

	DRAFT PROPOSED RECOMMENDATIONS	
	ATRT	BERKMAN
Sessions 1 and 2: Board Governance		
Board Selection and Composition		
		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.
	Benchmarking Board skill-sets against similar corporate structures	
	Tailoring the required skills to suit ICANN's unique structure and mission, through an open consultation process, including direct consultation with Chairs of the SOs and ACs	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.

	Review these requirements annually, delivering a formalised starting point for the NomCom each year; and	Re-evaluate board composition issues one year after implementation of these [previous] recommendations.
	Publish the outcomes and requirements as part of the NomCom's call-for-nominations.	Increase the transparency of the Nominating Committee's deliberations and decision-making processes.
	Review and re-enforce the existing Board training and skill-building program.	Consider the expansion of board selection processes to include board <i>development</i> activities including the establishment of a board development committee
	Ensure that Nominating Committee Procedures are publicly available at the earliest possible stage of each year's NomCom process.	See above [Increase the transparency of the Nominating Committee's deliberations and decision-making processes.]
	To the greatest extent possible, maximise the transparency of the NomCom's deliberations and decision-making processes. The only caveat should be the need to maintaining appropriate candidate confidentiality.	See above [Increase the transparency of the Nominating Committee's deliberations and decision-making processes.]
	Initiate a dedicated, specific, open review into Board composition and structure to ensure goals of representation and effectiveness are met. ICANN should adopt a top-down policy of corporate evolution and resist the inclination to assume current arrangements deliver best practice governance outcomes.	

	Expedite reforms to Board meeting and work practices, improving efficiency through a stronger focus on typical Board-level issues and less direct involvement in operational matters.	[cf. Recommendation p. 28 Outline]
Board – Staff interaction and workload	Through an open, consultative process, develop clear, codified procedures for determining which issues should be considered at Board level.	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.
	Develop complementary mechanisms for consultation with SOs and ACs on policy issues that will be addressed at Board level. This includes a refinement of consultation mechanisms with the GAC on matters of public policy.	
Transparency of decision-making		Better delineate areas of high, medium, and limited disclosure of board inputs, deliberations and decisions, and the rationale for each.

		<p>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.</p>
	<p>Promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing provided by staff, Board meeting recordings and detailed Minutes, and Director’s statements relating to significant decisions or votes.</p>	
	<p>Also publish a concise summary at the conclusion of each decision-making process, including:</p> <ul style="list-style-type: none"> a. why the matter was escalated for Board consideration; b. what consultation occurred; c. what input was received from the ICANN community; and d. how this input was considered and how and why it was adopted or discarded. 	<p>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.</p>

Independent Review (general)		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.
Reconsideration Request	Continue to improve transparency: Requests and outcomes are published on the Reconsideration Request web page, and the BCG issues regular reports to the Board. More information, including the status of deliberations and the rationale used to form decisions would improve transparency.	
	Clarify language that establishes eligibility to invoke the mechanism. The by-laws describe eligible parties as “materially affected” or “adversely affected.” Recommend that the by-laws be modified in Article IV, Sec. 2.1 and Sec. 2.2 to strike “materially” and “adversely” and simply describe eligible parties as “affected.”	
	Reconsideration decisions should be binding on the Board. Decisions of the BCG, which is comprised entirely of Board members, should be binding on the ICANN	

	<p>Reconsideration decisions should be binding on the Board. Decisions of the BCG, which is comprised entirely of Board members, should be binding on the ICANN Board. The BCG cannot issue alternative decisions through this mechanism, but it should have the authority to vacate or stay the implementation of an existing decision prior to implementation.</p>	
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<p>Independent Review Panel</p>	<p>OPTION 1. Accept ICANN’s interpretation of California corporate governance law as applicable to ICANN policy development. No new external appeals mechanisms. The California and US court system are the final appeals mechanism for ICANN decisions.</p>	<p>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.</p>
<p><i>{For all options:} WG4 requests that ICANN provide examples where it has claimed or defended its position with regard to California law.</i></p>	<p>OPTION 2. Accept ICANN’s interpretation of California law for corporate governance, but not as applied to ICANN / Internet policy development. Recommend a new structure within ICANN that replaces the Board as the final approval of policy decisions, since such policy has regulatory weight and force.</p>	
	<p>OPTION 3. Accept ICANN’s interpretation of California law for corporate governance, but not as applied to ICANN / Internet policy development. Require all matters brought before the Board to be designated as “governance” or “policy,” with the latter being eligible for appeal by an Independent body or the Board itself.</p>	
	<p>OPTION 4. Challenge ICANN’s interpretation of California corporate governance law as it applies to ICANN policy development. {Tentative Recommendation, pending further research}.</p>	

Sessions 3: Board and Role of the GAC		
Definition of “GAC advice”	Both the Board and the GAC need to clarify what constitutes a GAC “opinion” under the Bylaws and the Board needs to exercise more discipline in asking for GAC opinions on public policy issues. The GAC notion that any communication it has with the Board constitutes a GAC opinion that triggers the Board obligation to follow it is an unworkable and untenable position. Similarly, the Board position that it does not need to formally request a GAC opinion because the GAC is “on notice” as to all matters before the Board is equally frivolous.	In close consultation with the GAC, clarify what constitutes “advice” and the most effective channels of communication for submitting GAC advice to the Board.

Board-GAC Interaction	Both the Board and the GAC need to work together to have the GAC advice provided and considered on a more timely basis. Instituting a more formal process for requesting opinions should help in this regard by making it clearer when the Board is seeking a GAC opinion but given that the GAC meets face-to-face only three times a year, it will need to establish other mechanisms for preparing and reaching agreement on consensus opinions in a more	Revise and observe procedures for timely Board responses to GAC submissions.
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	timely manner.	
	<p>The Board, working with the GAC, needs to develop and implement a process to engage the GAC earlier in the policy development process. All parties would benefit if the supporting organizations and other constituencies could receive public policy input as early in the policy development process as possible. Such a process would also reduce the delay associated with requesting GAC input only after an issue has been submitted to the Board for its consideration and approval and should reduce the back-and-forth between the Board and the GAC that has not served either party well in the specific cases of .xxx and gTLDs. As a related matter, the Board should consider providing secretariat support to the GAC to ensure that it is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns.</p>	
	<p>Both the Board and the GAC need to work together to have the GAC advice provided and considered on a more timely basis. Instituting a more formal process for requesting opinions should help in this regard by making it clearer when the Board is seeking a GAC opinion but given that the GAC meets face-to-face only three times a</p>	<p>Determine whether the Board and GAC would benefit from more frequent joint meetings.</p>

	<p>year, it will need to establish other mechanisms for preparing and reaching agreement on consensus opinions in a more timely manner.</p>	
		<p>Clarify the role and responsibilities of the ICANN liaison to the GAC.</p>
	<p>The GAC, working with the Board, needs to consider how to ensure that member countries and organizations are participating in GAC deliberations at a sufficiently senior level. To the extent member representatives attending GAC meetings are authorized to speak on behalf of their countries and organizations without having to seek approval from senior officials not present at the meetings, the process by which GAC develops and submits consensus opinions to the Board should take less time and should lead to a more authoritative work product.</p>	

Sessions 4: Public Participation		
Eliciting Public Input		
	<p>The Board should direct the adoption of public Notice and Comment processes that are stratified (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated Community input and consultation with Staff.</p>	<p>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.</p>
	<p>Timelines for public Notice and Comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.</p>	
		<p>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.</p>

	The Board should direct the creation of a mechanism and/or support role at the Staff level the purpose of which is to ensure that all policy making processes within ICANN are run in accordance with ICANN bylaws and respective PDP procedures.	
	The mechanism and/or support role should ensure that all necessary inputs to the respective policy making processes are accounted for and included for consideration to ensure effective and timely policy development.	
	Public notice and comment processes should provide for both distinct “Comment” cycle and a “Reply Comment” comment cycle that allows Community respondents to address and rebut arguments raised in opposing parties’ Comments. [This provides the Board the argumentative bases on which it can found its decisions and to articulate the rationale thereof.]	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.

	The Board should ensure that access to and documentation within the PDP processes and the public input processes are, to the maximum extent feasible, provided in multi-lingual manner.	Continue to improve the quality and timely publication of translations of relevant materials and comments. Explore methods of engaging stakeholders and volunteers in translation.
	The Board should publish its decisions in a multi-lingual manner to the maximum extent feasible.	
Aggregating Public Input - Responding to Public Input		
		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.

Incorporating Public Input into ICANN decisions		
	The Board should, in publishing decisions, adopt the practice of articulating the basis for its decision and identify the public comment that was persuasive in reaching its decision.	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.
	The Board should identify the relevant basis and public comment that was not accepted in making its decision. The Board should articulate the rationale for rejecting relevant public comment in reaching its decision.	
Need for Enhanced Cross-Community Dialogue		
	The Board should request the ACs and SOs, in coordination with the Staff, to develop cross community deliberation processes. Mechanisms to initiate cross community deliberation processes as well as the potential role of ad hoc and “fast track” procedures should be given due consideration.	Create explicit policies and procedures for triggering cross-community deliberation among ICANN’s various constituent bodies at early stages of the policy development process.

Sessions 5: Transparency		
Information Design		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.
DIDP Requests		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.
Exemptions		Narrow transparency exemptions regarding internal decision-making processes and drafts. Eliminate the catch-all transparency exemption in the DIDP.

Transparency Audit		The lack of a comprehensive audit of ICANN's information activities makes assessing its practices across active, passive and participatory transparency mentioned above difficult.
		Create and implement policies and processes for conducting and communicating regular transparency audits.