ATRT WG#3 Beijing Meeting Update / Discussion paper

Community / Stakeholder engagement, including effectivemness and quality of ICANN support for the policy development process, the quality of PDP output and the extent to which ICANN PDP develops consensus, including across stakeholder groups, the level and quality of public input into ICANN process, and the extent to which such input is reflected in ICANN decision-making. http://www.icann.org/en/reviews/affirmation/proposed-wg-structure-atrt-06jul10-en.pdf

WG Members: ** indicates Co-Leaders role for WG#3
Cheryl Langdon-Orr **
Warren Adelman
Olivier Muron
Louie Lee **
Erick Iriarte Ahon

Review of our Proposed Work Plan:-
Also to be discussed and agreed to at this meeting are key dates / deadlines for each of these activities.

1. Review input from recent interactions with Community / Stakeholders on this matter (in parallel) including but not limited to:

a.) Relevant information and opinion from recently closed Public Comments on Questions to the Community **=> Progressing and to be discussed at this meeting. NOTE of the 28 Comments received to the PC all but 4 had relevance to the activities of WG#3... This can be perhaps construed to indicate a high level of interest and possible issue/concerns with this topic, and does need to be discussed not only with the WG but the ATRT as a whole at this meeting. See Public Comments Index Against ATRT Work Teams and Highlights (provided to ATRT by Fiona Alexander)** and also the Questions for the Community and Summarised Comments documents v2. Provided by staff to the ATRT

b.) ATRT meetings with the Community in Brussels. **=> To Start access to files/ method(s) for collation from the collection... to be discussed at this meeting**

c.) Other outreach mechanisms (TBD) **=> Discuss and Review and ensure no overlap with Berkman or other WG's**

2. Review and Analyse *current* PDP mechanisms processes and look for opportunity where Community / Stakeholder engagement exist; Look

for points/mechanisms of influence (including input of Public Comment) as well as any measurable or evidence of output from PDP showing that it reflects Community / Stakeholder engagement and effectiveness. Here the ongoing work of the GNSO's PPSC-PDP-WG and its sub groups needs to be considered see Policy Development Process Work Team Initial Report & Draft Recommendations (appendix)   and also https://st.icann.org/icann-ppsc/index.cgi?policy_process_steering_committee_ppsc for details of Current Proposed WG Guidelines and matters raised with PPSC review of the recommendations.   => outreach to Chairs of the SO's to explore current and next steps planning for PDP processes and also cross community Work and Discussion Group mechanisms .   => Discuss at this meeting and action in September.

3. Analyse how full consensus v.s. less than full consensus views are managed and recorded/reported to decision makers (SO Councils and/or ICANN Board) **=> Discuss at this meeting and action in September in parallel with 2. above.**

4. Review Public Input opportunity processes and consider how concerns about accuracy of how consequential review and analysis reporting of such public input works (some sample questions to ask in this analysis include; i) are their pro forma methods used, ii) is there Standard Operational Principals, iii) are established and standardised reporting /presentation of materials methods being deployed {if so how consistently}, iv) is there any "weighting or value system" applied to 'public comment' and (if at all) is this merited or not? **=> Discuss at this meeting and action in Sept / Oct work plan**

5. Reporting of Review and Analysis Outcomes, inclusive of establishment of any measurable or benchmark data / complaint /opinion levels on this matter for comparison (to measure improvement or not) in future ATRT work, and recommendations for next steps and opportunities for development of 'best practice models' for Community / Stakeholder and Public input into ICANN Processes and Policy Development Processes. **=> Reporting activities and Oct/Nov work plan**

Also relevant are the (mini) case studies on public participation examples) <insert link here to ref in Berkman paper> see pp 35 => 52

Excerpts from Berkman preliminary report Aug 2010 relevant to WG#3

A. from COVER NOTE: PUBLIC PARTICIPATION   pp 22 – 25
1. Background
On August 5, 2010 the Berkman Center for Internet & Society entered a services agreement with the Internet Corporation for Assigned Names and Numbers (ICANN). In this agreement, individual faculty and staff members of the Berkman Center ("Berkman team") agreed to provide to the Accountability and Transparency Review Team (ATRT) academic consulting services that focus on ICANN's commitments in the Affirmation of Commitments (AoC) and address, specifically, the provisions of paragraph 9.1 of the AoC.

As part of this process, the Berkman team is analyzing three case studies (see progress report): 1) the introduction of new gTLDs, specifically, the Expression of Interest proposal, the Implementation Recommendation Team, the role of the Governmental Advisory Committee (GAC), and vertical integration; 2) the .xxx top level domain, specifically, the review process (Independent Review Panel) and interaction between the GAC and the Board; and 3) the DNS-CERT proposal.

In its Terms of Reference and Methodology, the ATRT outlines three lenses through which to examine ICANN's accountability: "public sphere accountability, which deals with mechanisms for assuring stakeholders that ICANN has behaved responsibly; corporate and legal accountability, which covers the obligations that ICANN has through the legal system and under its bylaws; and participating community accountability that ensures that the Board and executives perform functions in line with the wishes and expectations of the ICANN community." All three are relevant to understanding the role and impact of the community and other stakeholders in ICANN's decision-making processes.

2. Purpose of Document
In order to start exploring cross-sectional issues in accordance with ATRT's methodological framework and to test the approach to fact-finding, data collection, and other relevant inputs as proposed in the services agreement, the Berkman team has drafted a series of mini-cases ("examples") focused on the ways in which public input processes were implemented in the context of specific policy decisions.

As a draft input into the work of the ATRT, this memo presents a preliminary description of the public inputs process as it played out in the context of four policy development processes associated with the broader case studies mentioned above.

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Examples one, two and three focus on public input in the context of the gTLD case: the Draft Applicant Guidebook (DAG) and the Expression of Interest/pre-registration proposal (EOI). The memo also looks into the origins and activities of the Implementation Recommendation Team (IRT).
The fourth example outlines ongoing public inputs into the ATRT process.

Each of these descriptions is designed to highlight the data, information, and types of inputs that the Berkman team is considering during this first round of research. Each example flows chronologically, seeking to describe at what point in the policy making process public input was solicited and through what channels and mechanisms. In the context of this initial report, the Berkman team has examined materials available on the ICANN website, including recordings and written transcripts, public comments and their summarization by ICANN staff, and associated documents, in addition to other data.

3. Research Questions and Hypotheses

Preliminary research into each of the examples yielded a set of questions that can be organized into a rough outline and taxonomy of issues to consider when examining public input processes. This list is not exhaustive, but rather outlines a working framework and approach to understanding the constellation of mechanisms and activities that comprise ICANN's public inputs processes.
The research questions are divided into questions of process, how the mechanisms for public participation are implemented, and representation, which looks more broadly at the ways in which individual input is brought into the decision-making process.
1. Process: How Public Inputs are Structured Across Different Policy Decisions
a. The Call for Public Input

Clarity of structure and input process: What are the channels and processes for public input into this policy development process? Are they clear and accessible? Are they available to individual users?
Timing: At what stage in the policy development process did the call for public comments occur? At what stage were those comments periods closed? When were summaries made publicly available?
Relevant Information and Data: How much information was made available to the public regarding the decision in question? At what point? What were the opportunities for community education and learning about the particular decision? Are translations available?

b. Synthesis and Communication

Summarization and the Role of the Staff: Once public comments periods are closed, how are they processed, summarized, and organized internally? Is there a consistent practice, methodology, or timetable? Are these standards evident to external participants? Do such processes vary across different types of decisions?
Input to the Board: Does public input influence Board decision-making processes?

c. General Practice

Consistency: Does there appear to be a consistent methodology for how and through what channels public input is solicited? Is there a consistent protocol regarding what kinds of decisions might require public input, and at what stage in the decision-making process?
Volume and Timing: How many calls for comments might be occurring simultaneously? In this particular case, were there competing opportunities for input? Were there other important decisions occurring that requested public comment?
Cost: What are the costs for individuals to participate in the decision-making process?

1.Representation: Direct versus Indirect Inputs

The Berkman team seeks to assess both the direct mechanisms for community representation and

indirect representation through the various supporting and advisory bodies.

d. Participation *in* Supporting Organizations and Advisory Committees:

Is there consistency across the different bodies with regard to how individuals can participate in their processes and decision-making?

How is community participation brought into the deliberations of the various SOs and ACs? To what extent are these community inputs passed on to the Board? Is this apparent to community participants? Are the processes and mechanisms for participation transparent and clear?

e. Participation *of* Supporting Organizations and Advisory Committees

In the context of the policy decision in question, what was the role and influence of Supporting Organizations and Advisory Committees? Did certain constituencies within those bodies wield more control or engage more deeply or directly in the substance of the decision?

In particular, what was the role and influence of the GAC? Is there a good mechanism for the Board to solicit and respond to feedback from the GAC? Does/did the timeline in this case give sufficient opportunities for input from the GAC?

General

Geographic and cultural diversity: how representative are these bodies? To what extent do they act on public inputs?

B. TENTATIVE WORKING HYPOTHESES (p.p. 51-53)

2. Transparency

Proposed ATRT working group relevance: WG 1, WG 2, WG 3

In the context of the initial review of ICANN's internal decision making policies and practices, the following set of draft working hypotheses has emerged:

1. *A comprehensive concept of transparency*: ICANN currently provides three types of transparency mechanisms: (a) active transparency (ICANN makes documents available by putting them on the website); (b) passive transparency (ICANN provides documents upon request from members of the general public); and (c) participatory transparency (ICANN involves stakeholders and the general public in its decision making progress by inviting comments etc.). - All three types of transparency need to be integrated into a comprehensive adjusted communication concept. Special attention is needed for the role of exemptions in all three types of transparency and in the overall communication concept (see below 5.)

1. *Active transparency*: ICANN's active transparency approach has been largely based on providing documents as lists of links on its website, with navigation tools such as topical clusters, keywords, and search. Such information design choices are likely to have an impact on transparency. The capacity of the interested public to handle this material may need improvement: To use document tagging techniques and/or to provide the user community with the opportunity to develop applications for better accessing, retrieving, organizing and presenting materials that ICANN is making available, for instance, might increase transparency.

1. *Passive transparency*: Two main problem areas associated with ICANN's passive transparency approach and practices deserve further investigation. First, the ways in which information about the conditions and procedures of passive transparency are shared with the community. Second, the limitations set forth in the review procedures in the case of refused information requests.

1. *Participatory transparency*: A tentative review of ICANN's policies and practices suggests the need to clarify the concepts of "participation", "consultation", and "comments". Related, the question of

how the information flow from the public to ICANN is conceptualized and designed deserves attention. More specifically, it remains to be discussed as to what extent such information flows are only meant to enhance the informational input for ICANN or fully embrace the concept of participation-oriented transparency in order to involve the community in the decision making process.

1. *Transparency exemptions*: All types of transparency are governed by a set of exemptions. While it is difficult to comment on the use of the exemptions due to the lack of empirical evidence (see below, transparency audit), it is possible to comment on the policies as such. When compared to international freedom of information regimes, two problems can be identified that require further consideration: (a) problems posed by individual categories of exemptions (e.g. draft exemption), and (b) problems posed by the exemption to the exemptions as well as the broad confidentiality override.

1. *Transparency audit*: ICANN currently lacks an up-to-date, publicly available transparency audit. This makes it difficult, for instance, to assess ICANN's active information practices (e.g. time delays in publication) or passive transparency practices (e.g. regarding answering or denying specific information requests).

3. Public Participation
Proposed ATRT working group relevance: WG 2, WG 3
The hypotheses set forth in the Transparency Section (2) interact with and inform hypotheses related to public participation. However, in the light of preliminary research regarding how public inputs factored into four distinct case examples (see Cover Note: Public Participation and Draft Public Participation Case Examples) the following set of draft working hypotheses have emerged as an analytically distinct set of issues:

1. *A holistic understanding of public participation*. ICANN provides a variety of opportunities for public participation, including direct mechanisms for community representation and indirect representation through the various supporting and advisory bodies. How an individual's input flows through and is ultimately represented in the decision-making processes via both channels must be considered in order to understand the role of public participation in the decision-making process.

2. *Structural elements*: The variety of structures and mechanisms for public input into the policy development process influence the strength of community engagement and participation. Functionality, clarity and consistency regarding how these structures are deployed across major types of policy decisions and in different forums enhance transparency and encourage sustained public participation. Information relevance, quantity, consistency, and translations are additionally decisive factors, as well as the timeliness and incisiveness of ICANN's communications in all these processes.

3. *Synthesis and flow of inputs*. The perceived impact and legitimacy of individual contributions rely in part on the belief and experience that those inputs have meaningful impact on the decision-making process. Transparency and the ability to track the life cycle of an input (whether via ICANN directly or via the supporting organizations) from its introduction to its summarization and communication to, and consideration by, the Board, also strengthens public participation. Consistency of practice and methodology regarding what kinds of decisions might require public input, and at what stage in the decision-making process, are important factors that need to be researched more fully.

4. *Representation (indirect inputs)*. Initial research suggests that public participation via various supporting and advisory bodies must be considered, particularly with regard to the processes and mechanisms for individual participation "within" these bodies, and how those community inputs are ultimately conveyed to the Board. A deeper understanding of the role and influence of Supporting Organizations and Advisory Committees in the context of a particular policy decision would be helpful in analyzing the strength and impact of public inputs via representative bodies.

Public Comments Index Against ATRT Work Teams and Highlights (provided to ATRT by Fiona Alexander)

Commenter	#1	#2	#3	#4	Highlights
Alan Greenberg			X		Lack of comments in the proceeding, like others, points out that comment process is not effective. Hope's review team factors this weakness of the ICANN comment process into its overall deliberations.
Shawn Gunnarson	X			X	White Paper "A Fresh Start for ICANN". For ICANN to exemplify the principles of the DNS White Paper, its corporate structure should be redesigned ton ensure accountability. Calls for a written charter to be ratified by a representative body of ICANN constituents. Enumerate and check the powers of the Board. Remove President as ex officio member of the Board, make independent with power to veto Board decisions that are inconsistent with charter and bylaws. Create corporate members of record. Restrain budget growth to 10% a year. Establish a Board of Review. Make bylaws subjects to amendment by 2/3 vote of Board and charter by 2/3 of members of record.
Internet Governance Project (Milton Mueller)	X		X		IGP paper from November 2009. ICANN responds to legitimacy and accountability concerns by creating new opportunities for public comment, public review, and public participation. Questions whether participation is an adequate substitution for accountability. Uses replacement of direct election of Board Members with At Large and NomCom, chartering of the noncommercial stakeholders group in the GNSO, and replacement of JPA with Affirmation as examples.
David Maher			X		Number of positive of changes over the years, but ongoing frustration with the way ICANN staff dismisses issues of concern to the community with which staff does not agree. Example of IRT process and dismissal of GPML. Staff should have provided the community with clear reasons for elimination, but did not.
ICC (Ayesha Hassan)	X	X	X	X	Recognizes that efforts are being made to improve, but concerns that previous efforts haven't progressed with sufficient speed or focus. Urges increased business involvement and notes that security and contract enforces are key for accountability – both require focus and adequate funding. Acknowledges current options like Ombudsman, etc., but notes these are advisory and believes that ICANN needs strengthened and independent accountability mechanisms. Should move forward with PSC recommendations to convene a group of multi-stakeholder experts to come up with something. Transparency concerns about TCRs selection related to DNSSEC and suggests Board resolutions and minutes be published in a more timely manner. Suggests the development of agreed upon standard to hold Board and staff to if there is a dispute with ICANN policy. GAC interaction with community has improved. All constituencies have a role to play in representing the public interest. Concerns about the number of simultaneous substantive issues out for review and comment at the same time – points to nine that were open just before Brussels meeting. Identifies various issues related to the new gTLD process that raise concern with ICANN decision's being embraced, supported and accepted.
CNNIC (Tan Yaling)	X	X	X	X	ICANN is not fully accountable to stakeholders. Not prompt re: IDN and lack of translation of many of the documentation. The latter impacts accountability and transparency as well as the ability for ICANN to receive public input. Suggests a multi-lingual DAGv4 and annual report. Work of Ombudsman not known to the community. Advises the creation of a permanent independent review mechanism on accountability and transparency, but not an appeal mechanism. Board selection process is not transparent and Board not diversified. GAC is the most appropriate entity to provide input on public interest and GAC has not been listened to enough. Lists .com and .org agreements as examples of decisions not embraced, supported and accepted. Sees new gTLD process as an example of good interaction across the community, however ICANN has failed to take prompt action in the PDP.
Limeli Liu			X		Participation of non-English speaking groups is limited given lack of document translation and simultaneous interpretation. Offers two suggestions to address.
Solid Quality Mentors (Fernando G. Guerrero)					Questions remarks he heard made by ICANN Chairman of the Board that the Affirmation of Commitments is a temporary solution that would soon be terminated. When asked publicly deferred to ICANN President who stated it was a long-term or perpetual document for ICANN. Based on these two different answers concerned about ICANN's real commitment to accountability.
Wei Zheng					C:\Users\CLO\Desktop\Wei Zheng contribution - EN Translation.pdf
Internet			X		Appreciate ICANN progress to date in seeking input and posting Board transcripts. Suggests review team

Commenter	#1	#2	#3	#4	Highlights
Society of China (Cao Huaping)					look at language synchronization, the IANA contract and DNSSEC deployment as case studies.
Coalition for Online Accountability (Steven Metalitz)			X		Public comment process is broken for three reasons: 1) sheer volume; 2) several instances when ICANN is going through the motions when decisions have already been decided (EOI, strategic plan, and call for review team applicants); and, 3) comments are often summarized in an incomplete and misleading fashion. With respect to latter suggest ATRT commission a survey of recent comments by sending to the commenter the staff summary a published and asking whether the commenter believes the summary is fair, accurate and complete.
Edward Hasbrouck	X			X	Requests for access to ICANN meetings, records and documents have been denied or ignored. Based on his experience, believes that none of ICANN's accountability mechanisms (ombudsman, reconsideration and independent review) work or have been implemented in compliance with ICANN's bylaws.
Kieren McCarthy	X	X	X	X	Lots of structures and procedures in ICANN, but decisions are made without anyone being aware of the logic used to arrive at them and explanations of decisions, if any, are inadequate. And when made, cultural bias towards revisiting – applies to transparency and accountability. ATRT should look at review of RAA caused by RegisterFly collapse, PSC process, EOI and IRT. ICANN lacks a culture of learning from previous mistakes. Never has it had a review of the effectiveness of a particular process as the end of the process. Existing accountability mechanisms don't provide accountability and are damaging because they give an illusion of accountability while not working – details problems of all three. Gives example of lack of executive summaries for documents and even a template for them. Believes that ICANN intends to look after the interests of global Internet users but those users have little voice in process. Points to Boston Consulting Group report as accurate and forward looking, but Board disregarded – suggests ATRT review it. Sees GAC as having adapted and providing some of the best advice and input into ICANN processes, but faults the Board – example of .xxx. Suggests Board make its deliberations public. Current public input process is flawed – explains reasons in detail. Thinks the ATRT itself is far from an effective model and accountability and falling into common ICANN traps.
Konstantinso Komaitis			X		Details problems with the IRT process. IRT created in a non-inclusive and unrepresentative manner. Was an attempt to rewrite GNSO policy, operated in a non-transparent manner, and ICANN provided travel support and expenditures. ICANN should ensure these procedural mistakes aren't made again.
CADNA (Samantha Demetriou)	X	X	X	X	Indicates new gTLD process and GNSO structure as an example where ICANN hasn't been accountable. A systems where ICANN reviews itself is biased – points to ICANN's request for an independent expert for ATRT as an example. Recognizes efforts to increase transparency, points to details Board minutes as an example. ICANN leadership needs to be accountable to an outside third party not simply itself – lists Board Governance Committee as an example. GAC should not be the only body that advises on public interest issues. Suggests an additional body that could supplement GAC and is a restructured version of GNSO where contracted parties don't dominate. ICANN needs to be more responsive to comments. Hard to tell if comments once filed have been considered or even read. Points to EOI as a standout example of where decisions made were not embraced.
Association for Competitive Technology (Jonathan Zuck)			X		Need for concrete metrics to measure progress towards accountability, transparency, and institutional confidence. Accountability not a binary concept, rather a continuum. Urges the review team to devote significant effort towards establishing concrete accountability metrics. For example, how does input provided in the public forum get captured and factored into decision-making.
IPC (J. Scott Evans)	X		X	X	The public does not have sufficient political and procedural accountability over ICANN. Current ICANN structure lacks adequate balanced representation of the intellectual property community – problem of GNSO structure. New gTLD process as an example of lack of accountability as is Whois issue. Suggests that consideration be given to adopt a review mechanism prior to final decisions being taken. ICANN not consistently transparent. Suggests ICANN regularly consult with and report to each of the GNSO constituencies on an individual basis. Board selection process should result in a Board that is reflective of the community it serves. More time is needed in the public comment process and too many topics running concurrently.
Internet Commerce Association (Phil Corwin)	X		X		Commends progress in improving accountability and transparency but serious shortcomings remain – details Czech Arbitration Court case re: UDRP and events leading up to it.
International Internet	X	X			Chief problem is around accountability to governments. Board can either accept or reject GAC advice. Details new gTLD process as an example, specifically failure of the Board to take into account GAC principles on new gTLDs. IANA contract has ICANN only accountable to one country. Other examples,

Commenter	#1	#2	#3	#4	Highlights
Research Team (Alan Wang)					selection process for President/CEO and .xxx.
Eric Brunner-Williams	X	X	X		Stakeholders outside of OECD countries and for profit corporate sector are accounted to less. Doesn't think existing processes can be improved to offset the systemic preference of OECD located for profit stakeholders. Points to shell registrars and lack (mostly) of non-governmental registries outside North America. Lack of institutional development in Latin America, the Middle East and Asia or Africa until quite recently. Idea of GAC as the source of public interest is unfortunate. Recommends grater communications between so and ac's and abstracts in the six UN languages. Cites example of the vertical integration working group as a barrier for non-native English speakers.
NeChoice (Steve DelBianco)	X		X	X	ICANN has fallen short of being accountable in how it participated in three separate processes – JPA mid-term review, improving institutional confidence process and comments on JPA conclusion. Calls out: accountability mechanisms; safeguard from capture; transparency of staff and Board decisions; and redress. Current three accountability mechanisms suffer from the same problem – they exert no actual authority over the ICANN Board. Transparency like accountability is not a binary concept. While progress has been made lingering problem of stakeholders not knowing whether and how their views have been taken into account. Cites new gTLD process and vertical integration as an example.
IP Justice (Robin Gross)	X		X		ICANN is insufficiently accountable to relevant non-commercial interests. This group also under represented in structure and practice when compared to trademark and domain name industries. Examples detailed include the creation of the new NCSG in the GNSO, the IRT, and public order and morality in new gTLD process. ICANN as a California corporation makes the Board ultimately responsible which is a problem. Board deliberations needs to be more open and transparent and concern of staff capture. Suggest a direct election to Board for Internet users representation. Problems with current Ombudsman model.
Kathy Klieman	X		X		Policy development process and decision-making has become much more transparent over time. Details two recent examples where this didn't occur – IRT and DNS-CERT.
Leap of Faith Financial Services (George Kirikos)	X	X	X		Too many open comment periods at once – 20 current at last count. Should be prioritized, spaced out better and have longer comment periods. References CIRA which 100 day comment period for a current issue. Raises concerns with excessive compensation and wasteful spending, questioning why compensation benchmarked against for profit companies given ICANN is a non-profit. .com settlement and presumptive renewal of .com and other agreements is not in the public interest. Registrants "taxed" but don't get to elect Board Member. No process to recall bad Board members. IRT was bad process and entire new gTLD process lacks consensus from the public to go forward. Suggests a Registrants Charter of Rights that could be enforced in court. Not transparent, cites lack of Board transcripts and recordings, secret negotiations of contracts and private Board retreats. Suggests NomCom be disbanded and direct elections as the alternative. Accountability and transparency of GAC also needs to be improved.
Bluderidge Technologies (Jaser Elmorsy)	X		X		Has advocated that IDN gTLDs be introduced at the same time as IDN ccTLDs. Was told ccTLDs would not go first, but this was not the case. As a newcomer to ICANN finds process frustrating. It's incredibly complex and intimidating which is to be expected but if ICANN is to act for global Internet community this is not good. Hard for an individual commenter to now whether his comments have been heard and even harder to learn whether any action has been taken.
ETNO (Debecker J.L.)	X	X	X	X	Expectation that previous comments to ICANN's improving institutional confidence process as well as NTIA NOI's will be considered. Recognizes progress, but concerned about lack of visibility regarding implementation of PSC recommendations that were approved by the Board in Mexico. Suggests independent and binding ongoing review mechanisms be explored. Need prioritization of work and longer time periods for comments. Recognizes improvements and the fact that majority of sessions are open. Suggests Board resolutions and minutes published in a more timely manner, Board decisions be better justified and explained including making transparent how the community inputs received are considered. The delimitation of the role of the staff should be clarified. EOI given as an example. Concerned that the ASO and IP addressing issues are becoming invisible inside the ICANN context. GAC should be engaged in the policy development process in timely manner and encourages more interaction with the community. GAC while important is not the only stakeholder group responsible for public interest representation. Recognize challenge for non English speakers.
AT&T (Marc Salvatierra)	X	X	X	X	Recommends ATRT consider ICANN's evolving organizational structure and policymaking process and assess how it should be structured to provide stability and ensure accountability – gives GNSO as example. ICANN's previous process re: accountability are a good example of problems. Generate lots of input/comments but did not lead to an overall assessment or tangible enhancements. New gTLD process is another example. Recommends the development of detailed charter to provide a standard for assessing public interest issues as well as an independent adjudicatory panel. Mechanisms are in place for transparency but concerns re: consistency of transparency given lack of analysis of community input

Commenter	#1	#2	#3	#4	Highlights
					and clear explanations for decisions. Suggests some sort Administrative Procedures Act process. Recommends effective mechanisms for business and commercial users from around the globe as well as continued remote participation processes. GAC is important in representing public interest but not the sole representative of it within ICANN. Supports improving coordination of GAC views within the current PDP as opposed to fundamentally changing the role or structure of the GAC. Concerned about the volume of public comment proceedings and suggests streamlining and restructuring the process to encourage more participation. Recommends that cross community deliberations occur on trademark protections, malicious conduct and the economic analysis in the context of the new gTLD program.
PIR (Kathy Kleiman)	X		X		Details issues with the DNS-CERT process and recommends it be a case study for the ATRT work. PIR believes that ICANN did not follow either its bottom-up process or its transparency requirements and that the DNS-CERT process started backwards in a top-down manner being driven by ICANN

Discussion Points.

Questions for the Community-

Of the 10 Questions posted to the community in the Public Comments the following are of specific interest and relevance to WG#3 are 1,3,4,8,10, 11 and 9 (in part) highlights from the Comments received on this questions from the PC Summary v2 are inserted below:-

Summary of Public Comments on the Questions to the Community on Accountability and Transparency within ICANN

This document provides an overview of the 28 public comments[1] received in response to the 'Questions to the Community on Accountability and Transparency within ICANN' issued by the Accountability and Transparency Affirmation Review Team and featuring 11 questions to the community. The comments are grouped per question and responses without reference to any questions have been summarized under closely related questions, with the exception of certain responses of a different nature that are summarized under "Other contributions". The summary does in no way substitute for the original contributions, which should be consulted for complete information. These are hyperlinked below for easy access and available at: http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt

Key to Contributions is found on the original document. (see link above)

QUESTIONS	SUMMARY OF COMMENTS
1. Do you think ICANN is accountable to all stakeholders? Can you identify a specific example(s) when ICANN did not act in an accountable manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in an accountable manner.	ICC: Previous efforts to enhance accountability have not progressed with sufficient focus or speed. Proposed improvements suggested as part of these efforts do not provide Internet stakeholders the full measure of accountability needed for stakeholder confidence. Status of proposed accountability enhancements, posted for public comment in November 2009, remains unclear. Decisions should reflect public comment, community consensus and explain the rationales. Balanced participation with increased business involvement is needed. Accountability should be to the broader community impacted by ICANN decisions. Security and contract enforcement are important and require adequate funding.

CNNIC: ICANN has not been fully accountable to all stakeholders and has not promptly responded to the demands for IDNs from users with different cultures and languages worldwide. Information on the websites is in English, requiring translation and causing response delays for non-English users. Multi-language versions of the website, DAG4 and the annual report would improve transparency and accountability to all stakeholders and increase participation.

EH: No, ICANN is not accountable in any meaningful way. I have been completely unsuccessful and holding ICANN accountable for complying with its procedural due process, transparency, and accountability Bylaws in (a) its decision-making on applications for TLD's, (b) its promulgation of a "Documentary Information Disclosure Policy" clearly contrary to the "maximum extent feasible" clause of its transparency Bylaw, and (c) its refusal to consider or act on my requests for reconsideration and independent review in a manner consistent with its Bylaws.

KMC: There are structures and procedures aimed at making the organization accountable to all stakeholders, but decisions are made without anyone knowing the logic behind them and there is bias against revisiting them. Groups of people have become adept at manipulating the structures and procedures to their own ends, hence the complaints despite a significant facade of accountability. Examples: (a) The review of the Registrar Accreditation Agreement, initially done in the open until it came to the point of concrete changes and the process became opaque at the registrars' insistence, resulting in a greatly cut down version. (b) The President's Strategy Committee and its Improving Institutional Confidence consultation, which started very open but when approaching conclusions, the process became opaque and a new paper emerged with significant changes. The measures eventually adopted has |

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[1] The public comment period ran from 18 May 2010 to 14 July 2010.

since been forgotten, with no explanations despite several public requests. (c) The EOI and the IRT, as chosen by Berkman. Both examples show how useful, constructive criticism is lost in a vicious circle largely caused by a culture of conspiracy theories.

CADNA: ICANN has not been accountable to all stakeholders in the rollout of new gTLDs. The EOI model was dismissed, with no other means of measuring demand for new gTLDs and the process continued, in spite of stakeholders' objections. The structure of the GNSO is another case lacking equal accountability to all. Registrars and registries, whose interests are frequently aligned, have 50 percent of the voting power. The non-contracted parties' house is a diverse with varied interests that never all align. This creates a voting bloc that forces 50 percent of Internet stakeholders to go unheard.

IPC: The public is not adequately represented in the governance model, including on the Board. IPC recommends a substantive role for the interests of the business and intellectual property community on the Board and a reform of the governance structure. Over 10 years, ICANN has not functioned as a "private-sector led" organization, rather as an organization of different stakeholder interests vying for commercial or other advantages on governance issues. An adequate balanced representation of the intellectual property community is needed, but steps were taken in the wrong direction when the GNSO was reformed, including a reorganization that reduced representation of the independent private sector. This imbalance in representation and philosophy remains an obstacle to acting in a manner accountable to the public's interest. Examples: (a) ICANN did not evaluate and consider the impact of previous rounds before announcing plans for unlimited new gTLDs. Comments reflected significant concerns regarding the impact on the public's interest, but the overarching issues then brought up had all been previously identified as needing resolution before launching new gTLDs. (b) Whois, for 10 years lacking adequate contractual compliance conditions to yield reliable and accurate Whois data, necessary to prevent consumer fraud and other crimes.

IIRT: The main problem is accountability to governments, the key players in public policy making as stated in the Tunis Agenda of WSIS. However, GAC can only provide non-binding advice to the Board. In June 2008, the Board decided to launch the new gTLD program in spite of concerns expressed by GAC that its principles for New gTLDs were not fully reflected. Governments should play a more important role and GAC's role should change to reflect that. However, there is inequality between governments as the IANA contract gives the US government the right to govern changes to the root zone file. This is in conflict with Para. 8 of the AoC. Many countries have called for another form of external accountability to replace the oversight previously exercised by the US. ICANN should not be accountable to one country, but to the world.

EBW: Broadly no. Stakeholders outside the OECD countries and outside the for-profit corporate sector are accounted to less than stakeholders within those spheres.

ETNO: Accountability has progressively improved we recognize the efforts made in line with the expiration of the JPA, but the lack of visibility regarding the implementation status of the mechanisms approved by the Board is a concern that ATRT should address. Accountability must not be restricted to parties currently in contract with ICANN, but must be applied to the broader community impacted by ICANN decisions, including users, ISPs and network operators.

ATT: Some aspects of ICANN's structure and decision-making process are designed to promote accountability, but accountability could be improved with mechanisms to institutionalize accountability more consistently. Examples: (a) The GNSO is undergoing a restructuring that affects the representation of commercial users. This is a work in progress which ATRT should consider and assess how it should provide stability and ensure accountability. (b) Proceedings initiated to improve institutional confidence generated extensive input with concerns and proposals from the community, but no overall assessment of accountability and transparency was done, nor did it lead to enhancements being implemented. (c) The process for introducing large numbers of new gTLDs met significant concerns about the impact of new gTLDs on customers and the operation of the DNS, but ICANN produced a guidebook without adequately addressing these issues, only acknowledging last year the importance of four overarching issues. It would be better to thoroughly address concerns and policy issues early.

LFFS: ICANN is not accountable to registrants. Examples: a) excessive compensation and wasteful spending by ICANN, where registrants have no say. b) The VeriSign .com

settlement and "presumptive renewal". A competitive tender process would result in lower fees for registrants. c) The elimination of elected Board members - registrants are "taxed" but have no representation. d) Allowing registry operators to change the terms of their contracts through later amendments later. e) UDRP providers are not brought under contract. f) The process behind the IRT where a self-selected group gets funding to create a ridiculed report. g) The entire new gTLD process, where there's no consensus from the public that they should be established and staff misuse the word "implementation" to avoid going through the policymaking.

NC: ICANN's efforts to strengthen accountability and transparency also show how the organization has fallen short of being accountable to the community, as in the mid-term review of the JPA, the Improving Institutional Confidence consultation and comments on the conclusion of the JPA. In 2007, ICANN sought to terminate the JPA on grounds that it had accomplished the goals. The community asked ICANN to establish accountability mechanisms before ending the JPA. Points made by participants from across the spectrum of stakeholders, and not acted upon: (a) Accountability Mechanisms: ensure that the Board could be held accountable to some entity other than itself. (b) Safeguard from Capture: functional mechanisms are needed to prevent capture by governments or intergovernmental organizations. (c)Transparency of decisions: how staff digests community comments is unclear and the ability of stakeholders to track their impact is critical. (d) Redress: new mechanisms for redress are needed where a Board decision adversely affects a company or industry.

KOKO: The IRT focused on the needs of a single constituency, the IPC. The IPC did not get all it wanted in the GNSO PDP on New gTLDs and used the IRT to re-negotiate trademark rights to its liking. The IRT Team provided no information about its meetings and work progress. Also, during the IRT process, ICANN gave travel support to a single constituency comprising the world's largest and wealthiest companies. ICANN should ensure that from now on and in the future it operates under a transparent, open, inclusive and bottom-up process of policy making and development.

ACT: Concrete metrics are needed to measure progress toward achieving accountability, transparency and institutional confidence. The review team took a valuable step by adopting a working definition of accountability but the challenge is to establish tools to measure how ICANN is living up to that definition. Accountability is not a binary concept, it exists along a continuum. Metrics are also needed to assess how ICANN is using public comments, including from the public forum. Members of the community must have a way to know how their recommendations were considered by staff. The review team should make efforts to establish accountability metrics and ICANN should be more transparent about how community input factors into the bottom-up decision-making process.

IPJ: ICANN is insufficiently accountable to relevant non-commercial interests, while business interests are over-represented. Examples: a) Handling of the new NCSG formation and refusal to accept its charter. b) The creation of the IRT, consisting almost exclusively of large trademark owners. c) Public comments submitted by parties lacking muscle seem to go straight into the trash bin. d) Staff's refusal to provide key legal research reported to support the staff's creation of legal standards for morality and public order objections. There is no accountability mechanism - no check on the staff to actually respond to concerns from the community. e) The legal corporate governance structure contributes to lack of accountability and transparency. California law requires the Board to be the ultimate decision makers, at odds with providing an independent mechanism to check the decision making process. The workload required for all the issues is unrealistic for a volunteer Board and results in "staff capture", a significant problem for accountability and transparency. There must also be more openness and transparency in Board deliberations and decisions, made in secret without explaining the reasoning or the positions taken by members. f) The GNSO's PDP that encourages a "chipping away" of the rights of Internet users with no fundamental principles that can't be bargained away by the business interests. Civil liberties, due process rights and other public interest concerns should be safeguarded. g) The lack of funds to support participation is a hurdle and ICANN must support and maintain a vibrant and welcoming space for truly non-commercial participation. h) The current model for an "ombudsman" should be changed to an independent, neutral, ethical and competent "third-party" that works in practice with genuine independence and neutrality to oversee certain governance decisions. would have to exist for that model to provide meaningful accountability.

Q2 deleted	
3. Do you think ICANN's processes and decision making is transparent? Can you identify a specific example(s) when ICANN did not act in a transparent manner. If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in a transparent manner. Are ICANN's transparency mechanisms robust and how could they be improved?	ICC: Transparency is not the same as posting of voluminous materials and information. Transparency in decision-making has improved and it is good that the non-confidential parts of the Board briefing materials will be published. The resolutions and minutes should be published in a timelier manner and decisions better justified and explained. Efforts should focus on the link between information-posting transparency and how to inform the community about decision-making. An adequate amount of time for stakeholders to submit public comments is crucial (30 or 60 days, complexity-depending). The range of substantive positions submitted should be summarized and the rationale provided for acceptance or rejection of views. An adequate range of input from the community is needed, which in several instances has not been the case. Effectively informing the community requires that stakeholders can adequately analyze the issues, participate, positively contribute, understand and challenge the substantive basis for decisions. Accurate summaries allows stakeholders to follow policy development, contribute and also contribute to building stakeholder confidence as comments are adequately taken into consideration.
	The DNSSEC root signing lacked transparency as the trusted community representatives were announced after the signing ceremony in June. Ambiguity about the process itself fosters uncertainty and can hamper trust.
	CNNIC: Not fully transparent - for example, NomCom is completely opaque. An independent review group would improve transparency.
	EH: The relevant criterion is not whether the processes are transparent, but whether ICANN operates with the "maximum extent feasible" of transparency. It does not. Any reasons for refusal to provide access to meetings, documents, or records, it has typically relied on either promises of confidentiality to third parties or a belief that decision-making would benefit from confidentiality. These may be arguments to amend the transparency Bylaws, not a valid justification for departure from them. Examples: (a) It is feasible to make Board meetings accessible in real-time (b) The Board holds secret discussions at "retreats" and has a non-public e-mail list (c) The evaluations of applications for new TLD's were conducted almost entirely in secret (d) Thru the "Documentary Information Disclosure Policy" documents can be withheld for reasons unrelated to whether it would be "feasible" to disclose them (e) A negative response I received after four years to my request for any agreements between ICANN and ICDR and/or any other purported independent review providers, without reference to the "maximum extent feasible" terms.
	KMC: Yes, transparent in the sense that you can see what is going on, but parts of the process are not transparent and there is a culture of not providing information. Unless you closely follow a process, you will find that things progress without you being aware of it. Conclusions are put out to public comment before adoption but by that stage it is too late to make anything but cosmetic changes, and people who have invested time in the results are resistant to last-minute changes. Typically there are long conference calls with results provided in dense documents posted for public comment with a single announcement. This process is ineffective at encouraging contributions and providing useful feedback, yet no effort is made to change. An example of resistance to change is the issue of executive summaries of every, requested by the community since many years. At long last, the Board adopted a document to that end, but the majority of documents still have no real executive summary, just something called that. The public comment period is an ineffective one-way system needing change. The review under way is unlikely to deliver and even if it does, there is no mechanism to hold anyone accountable for implementation or measuring success.
	CADNA: ICANN's process and decision making has not been transparent in the past, but it has made efforts recently to improve. It has begun to publish detailed minutes from Board meetings, a step in the right direction. The ideal would be to provide recordings of these meetings.
	IPC: ICANN's actions are not consistently transparent and transparency should be improved in decision-making and governance processes. Example: ICANN did not hold public consultations to address the overarching issue of demand and impact of new gTLDs and the economic reports were commissioned in a non-transparent manner, without community input or knowledge of the questions and issues raised to the authors. ICANN should regularly consult with and report to each of its GNSO constituencies on an individual basis, on all main issues, and this should be a specific responsibility of a staff member.

IIRT: No accountability is equivalent to no transparency. Examples of questionable transparency: (1) The current CEO's provenance from a US security department. (2)The IANA contract providing exclusive control over the root zone file for the US government. (3) The case of .XXX.

EBW: No, and the absence of transparency concerns acts taken as well as not taken. Examples: (a) The necessity for authoritative servers for the correct resolution of labels in Chinese. (b) The accreditation of hundreds of shell registrars, but only a handful in Africa, Middle East and Latin America. (c) The absence of nongovernmental registries outside North America, other than .cat, .coop, .museum and.aero.

ETNO: ICANN can be seen as extremely transparent simply from the information volume on its website, as "One World Trust" concluded in 2007, but transparency must be seen towards effectiveness. Synthesis is needed in order to help stakeholders understand the issues and participate. Prioritization of work and longer comment periods are needed, especially for complex issues. The workload just before an ICANN meeting makes it impossible for most community members to engage and contribute efficiently. Most meetings are now open, including most GAC meetings, which facilitates the understanding of the issues and improves the functioning of the bodies. On issues cutting across different bodies, this evolution has improved ICANN by allowing better and quicker understanding of positions from various constituencies. That a few meetings are still closed and clearly announced as such is understandable and acceptable for specific agenda points or issues; however in general ETNO urges for all meetings to be open. Regarding the ICANN Board, the resolutions and minutes should be published in a timely manner, decisions should be explained and the assessment of input should be made transparent. Among the supporting organizations, the ASO is becoming invisible in the ICANN context. IP addressing is a key element and ICANN has a responsibility in this area. As the IANA pool of IPv4 addresses will be exhausted in 2011, it is a concern that no public session related to IP addressing was organized over the last years, nor any public meeting of the ASO. IP addressing issues are addressed at regional level, but when issues become global by nature and the IANA function is concerned, ICANN's responsibility is engaged. The ATRT analysis of accountability and transparency must cover all parts of the organization, not only staff, Board and GNSO.

ATT: ICANN makes information available to the community, encourages participation in its meetings and provides transcripts of main sessions. However, analysis of community input and explanations of decision-making are areas of concern. Examples: (a) In the new gTLD program, concerns were not adequately addressed, there was no detailed analysis and no explanation of reasons for ignoring comments. In some cases, the issues were not reflected in the comment summaries, which should accurately reflect the input. Contributors could be given an opportunity to review and edit a draft of the comment summary. (b) ICANN should have clear guidelines, particularly for major decisions and contractual compliance activities. These guidelines should include full "Administrative Procedure Act" notice and comment procedures for public consultation and decision-making.

LFFS: No, not transparent at all. Examples: a) ICANN refuses to provide complete transcripts and oral recordings of all Board meetings. Board mailing lists should also be made public. b) Board members go on private "retreats" to decide important issues in private. c) ICANN negotiates contracts (like for .com) in secret, without involving the public affected by it.

NC: Like accountability, transparency is not a binary concept. ICANN has made improvements in transparency by providing more information in a timely manner, but concerns remain. Stakeholders are not able to see how their recommendations factor into the bottom-up process. There is an occasional, serious disconnect between the public policy-making process and the policy recommendations put forward for vote by the staff. In a recent example regarding to the DAG, staff appeared to create a new, two percent cross-ownership threshold, rather than following the Board resolution.

DM: Over the years, positive changes of the processes have occurred, but there is an ongoing frustration with the way staff dismisses issues of concern. Too often such issues are handled with little more than a mention, or dismissed with a few words. This lack of attention turns away volunteers and impairs openness and transparency. Example: The IRT made five recommendations, but the Globally Protected Marks List (GPML) proposal was removed by staff, in spite of widespread support.

	PIR: The DNS-CERT process started in a top-down manner. The workshop in April 2010 did not follow a transparent process and the outcome was not exposed to public comment. The review team should consider this case.
4. What is your general assessment of ICANN's commitment to the interests of global Internet users? Can you provide a specific example(s) when ICANN did not act in the interests of global Internet users? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in a manner consistent with the interests of global Internet users.	ICC: Global diversity remains an essential element of the bottom-up process. Changes proposed regarding the size of the Board or Supporting Organizations appear to make this challenging. The regional offices and liaisons are useful, but not equivalent to global diversity. Global outreach remains of paramount importance. We have confidence that ICANN acts with the best intentions for global Internet users, though it may not always be aware of the interests of certain groups of global Internet users. To ensure decisions in the interests of global Internet users by a global diversity should be actively promoted. The global Internet user community can be better reflected if staff and Board members were a globally diverse set of individuals. ICANN can further promote global diversity by expansion of its Fellows program. Continued progress on the introduction of IDNs will also demonstrate increased commitment to the interests of global Internet users. Fair, open, and competitive global processes for its various undertakings and contracts are suggested.
	CNNIC: To protect user benefits means to ensure the stability of the Internet and to respond to the demands of Internet users. ICANN can still improve much regarding the second aspect. The Chinese Internet user community is growing and paying attention to ICANN but most documents are in English and imply a language barrier, inhibiting Chinese user participation. The new gTLD project has a profound impact on Chinese users, but most large Chinese enterprises have no knowledge on the new gTLD project due to lack of promotion and accessible information. It is unfair for them and reflects negatively on ICANN and its mission to serve the global Internet community.
	WZ: Efforts are needed to strengthen the interaction with non-English communities, such as the fast growing Chinese Internet community.
	EH: There is little or no commitment to the interests of global Internet users. An example of ICANN action contrary to those interests was the elimination of direct election of Board members. Most global Internet users are not registrants and are not represented in the current constituencies - only registrants are.
	KMC: The intention is to look after the interest of global Internet users but they do not have much of a voice in the processes and their interests become guesswork. Very different results would have emerged if Internet users had been a more valid part of the exercise. The ATRT should look at where Internet users are in a position to affect decisions, and what's done to ensure their views are heard. Gathering user views is extremely difficult - there are many, with a very wide range of views. Board members are left to decide, mostly drawing from their own user experience. The ALAC is the home for Internet users and the Board should pay more respect to ALAC views.
	CADNA: Example: Without measuring demand for new gTLDs, it is difficult to say that the rollout represents global users' interest. It is not in the best interest of global Internet users to introduce new gTLDs in a way that could create confusion or jeopardize the security online. However, global Internet users have no voice in ICANN, so how can the organization be committed to their interests?
	IPC: There are missed opportunities to act in the interests of global Internet users. Example: The DAG does not include all forms of intellectual property, leaving out entire categories of rights, perhaps even entire countries. All forms of intellectual property protection throughout the globe must be recognized.
	IIRT: Internet is not a totally decentralized network - its core is more centralized than any other network, because of the root zone file. As long as the right to modify the root zone file is in one country's hand, we cannot talk about the interests of Internet users. The IANA contract must be replaced to protect global Internet users' interests.
	EBW: The interest of poorly served peoples is overlooked. In seeing "IDN" as a requirement for non-Latin scripts, the interests of populations which have accommodated languages to Latin script are ignored. Work to deliver correct service for the CJK, Arabic, Hindi or Cyrillic scripts and to develop registry operations competency in Latin America, Middle East, Asia or Africa has only commenced recently - more in spite of than thanks to ICANN's commitment to the global internet community.
	ETNO: ICANN's commitment should cover all ICANN stakeholders, registries, registrars,

	users, and parties impacted by ICANN decision as ISPs and connectivity providers.
	ATT: Effective mechanisms for users world-wide to participate are essential, like support for remote participation to ensure developing country interests are reflected in the decisions. Example: (a) The introduction of new gTLDs, where large numbers of new gTLDs that infringe on global brands is a recipe for protracted disputes and confusion for global Internet users, providing a target for those who want to engage in fraud and abuse. ICANN must implement robust safeguards prior to implementing its new gTLD program, as the resolution of these issues is extremely important for global Internet users. (b) The introduction of IDNs has a key role in internationalizing the Internet itself. ICANN has made progress toward the implementation of IDNs and should continue to prioritize these efforts in order to meet the needs of global Internet users.
	LFFS: ICANN's commitment is to itself, not to the public interest. Examples: a) The VeriSign .com agreement with 7% price increases and the PIR agreement with 10% increase. b) The excessive compensation and spending, growing from a budget of under $10 million to the $60 million range. c) Speculation with the "emergency reserve fund".
	ISC: a) ICANN should be accountable to and overseen by all countries and stakeholders around the globe, but for the IANA function ICANN reports to one government authority and cannot guarantee accountability to all countries and stakeholders. Accordingly, the IANA contract should be a case study in the review process. b) ICANN has decided to deploy DNSSEC without fully soliciting the views of the industry and the stakeholders. It is important to keep all handling of the Keys of the Root Zone accountable and transparent, but ICANN and VeriSign have been given authority for such handling on behalf of one government. For a worldwide Internet, this arrangement damages the accountability and transparency and should be added as a case study.
	JE: ICANN introduced Arabic ccTLDs ahead of Arabic gTLDs, contrary to reassurances at ICANN meetings and to the interests of business. It is unclear how an individual can hold the organization accountable for its promises. ICANN is complex and intimidating to newcomers and it is hard for a community member to know whether his comments have been heard or taken on board.
Q5 deleted	
Q6 deleted	
Q7 deleted	
8. What is your assessment of the processes by which ICANN receives public input? What is your assessment on how ICANN receives input of English-speaking and non-English speaking communities? Can you identify a specific example(s) when ICANN did not adequately receive public input from English or non-English speakers? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate public input.	ICC: The increase of the comment periods for new initiatives is an improvement. The number of simultaneous issues open for comments is a concern; comment periods often converge before meetings and comments are few on the work in progress. The number of issues posted for comment should be reduced, an adequate period is needed to prepare comments on complex issues, and a road map for the upcoming flow of work will enable more contributions. Many associations have networks of experts to consult and processes that ensures the quality of contributions. Building consensus from a diverse stakeholder community may make contributions impossible because of ICANN's number of simultaneous comment periods and close deadlines. The GNSO Council Work Prioritization Process and CCT Recommendations are welcome as steps to a rational approach, increasing the range and quality of participation. CNNIC: There is not enough support for input from the non-English speaking community. WZ: Input from the non-English community needs facilitation, also organization- and staff-wise. KMC: I spent three years trying to improve the flawed input process, but proper authority and resources for improvements were not given and there is resistance to change. Public input is seen more as an annoyance than a crucial check and balance. There are too many public comment periods, and as a result they are not taken sufficiently seriously. The American-English bias means lost contributions in other languages. I recommend the ATRT to read my report .

CADNA: ICANN needs to be more responsive to public input. CADNA regularly submits comments, but cannot always confirm that those have been read, let alone taken into account.

IPC: The community must have more time for public comment and the public comment process must be improved to allow for adequate public consideration. Examples: (a)During two periods in 2010, around 20 topics have been open for comments simultaneously.(b) The draft EOI mechanism was proposed before initial public comment on the concept closed. (c) The Board approved the FY2011 Budget and Operating Plan while the public comment period was open.

EBW: Example: The Vertical Integration PDP WG, where it is quite impossible for non-native English speakers to keep up with the work volume and methods. Everything is conducted in English and there is no limit on the verbosity by the native English speakers. The WG is attempting to make recommendations about the structure of DNS provisioning and competition issues. The topic is important to all. To inform the WG, it must be more open to participants who are not fluent in English. Discussions in other languages must happen in parallel with, not after, those in English. The means to facilitate representative input have to be provided, otherwise ICANN will lack adequate public input.

ETNO: The consultation periods are frequently too short. The handling of public comments lack analysis, the way comments are taken into consideration is unclear and the role of staff should be clarified. It is hard for those that do not speak English at an adequate level to understand the issues and express their views, sometimes even when translation facilities are available. Some Board members set good examples; occasionally expressing themselves in their preferred language and also making efforts to speak slowly and use international English understood by non-native speakers.

ATT: Processes are in place to promote community engagement and obtain community input, but the volume of public comment proceedings is excessive and the process could be streamlined and structured to encourage participation. ICANN should prioritize its public comment proceedings, build on input already received and continue to support participation and outreach for non-English speakers, particularly in developing countries.

LFFS: The processes leave much to be desired. Examples: a) Too many simultaneous issues and no prioritization. ICANN should focus on a narrow mission. b) Comment periods need to be longer c) Attachments as .doc and PDF files in comments are a security risk and should be limited to pure text files. d) Interactive commenting should be made possible with forum software.

AG: Frequently, there to be very few comments, even on issues of great importance. Current comment periods on DNS-CERT and RAA improvements have attracted no comments to date, despite being issues of known community interest. This indicates that the public comment process is not very effective and the ATRT is wisely following other paths through which the community can provide input. The review team should treat the weakness of this process in its overall deliberations.

LL: To fulfill its global mission, ICANN should: a) Improve and expand document translation to also include more documents, like GAC documents, Board resolutions and annual reports. b) Allow all 6 UN languages for public comments and in meetings, with simultaneous interpretation. c) Speed up the translation service. d) Enable and encourage local participants at meetings to use their own language. e) Survey the needs for translation and language choice and prioritize according to the outcomes.

ISC: 1) Many important documents are only in English, like DAG v4, the annual report and the bylaws. These should be translated into other languages. Lack of translations impedes contributions from the Chinese-speaking Internet community. 2) Simultaneous interpretation service at ICANN meetings should include Chinese. In most AC/SO meetings, English is the only working language and interpretation should be available for those. 3) More of the pages on ICANN's website should be translated, those translated today are too few and rarely in Chinese.

COA: The public comment process is broken, with three fundamental problems that also may explain why some public comment periods expire without any substantive comments received: a) The sheer volume of public comment periods, currently 20 ongoing with many deadlines coinciding. This is problematic for comment approval processes of membership organizations, whose input is important since they speak on behalf of many affected entities

	but may struggle to make it thru the public comment "decathlon." b) ICANN has invited public comment on issues where the next step has already been decided. Three such instances are summarized in a filing by COA. c) Senior staff and Board depend on the staff-generated summaries of public comments, which are incomplete and sometimes misleading.
Partial to WG#3 as it goes to the feedback and closing the loop on these processes that in turn builds trust in the AT of ICANN 9. Does ICANN provide adequate explanation of decisions taken and the rationale thereof? Can you identify a specific example(s) when ICANN did not provide adequate explanation of decisions taken and the rationale thereof? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate explanation of decisions taken and the accompanying rationale.	ICC: Support for the CCT Recommendations that the Board provide rationale for its decisions, as reflecting best practice and to promote informed and reasoned substantive results. This aids the community in understanding the handling of complex policy issues, fosters trust between ICANN and the community, and promotes engagement by stakeholders. Most importantly, such a process promotes well informed and well reasoned substantive results that can be implemented in a sustainable manner. CNNIC: No - see comment on question 1. KMC: The explanation for why decisions are reached is lacking in almost every aspect of the work and any rationale provided does not stand up to scrutiny. However, on the Board level the rationale for a decision is occasionally well presented. CADNA: There are no explanations as to which comments are heeded, which are disregarded, and why. Example: The latest version of the DAG for new gTLDs includes sections purportedly altered based on comments, but there is no explanation of how the comments are translated into changes or how the authors determined which comments to follow. Who gets to decide what is included and how? IPC: Explanation of some decisions is provided in a summary document posted at the close of a public comment period. This is an improvement but the current breadth of these documents is insufficient, missing key points and issues or with superficial/dismissive analysis. ICANN should allocate the resources needed for the process to provide adequate consideration and response to the comments. EBW: The rationales are unknown for the Board's registry-registrar separation resolution and for the staff decision not to certify backend registry service providers. The list of such decisions is considerable, and the issues are of some consequence. Parties seeking registry agreements have expressed concern for a unilateral amendment power in future registry contracts for three years without getting an adequate explanation or rationale. The Board is less predictable today than ever. ETNO: Further efforts in providing adequate explanations are necessary. Example: The rejection of the EoI was not accompanied by sufficient explanation of fundamental aspects that justified it. ATT: The analysis of input received can be improved and the reasoning should be explained for decisions, or lack of decisions. ICANN could have been more responsive to concerns raised about institutional confidence issues and the introduction of new gTLDs. More detailed analysis of input and explanations for not adopting constructive proposals should have been given. LFFS: No. There's often no costs/benefit analysis, although the AoC is supposed to require that. Examples: a) the VeriSign price increase. b) Costs and benefits of new TLDs. c) Costs and benefits of various registry-requested changes. d) Compensation, with many staff earning $200K+ per year.
10. What is your assessment of the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community? Can you identify a specific example(s) when ICANN decisions were not embraced, supported and accepted by the public and the Internet community? If so, please provide specific	ICC: Businesses have raised concerns regarding the new gTLDs process, asking for completion of the promised study of the need for new gTLDs and the consequences for users and for Internet security and stability. The economic study published and the root scaling study provide useful information that could have been beneficial to the discussions and development earlier on. Furthermore, the Expression of Interest (EoI) proposal did not have broad support from the community, but the decision taken by the Board did ultimately reflect the lack of community support. It is challenging to find full community support for any particular policy decision, but some actions find broader support than others. For example, the proposal to expand the DNS to include IDNs was broadly supported, whereas consensus on issues like WHOIS policy remains elusive. This reflects the diversity of stakeholders in the Internet community. Enhanced transparency and accountability in process and decision-making will promote community acceptance of ICANN decisions and ensure greater trust in the organization. CNNIC: Not all decisions have been supported or accepted by the community. The .com or

information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate support and acceptance by the public and the Internet community.	.org agreements were not fully discussed within the community.
	WZ: Lack of interaction and engagement, due to the language barrier, also leads to low support.
	KMC: Decisions are accepted, at times because no one wants to go through the process again, at times because a careful balance has been struck and everyone accepts a workable compromise. The Board tries to avoid decisions that will not be accepted and resists efforts to reconsider decisions. An example where this may not be in the interests of global Internet users is the Whois issue, lingering for 10 years.
	CADNA: An example of an instance where the public did not embrace ICANN's decisions was when it failed to perform a study on the demand for new gTLDs. The EOI was a flawed model, but the goal of quantifying demand for gTLDs was valid. The public called for a study, which was not delivered.
	IPC: Not every operational issue require "public buy-in", but for major decisions, like the introduction of new gTLDs, the public's consent is needed. This calls for adequate public representation in the governance model. See also answer 1 for examples.
	EBW: The decision not to accept and act upon requests by linguistic and cultural institutions, municipal governments and treaty organizations for basic service is not "embraced, supported and accepted" by any public or the internet community. There is no public support for not accommodating the needs of North American Indians, the residents of Paris and many others.
	ATT: It is challenging to build consensus within a diverse group of stakeholders, while serving the public interest and protecting the stability and security of the Internet. It is critical to have support for the process to reach decisions, since many stakeholders will not agree with at least some aspect of a decision. Confidence in the decisions is undermined if stakeholders don't see their concerns adequately addressed.
	LFFS: ICANN is loathed, except by the insiders. Examples: a) The testimony of Paul Twomey in 2009 before congress. b) The .com settlement with VeriSign. c) The acceptance of .XXX (should be rejected).
11. What is your assessment of the policy development process in ICANN with regard to: ▢ facilitating enhanced cross-community deliberations, and ▢ effective and timely policy development Can you identify a specific example(s) when the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development? If so, please provide specific information as to the circumstances and indicate why you believe the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development.	ICC: For several PDPs a broader range of stakeholder inputs would have strengthened the discussions and decisions. There is a link between ICANN's outreach efforts to improve the range of participation in policy processes, the schedules for policy processes and stakeholder ability to develop substantive contributions, and the ability of ICANN to facilitate cross-community deliberations. Numerous and simultaneous public comment periods on important issues undercuts the ability of stakeholders to give the issues the attention they deserve. Just before the Brussels meeting, nine documents (listed) were posted for public comments.
	CNNIC: It is acceptable but not rapid enough, which is understandable in a bottom-up process. The new gTLD process is an example where interaction across the community is good and input from all stakeholders has been adopted. However, due to failures in the PDP, the new gTLD process was slowed down.
	KMC: Failure to have cross-deliberation has resulted in arguments and waste of time, but the groups are increasingly willing to cooperate. Determined efforts to increase cross-community discussions have on occasion been undermined by community members and staff, although this practice has declined. Giving control of some slots at ICANN meetings to community members could bring up issues faster and allow for innovations.
	CADNA: ICANN is not effectively facilitating cross-community deliberations. Stakeholders may advise through comment periods and committee membership, but this input is not considered when making decisions. Rather than taking precautions and studying demand for gTLDs, ICANN is rushing to launch new gTLDs because of an outdated agreement with the US government.
	IPC: The WHOIS controversy shows ICANN's inability to address issues timely and effectively. ICANN's own studies show that much WHOIS information is false or misleading, yet ICANN appears unwilling to enforce the obligation for WHOIS records to be accurate.
	EBW: Lack of communications can only hinder effective and timely policy development. Interpretation of the issues and process to communities excluded in fact from participation is not a substitute for inclusion of those communities. A slot should be made available at ICANN

	meetings so that communication – by the community, for the community, and of the community could take place, on wide-ranging topics. ICANN has obstructed this so far. See also examples in previous answers.
	ETNO: The ASO Policy Development Process is complex, as a global policy must be submitted to all Regional Internet Registries and discussed at regional level. The proposed policy must be approved by all RIRs, endorsed by the ASO council and then approved by the ICANN Board after a public comment period. The absence of a forum for discussion of such issues and the absence of cross community open discussion at ICANN level lacks transparency and makes the process even more complex.
	ATT: To build broad consensus and support for decisions, the policy development process must facilitate effective cross-community deliberations. The use of issue-specific working teams is one mechanism facilitating that. Example: In the new gTLD program, the over-arching issues would benefit from cross-community deliberations, which has not yet occurred.
	LFFS: The process has been captured by the contracted parties, as those two constituencies have excessive voting power relative to the public. Examples: a) the GNSO supporting new TLDs, despite the public not wanting them. b) The IRT debacle.
	KK: The IRT process and the DNS-CERT process were not open and transparent policy development processes.
Other contributions	SG: [*Summary from a 41 page paper*] "A Fresh Start for ICANN": ICANN's corporate structure should be redesigned to ensure accountability. That new structure and fundamental commitments should be put in a charter to be ratified by a representative body of constituents. Key provisions should include: a) Limit ICANN's authority to performing the technical management and coordination of the Internet DNS. ICANN's powers need to be held within the technical purposes for which it was created to prevent mission creep. b) Put ICANN's core obligations from the AoC into the Charter, to make those obligations permanent. Require ICANN to maintain the security and stability of the DNS without qualification or trade-off. c) Enumerate and check the powers of the Board. Board decisions need to be subject to reversal, not merely reconsideration. Board members should be bound by the Charter and the bylaws and removed if breaching them. d) Remove the president as an ex officio Board member and make him independent of the Board, but with power to veto decisions that are inconsistent with the Charter and bylaws. e) Create corporate members of record, place directors under fiduciary duties to those members, and authorize the members as a body to remove any director found to have violated the Charter or bylaws. f) Restrain ICANN's budget growth to 10% per year and its net uncommitted assets to the total annual budget of four years before. Require excess revenues to be redistributed for infrastructure and security improvements, WHOIS and contract compliance, remote meeting facilities and a travel allowance for participation in ICANN's meetings and proceedings by ICANN constituents from developing countries. g) Establish a Board of Review with authority to adjudicate disputed decisions of the Board and to reverse them if contrary to the Charter or bylaws. h) Make bylaws subject to amendment by a 2/3 vote of the Board and the Charter subject to amendment by a 2/3 vote of all members of record.
	MM: [*Abstract from a 20 page paper*] "ICANN, Inc.": This paper assesses the relationship between public participation and accountability in ICANN. It explains how ICANN has responded to accountability concerns by creating new opportunities for public comment, review, and participation, but questions whether public participation is an adequate means of making ICANN accountable to the public. ICANN is a private corporation and such corporations are normally held accountable in three ways: 1) directly through their membership or shareholders, 2) through competition, which gives the public the opportunity to avoid their products or services, and 3) through external regulation or supervision by judicial or public authorities. None of these forms of accountability apply to ICANN. Instead, the public is given a wide range of opportunities to participate in ICANN's processes and to voice their opinions. This paper questions participation as a substitute for accountability and analyzes three reforms in ICANN's history to show how participation can displace accountability rather than improve it.
	FG: In Brussels recently, I heard the Chairman of ICANN say at a dinner that the AoC was just a temporary solution. I might have misunderstood, so at the public forum in Brussels I asked for a clarification but the Chairman avoided my question by asking the CEO to respond. The CEO responded that the AoC was a long-term document for ICANN. I am

	confused and concerned about the real commitment to the AoC and hope the review team will investigate this.
	ICA: [*Summary of 16 page case document*] ICANN has improved the overall accountability and transparency of its decision making process, but serious shortcomings remain. In this submission we cite one matter – the proposal of the Czech Arbitration Court (CAC) to implement an expedited UDRP process through amendment of its Supplemental Rules - to address multiple questions regarding: Accountability to stakeholders, transparency, the interest of global Internet users, the public input process, explanation of decisions and policy development. Extensive documentation of the background is attached for members of the ATRT to peruse as they see fit.

The WG#3 now needs to look at how this input and that from the Brussels meeting is to be analysed by us / Berkman...

Discussion Points.