



Review of the

Technical Liaison Group (TLG)

Prepared for the Internet Corporation for Assigned Names and Numbers

3 December 2010

Founded in 2003, JAS Communications LLC is a unique professional services firm delivering risk management, technology, and governance solutions to a wide range of commercial and government clients.

<http://www.jascommunications.com>

Table of Contents

- 1 Preface to the final version 5
- 2 Summary 6
 - 2.1 Summary of Recommendations..... 7
 - 2.2 Summary of Alternative Considerations 7
- 3 JAS Review Methodology..... 8
 - 3.1 Weaknesses..... 8
- 4 Findings 9
 - 4.1 History of the TLG 9
 - 4.2 IETF/IAB Involvement in TLG..... 10
 - 4.3 Mandate and guidance 10
 - 4.4 Participation in ICANN governance..... 11
 - 4.4.1 Individuals of high caliber 11
 - 4.4.2 Institutional relationships are not reciprocated 11
 - 4.4.3 Concern around conflicts of interest and lack of role clarity..... 11
 - 4.4.4 Concern around the prohibition of TLG meetings or policy advice 12
 - 4.5 Resourcing..... 12
 - 4.6 Historical Activity/Performance..... 12
 - 4.6.1 Limited performance of roles described in the Bylaws 12
 - 4.6.2 Informal value of individual contributors 13
 - 4.6.3 No concrete value of TLG aside from individual contributors 13
 - 4.6.4 Lack of documentation 13
 - 4.6.5 Structural disadvantage created by forced one-year terms 13
 - 4.6.6 Unique source of technical Board members 13
 - 4.7 Comparisons to peer organizations 13
- 5 Analysis and Recommendations 15
 - 5.1 Overview and key issues 15
 - 5.2 Technical advice to the ICANN Board 17
 - 5.3 The TLG is atypical and not well understood 20
 - 5.4 The TLG is not used as intended 20
 - 5.5 ICANN governance participation privileges are not reciprocated by TLG organizations..... 22

5.6	TLG Board observers are disadvantaged by forced one-year terms	22
5.7	ICANN is harmed by conflicts of interest and lack of role clarity of TLG members	22
6	Institutional Responses	24
6.1	ETSI	24
6.2	IAB	27
6.3	ITU-T	28
6.4	W3C	31
7	Sources	33

1 Preface to the final version

JAS would like to thank all of the individuals that have participated in the review process. We received significant and valuable feedback to the public draft, and have amended our report accordingly. Specifically, we addressed the following areas:

- Better documented the history of the TLG and ICANN's relationship with the TLG organizations;
- Refined our approach to "recommendations" and "alternative considerations";
- Expanded and refined our position on placement of technical Directors via the TLG;
- Expanded discussion on more attractive alternative bilateral relationship models between ICANN and industry organizations;
- Numerous expansions and clarifications throughout.

We have enjoyed working with ICANN on this project and appreciate the valuable time and commentary provided by members of the Community.

2 Summary

The Technical Liaison Group (TLG) is designed to connect the ICANN Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities. The TLG consists of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB). The TLG is described in ICANN's Bylaws under Article XI-A, Section 2.¹

ICANN's Bylaws describe an ongoing organizational review process as a part of its commitment to evolution and improvement. As specified in the Bylaws, the goal of the review shall be to determine:

- Whether that organization has a continuing purpose in the ICANN structure, and
- If so, whether any change in structure or operations is desirable to improve its effectiveness.

Additionally, the ICANN Structural Improvements Committee (SIC) tasked the external reviewer to answer the following questions:

- Has the TLG been effective in achieving its objectives as defined in Article XI-A, Section 2 of ICANN Bylaws?
- What elements –if any- prevented the full achievement of TLG's objectives?
- Did the establishment of the TLG impact –positively or adversely- the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?
- Does the rationale for TLG as spelled out in the Bylaws need to be revised, and in which sense?
- What structural and operational measures can be imagined to enhance the effectiveness of the TLG?
- Any other question that is relevant to the overall scope of this review and that is considered appropriate to address.

JAS Communications LLC was engaged to perform the first such review of the TLG in August 2010. We solicited feedback from the ICANN community, namely the Board, Management, Governmental Advisory Committee (GAC), Supporting Organizations, Advisory Committees, and TLG organizations and have collected qualitative data through interviews and email communications from more than 25 sources.

In summary, JAS found that the TLG is an antiquated structure of limited utility in the ICANN of today. The TLG: (1) does not and never has functioned as intended; (2) grants significant governance privileges to organizations with no reciprocity; and (3) places individuals on the Board for only a one-year term making it nearly impossible for them to be effective contributors.

Moreover, the continued existence of the TLG poses some risk to ICANN due to the lack of role clarity and the very real opportunity for questions of loyalty and conflicts of interest to arise in the Boardroom.

¹ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

As such, JAS recommends that ICANN disband the TLG and replace the inter-organizational liaison function with other more typical non-Bylaws level constructs.

Obviously, formal relationships between institutions are both common and important. The question is not whether ICANN should have these relationships, but on the modality for formalizing such relationships. JAS recommends the “one size fits all” TLG construct be replaced by more typical and flexible non-Bylaws mechanisms. Bilateral mechanisms like Memoranda of Understanding provide all parties with a flexible framework in which to negotiate and formalize the unique nature of complex institutional relationships.

In the event ICANN elects not to implement our recommendation to disband the TLG, JAS considered alternative, incremental improvements to the existing TLG model. These potential improvements are described as “Alternative Considerations” in the analysis section of the document.

2.1 Summary of Recommendations

RECOMMENDATION 1: Dismantle the TLG.

RECOMMENDATION 2: Utilize non-Bylaws constructs such as Memoranda of Understanding (MoU) to negotiate and formally memorialize institutional relationships on a bilateral basis.

RECOMMENDATION 3: Reaffirm the Nominating Committee’s present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

2.2 Summary of Alternative Considerations

ALTERNATIVE CONSIDERATION I: If the TLG is not dismantled, consider rebuilding the TLG membership pursuant to criteria and objectives set by the ICANN Board with the full range of global, technically-oriented organizations presently in existence considered for membership.

ALTERNATIVE CONSIDERATION II: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

ALTERNATIVE CONSIDERATION III: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

ALTERNATIVE CONSIDERATION IV: Address the issue of role clarity for the TLG liaison (or for all liaison roles). Clearly specify a duty of loyalty to ICANN for the Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

3 JAS Review Methodology

JAS was engaged in August 2010 and data collection started immediately. Unlike previous organizational reviews, this review did not span an ICANN public meeting.

Phone interviews were conducted with all individuals that were interested and made themselves available. Our questions were open ended allowing participants to interpret the question in a manner that best fit their perspective and role. Follow-up questions were asked to help ensure that the discussion stayed on track and that we gathered the necessary information from each participant.

Interviews shared common elements by design to enable responses to be directly compared and contrasted. All interviews were conducted with at least two JAS representatives present enabling one to take the lead and the other to document and cross-check responses in real time with previous interviews (potentially leading to clarifying questions). Interviews were recorded with advance permission.²

JAS solicited feedback by email to ICANN structures, past and present TLG members, and by reaching out to individuals that were referred to us or who we determined through research would have valuable perspective. A public draft was published on 23 October 2010 and an ICANN public comment period opened on the same day. During the 30 day public comment period, seven comments were received.³ JAS conducted additional interviews during the period between the public draft and final report, including interviews with all contributors to the public comments. All public comments were reviewed carefully, and many directly lead to changes in the final report. Numerous references to specific public comments may be found herein.

3.1 Weaknesses

JAS is pleased with the overall response to the TLG review. The greatest area of weakness in our analysis is the relatively high concentration of Western European and North American respondents. JAS made an effort to market the study as broadly as possible including: announcements on ICANN mailing lists, posting an email address on the public ICANN Organizational Review web site, emailing the Chairs of all relevant ICANN structures, and through networking and seeking referrals. Unfortunately, this did not translate into broad geographic participation.

We believe this is a result of straightforward self-selection bias and the reality that the TLG is relatively obscure. While it is important to be mindful of this bias, we do not believe it is debilitating for the purposes of this study. We were pleased that the release of the initial draft seemed to encourage discussion which translated to more broad participation in the review process. We note that controlling for selection bias is an ongoing challenge for ICANN organizational reviews given the extremely broad nature of the ICANN stakeholders and the high variance in the ability for external reviewers to identify and reach stakeholders in a timely fashion.

² These recordings will be destroyed at the completion of the engagement.

³ **[tlg-review-2010] Chronological Index.** Internet Corporation for Assigned Names and Numbers. 21 November 2010. Accessed 22 November 2010. < <http://forum.icann.org/lists/tlg-review-2010/>>

4 Findings

4.1 History of the TLG

The Technical Liaison Group (TLG) has the stated purpose of connecting the ICANN Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities, and formalizing ICANN's relationship with several institutions. Created during the 2002 reorganization of ICANN and the December 15, 2002 Bylaws,⁴ TLG membership is defined as the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C) and the Internet Architecture Board (IAB) committee of the Internet Engineering Task Force (IETF). Subsequent documentation regarding the TLG has proven to be quite limited.

The selection of TLG member organizations appears to be historical: ETSI, ITU-T, W3C and the IETF were the founding members of the ICANN Protocol Supporting Organization (PSO)⁵ and 1999 signatories to a Memorandum of Understanding⁶ with ICANN, recognizing each as an international standards development organization. These organizations were reported by several sources to have been chosen in part because of their direct technical relevance to the naming and numbering of the Internet and in part to build the necessary consensus and buy-in needed for ICANN to come into being. While no documentation could be located stating explicitly that the TLG "replaced" the PSO during the 2002 ICANN reorganization, the historical record and several interviewees indicate this is most likely the case.⁷

Historically, there has been consistent recognition of the importance of providing accurate and objective technical advice to ICANN and the Board. Prior to the formation of ICANN, the proposed organizational approaches to managing the Internet's unique identifiers included mechanisms to provide advice on technical matters.⁸ ⁹ While there is general agreement that such advice is important, the specific modality of this advice has been a point of debate through ICANN's history, and remains a debated topic to this very day.

⁴ **Organizational Meeting of the Transition Board Minutes.** Internet Corporation for Assigned Names and Numbers. 15 December 2002. Accessed 22 November 2010. <<http://www.icann.org/minutes/minutes-organizational-meeting-15dec02.htm>>

⁵ **Request for Comments 2690: Proposal for an MOU-Based ICANN Protocol Support Organization.** Scott Bradner. September 1999. Accessed 22 November 2010. <<http://tools.ietf.org/html/rfc2690>>

⁶ **Request for Comments 2691: A Memorandum of Understanding for an ICANN Protocol Support Organization.** Scott Bradner. September 1999. Accessed 22 November 2010. <<http://tools.ietf.org/html/rfc2690>>

⁷ **IAB Response to ICANN Evolution and Reform.** Internet Architecture Board. June 2002. Accessed 1 December 2010. <<http://www.iab.org/documents/docs/icann-response.html>>

⁸ **Institutionalizing the IANA Functions to Deliver a Stable and Accessible Global Internet for Mission Critical Business Traffic and Transactions.** Scott Bradner. 28 January 1998. Accessed 22 November 2010. <<http://www.sobco.com/presentations/1998.01.28-reng.inet.london/index.htm>>

⁹ **Generic Top Level Domain Memorandum of Understanding.** International Ad Hoc Committee. Archived 11 December 1997. Accessed 3 December 2010. <<http://web.archive.org/web/19971211190034/http://www.gtld-mou.org>>

4.2 IETF/IAB Involvement in TLG

The IETF (and, thus, IAB) has a different relationship with ICANN than the other members of the TLG; this relationship is multifaceted and memorialized in multiple formats including an MoU between the IETF and ICANN.¹⁰ As a part of this relationship, IETF has a separate liaison to the ICANN Board independent of the TLG and therefore does not participate in the TLG rotation. The IAB largely withdrew from the TLG in 2005 for reasons described in a later section of this report.

4.3 Mandate and guidance

The Technical Liaison Group was established under Article XI-A, Section 2 of the ICANN Bylaws.¹¹ Pursuant to the Bylaws, TLG's purpose is to "connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities."

The Bylaws further describe two modes of operation for the TLG:

- a. *In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.*
- b. *As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.¹²*

The Bylaws also specifically prohibit TLG from forming an identity, organizing, or becoming a body in and of itself, and from becoming involved with the IANA function or ICANN's work with the IETF/IAB:

The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

¹⁰ **Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority.** Internet Corporation for Assigned Names and Numbers. March 10, 2000. Accessed 22 November 2010. <<http://www.icann.org/en/general/ietf-icann-mou-01mar00.htm>>

¹¹ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

¹² *ibid.*

*The TLG shall have no involvement with the IANA's work for the Internet Engineering Task Force, Internet Research Task Force, or the Internet Architecture Board, as described in the Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.*¹³

4.4 Participation in ICANN governance

The TLG directly participates in ICANN governance in two ways: through an annual rotating Board liaison seat, and an annual rotating delegate to the Nominating Committee. A historical list of the individuals holding these seats is available on ICANN's web site.¹⁴

4.4.1 Individuals of high caliber

Virtually all interviewees described the individuals occupying the TLG Board liaison seat and the TLG delegate to the Nominating Committee as being exceptional in their individual capacity and additive to the respective ICANN bodies. The value of these individuals is realized informally through participation in discussion and debate rather than through any formal TLG mechanism. The high quality of past and present delegates was mentioned in nearly every interview and is further evidenced in the public comments received from Mr. Steve Goldstein and Mr. Roberto Gaetano.^{15 16}

4.4.2 Institutional relationships are not reciprocated

The level of participation in ICANN governance granted via the Board and Nominating Committee seats is not reciprocated. ICANN does not possess a comparable level of participation in the governance of ETSI, ITU-T¹⁷, or W3C (note that IAB does not participate in these rotations so there is no question of reciprocity).

4.4.3 Concern around conflicts of interest and lack of role clarity

Most interviewees described a level of concern around the participation of possibly competing entities in the governance of ICANN. The core issue is a lack of role clarity around the Board observer positions and competing fiduciary responsibilities. The ITU-T participation was of particular concern because of the occasionally competing agendas of ICANN and ITU-T. Be it perceived or actual competition, some sources described a reduced ability for the Board to openly and fully discuss specific topics as a direct result of this lack of clarity.

¹³ *ibid.*

¹⁴ **ICANN Board of Directors.** Internet Corporation for Assigned Names and Numbers. 5 June 2010. Accessed 9 October 2010. <<http://www.icann.com/en/general/board.html>>

¹⁵ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

¹⁶ **TLG Review.** Public comments of Mr. Roberto Gaetano. 20 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00005.html>>

¹⁷ **Letter from Dr Hamadoun Touré to Mr. Rod Beckstrom.** 16 August 2010. Accessed 1 December 2010. <<http://www.icann.org/en/correspondence/toure-to-beckstrom-16aug10-en.pdf>>

4.4.4 Concern around the prohibition of TLG meetings or policy advice

A minority of interviewees noted that the specific prohibitions against the TLG organizing, holding meetings, and providing policy advice to the Board as a committee are odd at best and insulting to TLG member institutions at worst.

4.5 Resourcing

TLG is not resourced by ICANN beyond travel support and some limited administrative and IT support. While not trivial, the level of financial resourcing does not appear to be significant. ETSI also generously provides some level of administrative support to the TLG on a pro-bono basis; the primary support provided by ETSI is communication and coordination among TLG members regarding seat rotation.

4.6 Historical Activity/Performance

4.6.1 Limited performance of roles described in the Bylaws

We have found no evidence that the formal invocation (the “a” mode of operation described in the Bylaws) has ever occurred. No written record of such an invocation can be located, and, without exception, none of the interviewees could recall a single invocation. The institutional response from W3C and the individual comment from Mr. Steve Goldstein also support this finding.^{18 19}

The more general liaising role (the “b” mode of operation described in the Bylaws) is more difficult to quantify; however, most interviewees described limited historical utility of this function.

As additional evidence supporting the lack of TLG activity, the IAB effectively removed itself from the TLG in 2005. From the Minutes of IAB Meetings at IETF62, March 7-11, 2005, agenda item 2:

Liaisons to ICANN TLG

*Rob Austein and Geoff Huston have served as our liaisons [SIC] to the ICANN Technical Liaison Group (TLG). As they reported very little activity in that group for the IETF, the IAB elected to leave the liaison seats vacant for now.*²⁰

This fact was further memorialized in Mr. Thomas Narten’s public comment.²¹ The reviewers note that ICANN’s TLG page presently lists the IAB position as “<tba>.”²²

¹⁸ **W3C Comments on the ICANN TLG Review.** Public comments of Mr. Thomas Roessler. 19 November 2010. Accessed 22 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00004.html>>

¹⁹ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

²⁰ **Minutes of IAB Meetings at IETF62.** Internet Engineering Task Force, Internet Architecture Board (IAB). March 7-11, 2005. Accessed 22 November 2010. <<http://www.iab.org/documents/iabmins/iabmins.2005-03-07.txt>>

²¹ **Review comments on TLG Review Report.** Public comments of Mr. Thomas Narten. 21 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00006.html>>

²² **The ICANN TLG (Technical Liaison Group).** Internet Corporation for Assigned Names and Numbers. Accessed 22 November 2010. <<http://www.icann.org/en/structure/tlg.htm>>

4.6.2 Informal value of individual contributors

Virtually all interviewees described the individuals occupying the TLG Board liaison seat as having valuable technical skills that were additive to the overall Board discussions. No feedback was available regarding the individuals occupying the Nominating Committee seat.

4.6.3 No concrete value of TLG aside from individual contributors

A minority of interviewees offered “nice to have” and “not doing any harm” arguments in favor of maintaining the TLG in present form, but failed to articulate concrete value to ICANN outside of seating technically competent individual contributors.

4.6.4 Lack of documentation

Aside from the administrative appointment of new members and recognition of exiting members, no written records of TLG activity could be located. An email list does not appear to exist. Because of the Bylaws' prohibition of TLG meetings and other self-organization, it is not clear whether the lack of documentation is appropriate or expected.

4.6.5 Structural disadvantage created by forced one-year terms

There was wide agreement that the forced one-year rotation of the TLG Board observer position made it very difficult for the individual filling that seat to be an effective Director. Board continuity and the significant amount of time it takes to get “up to speed” as an ICANN Director was discussed at length in the ICANN Board Review.²³ The forced one-year rotation of TLG members further exacerbates the issue.

4.6.6 Unique source of technical Board members

Several interviewees defended the TLG as a unique source of qualified technical Board members outside of ICANN's politicized nomination and appointment mechanisms. A minority of sources indicated a lack of confidence in ICANN's existing nominating and appointment mechanisms to identify and place talented and unbiased technically-oriented Directors.

4.7 Comparisons to peer organizations

JAS was unable to locate any peer organization with a similar mechanism. Bylaws-level inter-organizational relationships absent an investment, joint venture, or other obvious construct are rare for a host of reasons, particularly their inflexibility. The vast majority of international organizational relationships are handled through management constructs, non-fiduciary Board advisory committees and other liaison processes/activities. The reviewers note that the use of non-fiduciary advisory committees in other organizations alleviates conflict of interest issues and provides the opportunity for negotiation and customization of the institutional relationship to meet the unique needs of both organizations.

We further note that ICANN presently uses MoUs to formalize several relationships, including the relationship with IETF and the past and present relationship with the United States Department of Commerce (the “Affirmation of Commitments” could be considered a MoU). Moreover, a MoU with the

²³ *Independent Review of the Board of ICANN*. Boston Consulting Group and Colin Carter and Associates. November 2008. Accessed 3 October 2010. <<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>>

New Partnership for Africa's Development Planning and Coordinating Agency is presently being negotiated.²⁴

²⁴ **Agenda for Board Meeting – Cartagena.** Internet Corporation for Assigned Names and Numbers. 28 November 2010. Accessed 1 December 2010. <<http://www.icann.org/en/minutes/agenda-10dec10-en.htm>>

5 Analysis and Recommendations

5.1 Overview and key issues

In general there was very little disagreement about the facts regarding TLG; however, there was a wide range of opinions about how best to improve the TLG, or whether to dismantle it altogether. JAS found nearly universal recognition that TLG is odd and awkward, but is that enough to require action? We believe so. We find that the TLG has not functioned as designed, is not adding material value, and its continued existence in the current form is potentially damaging to ICANN. Historically, the structural issues have been partially obscured by the outstanding, honorable, and highly qualified people filling the liaison positions.

JAS identified two macro concerns that we believe are the root cause of several issues with respect to the TLG:

The TLG is an attempt at a “one size fits all” relationship model. JAS believes that some of the awkwardness with respect to the TLG is inherent in the reality that the TLG organizations are very different and ICANN should and must have very different relationships with these organizations. Pressing these four organizations and ICANN into the “one size fits all” TLG model has proven both ineffective and uncomfortable.

The reviewers consider that the TLG is already inconsistent due to differences in ICANN’s institutional relationships with the TLG members. Pursuant to the ICANN Bylaws, “*IAB does not participate in these rotations because the IETF otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN Nominating Committee.*”²⁵ Notwithstanding IAB’s voluntary withdraw from the TLG (described previously), the ICANN/IETF relationship is already formalized in other mechanisms, including a dedicated IETF liaison to the ICANN Board and NomCom. Similarly, the ITU has a multifaceted relationship with ICANN vis-à-vis their participation in the GAC.²⁶

The TLG mixes the objectives of (1) formalizing institutional relationships and (2) supplying unbiased technical advice to the ICANN Board. Several interviewees underscored both the importance of a reliable mechanism for providing unbiased technical advice to the ICANN Board and the importance of the formal institutional relationships TLG provides. While both of these objectives are important, JAS notes that these objectives are at times incompatible and mixing them in the present TLG construct is a source of tension. Similar concerns about the provision of technical advice to ICANN were raised by the IAB prior to the creation of the TLG.²⁷

²⁵ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

²⁶ Note discussion of this issue in Section 1 of the ITU-T institutional response.

²⁷ **IAB Response to ICANN Evolution and Reform.** Internet Architecture Board. June, 2002. Accessed 1 December 2010. <<http://www.iab.org/documents/docs/icann-response.html>>

In addition to the above macro issues, JAS identified several additional recurring themes:

- The TLG is atypical and not well understood both inside and outside of the ICANN community;
- The TLG is not used as intended and documented;
- ICANN governance participation privileges are not reciprocated by TLG organizations;
- TLG Board observers are disadvantaged by forced one-year terms; and
- ICANN is harmed by perceived or actual conflicts of interest and lack of role clarity of TLG members.

QUESTION: Does the TLG have a continuing purpose in the ICANN structure?

JAS believes the TLG is the product of a previous chapter of ICANN's history and has limited ongoing value to ICANN.²⁸ As such, JAS recommends that ICANN dismantle the TLG. We believe the primary benefit to ICANN of the TLG – placement of qualified technical persons on the Board – is more appropriately realized through the existing Board selection mechanisms, namely the Nominating Committee. As noted, previous TLG Board observers are of exceptional caliber and as such would have been outstanding candidates for Board placement through the Nominating Committee.

Dismantling the TLG provides an excellent opportunity to work toward a smaller and more efficient Board, as recommended by the independent Board review²⁹ and several interviewees.

Public comments from Dr. Steve Crocker, Mr. Steve Goldstein, Mr. Thomas Narten, and the institutional response from IAB support this recommendation.^{30 31 32}

RECOMMENDATION 1: Dismantle the TLG.

Obviously, formal relationships between institutions are both common and important. The question is not whether ICANN should have these relationships, but on the modality for formalizing such relationships. JAS recommends the “one size fits all” TLG construct be replaced by more typical and flexible non-bylaws mechanisms. Bilateral mechanisms like Memoranda of Understanding provide all parties with a flexible framework in which to negotiate and formalize the unique nature of complex institutional relationships.

RECOMMENDATION 2: Utilize non-B

²⁸ Note that the question of whether the TLG provides value to the other organizations is, of course, beyond the scope of this report. This report is solely from an ICANN perspective.

²⁹ **Independent Review of the Board of ICANN.** Boston Consulting Group and Colin Carter and Associates. November 2008. Accessed 2 October 2010. <<http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>>

³⁰ **Comments on 16 Oct 2010 draft of Review of the TLG.** Dr. Steve Crocker. 16 October 2010. Accessed 19 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00000.html>>

³¹ **TLG Review: SPOT ON!** Public comments of Mr. Steve Goldstein. 9 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00001.html>>

³² **Review comments on TLG Review Report.** Public comments of Mr. Thomas Narten. 21 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00006.html>>

ylaws constructs such as Memoranda of Understanding (MoU) to negotiate and formally memorialize institutional relationships on a bilateral basis.

If ICANN elects not to dismantle the TLG, JAS offers several alternative considerations for potential incremental improvements to the existing TLG structure.

5.2 Technical advice to the ICANN Board

The rather odd nature of TLG as specified in the Bylaws, specifically the prohibition on becoming a cohesive body, holding meetings, or providing policy advice to the Board as a committee, essentially limits the TLG to individual contributors. The only concrete value of the TLG consistently articulated to JAS through the review process was the identification and appointment of technical expertise to the Board.

Article XI-A, section 2, subsection 3b of the ICANN Bylaws define the TLG as having a “watchdog” role:

b. As an ongoing “watchdog” activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.³³

While JAS notes that it is extremely atypical for corporate Bylaws to identify a “watchdog,” a majority of interviewees underscored the importance of having a reliable *and apolitical* technical presence in the ICANN Boardroom. A minority of interviewees expressed concern that the present ICANN Board selection mechanisms are highly politicized and may not be a reliable long-term source of objective expert technical candidates. Several interviewees defended the TLG as a *unique* and *reliable* source of technical Board members outside of ICANN’s political processes. We believe the concept of maintaining an ongoing objective technical presence in the ICANN Boardroom may be an interpretation of the “watchdog” language in the ICANN Bylaws.

Similarly, several sources supported the continued existence of the TLG largely to mitigate concerns about the existing identification and selection mechanisms and their ability to appoint technically qualified directors.

QUESTION: Does the TLG provide a unique source of objective technical experts to the ICANN Board?

JAS is sympathetic to concerns about the continued availability of objective technical advice to the ICANN Board. Based on the reviewers experience with all types of organizations, we observe that as an organization grows in size and stature, nomination and selection processes do tend to become increasingly politicized. That being said, balancing the skill sets on the Board is an organizational risk

³³ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#XI-A>>

that ICANN must manage through the nominating processes.³⁴ While we believe that technical expertise in the Boardroom is important, we also believe that managing this risk through the TLG construct is ill-advised and ineffective. JAS notes that several concerns expressed by a majority of interviewees about the TLG are in fact largely political in nature thus questioning the potential for the TLG to be a source of apolitical technical advice. We further note that as ICANN has matured, policy decisions have been steadily pushed out of the Board and into the ICANN policy constructs. Without in any way diminishing the valuable individual contributions of past and present liaisons, the TLG’s “watchdog” role has not proven itself to have substantial unique value to ICANN nor to the Internet community as a whole.

The primary basis for our assertion that the TLG does not provide a *unique* source of technically qualified Board candidates is the fact that the outstanding past TLG Board delegates are highly qualified technical experts and could certainly have been appointed to the ICANN Board through the existing mechanisms. We note that Mr. Roberto Gaetano argues against this position in his public comment where he asserts that “*the NomCom has already multiple constraints like gender equality and geopolitical distribution, and adding a new one would make their already difficult job impossible.*”³⁵ Similarly, the public comment from Julian Pritchard (ETSI) takes the position that the TLG indeed offers a unique source of candidates:

*The suggestion that the same delegates would appear via NONCOM [sic] if the TLG is closed is a false assumption. Without the pressure that the ETSI Board puts on its membership to offer candidates due to our TLG obligations these people would probably never even appear on the NOMCOM radar screen.*³⁶

However, we do not view technical expertise as being fundamentally different from any other skill set that a Board nominating process must manage and balance, including executive leadership experience, international relations experience, financial acumen, and the like. While the marketing and outreach activities of ICANN’s Nominating Committee are far beyond the scope of this review, a lack of confidence in the existing nominating mechanisms is not a reason to create or sustain an orthogonal mechanism.

JAS believes that maintaining the mix of skill sets on the Board is the duty of the Nominating Committee, at the direction of the Board, and sees little value in maintaining TLG solely for this purpose. Article VI Section 3 in whole, and particularly Section 4, clearly obligates the Nominating Committee and

³⁴ The reviewers are sensitive to the fact that reviewing ICANN’s nominating and placement mechanisms are well beyond the remit of this report.

³⁵ **TLG Review.** Mr. Roberto Gaetano. 20 November 2010. Accessed 21 November 2010.
<<http://forum.icann.org/lists/tlg-review-2010/msg00005.html>>

³⁶ **ETSI comments on the Draft TLG Report.** Julian Pritchard. 17 November 2010. Accessed 22 November 2010.
<<http://forum.icann.org/lists/tlg-review-2010/msg00003.html>>

Supporting Organizations to staff the Board with appropriately skilled persons, including those with technical skill.³⁷

In the reviewers' past experience with a variety of organizations, overall Board skill set mix is typically and most effectively managed in a central, coordinated fashion under active management by the Board as opposed to a piecemeal approach leveraging disparate mechanisms. We further recommend that any concerns about the existing nominating and selection mechanisms are addressed head-on and not used as justification to create or sustain alternative mechanisms. Finally, there is a natural tendency for individuals to over-prioritize familiar and/or historically important skill sets. As an organization evolves, part of the evolutionary process is a critical re-evaluation of the full range of skill sets to ensure that the organization thrives.

We believe it is clear that the TLG does not provide a vector for accessing uniquely qualified individuals that the other Board selection mechanisms lack. JAS believes that maintaining the TLG solely as a source of technically qualified Board members is neither necessary nor advisable.

RECOMMENDATION 3: Reaffirm the Nominating Committee's present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

QUESTION: Does the TLG play a role with respect to ICANN's accountability to the Internet public?

In addition to technical skill, comments from Mr. Thomas Roessler (W3C) also discuss the topic of accountability:

The current Technical Liaison Group arrangement, while imperfect, provides ICANN with much needed governance-level interactions with the technical community. W3C's participation in this mechanism helps to ensure that the Web standards community is part of these interactions. It further provides a high-level accountability mechanism between ICANN and the Web community. We firmly believe that this accountability mechanism is an important element of ICANN's overall accountability to the public, and its ability to function as a trusted coordinator for the Internet's and Web's naming and numbering infrastructures.³⁸

We do not believe the TLG was intended to be an accountability mechanism, and note that the restrictions placed on the TLG in the ICANN Bylaws would make it difficult for the TLG to function in this capacity. Furthermore, the historical record does not seem to indicate that the TLG has played a role in ICANN's accountability activities/framework to date.

³⁷ **Bylaws For Internet Corporation For Assigned Names And Numbers.** Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. <<http://www.icann.org/en/general/bylaws.htm#VI>>

³⁸ **W3C Comments on the ICANN TLG Review.** Public comments of Mr. Thomas Roessler. 19 November 2010. Accessed 22 November 2010. <<http://forum.icann.org/lists/tlg-review-2010/msg00004.html>>

5.3 The TLG is atypical and not well understood

JAS found nearly universal recognition that TLG is odd, awkward, and not well known – even within the ICANN sphere. As discussed previously, despite fairly wide solicitations for input for this review, few individuals had input or views to share. Several individuals we contacted proactively had no familiarity with the TLG. The only value of the TLG clearly and consistently articulated to the reviewers was the placement of qualified technical persons on the Board.

QUESTION: Does the rationale for TLG as spelled out in the Bylaws need to be revised, and if so, in what sense?

Again, JAS believes the TLG is the product of a previous chapter of ICANN’s history and has limited ongoing value to ICANN. The TLG was created when ICANN was very young; now that ICANN has matured, more traditional and more flexible vectors for inter-organization relationships are appropriate. As an example, the ICANN Board and/or Management could establish active consultation mechanisms for liaising with other organizations. Bilateral Memoranda of Understanding (MoU) are a typical method to codify inter-organizational relationships and surrounding processes.

QUESTION: Did the establishment of the TLG impact – positively or adversely - the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?

It is not clear whether the TLG construct had an impact on the institutional relationships between ICANN and the TLG organizations. JAS hypothesizes that the relatively obscure nature of the TLG and limited historical activity are indications that there has been little overall impact for the better or worse. Furthermore, JAS believes that ICANN’s relationships with IETF and ITU-T in particular are far more influenced by factors well removed from the TLG for there to be any impact from the limited TLG activities. JAS believes the TLG is largely a “token” construct without any real meaning or function, and has had limited to no historical impact on any participating organization.

That being said, JAS believes the existence of the TLG has caused loyalties in the ICANN Boardroom to be questioned at times, an unfortunate and damaging occurrence. This will be discussed at length in a subsequent section.

5.4 The TLG is not used as intended

QUESTION: Has the TLG been effective in achieving its objectives as defined in Article XI-A Section 2 of ICANN Bylaws?

No. We have been unable to find any evidence that formal invocations of the TLG have ever occurred. The liaising function with the W3C, ETSI, and ITU-T is largely ineffective. We believe liaising with these (and other) organizations is better accomplished through other mechanisms.

As ICANN has matured, policy decisions have been steadily pushed out of the Board and into the policy constructs. Injecting technical advice at Board level actually makes it more difficult to sustain this

model, and it creates the undesirable opportunity for lobbying at the Board level as opposed to within the policy constructs.

QUESTION: Are W3C, ETSI, and ITU-T the right organizations to be represented on the TLG?

Several interviewees identified ETSI as a “regional standards body” and questioned their presence on the TLG. In contrast, several other interviewees, including the institutional response from ETSI, made strong arguments that ETSI is in fact a “global standards body.” Fortunately, for the purpose of this review, it isn’t important to somehow classify ETSI’s scope, but merely to point-out the varying opinions within the stakeholder community.

For those who regard ETSI as a regional standards body, their membership in the TLG is troubling in that it blurs the line between a pure technical advisory body and a body representing regional interests, particularly when no other regions are represented in this way. For those who believe ETSI is a global standards body, their membership in TLG seems entirely appropriate and similar to ITU-T, W3C and the IAB.

QUESTION: Should other organizations and/or standards bodies be added to the TLG?

This issue opens a "slippery slope" problem for ICANN. As the saying goes: *The beauty of standards is that there are so many to choose from.* Opening the TLG to additional standards body membership would likely open a flood of “if X then why not Y?” arguments which would be damaging and counterproductive. Any approach to augmenting TLG membership must be undertaken carefully in a structured fashion.

Several sources noted that the IEEE and the Unicode Consortium may be appropriate additions to the TLG. Fewer recommended ACM, ISO, and ANSI be considered.

JAS notes that the present TLG membership was set in 1999 given the needs of ICANN at the time, the state of the Internet at the time, and the bodies that existed at the time. If the TLG is not dismantled, it should be rebuilt considering the present slate of global technical bodies, the present needs of ICANN, and the technologies currently in-play on the Internet. A full range of global, technically-oriented organizations should be considered for TLG membership against specific objectives set by the ICANN Board.

ALTERNATIVE CONSIDERATION I: If the TLG is not dismantled, consider rebuilding the TLG membership pursuant to criteria and objectives set by the ICANN Board with the full range of global, technically-oriented organizations presently in existence considered for membership.

QUESTION: What elements – if any - prevented the full achievement of TLG’s objectives?

The TLG is not used as intended because: (1) it does not receive formal tasking from the Board; (2) is prohibited from proactively offering counsel in many areas; and (3) the utility of TLG organizations liaising with ICANN through the TLG construct is in doubt.

5.5 ICANN governance participation privileges are not reciprocated by TLG organizations

JAS found it surprising and atypical that none of the TLG organizations have reciprocated the governance participation privilege that ICANN has granted through the TLG mechanism. We believe this too is an artifact of the past when ICANN was a very different organization. We strongly believe governance participation privileges at the highest level – participation on the Board – should and must be reciprocated to form effective peer relationships.

ALTERNATIVE CONSIDERATION II: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

5.6 TLG Board observers are disadvantaged by forced one-year terms

The Board review and a majority of interviewees noted that continuity of the ICANN Board is an issue. Even with three-year terms, the significant learning curve together with the historically low reappointment rate of Nominating Committee-selected Directors creates a high level of Director churn. The TLG-appointed observers are further disadvantaged by a forced one-year term with limited reappointment potential.³⁹ This makes it extremely difficult for the TLG-appointed Director to be a meaningful contributor to the Board.

That being said, extending TLG Board appointments involves a number of moving parts. At present, the seat is determined by a three-year institutional rotation, making continuity impossible.

ALTERNATIVE CONSIDERATION III: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

This would put the TLG-appointed Director on par with the rest of the Board and give them an opportunity to be a contributor. Note that this recommendation must not be considered in a vacuum as the issue of term is highly related to subsequent discussion and recommendations; further, care must be given to the design of the nomination and voting mechanism to ensure functionality and fairness.

5.7 ICANN is harmed by conflicts of interest and lack of role clarity of TLG members

Almost all interviewees noted concerns about ITU-T’s participation in the TLG. The core issue is one of role clarity: when an ITU-T representative sits in the TLG-appointed Board observer seat, is that

³⁹ Noting that the seat rotates through three organizations; the earliest opportunity for reappointment would be in three years.

individual an ICANN fiduciary concerned with ICANN’s best interests, or an ITU-T fiduciary concerned with ITU-T’s best interests? The question moves from unclear to untenable when the observer is an employee of, or under contract with, a competing organization. JAS finds it impossible to rectify the conflict of interest in such a scenario and sees no alternative but to remove actual or perceived competitors from the fiduciary Board.

Any scenario where the loyalties of the individuals in the Board room are unclear sets in motion a host of undesirable activities to “work around” these issues. JAS has some evidence that such “working around” has occurred in the past as a direct result of such a presence in the Board room. We find it challenging at best for a competitor to have such a significant role in ICANN’s governance spelled out in the Bylaws and again note that ICANN has no such role in any TLG organization’s governance.

Within the stakeholder community, ICANN and ITU-T are occasionally viewed as competitors.⁴⁰ At present, the other TLG organizations are not perceived as ICANN competitors, so this concern was initially directed specifically at ITU-T. However, JAS believes this is a symptom of two larger governance problems: the lack of Board observer role clarity and the atypical nature of the TLG construct. ITU-T is the present concern, but any of the TLG participants could be of concern now or in the future. If TLG is not disbanded, it must be re-architected to address this issue systemically.

JAS is sensitive to the assertion made by several sources that managing conflicts of interest is a normal part of corporate Board membership. The ICANN Board regularly deals with perceived and actual conflicts and ICANN Board members regularly recuse themselves from specific conversations. However, JAS draws a distinction between directors being occasionally conflicted on particular issues and directors being systemically and/or institutionally conflicted on an ongoing basis. JAS further notes that it is exceedingly rare for institutional competitors to share Board members for these reasons. JAS finds occasional issue-based conflicts typical and manageable, but systemic and persistent institutional conflicts untenable.

JAS finds this to be a serious and dangerous issue that ICANN must address. Absent a resolution on this issue, the ICANN Board will be forced to avoid or postpone critical conversations, or to fragment. This is a serious risk and is damaging to ICANN.

ALTERNATIVE CONSIDERATION IV: Address the issue of role clarity for the TLG liaison (or for all liaison roles). Clearly specify a duty of loyalty to ICANN for the Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

Absent a clear duty of loyalty to ICANN, one option is a periodic mutual briefing structure where the TLG liaison is invited to brief the ICANN Board on the activities of TLG organizations and the TLG liaison is briefed on ICANN’s activities. JAS notes that effective liaison relationships rarely require the capacity of a dedicated Board member; structured mutual briefings are often much more effective as they don’t present ongoing conflict of interest concerns and likely have a much higher signal to noise ratio allowing the organizations to effectively focus on the topics where liaising is necessary.

⁴⁰ Please note the counterargument in the institutional response from ITU-T.

6 Institutional Responses

Please note that institutional responses were formulated based on the public draft of this report dated 23 October 2010. JAS took all public comments – including institutional responses – into consideration while preparing the final draft of this report.

6.1 ETSI

General comments:

The draft Report totally ignores ETSI's activities as a Global SDO. The draft Report totally ignores the history of ETSI's involvement with ICANN. The TLG appeared in the ICANN reform as the place where standardization organizations, formerly represented in the Protocol Supporting Organization (PSO) and the Domain Names Supporting Organization (DNSO), continued having a role in ICANN after the abolishment of the PSO. Under the PSO rules members had to be considered as 'international', and the "full" members had to include individuals or companies primarily located in at least three different regions and at least two different countries within each of those regions. ETSI's wide international membership base (today over 700 members from more than 60 countries) was more than sufficient for accreditation as "International" rather than "Regional" in the ICANN context. In the DNSO, ETSI was present via CORE, the Committee of Registrars, of which ETSI was a founding member. ETSI was also responsible for the creation of the CORE Database used for DNS registration.

The TLG allows ETSI to participate in a formal way to ICANN. ETSI has supported ICANN for a long time, and the participation in the TLG shows this commitment to the support. Technical Liaisons have an important role to ensure that ICANN has the right balance in technical knowledge. The ICANN Board seat allows ETSI to bring technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective). The ICANN Board liaison provides valuable information back to ETSI members which helps to ensure technical compatibility issue and interoperability.

Specific comments (numbered with respect to the draft TLG Report):

4.2.2 Institutional relationships are not reciprocated

Reciprocity was never mentioned before and has never been requested by ICANN so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies (as a result Roberto Gaetano attended a number of times when he was ICANN Board Vice-Chair).

It is doubtful that ICANN participation to the ETSI Board would bring any value to ICANN. However, ETSI participation to ICANN brings technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective).

4.2.3 Concern around conflicts of interest and lack of role clarity

There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives. The ETSI role is quite clear; e.g. to provide technical understanding and clarification.

5.1 Overview and key issues

ICANN governance participation privileges are not reciprocated by TLG organizations. Same response as for 4.2.2 above: Reciprocity was never mentioned before and has never been requested by ICANN so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies (as a result Roberto Gaetano attended a number of times when he was ICANN Board Vice-Chair). It is doubtful that ICANN participation to the ETSI Board would bring any value to ICANN. However, ETSI participation to ICANN brings technical understanding to the ICANN Board deliberations (from the Telecom ecosystem perspective).

ICANN is harmed by conflicts of interest and lack of role clarity of TLG members.

Same response as for 4.2.3 above: There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives. The ETSI role is quite clear; e.g. to provide technical understanding and clarification.

5.2 The TLG is atypical and not well understood

QUESTION: Does the TLG provide a unique source of qualified technical Board members?

The suggestion that the same delegates would appear via NONCOM [SIC] if the TLG is closed is a false assumption. Without the pressure that the ETSI Board puts on its membership to offer candidates due to our TLG obligations these people would probably never even appear on the NOMCOM radar screen.

5.3 The TLG is not used as intended

QUESTION: Are W3C, ETSI, and ITU-T the right organizations to be represented on the TLG?

RECOMMENDATION 3: If the TLG is not dismantled, consider removing region-specific representation from the TLG, specifically ETSI.

The text in this section of the report show a total lack understanding of ETSI and it's global role. Characterizing ETSI as a Regional SDO is wrong in this context. In the ICANN context ETSI is operating as a "global" SDO representing the interests of 700+ members from 60+ countries rather than in it's European ESO-role. ETSI is the birth place of GSM and the home of the 3GPP secretariat therefore ETSI also brings the technical knowledge from the mobile sector to ICANN and in addition, the work in ETSI TC TISPAN supplementing the IETF work is of significant importance. ETSI is primary a technical organization and provides Technical Specifications to support the Internet infrastructure! See also, the comment above on the history ETSI's involvement with ICANN and accreditation as an International body under the PSO rules.

QUESTION: What structural and operational measures can be imagined to enhance the effectiveness of the TLG?

Although the TLG is not allowed to hold meetings nor to perform internal consultations a certain amount of co-ordination is required to ensure that the rotating seats on the ICANN Board and NOMCOM are filled with suitable candidates from the appropriate TLG organizations. The Governance Support Director has provided that service since 2004, acting as a co-ordination point and issuing reminders to the ETSI Board, ITU-T TSB Director, and W3C in due

time, and also maintaining contact with the ICANN Board and NOMCOM Secretariats. If the TLG continues then this coordination function should either be formalised or clearly taken-over by the ICANN Secretariat. ETSI is more than happy to continue offering this co-ordination function.

5.4 ICANN governance participation privileges are not reciprocated by TLG organizations

Same response as for 4.2.2 and 5.1 above: There was never any request for reciprocity, so it is rather strange that it now appears as an "issue". In fact, there is a form of reciprocity as the ICANN CEO and the ICANN Board Chairman routinely receive personalised invitations to attend ETSI General Assemblies. ETSI provides ICANN with a valuable resource in the form of delegates to the ICANN board and the NomCom, this person is paid by the ETSI member he/she works for which costs their company time and real money. So, in practical term ETSI is investing to ICANN. Within ETSI ICANN is treated in the same way as if ETSI & ICANN had signed a formal Memorandum of Understanding (even though no such paper exists in this case).

5.6 ICANN is harmed by conflicts of interest and lack of role clarity of TLG members There has never been any discussion, accusation nor any suggestion that there could be a conflict of interest situation related to the ETSI TLG representatives.

These comments have been endorsed at the ETSI Board meeting #80 on 5 November 2010.

Julian Pritchard
Governance Support Director & ETSI Board Secretary
ETSI (European Telecommunications Standards Institute)

6.2 IAB

Dear Colleagues,

A few weeks ago the IAB received a request from JAS Communications LLC for the review of the Technical Liaison Group. For the IAB I would like to offer a short initial response.

First, we support the recommendation to dismantle the TLG and agree with the JAS summary that it is "is an antiquated structure of limited utility in the ICANN of today."

However in the discussions about dismantling the TLG and in particular the discussion that led to Recommendation 2 the report opens the question of "technically qualified directors", a question that goes beyond review of the TLG.

We believe that it is critical for ICANN broadly (and the board specifically) to operate from a solid basis of technical and operational skills (e.g. in the area of broad Internet Architecture and in the specifics of use and stability of identifiers). We are concerned that ICANN does not have adequate mechanisms for guaranteeing sufficient representation of technically qualified Directors. It is not clear to us that Recommendation 2, and a reminder to the Nomcom in particular, are an adequate vehicle to resolve these concerns.

The IAB intends to investigate these concerns and their validity further. In doing so we would expect to develop a position that might lead to amendments or even contradictions of Recommendations 2. For example, development of that position might lead to further thoughts on the role of an ICANN board liaison and therefore relate to Recommendation 7.

For completeness, the IAB notes that in its March 7, 2005 meeting we elected to leave the IAB-appointed seat on the TLG vacant. That decision was based on reports of very little activity in the group by those who had acted in that membership role. (<http://www.iab.org/documents/iabmins/iabmins.2005-03-07.html>)

For the IAB,

--Olaf Kolkman
IAB Chair.

The Internet Architecture Board
www.iab.org
[EMAIL ADDRESS REMOVED]

6.3 ITU-T

I would like to thank for the opportunity to comment on the draft report "Review of the Technical Liaison Group (TLG)" prepared by JAS Communications for ICANN and issued on 23 October 2010 for public comment (<http://www.icann.org/en/reviews/tlg/tlg-review-draft-report-16oct10-en.pdf>). The draft report makes numerous references to ITU-T and its relationship to ICANN, in particular to the perceived competitiveness between ICANN and, as the draft report states, ITU-T.

1 - As matters related to ITU often tend to be misrepresented, especially in the Internet community, I would like to recall the following.

ITU comprises three Sectors: ITU-T (Standardization), ITU-R (Radiocommunication) and ITU-D (Development). It is ITU-T, the Telecommunication Standardization Sector, which has an observer seat on the TLG, not ITU. But it is ITU, not ITU-T, which has an observer seat on the GAC, the Governmental Advisory Committee.

Some of ITU-T's most well-known standards include:

- ITU-T H.264, an advanced video compression standard, jointly developed with ISO and IEC, which can be found in more than a billion consumer devices and for which ITU-T has received Hollywood's prestigious Primetime Emmy award;
- ADSL/VDSL standards without which many consumers would not be able to benefit from high-speed Internet access;
- Optical networking standards without which the Internet would come to a halt.

Currently, some of the work which receives highest attention in the market includes

- ITU-T's home networking standard ("G.hn"), a next generation wired home networking standard which supports high-speed communication over power lines, phone lines and coaxial cable;
- ITU-T L.1000 "Universal power adapter and charger solution for mobile terminals and other ICT devices";
- ITU-T's work related to ICTs (Information and Communication Technologies) and climate change which includes the development of a standardized methodology for measuring the emissions caused by ICT throughout their lifecycle, as well as the positive effects in, for instance, cutting energy requirements.

2 - ITU has a diverse membership comprising Member States (the governments) and Sector Members (non-governmental entities and mainly private sector). In ITU-T, most of the work (95%) is done by the Sector Members. Due to ITU's diverse membership it is not surprising that opinions can span a wide range at times. However, all too often an opinion of a single Member State is portrayed as "the ITU

opinion." This is not correct. Correct would be to say that a Member State, or a group of Member States, have a certain opinion. ITU's opinion is reflected in its Resolutions and Decisions as approved by its various conferences, some of which are treaty making conferences (this is, in particular, the case for the Plenipotentiary Conference, the supreme organ of ITU).

3 - I disagree that ITU-T is singled out in the discussion on conflict of interest. Any ICANN Board Member could have a potential conflict of interest. Corporate boards routinely include people from companies that could be potential competitors, and it should not be too difficult to cite best practices of corporate boards. The ITU-T representative signs the same forms as any other ICANN Board member, so the question of divided loyalty for the ITU-T representative is as relevant or irrelevant as it is for any other ICANN Board Member. To my knowledge, nobody ever expressed any doubts about inappropriate behavior of an ITU-T representative on the ICANN Board.

4 - The draft report implies that some people think that ITU and ICANN are competitors, or are perceived as competitors. However, ITU's Plenipotentiary Conference (October 2010) has made clear the need for ITU and ICANN to cooperate. To cite but one example: ITU resolves "to explore ways and means for greater collaboration and coordination between ITU and relevant organizations¹ involved in the development of IP-based networks and the future internet, through cooperation agreements, as appropriate, in order to increase the role of ITU in Internet governance so as to ensure maximum benefits to the global community;

- 1 [footnote] including, but not limited to, the Internet Corporation for Assigned Names and Numbers (ICANN), the regional Internet registries (RIRs), the Internet Engineering
- 2 Task Force (IETF), the Internet Society (ISOC) and the World Wide Web Consortium (W3C), on the basis of reciprocity."

5 - Regarding making reciprocity a condition of participation for TLG organizations: nothing prevents ICANN from applying for a Sector Membership in ITU-T, ITU-R and/or ITU-D. As a Sector Member, ICANN would enjoy the same rights as any other Sector Member and would therefore have much more weight in ITU than, say, ITU-T in ICANN.

6 - The ICANN Bylaws say: "The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities." I wish to reiterate that ITU-T is more than happy to collaborate with ICANN on standards matters.

7 - ITU remains committed to working towards collaboration and cooperation with ICANN as appropriate and on the basis of reciprocity (including through the MoU which ITU Management has previously suggested) as expressed in ITU's Plenipotentiary Resolutions (October 2010) referred to above.

Reinhard Scholl,
Deputy to the Director of the Telecommunication Standardization Bureau,
TLG Liaison 2008

6.4 W3C

We appreciate the opportunity to comment on the Technical Liaison Group Review report prepared by JAS Communications for ICANN: <http://www.icann.org/en/reviews/tlg/tlg-review-draft-report-16oct10-en.pdf>

While we do not agree with several of the details of this report, we will not elaborate on these. Instead, this comment focuses on the high-level issues.

The Technical Liaison Group fulfills three functions within ICANN, each of which deserves a separate discussion.

1. Responding to direct technical questions from ICANN. We are not aware that this mechanism has actually been used as envisioned in the ICANN Bylaws. We agree with the reviewers that the details of this mechanism do not need to raise to a bylaw level function within the ICANN structure. However, the Bylaws' observations on ICANN's need with respect to technical input are apt:

The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important.

We believe that these principles continue to hold, and remain willing to assist ICANN by collaborating on technical matters as needed.

2. Participation in ICANN's Nominating Committee, in a voting facility. The design of the ICANN Nominating Committee aims at broad participation of stakeholders in the Internet Ecosystem, beyond the immediate ICANN community. This design provides important safeguards for ICANN's ability to function as a broadly accountable and independent organization. We recommend to consider standardization organizations' role in the Nominating Committee with this background, and remain willing to assist ICANN by naming a representative to this committee.

On a mechanical note, we have not found the annual rotation arrangement for the TLG to be an obstacle to effective participation in the nominating committee, since this committee is reconvened on an annual basis.

3. Participation on the ICANN Board, in a liaison facility. In the Affirmation of Commitments [1], ICANN reinforces its commitment to "maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet", and "to operate as a multi-stakeholder, private sector led organization with input from the public." Broad participation in ICANN's governance process is a critical element of this multi-stakeholder nature, as is recognized by ICANN's own board review working group [2]:

Having carefully considered the multiple aspects related to the size and composition of the Board of ICANN, the WG has concluded that the reviewers' recommendation to adopt major reductions of the size of the Board was inappropriately based on practices of the corporate sector. ICANN does not fit easily into a corporate model for a number of reasons, including: the cultural and geographic diversity of its stakeholder base; the plurality of tasks assigned to the Board; and the nature of ICANN's mission.

Further, the board review working group notes on liaisons' role:

In particular, the WG is keen to ensure that any change to the current Liaison arrangements does not impede or decrease the much needed interactions between the Board and the technical community.

On the balance of these perspectives, the WG has concluded that no change needs to be made to the current Liaison arrangements at this point.

The current Technical Liaison Group arrangement, while imperfect, provides ICANN with much needed governance-level interactions with the technical community. W3C's participation in this mechanism helps to ensure that the Web standards community is part of these interactions. It further provides a high-level accountability mechanism between ICANN and the Web community. We firmly believe that this accountability mechanism is an important element of ICANN's overall accountability to the public, and its ability to function as a trusted coordinator for the Internet's and Web's naming and numbering infrastructures.

We look forward to further discussions about improvements of this mechanism.

[1] <http://www.icann.org/en/announcements/announcement-30sep09-en.htm>

[2] <http://icann.org/en/reviews/board/board-review-final-26jan10-en.pdf>

--

Thomas Roessler, W3C <tlr@xxxxxx> (@roessler)

7 Sources

Anonymous (n=1)	Wolfgang Kleinwächter
Scott Bradner	Cheryl Langdon-Orr
Eric Brunner-Williams	Marco Lorenzoni
Bernardo Correia	Thomas Narten
Steve Crocker	Julian Pritchard
Leslie Daigle	Thomas Roessler
Francisco da Silva	George Sadowsky
Chris Disspain	Reinhard Scholl
Roberto Gaetano	Jonne Soininen
Steve Goldstein	Fernando Soriano
Chuck Gomes	Peter Dengate Thrush
Richard Hill	Richard Thwaites
Dennis Jennings	Paul Twomey