DRAFT II 12.8.2013

ATRT2 Templates

B. **Proposed new recommendations regarding Legitimacy/Outreach**

- Hypothesis of problem

Effective accountability and transparency mechanisms are at the core of the multistakeholder model and a prerequisite for the over-all legitimacy of ICANN. This is well reflected in art. 9.1 of the Affirmation of Commitments (Affirmation) with the title "Ensuring accountability, transparency and the interests of global Internet users". ICANN is accountable to the global Internet Community. This should be reflected in the services and policies that ICANN provides. As such, ICANN's services and policies must be relevant and applicable to stakeholders in all parts of the world and businesses, citizens, organisations and governments in all countries must have equal and fair access.

The legitimacy of the multistakeholder model and the role played by ICANN is based on active participation from all stakeholders, including the world's governments. An important prerequisite for this active participation is that ICANN's decision-making processes are perceived to be effective, relevant, accessible and fair by all stakeholders. An example of the wording of the Affirmation which reflects this general principle with regard to inclusion/participation can be found in art. 9.1(d): "continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community".

So in short the legitimacy of ICANN is suffering if stakeholders, including governments do not embrace, support and accept the decisions taken by ICANN.

Is that the situation right now? The examples below indicate that something needs to be done.

New gTLDs
An example which illustrates that ICANN's decisions are not "embraced, supported and accepted by the public and the Internet community" can be found in the mix of applications for new gTLDs. In total ICANN received more than 1900 applications, of which 911 came from North America, 675 from Europe and 303 from Asia (incl. Australia and New Zealand). As a comparison only 17 applications came from Africa and 24 from Latin America.

Moreover, ICANN's evaluation process will presumably result in a significant number of strings ending up in auctions where it is the willingness to pay that determines the outcome. This may lead to situations where large companies from developed countries will have substantial advantages compared to small companies from developing countries.

ICANN is mandated to make policies related to DNS in the global public interest. However, the above examples illustrate a reality where it is most likely large businesses and players – may be even predominantly internet companies from one part of the world – that seem to benefit

the most from ICANN's policies and services. This consequence – or the perception that this is the consequence – entails that ICANN's decisions are not – or not by all – "embraced, supported and accepted by the public and the Internet community".

Other barriers for participation
Another example can be found in the practicalities of establishing TLD's in the African region with the purpose of encouraging the development of African domain and internet businesses. There are still large thresholds and barriers to participate in the new gTLD program, including a new RAA which in reality makes it more difficult for African registrars or other registrars from less developed countries to sign the agreement and participate in the process. This does neither promote global competition nor global participation. So, how can we ensure that the gTLD policies are made truly in the global public interest while ensuring the security and stability of the DNS.

Global participation in ICANN and the GAC
The relatively low active participation of the governments of the world in the GAC is another example indicating that ICANN's decisions are not "embraced, supported and accepted by the public and the Internet community". Out of appr. 190 UN members GAC has appr. 120 members. But looking back at recent meetings only on average 50-60 governments have been represented at meetings. And substantially fewer participate in in-between-meetings activities.

One reason for this may be that active participation in ICANN and the GAC requires far more resources than are available to many governments. And those finally deciding to participate in ICANN's processes are met with excessive amounts of information as well as a model for decision-making that is not self-explanatory. So, the barriers – or the perceived barriers - for effective participation in the multistakeholder model of ICANN may in reality prevent many governments from participating.

Another reason may be related ICANN's handling of GAC advice. A number of governments have underlined that it is of greatest importance that ICANN, including Board and staff ensure that GAC advice is duly taken into account when ICANN policy is developed and adopted. Not surprisingly governments expect to have a visible and effective influence in matters with relation to critical public policy issues. And if this is not the case many governments will have an incentive to reconsider their participation in and support for the multistakeholder model. A recent illustration of the concerns by many governments in that respect can be found in the Chairman's report from World Telecommunication/ICT Policy Forum 2013 (Document WTPF-13/16-E) which on page 26 i.a. says: "Many delegates as well as the Chairman agreed that the issue of the role of governments in the multistakeholder model of Internet governance is a very important topic and one of the key issues that have not clearly been addressed to date. It was emphasized by the Chairman that we should not shy away from talking about it and that until we do address the core issue, there will be a degree of uncertainty especially when it comes to public policy issues." The discussions at WCIT in December 2012 point in the same direction.

In short level of government participation in GAC as well as statements and positions by governments in other international fora seem to indicate that ICANN's legitimacy is not fully recognized by governments.

Response to the ATRT2 Questionnaire
Also, despite the fact that the reviews provided for in art 9 of the Affirmation are at the core of ICANN's accountability and transparency mechanisms and critical in ensuring legitimacy to the multistakeholder model, only 31 responses have been submitted to the ATRT2, including only 4 from governments (European). The rest are mainly from active ALAC members and a few from other AC/SO members.

This is indeed surprising. The few responses could be interpreted as an indication that the vast majority of the Internet community consider the current governance system to be perfect and that no improvements are needed. But it could also be interpreted as a reflection of a feeling of not being listened to in any case and that answering the questions of the questionnaire is therefore not worth the effort in doing it.

In all circumstances the lack of a more comprehensive feed back from the Internet society is somewhat worrying not only for ATRT2 but certainly also for ICANN legitimacy in the broader perspective.

Conclusion
The examples show that there is a need for improvements. Further outreach is necessary to enhance participation. Only then the legitimacy of ICANN can be ensured and the current Internet governance regime be maintained.

- Background research undertaken

    o Summary of ICANN input
    o Summary of community input via the public comment process and face to face meetings

The GAC Communique of 18 July 2013 from the Durban meeting says i.a.: *"The ATRT2 was invited to advise on how to improve outreach and active participation, especially from developing countries. Broad participation of stakeholders from all regions is vital for the legitimacy of ICANN and the multi-stakeholder model."*

    o Summary of other relevant research

Report of the Chair, High Level Meeting of Governments at the 45th Meeting of the Internet corporation of Assigned names and numbers, Preserving and Improving the Multistakeholder Model, Toronto, Canada

Applicant Guidebook, and related gTLD materials/processes, RAA, GAC Advice

Chairman's report from World Telecommunication/ICT Policy Forum 2013 (Document WTPF-13/16-E)

- Relevant ICANN bylaws
On the Governmental Advisory Committee - Article XI, Section 1 and Section 2.1.
http://www.icann.org/en/about/governance/bylaws#III

Article I, Section 2 Core Values

Article II, Section 3 Non Discriminatory Treatment

- Relevant ICANN published policies

- Relevant ICANN published procedures
Articles of Incorporation of Internet Corporation for Assigned Names and Numbers, Article 3. and
4. http://www.icann.org/en/about/governance/articles

Affirmation of Commitments: in the global public interest – AOC reviews

- ATRT2 analysis
Accordingly ATRT2 may consider drafting recommendations which address the issues
mentioned in the examples mentioned above. They concentrate on mainly:
  - Launch initiatives to improve outreach towards governments to increase their active
    participation in ICANN's work i.a. by establishing a better understanding among
    governments that the current multistakeholder model does ensure that public policy
    issues are been taken into account, including those critical to government interests.
    Furthermore improve processes to ensure this.
  - Improving working methods and outreach to the entire Internet society to promote
    broad participation from all regions in order to ensure that ICANN decisions are
    "embraced, supported and accepted by the public and the Internet community". This
    in turn will be reflected in participation/inclusion of the entire Internet community in
    the work of ICANN making the governance model a true multistakeholder driven one.

- Draft recommendation including rationale

Rec 1

(On improving outreach to governments, incl. baseline and goal to be reached. Recommendation
should touch upon relations to GAC as well as to non GAC members)

Thoughts to be developed further: ICANN/GAC interaction can be summarized and communicated
in a more structured way to increase the transparency on how ICANN reacts to GAC advice (e.g. by
using information in the GAC advice register), could be summarized in an annual report, timing to
be presented at global IGF]

[Recommendations should also consider the GAC initiative to improve working methods]

[Recommendations should also consider the establishment of effective procedures for early cross
constituency engagement]

Rec 2

(On launching activities aiming at making ICANN and its work not only relevant for stakeholders in some parts of the world (see the example on gTLD applications), incl. baseline and goal to be reached)

[Recommendations should consider a way to ensure that ICANN´s policies are made in the global public interest. In practice ICANN should ensure that its policies are inclusive to stakeholders in all parts of the world (non-discriminatory) Only then the policies will be embraced by ICANN´s global stakeholders]

[For each region of the world ICANN should develop an operational plan on how to develop and improve the local domain name business to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN's services including new gTLD's. The operational plan should identify any barriers from a local perspective and present action points to address barriers or in the case that general ICANN rules or policies present an obstacle the plan should make recommendations for consideration of the problem in ICANN's policy-making processes. The operational plan should be made in cooperation with local stakeholders.

The operational plan should include a baseline of the local access to ICANN's services. The plan should be presented for public consultation. The operational plans should be finalized by xx.yy.201z]

- Public Comment on Draft Recommendations (to be completed later)

- Final recommendation (to be completed later)

Note: Links to relevant documents can be included, provided the link refers to a specific section of a given document. Alternatively, relevant section of other documents may be copies and pasted.