LONDON – ATLAS II Thematic Group 4: Transparency & Accountability - Session 4
Sunday, June 22, 2014 – 15:00 to 16:30
ICANN – London, England

HOLLY RAICHE: …For getting into the larger global community in ICANN is the ALSes. In fact, recognition of the role of ALSes, which is to both reach out to other users, to provide to outreach in terms of general information about the Internet, information about ICANN, and listening to the viewpoints of the various ALSes when we, as members of the community, make submissions. In fact, the mechanism for getting at the larger global community are the ALSes.

We do not represent – this is the phrase that Olivier probably said two days ago – we do not physically represent all sorts of billions of people, but we do represent a number of organizations that are users of the Internet in their various geographic locations and their various organizations and so forth. If you're talking about how you listen, ALSes and ALAC is the mechanism that's being used. We didn't put that in. That's the point. You forgot to actually correct me.

SCOTT SULLIVAN: Okay. Also, Alan looks rather confused.

ALAN GREENBERG: I am. It's fine to say ALSes are a mechanism for getting input from the global community, but are ALSes and users in a group encompassed by At-Large?

HOLLY RAICHE: It's "global community of Internet users". It's qualified. We can take out the larger community. How about we take out "global" then?

ALAN GREENBERG: I guess I'm concerned that I thought we'd be talking about ICANN's accountability and transparency, not just from a perspective of users.

SPEAKER: I would wager that extends beyond the scope of At-Large into the GAC and the other sections. Bill worried about ICANN's accountability to their needs. We should worry about ours.

ALAN GREENBERG: This group can do what it wants, but the subject matter we were looking at, across the various groups, is wider than At-Large. If you go back to the first ATLAS, one of the issues was new gTLDs, which was not just new gTLDs from a user perspective, but new gTLDs overall. My understanding was we were looking at all of these issues from an ICANN-wide perspective, giving the input of users, and of At-Large, but not necessarily restricting ourselves to At-Large issues.

SPEAKER: If I may, bringing it from an At-Large perspective is just a starting point. It at least gives us something to put forward, and then we're going to have to engage with the other chunks on that larger issue, because it's

not just us. It never is just us. Let's get something out the door that gives us something to build on.

ALAN GREENBERG: The framing of it better make it clear that that's what we're talking about, because it wasn't clear to me.

HOLLY RAICHE: I would have to say it wasn't clear, full stop. We've had to fit our answer into what we can do in nine hours.

ALAN GREENBERG: I'm assuming for instance that your "cross-something, oversight body" is not just restricted to At-Large, or am I mistaken there?

HOLLY RAICHE: No.

ALAN GREENBERG: No, I'm mistaken?

HOLLY RAICHE: The introduction, the Working Group recognizes there are two constituencies, okay? There is the ICANN community. When we talk about the ICANN community and the accountability and transparency, we're not going through the ATRT 2. We're saying we largely recommend that as yes, those are good things. What we're going is

picking up, from an At-Large perspective, a few things that might assist in the accountability and transparency issues.

ALAN GREENBERG: That I support. Let me ask the question again. Is the "cross-something oversight body" restricted to oversight by At-Large, or oversight by all the parts of ICANN? Okay. Therefore, it's not just At-Large we're involving in this. Clearly the people in this room are largely At-Large. We're giving a perspective of how ICANN should manage its accountability and transparency. We're talking about a body that's going to include other parts of ICANN.

HOLLY RAICHE: Yes. I thought that was clear. Sorry.

GARTH BRUEN: In an attempt to isolate the confusion, I obfuscate the obfuscatable! I was never in any doubt we were talking about ICANN, but every time Scott steps in, when he talks about ALSes being constituents, and you talk about ALSes being constituents, I become confused over that. That's the source of the confusion. If Scott agrees that we're talking about accountability for ICANN then we don't have any confusion. He's the one who keeps coming back to this.

ALAN GREENBERG: ALSes are sub-constituents of the At-Large constituency.

HOLLY RAICHE: I'd have to ask, we are not writing this document from the perspective of anything other than an At-Large perspective, is that right? Okay. I don't have a problem then.

SPEAKER: [Yodi 07:21] from [Center Energy Society 07:22]. Just to address some of my confusions to the At-Large group, and also perhaps address, resolve and propose and float an idea, to address this entire larger issue of the ICANN community, and beyond the ICANN community, I'd like to read something out here. This is a substantive addition to the overall oversight body being proposed here.

I propose – and this is just a suggestion and we'll see if everybody here agrees – an independent third party body should be constituted to sit an appeal over information officers that will be part of this oversight body. To sit an appeal over their decisions to provide or decline to provide information. Such a body may be composed of nominated members from the global multistakeholder community, with [advocate 08:18] stakeholder, regional and gender representation.

However, such members should not have held prior positions in ICANN, or its related organizations. During the appointed term of the body, the terms and conditions of services ought to remain beyond the purview of ICANN, similar to globally accepted principles of independent judiciary. For instance, the constitution of India forbids any disadvantages, alterations of privileges and allowances of judges of the Supreme Courts and High Courts during tenure.

While I understand that this oversight body would largely constitute At-Large Members, maybe just that aspect of addressing information officers, and the information that's not been addressed, or could be expanded to the [serving 09:00] committee.

HOLLY RAICHE: Now I am confused. My understanding of the body itself is not just about information provision. It's about oversight of Board decisions to act or not to act, and so I wouldn't confine it as an information thing. Some of the other elements you have are probably worth copying, although at this stage we're word-smithing, so we'll get to that.

The idea of the oversight body was a body that's not just about information provision. It's about a body that has oversight of Board decisions. Then we can use whatever terminology we want, but essentially, where there's a matter of huge public interest and the Board has done something either through action or inaction, that would have serious consequences for the public interest and the Internet, however that is.

The discussion about it has been constituted as a larger remit than just information. Some of those words are actually quite useful. When we wordsmith we can think about that. Christopher?

CHRISTOPHER WILKINSON: Just to say that this will be perceived outside At-Large as a vote of no confidence in the whole paraphernalia of recall and review of Board decisions and the time it takes. I think it probably needs somewhere in the header, in the introduction, a few words saying specifically that

certain decisions need to be able to be reviewed and if necessary challenged, much more quickly by a cross-community entity, than is presently possible through Ombudsman or recall.

HOLLY RAICHE: I think the point that Hong made – and again, because you weren't in the room… We had a discussion, if you look at the Review Panel, the Members of the Panel are appointed by the Board. Normally, if you're going to have a review of something, the body that is to be reviewed doesn't get to appoint the people who review it. That's just bad governance. It was within that context. Now, you've got your hand up?

SAMANTHA EISNER: This is Samantha Eisner from ICANN Legal. I don't mean to interject into your deliberations, but if you're speaking of the Independent Review Panel, the ICANN Board does not appoint those Members. I just wanted to make sure that was clear. There are three Members of a Panel that oversee that IPR. One of those Members is appointed by the complainant.

One of those Members is appointed by ICANN, not by the Board but by ICANN's Council, who represents ICANN in those proceedings. The third Panelist is appointed either by the appointing body, the ICDR that oversees it, or is agreed to by the two Panelists that have already been appointed.

HOLLY RAICHE: That's very helpful. Thank you. Have we resolved the confusion about cross-constituency or cross-community, in the sense that we now understand the community is being used to mean what I used to think of as constituency? We need to make it clear what we mean?

ALAN GREENBERG: Just for the record, the formal term for At-Large is the At-Large community. That's a bylaw term. That's why the term, if we're looking at cross-community Working Groups and dialogues, those are dialogues or Working Groups between the various constituent parts of ICANN. That's the terminology being used. It may be confusing to people, but if you're going to use other terms you'll confuse the people who are familiar with those terms.

HOLLY RAICHE: Tell us we're not incestuous.

ALAN GREENBERG: The term "constituency" used to be used within the gNSO, and tends to be used in a very generic way, but is not really referring to specific parts of the organization.

HOLLY RAICHE: Oksana?

OKSANA PRYKHODKO: Maybe you can use "cross-constituency" term, but with invitation of representatives of other organizations, of other institutions of the Internet governance ecosystem.

HOLLY RAICHE: We can do that. Okay. Now, Scott, because you were the one whose comments triggered by thought to having a recommendation to somehow support greater outreach, if we're looking to the At-Large community, to provide input, do we want to support greater outreach and capacity building? We're talking about accountability and transparency here. Does that fit?

SCOTT SULLIVAN: I think to add it in at this point is to overcomplicate the matter. It's something I need to take back with me and resolve my own thoughts on before subjecting the group to it.

HOLLY RAICHE: My only comment is that we're not far from our deadline, so we can put something in or not. You can walk away, have a cup of tea, come back and give us words, if you like? It was simply a point that was raised early on, which was to enhance the representative nature, the breadth of the outreach and the breadth of the informed outreach, of ALSes. That was the point you were making yesterday. Garth?

GARTH GRAHAM: I would make the point that if you did want to put it in, it fits neatly under transparency.

HOLLY RAICHE: I don't understand why you say transparency. I would think accountability, but…

GARTH GRAHAM: I don't understand how outreach is a dimension of accountability in any way, shape or form. How I am answering from my responsibilities and the question of me getting involved with other people's capacity are two separate things. The processes of transparency within ICANN are all the mechanisms by which people participate within ICANN, all of the openness with respect to the decision-making process, and all of the skills you need to learn in order to manipulate that.

That's what I understand by engagement and capacity building. Therefore I'd see it as a dimension of transparency, and being irrelevant to accountability.

HOLLY RAICHE: It's almost too late to quibble.

SCOTT SULLIVAN: I actually agree with Garth here, because once you give the people the tools to get in and understand what's going on, then they can deal with holding people to account. It is a separate matter.

HOLLY RAICHE: If between the two of you we can do a bit of word-smithing, that would be terrific. I'd love that. I've tried to come back to this non-sentence for

a while. Given that we've got half an hour to wordsmith, it would be really nice… Otherwise we can put forward recommendations that don't read very well, and I don't think we want to do that. The first is not a sentence. What we're trying to say in the first sentence is the reason that we're doing this.

It's that in the Affirmation of Commitments, the reason we're talking about this issue is that it's an integral part of the contract that we have with the Department of Commerce in the US. We have agreed, as ICANN, to do this. We've got to turn what's a very convoluted statement into a sentence that explains why we're having this conversation. Has anybody got word-smithing… I'll look at this for a couple of minutes and see…

The concerns of this Working Group arise from ICANN's commitment in the Affirmation of Commitments… No, you can't have "commitments" twice. Is anybody else word-smithing? I'll do it. Nobody else is doing this? Is anybody else trying to come up with words? Good. What is the first sentence? What are we trying to say? We're trying to say we're talking about these issues because in the AOC ICANN has…

ALAN GREENBERG: Can I make a suggestion? I would suggest we change the beginning. First of all I'll note that it's not just the AOC. The bylaws talk about it. "Accountability and transparency are prominently mentioned in the ICANN bylaws and the AOC, to ensure that…"

HOLLY RAICHE: How about, "ICANN is committed under its own bylaws and the AOC to…"

ALAN GREENBERG: I'm fine with that too.

HOLLY RAICHE: There you go. I hope you got what I said, because I've got no idea what I just said.

SPEAKER: That seems to be the operation of the weekend.

HOLLY RAICHE: How about we start with, "ICANN is…" No, I think you're right. "ICANN, under its own bylaws and the Affirmation Of Commitments is committed to ensure that decisions…" Follow on. This will wind up going on that. Okay? He's working on his computer, but in fact… Actually, I can do this.

SPEAKER: Holly, I'd prefer it if you didn't split your attention between editing and moderating.

HOLLY RAICHE: Okay. "ICANN, under its own bylaws and the Affirmation of Commitments must ensure that decisions made related…" That's it. We've got it. The first one is now a sentence. I'm happy. "…In making

recommendations on accountability and transparency, the Working Group recognizes there are two constituencies – the ICANN community and the larger…" No. Somebody had connections over global.

I think ICANN didn't like global. We'll take out global. Garth?

GARTH GRAHAM: I'd like to suggest the addition in the phrase, "…And making recommendations on accountability and transparency in the context of global acceptability."

HOLLY RAICHE: No.

GARTH GRAHAM: No? Why not?

HOLLY RAICHE: I don't know what that adds.

GARTH GRAHAM: That's what ICANN is attempting to achieve. That's ICANN's stated intention in moving out from under NTIA. That's what ICANN needs to do in order to survive – to be trusted in the global community. That's the phrase Fadi Chehade always uses.

HOLLY RAICHE: I know. It's not an elegant sentence that way. It really isn't. What's the phrase you want to put in?

GARTH GRAHAM: "In making recommendations on accountability and transparency, in the context of global acceptability…"

HOLLY RAICHE: "In making its recommendations," and wipe out, "On accountability and transparency," and add your phrase.

GARTH GRAHAM: Fine.

HOLLY RAICHE: Right. The Working Group…

[END OF TRANSCRIPTION]