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AT-LARGE ADVISORY COMMITTEE

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Advisory of the ALAC

Related to the Staff Document Entitled “Improving Institutional Confidence – The Way Forward”

Introduction

By the Staff of ICANN

This document was composed by Sébastien Bachollet, Chair of the At-Large working group on the Future Structure and Governance of ICANN and was made available for comments from the At-Large Community. Sébastien then incorporated the comments received and submitted a first revision to the ALAC for adoption.

The Staff then started an ALAC vote on the first revision of the document on 23 October 2009. During its 25 October meeting, the ALAC decided to stop the vote for further discussion on the document. Sébastien incorporated the comments made during that session and submitted a second revision to the ALAC to vote upon on 25 October.

[End of Introduction]

The ALAC’s views on the various recommendations proposed over the course of time are provided by the addition of a further column in the Appendix A, taken from the document to which this Advisory relates.

In green already stated ALAC positions;
 In red new proposals.

RECOMMENDATION	FEEDBACK from community through PSC and Board consultations	STAFF RECOMMENDATION FOR BOARD ACTION	ALAC position
1 AVOIDING CAPTURE			
1.1 Safeguards must address all types of capture	<p>Improve participation of all elements, especially those not currently active or involved, possibly through issues-based involvement</p> <p>Support “community-wide issues-based interaction”.</p>	<p>Issues-based involvement is being dealt with in the implementation of the GNSO review recommendations.</p> <p>Benchmarking of volunteer recruitment for each SO and AC is now being conducted and proposed targets may be incorporated into the Operational Plan for FY 2010</p>	<p>At-Large/ALAC supports those proposals but in some cases a cross SO and AC WG could be setup to help a broader and earlier participation on topics not fitting in only one SO.</p>
1.6 Strengthen GAC to avoid capture	<p>Broad agreement that governments should be engaged in the multi-stakeholder process and their participation improved.</p>	<p>Board should consider means to work with the GAC and the ICANN community on a fully consultative process to publicly review the GAC’s role within ICANN. This review process might focus on coordination and consultation between the GAC and other supporting organizations and advisory committees</p>	<p>At-Large/ALAC supports those proposals. And generally speaking “...a formal and detailed response to” advice given to the Board must be setup for all the ACs.</p>

		<p>of ICANN.</p> <p>The Board should consider the exploration of how the practice of issuing a formal and detailed response to GAC communiques can be done in a timely way.</p>	
<p>1.6.1 Language interpretation at GAC meetings</p>	<p>Translation and interpretation would particularly help GAC members participating remotely.</p>	<p>The Board should consider ... translation and interpretation of documents and other work to continue to support participation and working practices at the GAC.</p>	<p>With the development of a number of At-Large Structures from different regions around the globe, it would be useful to offer the same simultaneous interpretation services at At-Large Structure meetings.</p>
<p>1.6.2 Board meeting or workshop once a year in a city with much government representation, e.g. Geneva, New York</p>	<p>Governments + Board relationship shouldn't be privileged. Interaction of governments with broader ICANN community needed. Variety of suggestions about how Board and GAC could interact more effectively.</p>	<p>Possible updated recommendation 1.6.2: "Find better ways for governments to be informed about and meet with the ICANN community and, as a part of that, interact with the Board."</p>	<p>At-Large (ALAC) does not support this recommendation particularly if this meeting is counted towards one of the 3 yearly (general) meetings of ICANN as a whole because it would decrease the opportunity of having meetings of regional structures (RALOs) in the context of ICANN general meetings and would also decrease the opportunity to promote outreach in various countries through ICANN general</p>

			<p>meetings.</p> <p>In addition, At-Large (ALAC) supports regional meetings open to all the constituencies and not just select constituencies.</p>
1.6.3 Travel support programme for GAC reps from UN LDCs	Travel support is useful for GAC reps, but remote participation should be further developed.	Staff recommendation to the Board: Board should consider the extension of travel support for GAC members from the Least Developed Countries and support for more remote participation at GAC meetings,	At-Large (ALAC) supports this proposal and hopes the same will be offered to At-Large Structures.
1.10 Retain ICANN's headquarters in the United States to ensure certainty about ICANN's registry, registrar and IANA contracts and other stakeholder agreements and frameworks.		The Board should consider accepting the PSC recommendation and recommends that ICANN maintain its headquarters in the United States, specifically in Marina del Rey, California.	<p>At Large members expressed the view that ICANN should make a greater effort to geographically diversity its organs, staff and activities. One way to accomplish this would be to have important ICANN functions and responsibilities split among various regions, languages, genders and cultures:</p> <p>The splitting of functions and responsibility, however, should not be done in a way that would result in inefficiencies or duplication of</p>

			effort. ICANN must also remain vigilant concerning the efficient use of its resources.
1.13 Maintain and strengthen transparency in the constituent parts of ICANN.			
1.13.1 Require statements on conflict of interest from all members of the Advisory Committees, Supporting Organizations and Nominating Committee.	General support for this proposal from commenters who discussed it.	The Board Governance Committee should develop appropriately binding policy on statements on conflict of interest across the SOs and ACs.	At-Large (ALAC) supports this proposal and has already begun to implement such a policy for its members.
1.13.2 Develop clear guidance for Supporting Organizations, Advisory Committees and the Nominating Committee on disclosing and handling conflicts.	Few discussed this proposal; most who did supported it.	The Board Governance Committee should work with the leadership of the SOs and ACs to establish guidance on disclosing and handling conflicts of interest across the SOs and ACs.	
1.13.4 Create a framework that allows cross-participation in supporting organizations and advisory committees but prohibits voting in more than one ICANN entity.	Focus on need for cross-participation rather than on voting.	The Structural Improvements Committee should consider further improvements in coordination and potentially increased cross-participation between SOs and ACs, especially during the issue-identification stage of a new policy initiative.	At-Large (ALAC)'s position and proposal on this topic is included in the Summit Declaration. This recommendation of the PSC will be very difficult to implement and will create more burden than any real improvement in transparency. At the same time At-Large (ALAC) supports the position that the

			elected seats in each SO/AC/Board should be easier to follow and be populated with different individuals.
1.14 Safeguard against capture by inappropriate or inadequate staff conduct.	Support proposed code of conduct in general.	Building on ICANN's Accountability and Transparency Frameworks and Principles, the Board Governance Committee and the CEO should work together to develop a staff code of conduct.	
1.14.1 Review and enhance the professional code of conduct for the staff to highlight their obligations of independence, impartiality and support for the community.	Support proposed code of conduct in general.	Building on ICANN's Accountability and Transparency Frameworks and Principles, the Board Governance Committee and the CEO should work together to develop a staff code of conduct.	
2 ACCOUNTABILITY			Recommend that policy briefing materials staff prepares for the board should be made available online as soon at the same time as they are available to the board. Particularly any material prepared for a decision by the board
2.2 Ensure due consideration of GAC's advice on matters of public policy.			At-Large (ALAC) suggests the Recommendation 2.2 be revised to read: "Ensure due consideration of

			AC's advice."
<p>2.2.1 ICANN and the GAC shall set up a joint mechanism to review performance of the ICANN Board's Affirmation of Responsibilities, paragraph 7, Annex A to the Joint Project Agreement with the US Dept. of Commerce :</p> <p><i>"Role of governments: ICANN shall work with the Government Advisory Committee Members to review the GAC's role within ICANN so as to facilitate effective consideration of GAC advice on public policy aspects of the technical coordination of the Internet".</i></p>	<p>Commenters generally agreed with this, stressing the strong need for community input on this and community should discuss directly with GAC.</p>	<p>The Structural Improvement Committee should convene, commencing at the Sydney meeting, a dialog among the leadership of the GAD and the leadership of the other SOs and ACs to publicly review the GAC's role within ICANN. This review process should focus on coordination and consultation between the GAC and other supporting organizations and advisory committees of ICANN. Any outcome of this dialogue should be open to public comment before Board approval for implementation</p>	
<p>RECOMMENDATION 2.5: Make consultation documents easily accessible and understandable.</p>			
<p>2.5.1 Executive summaries shall be attached to all substantive documents.</p>	<p>Support this from commenters who mentioned it.</p>	<p>The Public Participation Committee is continuing to recommend process and substantive improvements to the Board for implementation by staff and others.</p>	
<p>2.5.2 Standardized formatting and timelines shall be used for dealing with all published documents</p>	<p>Give more detail on the predictable timeline for materials, and make specific recommendations about timelines.</p>	<p>The Public Participation Committee has recently recommended, and the Board enacted, a new set of pre-physical meeting deadlines for the production of relevant documents. These deadlines are being observed, beginning with</p>	

		the Sydney meeting in June 2009.	
<p>RECOMMENDATION 2.7: Seek advice from a committee of independent experts on the restructuring of the review mechanisms to provide a set of mechanisms that will provide for improved accountability in relation to individual rights and having regard to the two proposed further mechanisms in <i>RECOMMENDATIONS 2.8 and 2.9</i> immediately below.</p>	<p>These measures alone are insufficient to address all community concerns.</p>	<p>The ICANN Bylaws should be amended to establish a new and newly constituted Independent Review Tribunal with powers to review the exercise of decision-making powers of the ICANN Board under three general rubrics of fairness, fidelity and rationality</p>	<p>At-Large (ALAC) believes that ALAC would be well suited to offer ICANN this type of advice.</p>
<p>RECOMMENDATION 2.8: Establish an additional mechanism for the community to require the Board to re-examine a Board decision, invoked by a two-thirds majority vote of two-thirds of the Councils of all the Supporting Organizations and two-thirds of members of all the Advisory Committees. For the Governmental Advisory Committee, a consensus statement from all the members present at a physical meeting shall suffice.</p>	<p>These measures alone are insufficient to address all community concerns.</p>	<p>The ICANN Bylaws should be amended to establish a new and newly constituted Independent Review Tribunal with powers to review the exercise of decision-making powers of the ICANN Board under three general rubrics of fairness, fidelity and rationality</p>	
<p>RECOMMENDATION 2.9: Establish an extraordinary mechanism for the community to remove and replace the Board in special circumstances.</p>	<p>These measures alone are insufficient to address all community concerns.</p>	<p>This recommendation should not be implemented at this time. Instead, the ICANN Bylaws should be amended to establish a new and newly constituted Independent</p>	

	This recommendation recently drew much resistance and doubt from community members.	Review Tribunal with powers to review the exercise of decision-making powers of the ICANN Board under three general rubrics of fairness, fidelity and rationality	
3 MEETING THE NEEDS OF THE GLOBAL INTERNET COMMUNITY			
RECOMMENDATION 3.3: Produce a review of translation and interpretation policies and expenditure to assess the need for further improvements.	Few commenters mentioned this recommendation; those who did were generally supportive.	The Public Participation Committee should consider and possible review against the published Translation Policy.	
RECOMMENDATION 3.4: Continue to improve participation by extending outreach so that all relevant stakeholders around the world are able to interact with ICANN, including by establishing ICANN’s presence in additional jurisdictions. Priority should be given to presence/office establishment in south, central and northern Asia and in Africa.	Most commenters who referred to this considered the existing information insufficient to make a fully informed decision.	The Board should consider recommending ICANN staff to continue conversations with authorities in jurisdictions such as Belgium and Switzerland, and report back with a detailed analysis of risks and benefits to the Board and community.	At-Large (ALAC) thinks that in addition to the 3 yearly general meetings, at-least 2 regional meeting should be organized by ICANN each year one in each of the (2) remaining of ICANN’s five geographic regions. All the regional meetings must be open to all constituencies and support must be provided for these additional regional meetings, as it is for the 3 yearly general meetings.
RECOMMENDATION 3.6: Maintain ICANN’s current headquarters and operational presence in California, regardless of	Most commenters agreed with this recommendation.	The Board should consider accepting the PSC recommendation and recommends that ICANN maintain its	See 1.10

any change in its corporate organizational structure.		headquarters in the United States, specifically in Marina del Rey, California.	
3.9 Hold initial discussions and do fact-finding on international not for profit organization status to see what the advantages might be. Then consider establishing an additional subsidiary legal presence whose corporate headquarters remain in the US. Subject to full public consultation.	Commenters noted potential risks in having the same kinds of contracts subject to more than one jurisdiction's law and asked if a separate board created in Switzerland or Belgium be accountable to ICANN's global stakeholders.	The Board should consider recommending ICANN staff to continue conversations with authorities in jurisdictions such as Belgium and Switzerland, and report back with a detailed analysis of risks and benefits to the Board and community, including a comparison of legal presences versus additional office.	
4 OPERATIONAL AND FINANCIAL SECURITY OF ICANN			
RECOMMENDATION 4.3: Maintain and enhance detailed, results-based and transparent planning and reporting processes.	General agreement from commenters	Continue with and provide more detail on Strategic and Operational Planning and reporting systems, including Dashboard and other tools.	
4.3.1 Continue to implement best financial practices, including of financial disclosure to the community. 4.3.2 Ensure financial materials are disclosed in a timely way and with sufficient explanation to permit full comprehension.	General agreement from commenters	Continue with and provide more detail on Strategic and Operational Planning and reporting systems, including Dashboard and other tools.	
RECOMMENDATION	General	The Finance Committee	At-Large (ALAC)

<p>4.6: Give consideration to how to manage ICANN’s future revenue growth in line with ICANN’s not-for-profit status and its core mission and mandate.</p>	<p>agreement amongst commenters.</p>	<p>should continue with and provide more detail on Strategic and Operational Planning and reporting systems, including Dashboard and other tools, and encourage increased community involvement in the bottom-up planning and budget process.</p>	<p>is willing to participate in these discussions with the understanding that better and wider outreach and participation is a first step to the useful utilization of any increase in ICANN revenues.</p>
<p>4.6.1 Include a public discussion and comment period on any surplus as part of the FY10 draft Operating Plan and Budget consultations.</p>	<p>General agreement amongst commenters.</p>	<p>The Finance Committee should continue with and provide more detail on Strategic and Operational Planning and reporting systems, including Dashboard and other tools, and encourage increased community involvement in the bottom-up planning and budget process.</p>	
<p>4.6.2 ICANN should consult the community on sources of revenue, recognising ICANN’s core mission, so that it is not too reliant on one sector of the community.</p>	<p>Some commenters support a public discussion of revenue growth and services, but others held that the source of revenues were not as important as overall transparency and accountability measures that work to prevent capture by one or more groups.</p>	<p>The Finance Committee should continue with and provide more detail on Strategic and Operational Planning and reporting systems, including Dashboard and other tools, and encourage increased community involvement in the bottom-up planning and budget process.</p>	
<p>5 STABILITY AND SECURITY OF THE UNIQUE IDENTIFIERS</p>			
<p>RECOMMENDATION 5.3: ICANN should be a discussion leader and</p>	<p>General support, as long as ICANN remains</p>	<p>21 May 2009, ICANN published for public comments the “Plan for</p>	<p>While the At-Large (ALAC) supports these</p>

<p>raise awareness of issues linked to stability and security of the Internet.</p>	<p>within its existing mandate.</p>	<p>Enhanced Internet Security, Stability and Resiliency”</p>	<p>recommendations, it expects ICANN to be much more than just a discussion leader and awareness raiser. As the current state of the deployment of DNSSEC and IPv6 demonstrate, the unorganized spreading of responsibilities between informal groups and regional entities with no real leadership, has led to a very low adoption rate of these technologies, although the standards have been there for more than 10 years.</p>
<p>5.3.1 ICANN should further define and strengthen its role in relation to security and stability of the unique identifiers and their impact on the Internet.</p>	<p>General support, as long as ICANN remains within its existing mandate.</p>	<p>21 May 2009, ICANN published for public comments the “Plan for Enhanced Internet Security, Stability and Resiliency”</p>	<p>We call ICANN to identify the best practices used in other industries like the automotive or aviation ones. A master plan with clear milestones and deadlines needs to be drafted and implemented with the help of relevant organizations.</p> <p>Obviously, the role of ICANN with regard to</p>

			<p>new technologies related to the unique identifiers on the Internet does not end with a software and network update of the L root server. As long as these technologies are not being deployed down to the end user premises, they are pretty useless. With a depreciation cycle of an average of 5 years for general hardware and software related to the use of the Internet, a much more aggressive timeline could be drafted for the introduction of new technologies. ICANN should take the leadership on these efforts.</p>
<p>RECOMMENDATION 5.7: ICANN shall pursue operational efficiency measures under the IANA procurement agreement with the United States Department of Commerce.</p>	<p>General support</p>	<p>Implementation of e-IANA proposals are being finalized with the Department of Commerce for implementation.</p>	

Proposal to Establish a Special ICANN Community Vote Requesting a Board Re-Examination of a Board Decision:

At-Large/ALAC support this proposal in principle but would like to see:

- **an explicit way to push such a motion (the risk here is that if anyone can ask to vote, it will be time consuming for the SO and ACs). Like one SO or one AC or X number of people in a common petition could initiate such a vote.**
- **a full picture of the bylaws change (under consideration, in project or possible following evaluation(s))**

PROPOSAL TO ESTABLISH AN INDEPENDENT REVIEW TRIBUNAL

The ALAC does not propose to make recommendations on this idea at the present time. But (now) see next page.

Proposed Bylaw Changes to Improve Accountability

Please refer to the following links to get more information

<http://www.icann.org/en/announcements/announcement-27jul09-en.htm>

After reading the following ICANN staff proposal to review the bylaws with two proposed accountability measures, ALAC is willing to make the following comments (first added August the 14th 2009).

<http://www.icann.org/en/general/proposed-bylaw-revision-iv-5-clean-27jul09-en.pdf>

Concerning this proposal we just want to reiterate what is written the page before:

an explicit way to push such a motion (the risk here is that if anyone can ask to vote, it will be time consuming for the SO and ACs).

<http://www.icann.org/en/general/proposed-bylaw-revisions-iv-3-redline-27jul09-en.pdf>

If ICANN implement the previous proposal (and further other accountability mechanisms) maybe an "IRB" Independent Review Body is not any more mandatory. If it is to be implemented we need to see a better description of the role of the IRB, IRB panel and the IRB provider. We need to be sure that process is setup by the Board and not by any external provider.