

DRAFT RECOMMENDATIONS

BERKMAN CENTER FINAL REPORT

Reorganized for Side by Side Review

Sessions 1 and 2: Board Governance

1. Board composition

(a) Issue

- In interviews and, more prominently, in various public submissions, concerns have been expressed regarding the adequate composition of the ICANN Board. Two issues in particular can be distinguished: the expertise and skill sets represented on the Board on the one hand and adequate representation of the various stakeholders on the other hand.

(b) Recommendations

- Implement the recommendations of prior studies to focus more attention on Board composition and skills, including the recommendation regarding the establishment of a mechanism for identifying the collective skill-set required by the ICANN Board and for consulting with stakeholders on this issue.
- Re-evaluate board composition issues one year after implementation of these recommendations.
- Provide more emphasis in board selection on corporate governance, collective decision-making, negotiation and dispute resolution skills. Consider recruiting professional directors to fill specific skill needs. Increase the transparency of the Nominating Committee's deliberations and decision-making processes.
- Consider the expansion of board selection processes to include board *development* activities including the establishment of a board development committee.

2. Board – Staff interaction and workload

(a) Issues

- Concerns have been expressed in some interviews as well as in a number of public submissions that ICANN staff – as opposed to the Board – often play the predominant role in setting ICANN's larger agenda and plans.
- The broad scope and complexity of ICANN activities results in a demanding workload for ICANN Board members, which in turn raises questions over their ability to devote sufficient time to proactively oversee the activities of the staff and guide the strategic direction of the organization.

(b) Recommendations

- Strengthen the capacity of the Board to proactively steer ICANN activities: explore and adopt ways to increase the amount and effectiveness of time spent by Board members on ICANN activities; make better use of the committee structure to extend Board involvement with staff earlier into the decision-making and planning processes; and increase the Board's role in setting its agendas for meetings.

3. *Transparency of decision-making*

(a) Issue

- Some stakeholders have expressed concerns that Board decisions are made without properly taking into consideration their input and therefore without taking into account the full set of relevant facts. Multiple opportunities for input and participation have not resolved the perceptions that stakeholders are not being fairly represented.

(b) Recommendations

- Better delineate areas of high, medium, and limited disclosure of board inputs, deliberations and decisions, and the rationale for each.
- Develop more specific procedures for different sorts of Board consideration and decision making, including procedures for information submission, release of internal work product, and reason-giving for decisions.
- Provide detailed explanations of the reasons for taking various decisions, including the manner in which expert opinion and community input are factored into these decisions. Respectfully recapitulating the losing arguments may be useful.

4. *Independent review*

(a) Issue

- Although ICANN provides three different avenues for seeking review of a Board decision, in some instances where these have been invoked they have still not given satisfaction to the stakeholders involved. This raises concerns both over individual decisions and overall conceptions of accountability of the Board.

(b) Recommendations

- Better define the scope of the IRP processes, with an eye not only to better access and fairness, but also to cost containment and early identification of issues that should be fully argued and briefed and those that can be resolved at a more summary level.
- Consider making a performance and policy review and evaluation that is linked to accountability factors an explicit part of the re-appointment process for any current members seeking to continue their service on the Board.

Sessions 3: Board and Role of the GAC

Note: the Berkman Team has included the Role of the GAC as Issues 5.1 and 5.1 under their Board Governance Analysis

1. Definition of “GAC advice”

(a) Issue

- The Bylaws lack a precise definition of GAC “advice.” It is unclear what type of input constitutes GAC advice and what methods of correspondence are permissible for submitting GAC advice to the Board.

(a) Recommendation

- In close consultation with the GAC, clarify what constitutes “advice” and the most effective channels of communication for submitting GAC advice to the Board.

2. Board-GAC Interaction

(a) Issue

- Communication between the Board and the GAC is not always strong. Some GAC members feel they do not receive adequate feedback on advice or notice of pending issues where GAC advice might be required.

(b) Recommendations

- Revise and observe procedures for timely Board responses to GAC submissions.
- Determine whether the Board and GAC would benefit from more frequent joint meetings.
- Clarify the role and responsibilities of the ICANN liaison to the GAC.

Session 4: Public Participation

1. Eliciting Public Input

(a) Issue

- ICANN is dedicated to providing a variety of mechanisms and opportunities to encourage public participation, including providing public notice of proposed policies online before Board action is taken, providing opportunities for public comment on proposed policies, and holding in-person forums where “practical and feasible.”¹ However, issues related to the volume, structure, and timing of such forums can be a barrier to effective and meaningful participation. Lack of consistency regarding the accessibility (in language, clarity, etc.) and structure (easy to find) of participation mechanisms can also prevent public input. Some

¹ ICANN Bylaws, Article III.

interviewees suggested that lack of technical knowledge inhibited their ability to effectively contribute to comment forums; others suggested that basic understanding of how ICANN functions and how it receives public inputs could go a long way toward facilitating proactive participation from people with interest, but limited time.

(b) Recommendations

- Establish and observe baseline standards for the structure and timing of public comment periods. Differentiate between the public input requirements for different types of ICANN activities and decisions (e.g. requests for information, policy-making proposals, draft documents, etc.) and create standards accordingly.
- Ensure that there is adequate coordination by ICANN staff and constituent bodies of the different comment periods to better address the volume and timing of public comment periods.
- Explore, evaluate and establish alternative mechanisms and tools for soliciting public input and structuring comment periods that better foster dialogue among stakeholders and with the ICANN staff.
- Continue to improve opportunities to participate in ICANN meetings by scheduling these meeting further in advance.
Continue to improve the quality and timely publication of translations of relevant materials and comments. Explore methods of engaging stakeholders and volunteers in translation.

2. *Aggregating Public Input - Responding to Public Input*

(a) Issue

- This issue intersects with questions related to the role of the staff in interpreting, processing and organizing comments. Is there a consistent practice, methodology, or timetable for the summarization and analysis of public comments? Are these standards evident to external participants? Do such processes vary across different types of decisions? Does public input influence Board decision-making processes?
- Feedback on participation is weak; it is difficult for contributors to know how and when comments have been aggregated, summarized and incorporated into decisions.

(b) Recommendations

- Develop and communicate standard procedures for summarizing and analyzing public comments.
- Continue to experiment with different public input response mechanisms; explore, evaluate and establish mechanisms to improve the ability of stakeholders to track the life cycle of their input into ICANN policy-making and decision-making processes.
- Explore opportunities and tools to engage community members in the summarization and analysis of comments.

3. *Incorporating Public Input into ICANN decisions*

(a) Issue

- Despite the multiple opportunities for public input regarding a policy decision, community members have expressed concerns that it is difficult for them to know how and when their comments have been incorporated and reflected in Board decisions.
- According to comments to the ATRT, examples of occasions where the explanation of Board decisions was judged insufficient are the EOI process and redelegation decisions.
- Additional issues related to the transparency of Board decision-making are outlined in section C 2.3.

(b) Recommendations

- Provide more explicit and detailed information regarding the rationale for decisions by the Board, including the reasons why community input may have been rejected or incorporated in the final outcome.

4. *Need for Enhanced Cross-Community Dialogue*

(a) Issue

- ICANN has committed itself to “assessing the policy development process to facilitate enhanced cross community deliberations.”² Anecdotal evidence suggests that improvements in the existing channels and mechanisms for cross community deliberations are still needed and may help prevent policy development delays.

(b) Recommendations

- Create explicit policies and procedures for triggering cross-community deliberation among ICANN’s various constituent bodies at early stages of the policy development process.

Session 5: Transparency

1. *Information Design*

(a) Issue

- ICANN makes a great amount of information publicly available on its website. Comments suggest, however, that the making available of a massive amount of information is not a sufficient approach to active transparency. Several observers have pointed out that the information available is not always structured in such

² Affirmation of Commitments, section 9.1(e).

ways that are helpful to the community and in some instances may even cause “information overload.”

(b) Recommendations

- Improve information and document handling by adopting procedures and best practices from the public and corporate sectors.
- Redesign ICANN’s website to promote, facilitate and leverage the active, passive and participatory aspects of transparency.

2. *DIDP Requests*

(a) Issue

- While ICANN’s transparency framework includes the possibility to request information that is not made publicly available, the conditions and procedures of passive transparency are not clearly communicated with the community as the review suggests. Further, the limitations set forth in the review procedures in case of refused information requests may have a negative impact on transparency and accountability.

(b) Recommendations

- Provide clear and easily accessible information about the terms and procedures to obtain information from ICANN that has not already been made publicly available.
- Develop a less restrictive and more independent mechanisms for review of cases where information requests are refused.

3. *Exemptions*

(a) Issue

- ICANN’s transparency commitment is subject to a significant set of exemptions. Due to the lack of a transparency audit, it is difficult to assess the use of the exemptions. However, the review of the exemption policies leads to several concerns, including concerns related to specific exemptions and regarding the broadness of a “catch-all” transparency exemption.

(b) Recommendations

- Narrow transparency exemptions regarding internal decision-making processes and drafts. Eliminate the catch-all transparency exemption in the DIDP.

4. *Transparency Audit*

(a) Issue

- The lack of a comprehensive audit of ICANN’s information activities makes assessing its practices across active, passive and participatory transparency mentioned above difficult.

(b) Recommendation

- a. Create and implement policies and processes for conducting and communicating regular transparency audits.