ICANN ACCOUNTABILITY & TRANSPARENCY FRAMEWORKS AND PRINCIPLES

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OVERVIEW

ICANN's core mission is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifiers.

This is mainly a technical coordination function but is fundamentally important to the stable and interoperable character of the Internet.

ICANN operates on a multi-stakeholder model that brings all interested parties together to discuss policy issues that fall within ICANN's areas of responsibility. It follows a bottom-up model of policy development and relies on consensus from its stakeholders. For this model to operate effectively, ICANN needs to encourage participation, instill trust, make information accessible, and have sound dispute and review mechanisms.

ICANN believes that transparency and accountability are the foundations that support these elements in its operating model.

At this stage of ICANN's development, it is important to bring together in one place the frameworks and mechanisms for accountability and transparency that underpin ICANN operations. These frameworks and mechanisms for accountability and transparency were built by design into the ICANN structure and model itself, providing the organization with an inherent form of checks and balances through which stakeholders also participate. They have been built upon and improved over time through community input. ICANN wants to ensure that its ongoing development is underpinned by a set of permanent, clear operating principles and frameworks that will inform the development of all future measures designed to build transparency and accountability. The development of these principles and the communication of existing mechanisms and frameworks will build trust and will, in turn, create confidence that the organization is accountable. It is the creation of a virtuous cycle.

Accountability in the ICANN context

ICANN is a unique model and therefore ICANN accountability structures do not fit into any one traditional definition.

ICANN is an internationally organized, non-profit corporation and as such has accountability as a corporation but also through its purpose which is similar to a public trust.

Within ICANN's structure, governments and international treaty organizations work in partnership with businesses, organizations, and skilled individuals involved in building and sustaining the global Internet. ICANN is perhaps the foremost example of collaboration by the various constituents of the Internet community. Each of these groups has their own experience and expectations of accountability.

ICANN develops policy appropriate to its mission through bottom-up, consensus-based processes and in its governance, should be accountable to the community who contribute to the ICANN process.

The development of the framework of ICANN's accountability detailed in this document is the result of extensive consultation with the ICANN community, and in particular reflects definitions of accountability provided by the Governmental Advisory Committee (GAC) in November 2007.

ICANN's three types of accountability

ICANN is accountable in three ways:

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 executive perform functions in line with the wishes and expectations of the ICANN community.

Points of tension between these three types of accountability

These three types of accountability provide a useful framework for setting out the many aspects of ICANN accountability. However, before moving to the details of each of these types of accountability, it is important to note that there are inherent tensions that exist between the three types. An effective set of accountability mechanisms requires careful navigation through these points of tension.

Tension between corporate and legal accountability and accountability to the participating community

Many of the points of tension exist between the corporate and legal accountabilities and the accountabilities to the participating community.

The first point of tension concerns membership. ICANN is accountable to the global community, however the nature of ICANN's unique mission does not permit "members" of the organization that could exert undue influence and control over ICANN's activities. Thus by not having any statutory members, ICANN is accountable to the public at-large rather than to any specific member or group of members. This construct helps eliminate the specter of antitrust violations by allowing ICANN to operate in the best interests of the public at large rather than in the individual interests of certain members. This construct also allows ICANN to work collaboratively, rather than compete, with the various constituents of the Internet community.

The second point of tension is that between the responsibilities of elected Board members to the group that elected them and their responsibilities as Board members. Under ICANN's corporate structure, Supporting Organizations and other bodies within ICANN representing certain sectors of the participating community are entitled to elect directors to ICANN's Board. These directors, in turn, owe all of the duties of a director to ICANN in their roles as members of the Board. These duties for a director of care, inquiry, loyalty and prudent investment to the corporation and its constituencies take supremacy over the interests of the electing organization. Each member of ICANN's board is accountable to the participating community as a whole through his or her fiduciary duties and is required to make decisions that are in the best interests of the corporation and community at large.

The third and perhaps most critical point of tension is between the accountability to the participating community to perform functions in keeping with the expectations of the community and the corporate and legal responsibilities of the Board to meet its fiduciary obligations. The ultimate legal accountability of the organization lies with the Board, not with the individuals and entities that make up the ICANN community. Under California corporate law, ICANN's Board of Directors is charged with overall responsibility for the management of the business and affairs of the corporation. The general legal duties of an ICANN director are owed to the corporation itself, and the public at large, not to individual interests within the ICANN community. The Directors may therefore on occasion have to make decisions that run counter to the interests of individuals or groups in the community in order to properly address the Directors' broader fiduciary duties or to comply with other legal obligations.

Tension between public trust accountability and corporate and legal accountability

The tension between public trust accountability and corporate and legal accountability is most obvious in the area of disclosure of information. To meet its obligations under public trust accountability, ICANN seeks to "operate to the maximum extent feasible in an open and transparent manner" (ICANN Bylaws, Article III, Section 1). At the same time, ICANN's Directors have legal and fiduciary obligations that require that some types of information not be made public. That tension is addressed in the ICANN Documentary Disclosure Policy included in these Management Operating Principles. That policy sets out the wide range of material that is made public and also the conditions under which information will not be made public.

The following sections set out in detail the ways in which ICANN implements the three types of accountability within its operations and deals with the tensions described above.

1. Accountability in the Public Sphere

Public sphere accountability is one important aspect of ICANN accountability, and is relevant to the extent that ICANN performs a public trust function. This form of accountability is similar in some ways to that which would apply to governments and government officials. The salient aspects of public sphere accountability for ICANN are that its processes are transparent, that it discloses information to its community, that there are mechanisms for the reconsideration of decisions and that there is a process of audit or evaluation to check that procedures have been followed and that standards have been upheld.

This section of the Management Operating Principles sets out

    A. the ICANN Bylaw requirements for transparency;

    B. An Information Disclosure Policy that will guide the provision of information concerning ICANN's operational activity to the public;

    C. A Dispute Resolution Framework that outlines the mechanisms available for individuals who believe that they have not been treated fairly in their dealings with ICANN;

    D. A statement of Financial Accountability that outlines the monitoring of financial viability and governance during the budget cycle; and the reporting mechanisms that ensure transparency of ICANN financial matters;

    E. The external audit process by which ICANN's performance in regard to accountability and transparency will be evaluated and reported on.

A. COMMITMENTS TO TRANSPARENCY IN THE ICANN BYLAWS

ICANN's bylaws are very clear about the need for ICANN to uphold the standards of transparency appropriate for an organization that operates in an environment of public trust. Indeed, ICANN's Bylaws (http://www.icann.org/general/bylaws.htm#I) state that:

> **ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.**
>
> **(Article III, Section 1)**

The Bylaws also state that in performing its mission, a set of core values should guide the decisions and actions of ICANN. These include:

    7. **Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.**

    8. **Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.**

    9. **Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.**

    10. **Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.**

(Article I, Section 2)

In addition, under the Bylaws if the Board is considering policies for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN must:

- Provide public notice on its website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board.

- Provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments prior to any action by the Board.

- In those cases where the policy affects public policy concerns, request the opinion of the Governmental Advisory Committee (GAC) and take into account any advice presented by the GAC on its own initiative or at the Board's request.

- Where it is both practically feasible and consistent with the relevant policy development process, an in-person public forum also must be held for discussion of any proposed policies prior to any final Board action.

- After taking action on any policy subject undertaken through this process, the Board must publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director who chooses to publish such a statement.

B. ICANN DOCUMENTARY INFORMATION DISCLOSURE POLICY

ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.

A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.

Specifically, ICANN has:

- Identified many of the categories of documents that are already made public as a matter of due course
- Developed a time frame for responding to requests for information not already publicly available
- Identified specific conditions for nondisclosure of information
- Described the mechanism under which requestors may appeal a denial of disclosure

Documents Made Public in Due Course

ICANN posts on its website at www.icann.org, numerous categories of documents in due course. A list of those categories follows:

- **Annual Reports** –http://www.icann.org/annualreport
- **Articles of Incorporation** –http://www.icann.org/general/articles.htm
- **Board Meeting Transcripts, Minutes and Resolutions** –http://www.icann.org/minutes/
- **Budget** –http://www.icann.org/general/financial.html
- **Bylaws (current)** –http://www.icann.org/general/bylaws.htm
- **Bylaws (archives)** –http://www.icann.org/general/archive-bylaws/
- **Correspondence** –http://www.icann.org/correspondence/
- **Financial Information** –http://www.icann.org/general/financial.html
- **Litigation documents** –http://www.icann.org/general/litigation.htm
- **Major agreements** –http://www.icann.org/general/agreements.htm
- **Monthly Registry reports** –http://www.icann.org/tlds/monthly-reports/
- **Operating Plan** –http://www.icann.org/planning
- **Policy documents** –http://www.icann.org/general/policy.html
- **Speeches, Presentations & Publications** –http://www.icann.org/presentations/
- **Strategic Plan** –http://www.icann.org/planning
- **Material information relating to the Address Supporting Organization (ASO)** – http://aso.icann.org/docs/index.html including ASO policy documents, Regional Internet Registry (RIR) policy documents, guidelines and procedures, meeting agendas and minutes, presentations, routing statistics, and information regarding the RIRs

- **Material information relating to the Generic Supporting Organization (GNSO)** – http://gnso.icann.org/ – including correspondence and presentations, council resolutions, requests for comments, draft documents, policies, reference documents (see http://gnso.icann. org/reference-documents.htm), and council administration documents (see http://gnso.icann.org/council/docs.shtml).

- **Material information relating to the country code Names Supporting Organization (ccNSO)** –http://ccnso.icann.org – including meeting agendas, minutes, reports, and presentations

- **Material information relating to the At Large Advisory Committee (ALAC)** – http://alac.icann.org – including correspondence, statements, and meeting minutes

- **Material information relating to the Governmental Advisory Committee (GAC)** – http://gac.icann.org/web/index.shtml – including operating principles, gTLD principles, ccTLD principles, principles regarding gTLD Whois issues, communiqués, and meeting transcripts, and agendas

- **Material information relating to the Root Server Advisory Committee (RSSAC)** – http://www.icann.org/committees/dns-root/ – including meeting minutes and information surrounding ongoing projects

- **Material information relating to the Security and Stability Advisory Committee (SSAC)** – http://www.icann.org/committees/security/ – including its charter, various presentations, work plans, reports, and advisories

Responding to Information Requests

If a member of the public requests information not already publicly available, ICANN will respond, to the extent feasible, to reasonable requests within 30 calendar days of receipt of the request. If that time frame will not be met, ICANN will inform the requester in writing as to when a response will be provided, setting forth the reasons necessary for the extension of time to respond. If ICANN denies the information request, it will provide a written statement to the requestor identifying the reasons for the denial.

Defined Conditions for Nondisclosure

ICANN has identified the following set of conditions for the nondisclosure of information:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy, as well as proceedings of internal appeal mechanisms and investigations.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

- Information that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.

- Information subject to the attorney–client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

- Information that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Information that falls within any of the conditions set forth above may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.

ICANN shall not be required to create or compile summaries of any documented information, and shall not be required to respond to requests seeking information that is already publicly available.

Appeal of Denials

To the extent a requestor chooses to appeal a denial of information from ICANN, the requestor may follow the Reconsideration Request procedures or Independent Review procedures, to the extent either is applicable, as set forth in Article IV, Sections 2 and 3 of the ICANN Bylaws, which can be found at http://www.icann.org/general/bylaws.htm.

C. DISPUTE RESOLUTION MECHANISMS AT ICANN

There are two areas where ICANN has need for dispute resolution mechanisms.

- Parties may be in dispute with ICANN because they believe that due process has not been followed in arriving at a Board decision or because they believe that they have not been treated fairly in an ICANN process. The three part dispute resolution process that is available to members of the community is described in detail below in the section "Disputes about process and fair treatment".

- Parties may be in dispute with ICANN because they disagree not with the process but with the outcome of an ICANN decision process. The current method for dealing with disputes such as this is through the court system or via arbitration if provided for under the terms of ICANN's agreements. This approach is described in the section "Disputes about outcomes of a decision process".

Disputes about process and fair treatment

ICANN has a three-part dispute resolution process available to members of the community who feel that they have not been dealt with fairly or who believe that due process has not been followed in a Board decision making process.

Members of the community may choose whichever of these schemes is most appropriate to their needs. Alternative dispute resolution approaches are provided and preferred because these are accountable, transparent and flexible methods for resolving disputes..

Board Reconsideration Committee

The Reconsideration Committee is the first formal appeal or dispute resolution channel. It is a permanent committee of the ICANN Board of Directors. The Reconsideration Committee may hear a demand for the reconsideration of any decision made by the Board or the organization at no cost to the complainant. The purpose of a Reconsideration Committee review is to check that the correct process has been followed by the Board in reaching its decision. It has the power to recommend to the Board appropriate changes, and may amend or overturn decisions that were not made by a vote of the Board as a whole. The activities and decisions of the committee are posted on the ICANN website.

The Reconsideration Committee consists of three members of the Board and it has the authority to:

- Evaluate requests for review or reconsideration
- Determine whether a stay of the contested action pending resolution of the request is appropriate
- Conduct whatever factual investigation is deemed appropriate
- Request additional written submissions from the affected party, or from other parties
- Make a recommendation to the ICANN Board of Directors on the merits of the request.

Independent Review Panel (IRP)

The IRP is the second formal dispute resolution mechanism. It is established in the ICANN Bylaws, and ICANN must cooperate with the IRP in providing documents or information. The IRP promotes accountability and transparency by allowing any person who is materially affected by an ICANN decision to access an outside third party who will review that act or decision. The IRP's mandate is to

review the actions, decisions, and inactions of the Board to determine whether they were consistent with the Articles of Incorporation and the Bylaws.

The IRP has the authority to:

- Request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.
- Declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws.
- Recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

The IRP is operated by an international arbitration provider, the International Centre for Dispute Resolution (see http://www.adr.org/icdr). The steps for requesting an Independent Review Panel review have been set out simply and clearly on the ICANN website. The forms to initiate an IRP review can be found at http://www.icann.org/general/accountability_review.html . The IRP conducts much of its work online or by telephone in order to reduce costs and to make the process efficient and flexible to the complainant.

The ICANN Ombudsman

The Office of the Ombudsman is created in the ICANN Bylaws. The Ombudsman is an independent, impartial resource that allows community members an informal, cost-free mechanism to deal with perceived unfair decisions, actions, or inactions by the organization. Any person affected by an ICANN action, decision, or inaction may request an Ombudsman's review. The Ombudsman has the power to investigate, and to make recommendations to the Board to improve or change policies, procedures, or actions; the Ombudsman does not have the power to order changes. The Ombudsman has the discretion to publish or not to publish findings and recommendations. Each year the Ombudsman produces an Annual Report that outlines the activities of the Office of the Ombudsman for that year. That report is published for distribution to interested parties and is also available on the ICANN website.

Disputes about outcomes of a decision process

The dispute resolution mechanisms described above have been designed to provide efficient and cost effective means by which members of the ICANN community can have complaints dealt with and have issues resolved. As described in greater detail in the sections below on the legal accountability, parties in dispute with ICANN may choose to use the court system to resolve their dispute or in extreme cases may use the mechanisms provided by the State of California for the resolution of issues with nonprofit public benefit corporations.

Ongoing review of dispute resolution mechanisms

ICANN strives to maintain the highest standards of accountability and transparency. An important aspect of this is the continuous improvement of the mechanisms for dealing with complaints and resolving issues within the ICANN community. As part of the regular round of reviews of all aspects of ICANN's operations, the Board Governance Committee will implement reviews of the ICANN's dispute resolution mechanisms to ensure that they meet the needs of the all members of the community to have complaints dealt with efficiently and effectively.

D. FINANCIAL ACCOUNTABILITY

Once the budget is approved by the Board, there are several checks and balances built into the ICANN financial accountability framework. The ICANN financial accounts are audited every year by an external auditor in compliance with the ICANN Bylaws. In addition, the ICANN Board has two committees that review ICANN's financial affairs: the Finance Committee and the Audit Committee.

Independent External Audit

- Each year the ICANN accounts are audited by an independent external auditor. This is a Bylaws requirement which ICANN believes is good practice to ensure that financial management and governance are of the highest standard. The auditor reports to the Board Audit committee and report is made available for the community.

Finance Committee

- The Finance Committee of the ICANN Board is responsible for consulting with the President on the annual budget process of the corporation; for reviewing and making recommendations on the annual budget submitted by the President; and for developing and recommending long-range financial objectives for the corporation. In consultation with the President, the Finance Committee may establish such budget tracking and reporting standards as are appropriate to the needs of the committee and the Board.

Audit Committee

- The Audit Committee of the ICANN Board is responsible for recommending the selection of an independent external auditor each year to conduct a thorough audit of ICANN's financial affairs; for receiving, reviewing, and forwarding to the Board the annual financial report of the independent external auditors; for publishing that report for public consumption; and for such other matters as may warrant its attention.

These committees meet regularly throughout the year to monitor the financial health of the organization and to check that high standards of financial accountability are being upheld.

Reporting

There are two elements of reporting in the ICANN financial accountability framework: the audited financial accounts and the Annual Report.

Financial Accounts

- Within 120 days of the end of the fiscal year, the Audit Committee presents to the Board a final audited set of accounts for the year, along with an audit report that examines the standard of compliance with accounting standards.

- The final accounts are posted on the ICANN website for the information of the ICANN community.

Annual Report

- ICANN also publishes an Annual Report that details progress on the initiatives identified in the Strategic and Operating Plans and in the budget.

- It provides feedback to the community on achievements during the year.

E. ICANN'S ONGOING COMMITMENT TO THE HIGHEST STANDARDS OF TRANSPARENCY

ICANN is committed to very high standards accountability and transparency. In response to the recommendations of the One World Trust review, ICANN has undertaken to conduct an annual audit of standards of accountability and transparency, including an audit of the commitments made in these Management Operating Principles. This audit will be conducted by an external party and the results of the audit will be published in the Annual Report.

2. Legal and Corporate accountability

A second important aspect of ICANN's accountability is the legal and corporate accountability that comes about through the organization's Bylaws and through the state and national laws that govern ICANN's behavior. The Bylaws underpin the operations of ICANN and in particular set out the procedures for the appointment of Directors and for the running of ICANN's core governance process, the Board. As such, they are a critical component of ICANN's accountability framework. ICANN is a California nonprofit public benefit corporation, and is subject to both the state laws of California, and United States federal laws. One of the reasons that ICANN was constituted as a California nonprofit public benefit corporation is that the State of California provides a rigorous framework of legal accountabilities for organizations of this type. The responsibilities that have been put in place through ICANN's Bylaws and its corporate structure should give stakeholders certainty that ICANN operates to the highest standards of accountability.

This section of the Management Operating Principles sets out:

A. The ICANN Bylaw requirements for corporate responsibility;

B. The jurisdictional legal obligations ICANN has as a California nonprofit public benefit corporation.

A. BYLAW REQUIREMENTS

ICANN's Bylaws are the internal rules by which the Corporation operates.

The Bylaws state that the powers of ICANN and all property and business and affairs are to be conducted by or under the direction of the Board. The Board may act only by a majority vote of all members of the Board at any annual, regular, or special meeting of the Board, or by unanimous written consent of all voting members.

The Bylaws also require ICANN to have in place a process by which any person or entity may request review or reconsideration of actions by the Board that materially impact an individual or entity. This is outlined further in the framework for Dispute Resolution at ICANN.

The Bylaws can only be altered and new Bylaws adopted by a two-thirds (2/3) vote of all members of the Board.

B. JURISDICTIONAL LEGAL OBLIGATIONS

As a California nonprofit public benefit corporation, ICANN is subject to both the state laws of California, and United States federal laws. Laws generally applicable to ICANN and its operations include laws relating to tortious behavior, laws applicable to contracting activities of corporations, and laws prohibiting monopolistic behavior. As a corporation, ICANN is a legal entity and has the ability to sue and be sued for its actions, and to be held responsible in a court of proper jurisdiction for its business dealings with the global community. Accordingly, ICANN's activities in the global community are conducted under awareness and appreciation of the laws applicable to it as an organization.

Under its articles of incorporation:

- ICANN is a non-profit public benefit corporation
- It is not organized for the private gain of any person

The law that organizes ICANN is called the California Non-profit Public Benefit Corporation Law for charitable and public purposes. ICANN has been granted tax-exempt status by the United States federal and California state governments. Tax-exempt status was conferred upon ICANN based on its mission of providing technical coordination for the Internet, and the resulting benefits to the public community at large. ICANN's status as a tax-exempt organization carries with it certain responsibilities to federal and state authorities which are different than those associated with taxable, for-profit entities. Specifically, ICANN's operating activities and organizational decision-making are guided by requirements incorporated into ICANN's charter for continuing eligibility for tax-exempt status. The California Attorney General is the legal overseer of California nonpublic benefit corporations such as ICANN. As such, the Attorney General works to protect the interest of all public beneficiaries within his or her jurisdiction. The Attorney General, acting on behalf of the public, may conduct investigations and bring legal actions to ensure that ICANN does not stray from its public charitable purpose. For corporate behavior that has otherwise gone uncured and uncorrected, members of the public are also able to petition the Attorney General to conduct these investigations.

ICANN is recognized as a public charitable organization described in Internal Revenue Code ("IRC") § 501(c)(3). This recognition carries with it several benefits, namely, exemption from federal taxation and the ability to receive tax-deductible charitable contributions. Being an IRC § 501(c)(3) organization, however, also imposes special responsibilities on ICANN. Among those responsibilities is that ICANN's directors must ensure that ICANN operates exclusively in furtherance of its public charitable and scientific purposes and avoids transactions that may confer excessive economic benefit on corporate insiders, others closely affiliated with ICANN or private parties who contract with ICANN.

Fiduciary obligations of directors

Under California corporate law, ICANN's Board of Directors is charged with overall responsibility for the management of the business and affairs of the corporation. The general legal duties of an ICANN director are owed to the corporation itself, and the public at large.

Generally, a director of a non-profit public benefit corporation shall perform his/her duties in good faith, in the best interests of the organization and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

That is generally understood to embrace four duties, which directors owe to the organization and its constituencies: (a) a duty of care; (b) a duty of inquiry; (c) a duty of loyalty; and (d) a duty of prudent investment.

Duty of Care

The duty of care is best expressed as the seriousness that each Director brings to his or her responsibilities such as gaining and maintaining familiarity with the business objectives of the organization. It also includes important business considerations and industry information relevant to the organization's activities, and serving on the same basis on committees to which the Director may be appointed. The duty of care also requires that the Director take reasonable measures to ensure that the organization is managed and directed in a manner that is consistent with its mission. Further, the duty of care requires the Directors to be attentive to the concerns expressed by the organization's counsel and follow directives concerning the confidentiality of advice and overall legal strategy approved by the Board of Directors or the officers for dealing with particular problems or issues that may arise.

Duty of Inquiry

The duty of inquiry generally requires that a Director take such steps as are necessary to be sufficiently informed to make decisions on behalf of the organization and participate in the Board of Directors' activities. In satisfying this duty, Directors must balance against competing considerations, such as the organization's obligations relating to confidentiality of information received from third parties, privacy rights of employees and others who deal with the organization, attorney-client privilege relating to legal proceedings or legal advice to the organization, and protection against disclosures of information which may damage the organization's business, property, or other interests.

Duty of Loyalty

The duty of loyalty generally involves the protection of the organization's interests in its business, properties, assets, employees, and legal rights, avoidance of conflicts of interest or self-dealing on the part of Directors, and serving the interests of the organization and not the interests of any other person or group, including a constituency of the organization which caused the Director to be selected.

Duty of Prudent Investment

Directors of a non-profit corporation are required, in the management of the organization's investments, to avoid speculation and to comply with any applicable standards in the organization's Articles, Bylaws, or the terms of any gift or grant of funds to the corporation.

In addition, due to the tax-exempt status of ICANN, its directors and officers owe a duty to avoid "excess benefit" transactions and those that inure to the benefit of any insider (i.e., an officer or director of ICANN) or confer a benefit on a private party which is not an insider. Further, directors of a California nonpublic public benefit corporation may, under certain circumstances, be subjected to personal liability for uninsured damages resulting from acts or omissions not within the scope of the director's duties; that are not performed in good faith; or that are reckless, wanton, intentional or grossly negligent.

Similar standards of legal accountability apply if the Corporation opens international offices. There has been some discussion among the ICANN community about potential review of ICANN's legal status in the context of its further internationalization. Whatever may emerge out of these discussions, if anything, ICANN is committed to maintaining the same standards of external accountability to those outlined above.

Accountability of Senior Staff

The senior staff of ICANN serve as officers of the organization and are elected annually by the Board. The Bylaws require the designation of the President, Secretary, and Chief Financial Officer. The Board appoints the President and CEO and permits the Board to designate other officers on an annual basis. The Board also has the ability to remove any officer by a two-thirds vote of the Board and each officer is subject to ICANN's conflict of interest policies. Like Board members, these officers have fiduciary responsibilities to the corporation and are also accountable under state and federal laws.

3. Accountability to the participating community

ICANN operates on a multi-stakeholder model that brings together a wide range of relevant parties to develop policy to promote the stability and integrity of the Internet. As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policy appropriate to its mission through bottom-up, consensus-based processes. Within ICANN's structure, governments and international treaty organizations work in partnership with businesses, organizations, and skilled individuals involved in building and sustaining the global Internet. Innovation and continuing growth of the Internet bring forth new challenges for maintaining stability. Working collectively, ICANN's participants address those issues that directly concern ICANN's mission of technical coordination. Consistent with the principle of maximum self-regulation in the high-tech economy, ICANN is perhaps the foremost example of collaboration by the various constituents of the Internet community.

ICANN is accountable to the global community, however the nature of ICANN's unique mission does not permit "members" of the organization that could exert undue influence and control over ICANN's activities. Thus by not having any statutory members, ICANN is accountable to the public at-large rather than to any specific member or group of members. This construct helps eliminate the specter of antitrust violations by allowing ICANN to operate in the best interests of the public at large rather than in the individual interests of certain members. This construct also allows ICANN to work collaboratively, rather than compete, with the various constituents of the Internet community.

This section sets out the mechanisms by which ICANN makes itself accountable to its participating community. The major aspects are:

    A. The representative composition of the Board which allows all parts of the ICANN community to participate in ICANN Board process;

    B. The consultative planning process by the ICANN community sets strategic direction and determines operational priorities and budgets;

    C. The ongoing schedule of reviews of ICANN's structure according to Article IV, Section 4 of the ICANN bylaws;

    D. Translation Principles that guide the translation of documents within the ICANN community;

    E. Consultation Principles that guide the consultation processes that are used to generate community input on ICANN issues;

    F. A statement of expected standards of behavior which outlines the standards of behavior expected of those who participate in the ICANN process.

A. THE REPRESENTATIVE COMPOSITION OF THE ICANN BOARD

Although the powers of the Board are clearly set out in the Bylaws, the Board derives an important aspect of its validity from the diverse and global nature of its membership. The ICANN Board draws its membership from community selection and through a Nominating Committee. The Nominating Committee membership is also drawn from amongst the community.

The Board is constituted as follows:

- Six members of the Board (Directors) are elected from the ICANN Supporting Organizations (two each from the Address Supporting Organization (ASO), the Country-Code Names Supporting Organization (ccNSO), and the Generic Names Supporting Organization (GNSO)).

- The President is a voting member of the Board.

- Eight members are selected by the Nominating Committee. (A description of the Nominating Committee composition and process follows.) These Nominating Committee appointees are selected on strict criteria including intelligence and integrity, a broad experience of the Internet community, and an understanding of ICANN's mission. The Nominating Committee also is required to select candidates in such a way as to maintain the geographical diversity of the ICANN Board.

In addition, there are six non-voting liaisons, one each from:

- The Governmental Advisory Committee

- The Root Server System Advisory Committee

- The Security and Stability Advisory Committee

- The Technical Liaison Group (which represents the European Telecommunications Standards Institute, The International Telecommunication Union's Telecommunications Standardisation Sector, the World Wide Web Consortium, and the Internet Architecture Board)

- The At-Large Advisory Committee

- The Internet Engineering Task Force

The liaisons participate in Board discussions and bring the views of their respective groups to the Board table.

The Bylaws lay out the term for each Director and the process for removing a Director from office, if necessary (see Article VI, Section 11).

The Board meets regularly throughout the year, usually by telephone conference. These are called Special Board meetings. Regular Board meetings are held three times per year (including the Annual Meeting), and these meetings are open to the public (either in person or through streaming media). A detailed Preliminary Report of each Board Meeting is posted on the ICANN website shortly following each meeting. That report then forms the minutes subject to approval by the Board.

Apart from the Nominating Committee appointments, the other positions on the Board are derived from a bottom-up selection process. Under ICANN's corporate structure, Supporting Organizations and other bodies within ICANN representing certain sectors of the participating community are entitled to elect directors to ICANN's Board. These directors, in turn, owe all of the duties of a director to ICANN in their roles as members of the Board. These duties for a director of care, inquiry, loyalty and prudent investment to the corporation and its constituencies take supremacy over the interests of the electing organization. Each member of ICANN's board is accountable to the

participating community as a whole through his or her fiduciary duties and is required to make decisions that are in the best interests of the corporation and community at large.

The Nominating Committee

The Nominating Committee is responsible for the selection of eight of the voting members of the Board. Its membership is drawn from the community.

The Chair of the Nominating Committee is appointed by the Board and is responsible for the smooth running of the committee process. However, the Chair of the Nominating Committee cannot vote. The immediately previous Nominating Committee Chair acts as a non-voting advisor.

The committee is made up of 18 volunteers including the chairman. It is composed of voting members from:

- The At-Large Advisory Committee (5 members)
- The Business Users Constituency of the GNSO (2 members, one representing small business users and one representing large business users)
- The gTLD Registry Constituency of the GNSO
- The gTLD Registrar Constituency of the GNSO
- The Internet Service Providers Constituency of the GNSO
- The Intellectual Property Constituency of the GNSO
- The Council of the ccNSO
- The Council of the ASO
- An entity designated by the Board to represent academic and similar organizations
- Representatives of consumer and civil society groups selected by the Non-commercial Users Constituency of the GNSO
- The Internet Engineering Task Force
- The Technical Liaison Group

The Nominating Committee also has 3 non-voting liaison representatives, one each from:

- The Root Server Advisory Committee
- The Security and Stability Advisory Committee
- The Governmental Advisory Committee

With this membership, the Nominating Committee is extremely representative of the ICANN community and well placed to select appropriate members for the ICANN Board.

The size of the committee and the breadth of representation ensure that it is not able to be captured by one interest group and that it is not possible for any individual to force their ideas onto others.

B. PLANNING

One of the most important ways that the community participates in ICANN is through the planning element that encompasses Strategic Planning, Operational Planning, and budgeting. Members of the ICANN community are able to contribute through a multi-phase consultation process to the strategic direction of the organization and to its operating and budget prioritization.

During the first six months of each fiscal year, ICANN develops its three-year strategic plan. During the second six months of each fiscal year, ICANN develops the operating plan and the budget for the next fiscal year. Each of these elements of the planning phase is developed through a thorough, multi-phase process of consultation with the ICANN community.

Strategic Plan

- The Strategic Plan outlines the strategic priorities for ICANN over a three-year period. It is updated annually to reflect changes in the environment in which ICANN operates and the changing needs of the ICANN community. The strategic planning process begins with consultation with the ICANN community to gain initial input to the plan. This usually takes place at an ICANN meeting where sessions are conducted in several languages and also through online forums or similar tools.

- Based on this input, an issues paper is compiled that summarizes the main opportunities and challenges for ICANN over the coming three years, and a list of key priorities to address those opportunities and challenges. Consultation is undertaken on this issues paper by posting it for comment on the ICANN website.

- Based on this feedback, a draft plan is developed and posted for comment. Consultation is undertaken with the community on the draft plan through online forums and at the ICANN meeting held in the last quarter of the calendar year with sessions conducted in multiple languages. The plan is refined to reflect comments from the community, with each draft being posted for consultation.

- The final version of the plan is submitted to the Board for approval at its December meeting.

- The approved plan is posted on the ICANN website and previous plans are also available.

Operating Plan

- The Operating Plan is a one-year plan that turns the priorities identified in the Strategic Plan into action.

- An initial draft of the Operating Plan is prepared by ICANN staff in the first two months of the calendar year.

- The Operating Plan draft contains details of ongoing operations and special projects developed to address strategic priorities. This draft plan is posted for community comment and consultation sessions are conducted at the first ICANN meeting of the calendar year.

- The plan is redrafted based on the feedback received and posted for further comment. Another round of consultation is conducted at the second meeting of the calendar year. After any necessary redrafting, the Operating Plan is submitted to the Board. The current Operating Plan and previous plans are available on the ICANN website.

ICANN Budget

- The ICANN Budget is developed in parallel with the Operating Plan. Initial consultation on the Budget takes place at the first ICANN meeting of the year. All of ICANN's Supporting Organizations, Advisory Groups and constituency groups are consulted and general consultation sessions are conducted in multiple languages.

- The budget is adjusted in line with comments received during consultation about the Operating Plan and a draft budget is posted for community comment in May.

- Based on feedback received, a further draft is prepared and posted.

- Community consultation, including consultation with all of ICANN's Supporting Organizations, Advisory Groups and constituency groups, is undertaken at the second ICANN meeting of the calendar year with sessions conducted in multiple languages.

- The budget is fine-tuned on the basis of comments received and the final version of the budget is presented to the Board for approval in June. The approved version of the budget is posted on the ICANN website.

- As a final step in the consultation process, the registrar fee structure contained in the Budget must be approved by two-thirds of the gTLD registrars using the methodology contained in the Registrar Accreditation Agreement.

C. ONGOING REVIEW OF STRUCTURES

Another way in which ICANN maintains and strengthens accountability to the participating community is through an ongoing schedule of reviews of its structure. A regular review of performance is an important aspect of seeking continuous improvement in effectiveness and accountability. The ICANN Bylaws stipulate that an independent review of each of the key parts of the ICANN structure should take place no less frequently than every three years. "The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness." (ICANN Bylaws Article IV, Section 4) These reviews examine the effectiveness of ICANN's community structures and identify improvements that help the ICANN community and the ICANN model work more effectively.

D. ICANN CONSULTATION PRINCIPLES

ICANN is based on a multi-stakeholder model that develops policy through a bottom-up, consensus-driven process. ICANN's values contained in the Bylaws set out the importance of consultation in the ICANN process:

4. **Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.**

7. **Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.**

(Article I, Section 2)

Furthermore, ICANN consults in other aspects of its operations beyond policy development, including strategic planning, operational planning, and budgeting.

The ICANN Bylaws set out clear frameworks for aspects of consultation, particularly those associated with policy development.

This document does not override or replace any of the Bylaws requirements. However, given the importance of consultation to the ICANN community, this document establishes a set of principles that guide consultation that takes place within the ICANN community.

Principles

In consulting with the ICANN community, ICANN seeks to uphold the following principles.

To maximize the ease of participation in any consultation, ICANN will:

- Provide information on upcoming issues as far in advance as possible to give the community time to respond. Where issues are to be discussed publicly in a meeting, best efforts will be made to provide relevant information at least one week in advance of the meeting.

- Maintain a calendar of current consultations and, where practicable, forthcoming consultations so that the ICANN community can be aware of times when their views will be sought on issues

- Use online forums as the basic mechanism for conducting consultation

- Provide sufficient context and background material to enable participants to understand the issues on which they are being asked to comment

- Make clear the purpose of the consultation and the way in which comments will be used

- Use developments in technology to enhance the consultation process

- Follow the ICANN translation policy, with relevant documents and questions being translated and posted according to that policy

- Except where Bylaws stipulate otherwise, ensure the minimum time for a comment period will be 21 days

- Maintain a public participation site that encourages the community to discuss particular issues ahead of time and so clarify arguments and positions early on. If necessary, specific web pages, forums, and chat rooms can be quickly set up to cater to demand

To encourage active debate of issues, ICANN will:

- Explore interactive approaches to comments that encourage discussion and resolution between members of the community

- In the spirit of the values contained in the Bylaws, proactively seek comment from those entities most affected by an issue

To maximize transparency of the consultation process, ICANN will:

- Make all comments visible to the community

- Require that all comments be tagged with the sender's name and any relevant affiliation (where the individual is speaking on behalf of a group). Where the respondent is an ICANN Supporting Organization, Advisory Committee, or constituency group, some indication must be given of the process that was used to develop the comment and the parties who took part in that process

- Post a summary of comments at the end of each comment period and in the same place as the comments

- Post an analysis of the comments

- Explain how the input will be used

- Make clear wherever possible the impact of public comment on decisions

- Request explicit discussion of that summary and analysis by the relevant body while discussing the topic under consideration

To maximize the effectiveness of the consultation process, ICANN will:

- Conduct annual reviews of the consultation process

E. ICANN TRANSLATION PRINCIPLES

As a globally authoritative body on the technical and organizational means to ensure the stability and interoperability of the DNS, ICANN aspires to be an organization that is capable of communicating comfortably in a variety of languages. Through consultation with the community, ICANN will continue to improve its capabilities in this area. To encourage effective dialogue amongst all parties in the ICANN global multi-stakeholder process:

- ICANN commits to timely and accurate translations to encourage real dialogue in different languages.

- ICANN commits to translate core strategic and business documentation (such as the Strategic and Operating Plans; the budget; the annual report; ICANN's mission and by laws) into the UN languages (Arabic, Chinese, English, French, Russian, and Spanish), and the language of large Internet economies where there is little bilingualism in one of the UN languages (e.g. Japanese) and to continue to take expert advice on language choice and translation policy.

- ICANN works with the community to identify other types of documents that should be translated into the agreed block of languages.

- From time to time, ICANN will also translate documents into languages outside of the agreed block to communicate about issues that may be of special interest to particular communities.

- ICANN works collaboratively with the community and experts to develop tools for multi-lingual dialogue. Every effort will be made to ensure equity between comments made in languages other than English and those made in English.

- ICANN provides transcription (scribing) for major sessions at ICANN meetings to assist those who do not have English as a first language to follow discussions.

- English will remain the operating language of ICANN for legal purposes.

- ICANN has adopted the International Organization for Standardisation's 639-2 naming system for identifying and labeling particular languages.

F. ICANN EXPECTED STANDARDS OF BEHAVIOR

Those who take part in ICANN multi-stakeholder process including Board, staff and all those involved in Supporting Organization and Advisory Committee councils undertake to:

- **Act** in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.

- **Adhere** to the conflict of interest policy laid out in the Bylaws.

- **Treat** all members of the ICANN community equally, irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age, or sexual orientation; members of the ICANN community should treat each other with civility both face to face and online.

- **Act** in a reasonable and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability and security of the Internet's system of unique identifiers, irrespective of personal interests and the interests of the entity to which an individual might owe their appointment.

- **Listen** to the views of all stakeholders when considering policy issues. ICANN is a unique multi-stakeholder environment. Those who take part in the ICANN process must acknowledge the importance of all stakeholders and seek to understand their points of view.

- **Work** to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development. Those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants.

- **Act** in accordance with ICANN policies.

- **Protect** the organization's assets and ensure their efficient and effective use.

- **Act** fairly and in good faith with other participants in the ICANN process.