Inventory Item #13 and #14 (ATRT 1 Recommendations 23 and 25)

Development of the Accountability Structures Expert Panel (ASEP) and Delivery of Work

Response to Registry Submission to the ATRT2

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Development of the Accountability Structures Expert Panel (ASEP)

ICANN, through the Board Governance Committee, carefully planned for the ASEP work after ATRT 1's recommendations were issued. As noted in the very first implementation plan delivered, the timelines set in Recommendations 23 and 25 were not feasible and would not be met. Through coordination with the Board Governance Committee (BGC), a substantial amount of work was devoted to identifying the types of expertise that would be necessary for the composition of such a panel. The BGC discussions of this issue – taking place well before September 2012 - are represented in the BGC minutes (see, e.g., minutes of 5 October 2011, at http://www.icann.org/en/groups/board/documents/minutes-bgc-05oct11-en.htm, and minutes of 30 November 2011, reflecting discussion on how the planning for implementation was proceeding, at http://www.icann.org/en/groups/board/documents/minutes-bgc-30nov11-en.htm; minutes of 22 February 2012 http://www.icann.org/en/groups/board/documents/minutes-bgc-22feb12-en.htm discussing identification of experts; minutes of 15 March 2012 http://www.icann.org/en/groups/board/documents/minutes-bgc-15mar12-en.htm, 4 May 2012 http://www.icann.org/en/groups/board/documents/minutes-bgc-15mar12-en.htm, and 22 June 2012 http://www.icann.org/en/groups/board/documents/minutes-bgc-22jun12-en.htm discussing the ongoing work to identify experts.)

In 2011, ICANN staff began outreach to governance experts and organizations to obtain some initial ideas about the types of expertise that would be useful towards this review, as well as seeking initial recommendations of experts that might be appropriate for service on the ASEP. After determination of the desired qualifications for the panel and conversation with the BGC, on 11 March 2012 ICANN issued a call for expressions of interest to serve on the ASEP, see http://www.icann.org/en/news/announcements/announcement-11mar12-en.htm. ICANN received only four responses to the call. Staff then continued its outreach and finally identified three experts – one a former Judge of the Supreme Court of South Africa with notable governance background; one a noted jurist from Australia with governance and ombudsman experience; and a U.S.-based governance expert and speaker on corporate leadership and workplace issues. See

. Though the panel was not announced until September, as ICANN identified and completed contracting with the panelists and coordinated their biographical information, the ASEP membership began their work in earnest in August.

The Progress of the ASEP and Timing of Work

For the duration of the ASEP's work, an email address was opened, with publicly threaded comments available. Only one comment was ever received there.
The ASEP members worked diligently in both the development of a project plan (available at http://www.icann.org/en/news/in-focus/accountability/asep/project-plan-24sep12-en.pdf) and towards the development of recommendations, including a two-day work session and multiple conference calls. Two members of the ASEP attended ICANN's Toronto meeting, and worked to refine their recommendations, interview community members and consult with the Board Governance Committee. Towards the end of the week, the preliminary work of the ASEP was presented to the community in an interactive session. Given the complexity of the ICANN meetings schedule, the ASEP session was carefully planned to reduce conflicts with the higher interest topics within the community; there were no New gTLD-related sessions occurring at the same time, and the session was even scheduled prior to the start of the GAC plenary discussion for that day. Notwithstanding that planning work, there was very light attendance at the session.

During the ASEP panel discussion, Bruce Tonkin, Chair of the BGC, noted that concerns had been raised regarding the timeframe within which the ASEP was performing its work. Bruce noted that if the ASEP believed that it needed more time to perform its work, it could take the time needed. See http://toronto45.icann.org/meetings/toronto2012/transcript-asep-17oct12-en.pdf. The ASEP did not feel that more time would be of benefit. There was no ICANN-imposed rush to completion.

The ASEP's report was posted on 26 October 2012, after ASEP consideration of the feedback it received in Toronto. The public comment posting also included proposed Bylaws amendments, which were provided so that the community could see how the recommendations would be implemented if adopted. Two comments were received, and each comment was reviewed with the ASEP to determine what changes, if any, should be made to the recommendations within the report. In the summary and analysis of comments, the comments raised were addressed, including direct response to the Registry Stakeholders Group concerns regarding the standard of review for the Independent Review Process ("After a review of comments in coordination with the ASEP, in response to the RySG, it is important to note that the imposition of a standard of review into the Independent Review process assures that the process will be used for review, and not for a rehearing. There is a need for Board decisions to be able to be relied upon and implemented, unless there is the type of failure identified by the ASEP.") The cautions raised by both the RySG and the other commenter, Alejandro Pisanty, regarding the risks that the establishment of a standing panel could bring, were actually incorporated into the final recommendations as adopted by the Board. No comments were received regarding the modifications to the Reconsideration process.

Adoption of the ASEP Recommendations

On 20 December 2012, after the close of the comment period, the Board accepted the ASEP report

and approved the Bylaws amendments, while noting that further implementation work needed to be complete prior to assigning an effective date to the resolutions. Because of the community comments regarding the implementation of a standing panel, the Board specifically acknowledged that the Bylaws could be modified to further address those concerns, if needed. The resolution and rationale are available at http://www.icann.org/en/groups/board/documents/resolutions-20dec12-en.htm#2.c. The Board's 20 December 2012 discussion is included within the Minutes, at http://www.icann.org/en/groups/board/documents/minutes-20dec12-en.htm#2.c, and the briefing materials presented to the Board are located beginning at page 124 of the main Board book (http://www.icann.org/en/groups/board/documents/briefing-materials-1-20dec12-en.pdf) and beginning at page 124 of the Board book containing reference materials (http://www.icann.org/en/groups/board/documents/briefing-materials-2-20dec12-en.pdf).

The April 2013 action referenced within the Registry Stakeholder Group comment is the determination of the Accountability Structures Bylaws Effective Date (http://www.icann.org/en/groups/board/documents/resolutions-11apr13-en.htm#1.d). Contrary to the statement provided to the ATRT2, the brevity of the consideration of this item through the consent agenda cannot be attributed to a rush towards implementation. The Board had already considered the ASEP recommendations, had already discussed those recommendations, and had directed that nearly four months of implementation work proceed prior to putting the Bylaws in place. This was a follow-on action to the Board's December 2012 decision.

As part of the recommendations, the Board ultimately approved an *expansion* of the grounds for bringing a Reconsideration Request, to now explicitly allow reconsideration to be based upon the provision of false or misleading information to the Board in addition to the already existing grounds. The ASEP recommendations on the whole bring more predictability to the timing and procedure for all who use the accountability mechanisms. The ASEP report was carefully thought out, and the members worked diligently for the duration of their service to ICANN. The work internal to ICANN in developing how ICANN could go about implementation of ATRT1's recommendations 23 and 25 was also diligent. Significant amounts of work went into the design of the panel, the difficult work of comprising the panel, and in supporting the ASEP's work.

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