- iii. Accordingly, the RT will retain the authority to determine that an interaction will be held under "Chatham House Rules."¹ Where Chatham House Rules are invoked, members are expected to refrain from public reporting regarding the discussion conducted under these rules. Once invoked, the Chatham House Rules will continue to apply to the discussion in question. Whenever the Chatham House Rules are invoked, however, the record will reflect that as well as the general nature of the issue discussed under such rules.
- iv. 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 substantive tasks (i.e., report drafting, etc.) with respect to the work of the RT.
- v. The Chair and Vice Chair of the RT shall propose an approach to providing appropriate support to the RT efforts on or before June 18, the date of the RT face-to-face meeting in Brussels.

d. Participation

- i. **Members** could be assisted when necessary (e.g. for translation purposes) although the emphasis must remain on direct interaction between the named members. Assistants should not intervene themselves, nor should they be able to substitute for a member who is unable to participate. This applies to conference calls as well as face-to-face meetings. Remote participation possibilities should be provided in cases where a member is unable to attend a face-to-face meeting.
- ii. **The Chair and Vice Chair** of the working group will coordinate the work of the RT, but will serve as full participants in the substantive deliberations of the RT and in the development of the RT's deliverables. All members of the RT will have equivalent voting rights.
- iii. **External experts:** TBD

e. Tools /Means of Communications

- i. The RT will endeavor to use online communications capabilities to further its work. In particular, the RT will use Adobe meeting rooms in connection with its telephonic

¹ "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed". This rule was developed by the UK "Royal Institute of International Affairs" (whose home is at Chatham House in London) "with the aim of providing anonymity to speakers and to encourage openness and the sharing of information. It is now used throughout the world as an aid to free discussion. Meetings do not have to take place at Chatham House, or be organized by Chatham House, to be held under the Rule".
See <http://www.chathamhouse.org.uk/about/chathamhouse/> for more information.

meetings. The materials available in these settings will be made available to the public in keeping with the policies articulated in this methodology.

f. Indicators

- i. Identification of reliable indicators of progress with respect to accountability and transparency is likely to be complex. The RT has therefore tasked a working group to identify potential indicators to assist the team in its work. The initial recommendations of the working group are available [<here>](#). Members of the ICANN community will be invited to submit suggestions for such indicators as well.

5. Deliverables

a. Final Recommendations to ICANN

- i. The RT will endeavor to post draft recommendations in October, in order to solicit public comment in advance of its November meeting. Recommendations should be clear, concise, and concrete.
- ii. Those recommendations should aim at building greater trust among members of the ICANN community, establishing an open, candid debate on enhanced accountability (which is necessarily an ongoing process) and building a partnership that includes the ICANN staff, Board, and stakeholder community commitment to working as a team to improve the organization.
- iii. The team will need to demonstrate the rationale it has employed for any individual recommendation but focusing on recommendations rather than on a lengthy report of proceedings.
- iv. Prior to the first face-to-face meeting (but also through the process), team members should be encouraged to circulate their views on the various issues that need to be discussed. Once an issue has benefited from a first "tour" between members to gauge the level of interest and/or consensus, a volunteer can be sought to take responsibility for developing the exchange of views with a view to **developing a recommendation**. Ad-hoc Work Teams (WT's) may be formed to most effectively get initial drafting of recommendations done.

b. Recommendations to next Review Panel(s)

- i. To the extent it deems appropriate and useful, the RT will provide suggestions regarding the timing and procedures for conducting future reviews as called for in the AoC. Such suggestions will be advisory only.

6. Conflicts of Interest.

- i. The RT has adopted the conflict of interest policy set forth in Attachment A to this Methodology. All member declarations submitted in accordance with the conflict of interest policy will be posted on the RT website.

7. Timeline

a. May 5-6 - Meeting in Marina del Rey:

- i. **Issue list of questions to ICANN staff;**
- ii. Receive **ICANN staff input** on questions provided by the review team. There can be additional input from the staff as needed;
- iii. **Receive ICANN Presentation on or prior to 1 June 2010**
- iv. Engage in an initial discussion of a statement of work for the management **review** and of the **proposed questions for public comment**.

b. Intervening period:

- i. Evaluation of staff input
- ii. Terms of Reference and Methodology finalized and issued (mid-June)
- iii. Conceptual Framework and Indicators documents finalized and issued
- iv. Issue questions for public comment
- v. Issue questions for discussion with Board, GAC, the GAC/Board Joint Working Group and SO/AC's in Brussels
- vi. Schedule meetings with stakeholder groups in Brussels.

c. July 1 – Deadline for Public Comments:

- i. On 18 May 2010, the RT issued a call for **public comments** and proposed changes to ICANN's current practices and procedures. The initial deadline for submission of comments is 1 July 2010. Additional public comment may be sought following the meeting in Brussels.

d. June 18-19 –Meeting in Brussels (back-to-back with ICANN Meeting 20-25 June):

- i. The review team will **review public input** in its meeting in **Brussels in late June** and consider extending the comment period and/or issuing a new set of questions for public input.
- ii. The RT will meet with the Board, the GAC, the Board/GAC joint working group, the GNSO and any other SO and/or AC in Brussels to discuss its work and solicit input.
- iii. The RT will present an update on its progress and methodology in a public forum, and seek public input during ICANN meeting week.

e. Intervening period:

- i. Begin review of public comments received and management review by independent consultant underway.
 - ii. Evaluate public comments, other stakeholder comment, and begin drafting.
- f. August/September [TBD Asia]:**
- i. Review public comment and revise recommendations to reflect this input.
- g. October [10-16/TBD] meeting in Cairo, Egypt:**
- i. Finalize draft recommendations to be posted max by 18 October 2010 to allow for a public comment period of 45 days.
- h. Intervening period:**
- i. Receive public comments with a cut-off date of 29 November 2010
 - ii. Compile public comments and reflect in final draft.
- i. December 5-10 – ICANN Meeting in Cartagena, Colombia:**
- i. In conjunction with the December ICANN meeting in Latin America, finalization of recommendations and perhaps presentation to ICANN stakeholders during the regular meeting.
 - ii. December 31st deadline for submitting final Recommendations to ICANN board.