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Dr. Heather Dryden
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Via email:

Mr. Brian Cute,
Chairman, Affirmation of Commitments (AoC) Accountability and Transparency Review Team (ATRT)
Via email:

July 16, 2010

Subject: <u>ICANN's new direction of "Arbitrary Terrorism verification" for the New gTLDs in the 4th guidebook without clear definitions or standards, and ICANN's Bottom up Processes and Transparency.</u>

Dear Rod, Peter, Heather, Brian and all Board members,

You will recall, as a matter of public record, that I first raised part of this subject on the afternoon of the Public Forum during the ICANN Brussels meeting June 24, 2010. Peter, as chairman, requested I send a written statement on this matter. You may proceed to post it on the ICANN website, for the purpose of transparency, as it supplements my Public Forum statement.

ICANN BRUSSELS WAS SUPPOSED TO BE A CELEBRATION

The Internet is being reborn once again with IDNs. ICANN Brussels was supposed to be a celebration of seeing the fruit of great efforts of many IDN communities coming to fruition with the beginning of a Multilingual Internet as I and others had called and worked so hard and so long for. Efforts that spanned longer than a decade recently witnessed the initial symbolic images of a Multilingual Internet with the successful first baby steps of an Arabic DNS, followed by Cyrillic, Chinese and many others to follow, all in the same root.

All these communities should celebrate their achievements with great pride for their perseverance against the challenges and the natural and unnatural obstacles laid in front of them over the years. ICANN can take pleasure in being the enabler to these milestones

But instead of coming to ICANN Brussels to celebrate the above I found myself needing to address an alarming new ICANN direction.

THE GOOD, THE BAD, AND NOW:"THE DISTURBING" IN A SUPPOSED BOTTOM UP TRANSPARENT ICANN.

Those who have been involved in the ICANN process as long as I have naturally become accustomed to ICANN controversies at all levels. But this latest is a "wrong" of international ramifications.

All four (4) versions of the Guidebook for the new generic Top-Level Domains (gTLDs) have been hundreds of pages long with a lot of The Good, The Bad, and to some, The Ugly. However, for a <u>transparent</u> organization, something new has appeared in the 4th and latest version called DAG4 that can be called: "<u>The Disturbing</u>", which no one can tell where it came from in this supposed ICANN <u>bottom up</u> process.

It seems ICANN's has arbitrarily added Terrorism verification checks to be conducted on all applicants for New gTLDs, (which include IDN gTLDs) in its latest Guidebook DAG4 with NO definitions, or standards whatsoever

upon which these checks will be conducted - a clear indication of the little thought this matter was given, if any, or to its grave international implications.

ICANN, THE NEW GLOBAL TERRORISM VERIFIER.

Does ICANN truly want to venture itself into the field of "Global Terrorism Verification"?

In DAG4, Section 1.2.1 Eligibility and 2.1 Background Check it states and I quote:

Background checks at both the entity level and the individual level will be conducted for all applications, to confirm eligibility. The background check may include, but is not limited to any of the following areas:
- *Corruption and bribery*
- *Terrorism*
- *Serious and organized crime*
- *Money laundering*
- *Corporate fraud and financial regulatory breaches*
- *Arms trafficking and war crimes*
- *Intellectual property violations*

Alarmingly, nowhere does the DAG4 contain any clear definitions or standards upon which these checks on terrorism will be conducted.

INTENTIONAL OR ACCIDENTAL MISTAKE?

This action threatens ICANN's ability to effectively undertake its mandate of being the "Global Technical Coordinator" of the Internet, and to do so transparently. Also, continuing in this direction would challenge ICANN's legitimacy as a **"Global Public and Private Service Provider**" in the eyes of the international community per the Affirmation of Commitments Agreement (AOC) with The United States Government. Most importantly, it will alienate many in the international community who will choose not to take part in future ICANN processes including its New gTLDs, distrusting ICANN's motives, or actively choosing to boycotting it, and causing many to seriously start re-considering alternatives.

Regardless of whether ICANN's addition of "Terrorism" in this arbitrary manner was intentional or accidental, this direction will cause international ramifications and raise questions as to "who still pushes the ICANN buttons" and whether ICANN is succeeding at truly and functionally internationalizing itself, in contradiction to ICANN's repeated claims.

WHOSE STANDARD ON TERRORISM IS ICANN PLANNING ON ADOPTING? WOULD NELSON MANDELA QUALIFY?

So who's standard is ICANN planning at adopting, The US State department's definition on terrorism, or the UNs resolutions on terrorism? The international community and the IDN communities deserve clarity.

Also, will ICANN's non-existent measuring standard in DAG4 verify for

    "Allegations" of Terrorism

Or

    "Convictions" of Terrorism?

And, based on whose jurisdiction? USA's? Europe's? Middle East's? Whose?

And which terrorism is ICANN preoccupying itself with?

1- **Islamic Terrorism?**
2- **Cyber Terrorism?**
3- **State sponsored Terrorism?**
4- **Domestic Terrorism**
5- **"Generic" International Terrorism (gIT)**
     Or
6- **Is there any other terrorism I missed?**

Would Nelson Mandela pass or fail such check as they stand? After all he did serve prison time, making him a convicted felon

WOULD I QUALIFY?

Evidently, I am deemed worthy and in good standing to serve on the ICANN's President Advisory Committee on IDNs, (invited by former ICANN President and CEO Paul Twomey in 2005). But as a Syrian born Arab American would I pass the ICANN terrorism verification check as they are? After all Syria, my country of birth, is on the U.S. Government list of states sponsor of terrorism? And I admit, I do know an "Osama", does that disqualify me? I Forgot to add, "Osama Fattal" a cousin. So would I pass or fail this check?

HOW COULD ICANN ALLOW THIS TO HAPPEN?

Haven't ICANN drafters, senior staff, and especially the supposed *"consulted experts"* ICANN VP Kurt Pritz referred to in the public forum in replying to my public statement on this matter who have contributed, or worked on this DAG4, and/or board members who may have reviewed it prior to it being posted on the ICANN website not realized this possible offensive consequence?

The arbitrary inclusion of terrorism as a measuring stick without any internationally recognized laws or standards is wrong and offensive to many around the world. If acted upon, it will be seen by millions of Muslims and Arabs as racist, prejudicial and profiling and would clearly indicate that ICANN has gone far beyond its mandate. ICANN should stick to its mandate and focus on doing it well.

A QUESTION WORTH ASKING: HOW DID TERRORISM END UP IN DAG4?

In which ICANN policy making forum was Terrorism Verification requested or suggested to be added in the first place? Without clear definitions? And when? The world would need to know to believe in this supposed "transparent", "bottom up", constantly self congratulating ICANN that continues to fail to listen or learn from its previous mistakes. This is not only my opinion by that of many if not the majority in the ICANN community, including some of ICANN's former employees.

IS ICANN STILL OPERATING IN THE SHADOW OF THE U.S. GOVERNMENT OR ITS AGENCIES? PERCEPTIONS VS REALITY.

Perceptions are often stronger than reality and ICANN's arbitrary inclusion of terrorism in its DAG4 alerts many once again that ICANN's U.S. and western centric bias that was hoped to have been of the past seems to continue to live and prosper regardless of apparent direct day to day U.S. control. This new direction will cast serious damage to the value of The Affirmation of Commitments (AOC) which supposedly freed ICANN from the U.S. control, but which either party can walk away from at any time.

The IDN regions and the religious, cultural communities all over the world would be as seriously alarmed as I am at this new direction.

Many may conclude that ICANN drafters and senior executives and the experts it consulted would have copied and pasted from U.S. Government documents on terrorism with little afterthought. I, on the other hand await ICANN's explanation before passing judgment.

MY RECOMMENDATIONS

So I close by recommending ICANN undertake the following with a sense of urgency:

Option 1-

Retract "Terrorism" as an area of checks of verification of applicants in the guidebook.

Or

Option II-

A- If "Terrorism" as an area of checks is to remain ICANN <u>must</u> indicate **how** it intends to carry out such an evaluation and provide clear definitions of what type of terrorism, i.e. Cyber Terrorism, Islamic or state Terrorism, etc…

B- Adopt definitions that would be congruent with international, local community and local jurisdiction accepted laws and standards on terrorism upon which fair and unbiased measurements of applicants can be conducted.

C- And if ICANN staff or the "experts" it consulted cannot come up with appropriate definitions or protocols that meet the above criteria I articulated above, ICANN would be better served to post a 30 or 45 day period Request for Comment for feedback from the community for definitions and advise on protocols, as it does on other issues.

D- An explanation by ICANN as to how and why "Terrorism" was added to the DAG4 in the first place. And on whose request was it added? ICANN should also indicate in which policy making forum this request was made and when and by whom, for "bottom-up, transparency" purposes.

Last but not least, regardless of which option ICANN chooses, if this offense was unintentional, an apology by ICANN with a commitment to correcting it would go a long way to show how magnanimous ICANN can be when they realize they made a mistake.

I also look forward to your replies and positive actions in addressing and correcting the above and their posting on the ICANN website in the spirit of transparency.

Warmest Regards,

Khaled Fattal,

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