

Respondent	Category	Comment
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	Board Transparency - General	However, it has been pointed out that there are other ways in which the Board can operate in a non-transparent way. Mueller for instance argues that the critical details of many policies are usually contained in the Board's contracts with private parties, and are not subject to the bottom up policy process or transparency requirements. ⁹ This is noted in Recommendation 11 in section II which recommends the removal of contracts from DIDP exception. ¹⁰ Since contractual terms affect policy issues within ICANN, we recommend that this recommendation be changed to a proactive responsibility to disclose contracts entered into by the board or by ICANN.
ICANN gNSO IPC	Board Transparency - General	The IPC supports recommendations that would improve transparency into ICANN Board deliberations.
ICANN gNSO NCSG	Board Transparency - General	As with the report's findings for the DIDP, the NCSG supports the report's call for greater guidance, structure, and specificity with respect to the Board's exemptions from disclosure. We also note the Board's suggestion at the 2017 Copenhagen meeting (ICANN58) that its minutes and other documentation provide more information and a rationale for decisions taken by the Board. The NCSG supports the recommendations with regard to transparency of Board deliberations.
ICANN org.	Board Transparency - Rec 01	Of the three recommendations presented in this section, ICANN org has some key areas where it agrees with the Subgroup. First, documents/information already provided to a third party (without obligation to keep as confidential) should not be withheld simply because of a deliberative process exception. (Recommendation 1).
Internet Commerce Association	Board Transparency - Rec 01	We therefore enthusiastically endorse the recommendations that
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	Board Transparency - Rec 02	The ICANN Board of Directors has in the past been criticised by the Berkman Centre among others for conducting closed door deliberations. ⁶ This is problematic as ICANN's bylaws do not contain clear rules for the conduct of Board meetings. ⁷ We agree with the recommendations made in this section with respect to the DIDP exception not applying to the minutes, factual information and deliberations of the Board. ⁸
ICANN gNSO Business Constituency	Board Transparency - Rec 02	Most importantly, we believe the WGs suggestion for a bylaw revision explicitly stating the terms for withholding minutes would help standardize ICANN's transparency approach and provide the community proper redress through the IRP (recommendation 2).
ICANN org.	Board Transparency - Rec 02	Recommendation 2, on the types of information appropriate to redact from minutes, will need to be revisited upon the completion of the review of the DIDP, and must be considered in light of the ICANN Bylaws requirements on the process and grounds for basis of removal from minutes. ICANN needs to retain an appropriate scope of redaction to meet its legal obligations. Withholding items from resolutions is not a frequent practice. Notably, if ICANN violates the Bylaws in how items are withheld from posting, the IRP is already available. (SEE RESPONSE FOR DETAILS)
Internet Commerce Association	Board Transparency - Rec 02	We therefore enthusiastically endorse the recommendations that
ICANN gNSO Business Constituency	Board Transparency - Rec 03	We also support the WG's call for specific time limits on withholding of information related to Board decisions (recommendation 3).
ICANN org.	Board Transparency - Rec 03	Of the three recommendations presented in this section, ICANN org has some key areas where it agrees with the Subgroup. The idea that redactions should only exist for as long as necessary is also important to transparency. (Recommendation 3). For example, negotiation limits for rental of office space need to be kept confidential during negotiations, and likely for a period of time after negotiations are complete. However, at a future point that limit can probably be released. On the other hand, resolutions about specific employment matters are normally never appropriate for publication. Introducing information on when and how decisions on removing redactions are made could be a helpful improvement.
Internet Commerce Association	Board Transparency - Rec 03	We therefore enthusiastically endorse the recommendations that
ICANN gNSO IPC	DIDP - General	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for:
ICANN gNSO NCSG	DIDP - General	Overall, the recommendations for improving the DIDP seem very reasonable and are to be commended.
ICANN gNSO RySG	DIDP - General	The RySG is further concerned that some of the recommendations may impose a burden on DIDP staff or may have significant budgetary implications that might not be in proportion with the intended goal of the policy. ICANN is in a better position to assess possible cost drivers and to suggest fine-tuning (subject to community comment) that manages operational impact while maintaining a robust DIDP policy. Nonetheless, the RySG believes that some additional work is required on the DIDP to ensure that the operational impact to ICANN is maintained at a reasonable level consistent with such a robust policy. This might include steps to prevent unreasonable fishing expeditions, the imposition of costs on requests demanding ICANN-staff effort beyond a certain level, or other such approaches. At bottom, however, the RySG believes that the draft DIDP policy is not yet ready for final approval.
ICANN org.	DIDP - General	A presumption of a right to access information and a presumption of availability of information, as identified by the Subgroup, is a positive baseline for the organization. Some of the recommendations, such as Recommendation 4, suggesting that ICANN should provide further assistance to requesters, provide a good baseline for enhancements to the DIDP process. Having documentation of how and when ICANN will reach out to requesters if a DIDP request is unclear makes sense. Similarly, Recommendation 6, encouraging responses as soon as possible, furthers access to information. Enhanced reporting (Recommendation 20) is already under design. Recommendation 21 (setting a regular review cycle of the DIDP) demonstrates how the process can be set for continuous improvement.
Internet Commerce Association	DIDP - General	We therefore enthusiastically support the great majority of the recommendations made with the aim of converting the DIDP into a far more robust and useful procedure. (SEE RESPONSE FOR DETAILS)
National Internet Exchange of India	DIDP - General	Comments on Page 6: Para commencing "Another problem..... In this Para it is noted that the calendar days for replying to the requester was derived from practices adopted by individual countries (Serbia, Denmark, Lithuania, Bulgaria, Indonesia and India). In my humble opinion taking countries into account may not be appropriate, instead practices/methods adopted by similar Not for Profit (International Organizations) could have been considered.
ICANN gNSO Business Constituency	DIDP - Rec 01	We agree with the working group that its scope should be broadened beyond simply covering ICANN's "operational activities" (recommendation 1).
ICANN gNSO IPC	DIDP - Rec 02	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: o Clarifying the duty of ICANN staff to fully and accurately document records;
ICANN org.	DIDP - Rec 02	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 1. Recommendation 2, as written, could mandate a specific document management practice. While proper record keeping is essential, document retention and maintenance practices designed to organizational needs are matters of operational excellence and legal compliance and not solely transparency. ⁸ - The Information Transparency Initiative and the Open Data Initiative, each discussed in the most recent Board Report prepared through the CEO's office (https://www.icann.org/static_documents/executive-team-reports-march-2017-public.pdf) are expected to result in additional information being available to the ICANN Community and being more easily accessible to the public.
ICANN gNSO Business Constituency	DIDP - Rec 03	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4)

National Internet Exchange of India	DIDP - Rec 03	Recommendation No.3: E-filing of reports/complaints may be permitted. The said recommendation does not mention about e-filings. At the same time sending reports/complaints by letters and fax may also be encouraged. I request that the recommendation may be modified to mention e-filing of complaints.
ICANN gNSO Business Constituency	DIDP - Rec 04	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4)
ICANN org.	DIDP - Rec 04	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 4 ICANN maintains a DIDP Response Process document identifying how requests are handled, including a centralization of the response function, at https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf (Recommendation 4);
ICANN org.	DIDP - Rec 05	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 2 Recommendation 5, regarding requester's preference of document format, suggests that it is an appropriate use of ICANN resources to come to ICANN and request documents that are already public be provided to individuals in a different format.
ICANN gNSO Business Constituency	DIDP - Rec 06	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4) and that any response extension be capped at 30 days (recommendation 6).
ICANN gNSO IPC	DIDP - Rec 06	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: That requests should receive a response "as soon as reasonably possible" with a cap on timeline extensions being an additional 30 days;
ICANN org.	DIDP - Rec 06	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 5. ICANN has never taken 60 days to respond to a DIDP request, and since 2013 has responded to every request within a 30-day timeframe. - Since 2013, ICANN has responded to every DIDP Request within 30 days of receipt. Request 20121027 was responded to within 31 days.
ICANN org.	DIDP - Rec 08	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 1. Responses reference information that is already public through the development of narrative responses to requests (Recommendation 8) - Narrative responses identifying publicly available information are a regular part of the DIDP response process. Sampling responses across years, a few examples of this practice are: https://www.icann.org/en/system/files/files/didp-20170125-1-sobel-response-24feb17-en.pdf (2017); https://www.icann.org/en/system/files/files/didp-20160502-1-cis-response-01jun16-en.pdf (2016); 6. DIDPs typically are submitted after some level of outreach to ICANN to see if the documentation is already available. : 7. As stated in the DIDP Response Document, "Documents that have been determined as responsive and appropriate for public disclosure are posted in the appropriate locations on ICANN's website." This is in service of the idea that if a document is appropriate to release to a single person or entity within the ICANN community, it is likely appropriate for it to have a home on ICANN's website for more general availability. - See, for example, Request 20150407-1, https://www.icann.org/resources/pages/20150407-1-2015-05-08-en , which discusses which documents will be made available in response to the DIDP Request, and where they are located on the ICANN website. ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 3. Recommendation 8, encouraging the use of the DIDP process to seek narrative discussion of information that is known to be publicly available could impose resource and costs.
National Internet Exchange of India	DIDP - Rec 09	Recommendation No.9: This recommendation relates to root server aspects. I would like to know if any comments or advice has been received from Root Server System Advisor Committee (RSSAC).
ICANN gNSO Business Constituency	DIDP - Rec 11	The WG does suggest that exceptions for "trade secrets and commercial and financial information not publicly disclosed by ICANN" and for "confidential business information and/or internal policies and procedures" should be replaced with an exception for "material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stake-holders who have those interests" (recommendation 11). While we agree with the broad application of an actual harm standard, we do not believe the WG has made the proper case for removing the clauses in question. When businesses are required to share trade secrets or other confidential commercial information, they should have the certainty that that information will be protected from arbitrary release. We believe these existing clauses do that and should remain in place.
ICANN gNSO IPC	DIDP - Rec 11	The CCWG should not adopt Recommendation 11, which states that "The exceptions for "trade secrets and commercial and financial information not publicly disclosed by ICANN" and for "confidential business information and/or internal policies and procedures" should be replaced with an exception for "material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stake-holders who have those interests." (SEE RESPONSE FOR DETAILS)
ICANN gNSO NCSG	DIDP - Rec 11	We would also express specific support for recommendations to further clarify the exceptions for commercial information (#11) and for attorney client privilege (#15). While both of these exceptions touch on important public interests, it is vital that exceptions to protect these interests be phrased with sufficient clarity and specificity to avoid unnecessary classifications. In other words, these exceptions, like all of the others, should be grounded in a concrete test for harm that will flow from disclosures. If careful consideration supports a conclusion that no harm will result from disclosure, it stands to reason that the material should be disclosed.
ICANN gNSO RySG	DIDP - Rec 11	The Draft Transparency Report acknowledges that "non-disclosure clauses which are already in place should be respected, so that, going forward, contractors can decide for themselves whether they wish to engage with this open and transparent way of doing business" (page 9). However, this is not reflected in recommendations 11 and 16 : The recommendations should include text to guarantee that any existing contract must be honored in accordance with its terms irrespective of the new DIDP to cover among other information disclosed to ICANN under a non-disclosure agreement. Further, any new contract containing a nondisclosure agreement should have ICANN boilerplate text (in prominent font) informing the contracting party that information disclosed to ICANN is subject to public-interest disclosure. If that text did not appear then the DIDP should not apply.

ICANN org.	DIDP - Rec 11	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 6. A modification of the "confidential business information" nondisclosure condition to focus on harm to ICANN and to "stakeholders" (Recommendation 11) could make the condition broader (to cover stakeholders that have financial interests but are not under a confidentiality expectation) while limiting applicability to a vendor that some may disagree is a stakeholder.
Internet Commerce Association	DIDP - Rec 11	Likewise, the comment filed by the Business Constituency (BC), of which we are a proud member, also questions whether the WG has made the proper case for removing the clauses referenced in Recommendation 11. The BC notes that when businesses are required to share trade secrets or other confidential commercial information in a contractual context, they should have certainty that that information will be protected from arbitrary release. Therefore, notwithstanding our overall support for ICANN's adoption of open contracting for all future agreements exceeding \$5,000 in value, we support continued adherence to the nondisclosure provisions of existing contracts that ICANN has entered into in order to satisfy the reasonable expectations of their counterparties.
National Internet Exchange of India	DIDP - Rec 11	Ref: Page 8: Para commencing "The exception..... In this Para deletion of words like "trade secrets" has been proposed. I politely disagree with this. Words like "trade secrets" and "security" may be included in the proposed clause. Excluding such words may pave way for providing the same on requests which is not acceptable for stakeholders and may lead to legal issues.
ICANN gNSO IPC	DIDP - Rec 12	The CCWG should consider significant changes to Recommendation 12, which states that "Where an exception is applied to protect a third party, the DIDP should include a mechanism for contacting this third party to assess whether they would consent to the disclosure." (SEE RESPONSE FOR DETAILS)
ICANN org.	DIDP - Rec 13	On the role of the Ombudsman, if there is an allegation of unfairness in how ICANN handles a DIDP response, the Ombudsman typically has jurisdiction over that complaint. ⁹ To the extent that the Ombudsman is being tasked with new work (such as Recommendation 13 on labeling a requester as vexatious, or Recommendation 19 tasking the Ombudsman with responsibility for outreach on DIDP and reporting), the WS2 Ombudsman group is also considering the propriety of modifications to the Ombudsman's role. - Under the new ICANN Bylaws, with the expansion of the Independent Review Process to actions of staff, if a response to a DIDP is in violation of the ICANN Articles or Bylaws, that could be a proper dispute under the IRP.
National Internet Exchange of India	DIDP - Rec 13	Recommendation No.13: (This recommendation says that requests which are not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual" should be amended so that either the Ombudsman or the Complaints Officer automatically reviews any decision to use this exception). I politely disagree with this recommendation for the following reasons:- (see response for full text)
ICANN gNSO NCSG	DIDP - Rec 14	Among the other important recommendations of this section, recommendation #14 deserves to be highlighted: "The following sentence should be deleted: "Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information." "Transparency will have little meaning if ICANN can refuse requests on vague "public interest" grounds. Clearly, the standard should be higher than a mere allegation of public interest concern or even vague harm; specifically, the harm to the public interest must be greater than the public interest in accessing the information. That is fair and reasonable. Overall, the equities of the disclosure must be written to lean towards the disclosure request not against it, as the CCWG proposes. It follows that any denial of disclosure that is based upon public interest grounds should be fully justified, including the nature and specifics of the public interest(s) in question.
National Internet Exchange of India	DIDP - Rec 14	Recommendation No.14: This recommends deletion of reservation of ICANN's right to deny disclosure if the harm in disclosing the information outweighs the public interest in disclosing the information. It is suggested to retain the sentence and not delete it. This right may help ICANN in case where ICANN does not want to disclose some information for any cause of public interest.
ICANN gNSO Business Constituency	DIDP - Rec 15	Finally, we agree that the public interest override should apply only to withholding exceptions, rather than providing ICANN an additional tool to facilitate withholding (recommendation 15).
ICANN gNSO IPC	DIDP - Rec 15	The CCWG should re-examine Recommendation 15, which states that "The DIDP exception for attorney-client privilege should be narrowed so that information will only be withheld if its disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation, and explicitly mandate the disclosure of broader policy-making advice received from lawyers. (SEE RESPONSE FOR DETAILS)
ICANN gNSO NCSG	DIDP - Rec 15	We would also express specific support for recommendations to further clarify the exceptions for commercial information (#11) and for attorney client privilege (#15). While both of these exceptions touch on important public interests, it is vital that exceptions to protect these interests be phrased with sufficient clarity and specificity to avoid unnecessary classifications. In other words, these exceptions, like all of the others, should be grounded in a concrete test for harm that will flow from disclosures. If careful consideration supports a conclusion that no harm will result from disclosure, it stands to reason that the material should be disclosed. Further, we express strong support for recommendation #15: "The DIDP exception for attorney-client privilege should be narrowed so that information will only be withheld if its disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation, and explicitly mandate the disclosure of broader policy-making advice received from lawyers." We agree that attorneys at ICANN (and often those hired by ICANN) play a significantly different role than attorneys who serve typical private sector clients, due to ICANN's unique role overseeing a global public resource. Accordingly, their ability to exempt attorney work from DIDP requests should be narrowed in an analogous way to those of public sector attorneys, as the CCWG recommends.
ICANN org.	DIDP - Rec 15	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 4. Recommendation 15, requiring ICANN to proactively waive attorney-client privilege unless there is an ongoing or contemplated lawsuit or negotiation creates a directive on ICANN's internal operations and practices that could impact resourcing and operations.
National Internet Exchange of India	DIDP - Rec 15	Recommendation No.15: This recommendation speaks about disclosing the information which is under attorney client privilege if the disclosure does not affect the pending litigation or negotiation. While agreeing with this, I submit that client's permission may be necessary to disclose information which is under attorney client privilege else the concept of uberrimae fiedi (utmost good faith) will be defeated.
ICANN gNSO IPC	DIDP - Rec 16	The CCWG should not adopt Recommendation 16, which states, "ICANN should consider adopting open contracting, whereby all contracts above \$5,000 are automatically disclosed, and non-disclosure clauses are limited in their application to the legitimate exceptions found in the DIDP." (SEE RESPONSE FOR DETAILS)

ICANN gNSO RySG	DIDP - Rec 16	The Draft Transparency Report acknowledges that "non-disclosure clauses which are already in place should be respected, so that, going forward, contractors can decide for themselves whether they wish to engage with this open and transparent way of doing business" (page 9). However, this is not reflected in recommendations 11 and 16 : The recommendations should include text to guarantee that any existing contract must be honored in accordance with its terms irrespective of the new DIDP to cover among other information disclosed to ICANN under a non-disclosure agreement. Further, any new contract containing a nondisclosure agreement should have ICANN boilerplate text (in prominent font) informing the contracting party that information disclosed to ICANN is subject to public-interest disclosure. If that text did not appear then the DIDP should not apply.
ICANN org.	DIDP - Rec 16	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 5. Recommendation 16, suggesting open contracting (or the automatic disclosure of all contracts over US\$5,000 or \$10,000, and modification of non-disclosure agreements away from industry standards) represents a shift of ICANN's contracting process, and could have significant impact on ICANN's ability to serve its mission within appropriate budgetary controls and in ways that might be impractical.
ICANN org.	DIDP - Rec 17	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 2. Responses include consideration of "severability" when portions of documents are appropriate for disclosure while redacting other parts; (Recommendation 17); See https://www.icann.org/en/system/files/files/didp-response-20150717-1-morris-14aug15-en.pdf for an example of a partial release of a document in response to a DIDP Request.
ICANN org.	DIDP - Rec 18	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 3 Responses identify, by item requested, of the applicable conditions for nondisclosure, if items are not disclosed (Recommendation 18) - An example of how ICANN responds to DIDP requests on an item-by-item basis, including identification of the Defined Conditions for Nondisclosure applicable to a particular item in a request can be found at https://www.icann.org/en/system/files/files/didp-20150921-1-moody-responsesupporting-docs-21oct15-en.pdf . This has been part of ICANN's process since it first received a request with multiple requests in 2009 (https://www.icann.org/en/system/files/files/ruiz-response-05jun09-en.pdf).
National Internet Exchange of India	DIDP - Rec 18	Recommendation No.18: This speaks about appeal process. I agree with this recommendation. It may be clarified whether the Ombudsman or the Complaints Officer will be the appellate authority over the decision taken by the team rejecting the request or who is the appellate authority. The requester may be informed about the second appeal process (requester's right to challenge the challenge the decision made in appeal) and the jurisdiction the second appeal can be filed.
ICANN org.	DIDP - Rec 19	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 7. Recommendation 19, identifying a potential role for the Complaints Officer as the ongoing evaluator of the DIDP process, may not be aligned with the ICANN Org vision of the Complaints Officer role. On the role of the Ombudsman, if there is an allegation of unfairness in how ICANN handles a DIDP response, the Ombudsman typically has jurisdiction over that complaint.9 To the extent that the Ombudsman is being tasked with new work (such as Recommendation 13 on labeling a requester as vexatious, or Recommendation 19 tasking the Ombudsman with responsibility for outreach on DIDP and reporting), the WS2 Ombudsman group is also considering the propriety of modifications to the Ombudsman's role. - Under the new ICANN Bylaws, with the expansion of the Independent Review Process to actions of staff, if a response to a DIDP is in violation of the ICANN Articles or Bylaws, that could be a proper dispute under the IRP.
ICANN gNSO IPC	DIDP - Rec 21	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: Reviewing the DIDP every five (5) years to continue to assess ways to improve it.
Accessinfo Europe	General	Strong overall support
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	General	We recently published a report on Indian participation in international internet governance institutions over the last 5 years (2011-15).1 The Berkman Klein Centre for Internet and Society in their 2010 Review of ICANN's accountability and transparency noted that there is a deficit in active, passive and participatory transparency.2 It has also been argued that accountability measures normally seen in private corporations, standards bodies and government agencies are absent in the case of ICANN.3 As part of our report, stakeholders have also stated that many important discussions take place behind closed-doors, ignoring public input.4 This contrasts with the notion that ICANN operates through an open, bottom-up multistakeholder fashion. Our submission responds to specific recommendations made in the draft report and identifies areas that were not covered by the report. Respondents interviewed as part of our report highlighted specific areas where ICANN needs to be more transparent. The At Large Advisory Committee (ALAC) for instance, has come in for much criticism from Indian stakeholders for resisting accountability measures.11 ALAC not taking on board transparency recommendations has been singled out for criticism.12 In the past, we have noted that the allocation of funds from gTLD auctions functioned without an overarching framework of transparency and accountability-based criticisms.13 Other Indian stakeholders have also questioned the functioning of such a system without oversight or any framework of accountability.14 The gTLD auction proceeds and the ALAC review were two areas that were highlighted by Indian stakeholders. With this in mind, we recommend that the sub-group look at other similar processes and document areas where ICANN's transparency can be improved.
ICANN gNSO Business Constituency	General	The WG makes an important recommendation: ICANN should default toward disclosure, only making exceptions where disclosure would cause actual harm. Applied broadly, this standard can help ensure that the community has access to important information, including regarding the availability of data sets or associated with policy implementation. By following the actual harm standard, ICANN can also ensure that sensitive information, such as relates to personal employment matters or commercial data, are not unnecessarily revealed.
ICANN gNSO Business Constituency	General	While I agree to the majority of the recommendations, I humbly submit my objections for few recommendations:-
ICANN gNSO IPC	General	The IPC appreciates the improvements that have been proposed with respect to (1) enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP); (2) transparency of ICANN's interactions with governments; (3) improvements to the existing whistleblower policy; and (4) the transparency of Board deliberations. We believe these proposed measures will contribute to improved accountability.

ICANN gNSO NCSG	General	The Draft Recommendations to improve ICANN's transparency is a well-researched, well-developed, and well-thought-out document that moves ICANN in the right direction for its post-transition work, responsibilities, and accountability. The NCSG supports the thrust of the executive summary and the importance of considering each of the areas of focus – they are all key to enhancing ICANN's overall transparency. We thank the Cross-Community Working Group (CCWG) for these important recommendations. Small editorial issue: Phrasing of the first line of the second paragraph seems to suggest that transparency standards are a right – this is obviously not the case and should be reworked.
ICANN gNSO RySG	General	The RySG wishes to applaud the work by the members of the CCWG-WS2 and the WS2 Subgroup on ICANN Transparency. Transparency is instrumental for ICANN's accountability and contributes ultimately to increasing community and stakeholder trust in the ICANN organization. The presented draft recommendations offer many improvements to ICANN's transparency and the RySG expects them to be implemented within the shortest possible delay. The RySG opposes however any disclosure policy that would require ICANN to disclose any information in any form that it holds under a contractual duty of non-disclosure unless, and to the extent, that such information must clearly be disclosed under applicable law and unless, and to the extent, expressly permitted by the party(ies) to whom ICANN owes such a duty of nondisclosure.
ICANN org.	General	ICANN organization appreciates the opportunity to provide input to the CCWG WS2 Transparency Subgroup report. We are providing these inputs to the Subgroup, with a copy to the public comments for the wider community, to identify facts that will support further deliberations among the Subgroup. There are a number of recommendations that are actionable and implementable, and many excellent ideas presented. There are other recommendations where there may have been some misunderstanding of how ICANN org does things, and we provide some facts for further consideration. This input is not intended as an interference into the work of the Subgroup, but a presentation of data for the Subgroup to determine next steps. Within the report, there are some easily implemented and actionable items, such as some of the DIDP recommendations, and hotline improvements that are already underway. 1
Internet Commerce Association	General	We commend the chairs and volunteer members of the subgroup for the delivery of such a comprehensive and well-considered document within an expedited timeframe. Once this comment period is concluded we urge the subgroup to resume its activities, fully consider all comments, and deliver a final set of recommendations as quickly as possible so that the transparency recommendations can be adopted and implemented at the earliest feasible time.
ICANN gNSO NCSG	Government Interaction	We generally support the recommendations, but draw attention to our suggestions below. With regard to the recommendation "All expenditures on an itemized basis by ICANN both for outside contractors and internal personnel devoted to "political activities" both in the U.S. and abroad" we believe a threshold is necessary to ensure the approach is appropriate to achieving the goal of greater transparency. Clearly, ICANN's US\$1,000,000 threshold is too high. However, no threshold – as the report seems to suggest – may well be too low. A threshold of US\$20,000 may be a reasonable number that should encompass most lobbying/education/engagement activities. One issue not raised in the report is the inadequacy of the rather ambiguous category of "education/engagement." These are not the same thing, and it would be helpful – as well as bring clarity to this important aspect of overall transparency – if this "term" were further elaborated on and possibly broken down into more specific activities.
ICANN gNSO Business Constituency	Government Interaction - General	We, therefore, are supportive of the WG's recommendations, favoring increased reporting on political activities that produce increased transparency beyond what might be required by the letter of the law.
ICANN gNSO IPC	Government Interaction - General	The IPC supports recommendations that would improve the documenting and reporting of ICANN's interactions with governments.
ICANN org.	Government Interaction - General	The subgroup has identified that for "greater clarity with regard to how ICANN engages government stakeholders" and providing awareness of "interactions with governments", that ICANN should produce a detailed register including costs for engagement, engagement activities and topics of discussion for interactions beyond those lobbying activities. This is another area that might impose extra costs or have unintended effects on ICANN. Some questions or issues that could be part of future Subgroup deliberations on this issue could include: (SEE RESPONSE FOR DETAILS)
Internet Commerce Association	Government Interaction - General	We therefore enthusiastically endorse the recommendations that ICANN begin disclosing publicly the following (notwithstanding any contractual confidentiality provisions) on at least a yearly basis:
ICANN gNSO NCSG	Whistleblower - General	There does not seem to be a link in the Work Stream 2 (WS2) report to the NAVEX Global report.1 In addition, the policy and procedures should have a link.2 Hotline Policy Scope section: The NCSG agrees with the issues raised in the report related to the matter of the definition of "business partner" and believes that this should be further defined and the scope clarified. One issue that is unclear is if external issues go to the Ombudsman to whom do internal issues go to? How are complaints or issues raised by employees on the hotline addressed? We would like clarity as to who comprises the Hotline Committee; if it is four Board members, there may need to be a more independent mechanism to review these complaints. Having an outside entity manage the hotline is useful, but if the review is internal – by Board members – then it defeats the purpose of outsourcing and thereby the impartiality of the mechanism as a whole. We would recommend that two of the members should be external to the Board, possibly Nominating Committee (Nomcom) appointments.
ICANN org.	Whistleblower - General	The Subgroup's recommendations are well aligned with the Navex Report commissioned by ICANN to review the Anonymous Hotline. ICANN has already implemented some of the modifications to the policy,13 and is on schedule for the remainder of the modifications to be in place by the end of the fiscal year. In terms of publication of the policy, ICANN is currently evaluating where this and other employment policies can appropriately be posted on the website. - For now, the collection of policies are accessible off of the WS2 Staff Accountability Subgroup wiki page at https://community.icann.org/display/WEIA/Staff+Accountability . When posting the policies, the general publication of the hotline numbers on ICANN's website may be inconsistent with the Navex recommendation that the hotline not be opened up generally to the broader ICANN community. ICANN Org agrees with the Subgroup that the numbers should be easily accessible to any those that are covered by the policy. Internally, there are multiple places where ICANN employees can locate the hotline phone numbers. As the policy is extended to business partners, ICANN is already looking into tools to make the numbers easily accessible without need to make them generally available to anyone visiting ICANN's website.
Internet Commerce Association	Whistleblower - General	We therefore enthusiastically support the proposed strengthening improvements of ICANN's Hotline Policy and Procedures. In particular, we applaud the proposed broadening of incidents meriting reports beyond "serious issues", to encourage the report of all issues and concerns in potential violation of applicable law or organization standards.
National Internet Exchange of India	Whistleblower - General	Page 17 (Last Para): Hotline Policy Scope: It is noted that the scope is more widened to include stakeholders under the hotline policy (stakeholders including registries, registrars, governments and so on and future contract of operation with ICANN). I humbly submit that this may lead to complications for the following reasons:-Page 18: Para 3: commencing "Another measure.... In this Para "email, personal email, phone call etc" have been suggested as medium for acknowledging the receipt of the report of the reporter under hotline policy. I suggest including "sms" also.
ICANN gNSO NCSG	Whistleblower - Rec 02	Recommendation 2: consider renaming the "hotline" or Whistleblower line to the more formal "Confidential disclosure of wrongdoing reporting line." Translation issues arise from the use of such local, vernacular expressions.

ICANN gNSO Business Constituency	Whistleblower - Rec 03	The Anonymous Hotline provides ICANN employees to report problematic behavior. We strongly agree with the WG that the program must be broadened to include "all issues and concerns related to behavior that may violate local laws and conflict with organizational standards of behavior" (recommendation 3).
Internet Commerce Association	Whistleblower - Rec 03	We therefore enthusiastically support the proposed strengthening improvements of ICANN's Hotline Policy and Procedures. In particular, we applaud the proposed broadening of incidents meriting reports beyond "serious issues", to encourage the report of all issues and concerns in potential violation of applicable law or organization standards.
ICANN gNSO Business Constituency	Whistleblower - Rec 04	In order to be effective, the program should be adequately resourced and well administered (recommendation 4).
National Internet Exchange of India	Whistleblower - Rec 06	Page 18: Para 4: This Para outlines that classifying "urgent" and "non-urgent" is too arbitrary. This is a good consideration and I agree with this. Every report must be treated without differentiation on urgent and non urgent basis.
ICANN gNSO Business Constituency	Whistleblower - Rec 07	Further, it is essential that any ICANN whistleblower be protected from retaliation, and we support the WGs associated recommendation (recommendation 7).
ICANN gNSO NCSG	Whistleblower - Rec 07	Recommendation 7 - revise as follows: ICANN needs to more effectively address complaints of retaliation against the reporter by stating unequivocally that alleged retaliation will be investigated by an independent panel of experts. In order to address the reluctance of potential reporters of wrongdoing due to fear of retaliation, this independent review needs to be clearly advertised, and the policy must state clearly that any reports of retaliation will be investigated independently with the same level of rigor as alleged wrongdoing. ICANN should also guarantee remedies for reporters who suffer from retaliation as well as clarify that good faith reporting of suspected wrongdoing will be protected from liability.
Internet Commerce Association	Whistleblower - Rec 07	We also agree that ICANN needs to more effectively address potential fear of retaliation against the reporter by stating unequivocally that alleged retaliation will be investigated with the same level of rigor as alleged wrongdoing. ICANN should also guarantee a meaningful remedy for reporters who experience retaliation, as well as clarify that the good faith reporting of suspected wrong-doing will be broadly protected from liability.
ICANN org.	Whistleblower - Rec 08	Finally, the Subgroup's recommendation for a regular review of the hotline is also well taken, though imposing a 2-year cycle of review may impose costs that are not practical as a standard operating procedure.
ICANN gNSO NCSG	Whistleblower - Rec 08?	Recommendation 8: While we understand the different triggers for the development of these different policies, all related to transparency, thought should be given at this point in time to incorporating them all in a revised, integrated policy suite. The key issue for the harassment policy, the acceptable behaviour standards and the "hotline" is the reporting of wrongdoing. The policy and procedures are not clear enough between these accountability mechanisms, and there should be linkages between them and common definitions. Much behaviour crosses lines, and in a multistakeholder environment it should be clear to anyone, staff, contractor, contracted party, or ordinary stakeholder that they may complain about a variety of behaviour. Who you report to could very well depend on your status, but again, bringing them into one policy suite would make the avenues more clear.
ICANN gNSO NCSG	Whistleblower - Rec 09?	Recommendation 9: NCSG has commented in the past that ICANN needs a privacy policy. On the issue of data protection rights with respect to these policies, it is commendable that the organization is keeping up and issuing statements related to the data protection rights in Singapore and Brussels. However, ICANN has offices in other jurisdictions, or employees working in other jurisdictions and therefore maintaining records in other jurisdictions with data protection law. A more fulsome explanation of what rights all individuals have under data protection law should go into the whistleblower procedures. People need to know that whoever they talk about may have access rights to their testimony. We therefore recommend the development of a comprehensive privacy policy for ICANN, so that there is some consistency in approach to the handling of personal information in all jurisdictions, particularly across these various policies that are aimed at enhancing accountability and transparency.

Respondent	Category	Comment
Accessinfo Europe	General	Strong overall support
ICANN gNSO Business Constituency	General	The WG makes an important recommendation: ICANN should default toward disclosure, only making exceptions where disclosure would cause actual harm. Applied broadly, this standard can help ensure that the community has access to important information, including regarding the availability of data sets or associated with policy implementation. By following the actual harm standard, ICANN can also ensure that sensitive information, such as relates to personal employment matters or commercial data, are not unnecessarily revealed.
ICANN gNSO Business Constituency	DIDP - Rec 01	We agree with the working group that its scope should be broadened beyond simply covering ICANN's "operational activities" (recommendation 1).
ICANN gNSO Business Constituency	DIDP - Rec 03	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4)
ICANN gNSO Business Constituency	DIDP - Rec 04	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4)
ICANN gNSO Business Constituency	DIDP - Rec 06	We also find helpful the recommendations that the DIDP should include clear guidelines for requestors and ICANN (recommendations 3 and 4) and that any response extension be capped at 30 days (recommendation 6).
ICANN gNSO Business Constituency	DIDP - Rec 11	The WG does suggest that exceptions for "trade secrets and commercial and financial information not publicly disclosed by ICANN" and for "confidential business information and/or internal policies and procedures" should be replaced with an exception for "material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stake-holders who have those interests" (recommendation 11). While we agree with the broad application of an actual harm standard, we do not believe the WG has made the proper case for removing the clauses in question. When businesses are required to share trade secrets or other confidential commercial information, they should have the certainty that that information will be protected from arbitrary release. We believe these existing clauses do that and should remain in place.
ICANN gNSO Business Constituency	DIDP - Rec 15	Finally, we agree that the public interest override should apply only to withholding exceptions, rather than providing ICANN an additional tool to facilitate withholding (recommendation 15).
ICANN gNSO Business Constituency	Government Interaction - General	We, therefore, are supportive of the WGs recommendations, favoring increased reporting on political activities that produce increased transparency beyond what might be required by the letter of the law.
ICANN gNSO Business Constituency	Board Transparency - Rec 02	Most importantly, we believe the WGs suggestion for a bylaw revision explicitly stating the terms for withholding minutes would help standardize ICANN's transparency approach and provide the community proper redress through the IRP (recommendation 2).
ICANN gNSO Business Constituency	Board Transparency - Rec 03	We also support the WG's call for specific time limits on withholding of information related to Board decisions (recommendation 3).
ICANN gNSO Business Constituency	Whistleblower - Rec 03	The Anonymous Hotline provides ICANN employees to report problematic behavior. We strongly agree with the WG that the program must be broadened to include "all issues and concerns related to behavior that may violate local laws and conflict with organizational standards of behavior" (recommendation 3).
ICANN gNSO Business Constituency	Whistleblower - Rec 04	In order to be effective, the program should be adequately resourced and well administered (recommendation 4).
ICANN gNSO Business Constituency	Whistleblower - Rec 07	Further, it is essential that any ICANN whistleblower be protected from retaliation, and we support the WGs associated recommendation (recommendation 7).
ICANN gNSO Business Constituency	General	While I agree to the majority of the recommendations, I humbly submit my objections for few recommendations:-
National Internet Exchange of India	DIDP - Rec 03	Recommendation No.3: E-filing of reports/complaints may be permitted. The said recommendation does not mention about e-filings. At the same time sending reports/complaints by letters and fax may also be encouraged. I request that the recommendation may be modified to mention e-filing of complaints.
National Internet Exchange of India	DIDP - Rec 09	Recommendation No.9: This recommendation relates to root server aspects. I would like to know if any comments or advice has been received from Root Server System Advisor Committee (RSSAC).
National Internet Exchange of India	DIDP - Rec 11	Ref: Page 8: Para commencing "The exception..... In this Para deletion of words like "trade secrets" has been proposed. I politely disagree with this. Words like "trade secrets" and "security" may be included in the proposed clause. Excluding such words may pave way for providing the same on requests which is not acceptable for stakeholders and may lead to legal issues.
National Internet Exchange of India	DIDP - Rec 13	Recommendation No.13: (This recommendation says that requests which are not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual" should be amended so that either the Ombudsman or the Complaints Officer automatically reviews any decision to use this exception). I politely disagree with this recommendation for the following reasons:- (see response for full text)
National Internet Exchange of India	DIDP - Rec 14	Recommendation No.14: This recommends deletion of reservation of ICANN's right to deny disclosure if the harm in disclosing the information outweighs the public interest in disclosing the information. It is suggested to retain the sentence and not delete it. This right may help ICANN in case where ICANN does not want to disclose some information for any cause of public interest.
National Internet Exchange of India	DIDP - Rec 15	Recommendation No.15: This recommendation speaks about disclosing the information which is under attorney client privilege if the disclosure does not affect the pending litigation or negotiation. While agreeing with this, I submit that client's permission may be necessary to disclose information which is under attorney client privilege else the concept of uberrimae fiedi (utmost good faith) will be defeated.
National Internet Exchange of India	DIDP - Rec 18	Recommendation No.18: This speaks about appeal process. I agree with this recommendation. It may be clarified whether the Ombudsman or the Complaints Officer will be the appellate authority over the decision taken by the team rejecting the request or who is the appellate authority. The requester may be informed about the second appeal process (requester's right to challenge the challenge the decision made in appeal) and the jurisdiction the second appeal can be filed.
National Internet Exchange of India	DIDP - General	Comments on Page 6: Para commencing "Another problem..... In this Para it is noted that the calendar days for replying to the requester was derived from practices adopted by individual countries (Serbia, Denmark, Lithuania, Bulgaria, Indonesia and India). In my humble opinion taking countries into account may not be appropriate, instead practices/methods adopted by similar Not for Profit (International Organizations) could have been considered.
National Internet Exchange of India	Whistleblower - General	Page 17 (Last Para): Hotline Policy Scope: It is noted that the scope is more widened to include stakeholders under the hotline policy (stakeholders including registries, registrars, governments and so on and future contract of operation with ICANN). I humbly submit that this may lead to complications for the following reasons:-Page 18: Para 3: commencing "Another measure.... In this Para "email, personal email, phone calls etc" have been suggested as medium for acknowledging the receipt of the report of the reporter under hotline policy. I suggest including "sms" also.
National Internet Exchange of India	Whistleblower - Rec 06	Page 18: Para 4: This Para outlines that classifying "urgent" and "non-urgent" is too arbitrary. This is a good consideration and I agree with this. Every report must be treated without differentiation on urgent and non urgent basis.

ICANN gNSO RySG	General	The RySG wishes to applaud the work by the members of the CCWG-WS2 and the WS2 Subgroup on ICANN Transparency. Transparency is instrumental for ICANN's accountability and contributes ultimately to increasing community and stakeholder trust in the ICANN organization. The presented draft recommendations offer many improvements to ICANN's transparency and the RySG expects them to be implemented within the shortest possible delay. The RySG opposes however any disclosure policy that would require ICANN to disclose any information in any form that it holds under a contractual duty of non-disclosure unless, and to the extent, that such information must clearly be disclosed under applicable law and unless, and to the extent, expressly permitted by the party(ies) to whom ICANN owes such a duty of nondisclosure.
ICANN gNSO RySG	DIDP - Rec 11	The Draft Transparency Report acknowledges that "non-disclosure clauses which are already in place should be respected, so that, going forward, contractors can decide for themselves whether they wish to engage with this open and transparent way of doing business" (page 9). However, this is not reflected in recommendations 11 and 16 : The recommendations should include text to guarantee that any existing contract must be honored in accordance with its terms irrespective of the new DIDP to cover among other information disclosed to ICANN under a non-disclosure agreement. Further, any new contract containing a nondisclosure agreement should have ICANN boilerplate text (in prominent font) informing the contracting party that information disclosed to ICANN is subject to public-interest disclosure. If that text did not appear then the DIDP should not apply.
ICANN gNSO RySG	DIDP - Rec 16	The Draft Transparency Report acknowledges that "non-disclosure clauses which are already in place should be respected, so that, going forward, contractors can decide for themselves whether they wish to engage with this open and transparent way of doing business" (page 9). However, this is not reflected in recommendations 11 and 16 : The recommendations should include text to guarantee that any existing contract must be honored in accordance with its terms irrespective of the new DIDP to cover among other information disclosed to ICANN under a non-disclosure agreement. Further, any new contract containing a nondisclosure agreement should have ICANN boilerplate text (in prominent font) informing the contracting party that information disclosed to ICANN is subject to public-interest disclosure. If that text did not appear then the DIDP should not apply.
ICANN gNSO RySG	DIDP - General	The RySG is further concerned that some of the recommendations may impose a burden on DIDP staff or may have significant budgetary implications that might not be in proportion with the intended goal of the policy. ICANN is in a better position to assess possible cost drivers and to suggest fine-tuning (subject to community comment) that manages operational impact while maintaining a robust DIDP policy. Nonetheless, the RySG believes that some additional work is required on the DIDP to ensure that the operational impact to ICANN is maintained at a reasonable level consistent with such a robust policy. This might include steps to prevent unreasonable fishing expeditions, the imposition of costs on requests demanding ICANN-staff effort beyond a certain level, or other such approaches. At bottom, however, the RySG believes that the draft DIDP policy is not yet ready for final approval.
ICANN gNSO NCSG	General	The Draft Recommendations to improve ICANN's transparency is a well-researched, well-developed, and well-thought-out document that moves ICANN in the right direction for its post-transition work, responsibilities, and accountability. The NCSG supports the thrust of the executive summary and the importance of considering each of the areas of focus – they are all key to enhancing ICANN's overall transparency. We thank the Cross-Community Working Group (CCWG) for these important recommendations. Small editorial issue: Phrasing of the first line of the second paragraph seems to suggest that transparency standards are a right – this is obviously not the case and should be reworked.
ICANN gNSO NCSG	DIDP - General	Overall, the recommendations for improving the DIDP seem very reasonable and are to be commended.
ICANN gNSO NCSG	DIDP - Rec 11	We would also express specific support for recommendations to further clarify the exceptions for commercial information (#11) and for attorney client privilege (#15). While both of these exceptions touch on important public interests, it is vital that exceptions to protect these interests be phrased with sufficient clarity and specificity to avoid unnecessary classifications. In other words, these exceptions, like all of the others, should be grounded in a concrete test for harm that will flow from disclosures. If careful consideration supports a conclusion that no harm will result from disclosure, it stands to reason that the material should be disclosed.
ICANN gNSO NCSG	DIDP - Rec 14	Among the other important recommendations of this section, recommendation #14 deserves to be highlighted: "The following sentence should be deleted: "Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information." "Transparency will have little meaning if ICANN can refuse requests on vague "public interest" grounds. Clearly, the standard should be higher than a mere allegation of public interest concern or even vague harm; specifically, the harm to the public interest must be greater than the public interest in accessing the information. That is fair and reasonable. Overall, the equities of the disclosure must be written to lean towards the disclosure request not against it, as the CCWG proposes. It follows that any denial of disclosure that is based upon public interest grounds should be fully justified, including the nature and specifics of the public interest(s) in question.
ICANN gNSO NCSG	DIDP - Rec 15	We would also express specific support for recommendations to further clarify the exceptions for commercial information (#11) and for attorney client privilege (#15). While both of these exceptions touch on important public interests, it is vital that exceptions to protect these interests be phrased with sufficient clarity and specificity to avoid unnecessary classifications. In other words, these exceptions, like all of the others, should be grounded in a concrete test for harm that will flow from disclosures. If careful consideration supports a conclusion that no harm will result from disclosure, it stands to reason that the material should be disclosed. Further, we express strong support for recommendation #15: "The DIDP exception for attorney-client privilege should be narrowed so that information will only be withheld if its disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation, and explicitly mandate the disclosure of broader policy-making advice received from lawyers." We agree that attorneys at ICANN (and often those hired by ICANN) play a significantly different role than attorneys who serve typical private sector clients, due to ICANN's unique role overseeing a global public resource. Accordingly, their ability to exempt attorney work from DIDP requests should be narrowed in an analogous way to those of public sector attorneys, as the CCWG recommends.
ICANN gNSO NCSG	Government Interaction	We generally support the recommendations, but draw attention to our suggestions below. With regard to the recommendation "All expenditures on an itemized basis by ICANN both for outside contractors and internal personnel devoted to "political activities" both in the U.S. and abroad" we believe a threshold is necessary to ensure the approach is appropriate to achieving the goal of greater transparency. Clearly, ICANN's US\$1,000,000 threshold is too high. However, no threshold – as the report seems to suggest – may well be too low. A threshold of US\$20,000 may be a reasonable number that should encompass most lobbying/education/engagement activities. One issue not raised in the report is the inadequacy of the rather ambiguous category of "education/engagement." These are not the same thing, and it would be helpful – as well as bring clarity to this important aspect of overall transparency – if this "term" were further elaborated on and possibly broken down into more specific activities.

ICANN gNSO NCSG	Board Transparency - General	As with the report's findings for the DIDP, the NCSG supports the report's call for greater guidance, structure, and specificity with respect to the Board's exemptions from disclosure. We also note the Board's suggestion at the 2017 Copenhagen meeting (ICANN58) that its minutes and other documentation provide more information and a rationale for decisions taken by the Board. The NCSG supports the recommendations with regard to transparency of Board deliberations.
ICANN gNSO NCSG	Whistleblower - General	There does not seem to be a link in the Work Stream 2 (WS2) report to the NAVEX Global report. ¹ In addition, the policy and procedures should have a link. ² Hotline Policy Scope section: The NCSG agrees with the issues raised in the report related to the matter of the definition of "business partner" and believes that this should be further defined and the scope clarified. One issue that is unclear is if external issues go to the Ombudsman to whom do internal issues go to? How are complaints or issues raised by employees on the hotline addressed? We would like clarity as to who comprises the Hotline Committee; if it is four Board members, there may need to be a more independent mechanism to review these complaints. Having an outside entity manage the hotline is useful, but if the review is internal – by Board members – then it defeats the purpose of outsourcing and thereby the impartiality of the mechanism as a whole. We would recommend that two of the members should be external to the Board, possibly Nominating Committee (Nomcom) appointments.
ICANN gNSO NCSG	Whistleblower - Rec 02	Recommendation 2: consider renaming the "hotline" or Whistleblower line to the more formal "Confidential disclosure of wrongdoing reporting line." Translation issues arise from the use of such local, vernacular expressions.
ICANN gNSO NCSG	Whistleblower - Rec 07	Recommendation 7 - revise as follows: ICANN needs to more effectively address complaints of retaliation against the reporter by stating unequivocally that alleged retaliation will be investigated by an independent panel of experts. In order to address the reluctance of potential reporters of wrongdoing due to fear of retaliation, this independent review needs to be clearly advertised, and the policy must state clearly that any reports of retaliation will be investigated independently with the same level of rigor as alleged wrongdoing. ICANN should also guarantee remedies for reporters who suffer from retaliation as well as clarify that good faith reporting of suspected wrongdoing will be protected from liability.
ICANN gNSO NCSG	Whistleblower - Rec 08?	Recommendation 8: While we understand the different triggers for the development of these different policies, all related to transparency, thought should be given at this point in time to incorporating them all in a revised, integrated policy suite. The key issue for the harassment policy, the acceptable behaviour standards and the "hotline" is the reporting of wrongdoing. The policy and procedures are not clear enough between these accountability mechanisms, and there should be linkages between them and common definitions. Much behaviour crosses lines, and in a multistakeholder environment it should be clear to anyone, staff, contractor, contracted party, or ordinary stakeholder that they may complain about a variety of behaviour. Who you report to could very well depend on your status, but again, bringing them into one policy suite would make the avenues more clear.
ICANN gNSO NCSG	Whistleblower - Rec 09?	Recommendation 9: NCSG has commented in the past that ICANN needs a privacy policy. On the issue of data protection rights with respect to these policies, it is commendable that the organization is keeping up and issuing statements related to the data protection rights in Singapore and Brussels. However, ICANN has offices in other jurisdictions, or employees working in other jurisdictions and therefore maintaining records in other jurisdictions with data protection law. A more fulsome explanation of what rights all individuals have under data protection law should go into the whistleblower procedures. People need to know that whoever they talk about may have access rights to their testimony. We therefore recommend the development of a comprehensive privacy policy for ICANN, so that there is some consistency in approach to the handling of personal information in all jurisdictions, particularly across these various policies that are aimed at enhancing accountability and transparency.
ICANN gNSO IPC	General	The IPC appreciates the improvements that have been proposed with respect to (1) enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP); (2) transparency of ICANN's interactions with governments; (3) improvements to the existing whistleblower policy; and (4) the transparency of Board deliberations. We believe these proposed measures will contribute to improved accountability.
ICANN gNSO IPC	DIDP - General	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for:
ICANN gNSO IPC	DIDP - Rec 02	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: o Clarifying the duty of ICANN staff to fully and accurately document records;
ICANN gNSO IPC	DIDP - Rec 06	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: That requests should receive a response "as soon as reasonably possible" with a cap on timeline extensions being an additional 30 days;
ICANN gNSO IPC	DIDP - Rec 11	The CCWG should not adopt Recommendation 11, which states that "The exceptions for "trade secrets and commercial and financial information not publicly disclosed by ICANN" and for "confidential business information and/or internal policies and procedures" should be replaced with an exception for "material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stake-holders who have those interests." (SEE RESPONSE FOR DETAILS)
ICANN gNSO IPC	DIDP - Rec 12	The CCWG should consider significant changes to Recommendation 12, which states that "Where an exception is applied to protect a third party, the DIDP should include a mechanism for contacting this third party to assess whether they would consent to the disclosure."(SEE RESPONSE FOR DETAILS)
ICANN gNSO IPC	DIDP - Rec 15	The CCWG should re-examine Recommendation 15, which states that "The DIDP exception for attorney-client privilege should be narrowed so that information will only be withheld if its disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation, and explicitly mandate the disclosure of broader policy-making advice received from lawyers. (SEE RESPONSE FOR DETAILS)
ICANN gNSO IPC	DIDP - Rec 16	The CCWG should not adopt Recommendation 16, which states, "ICANN should consider adopting open contracting, whereby all contracts above \$5,000 are automatically disclosed, and non-disclosure clauses are limited in their application to the legitimate exceptions found in the DIDP." (SEE RESPONSE FOR DETAILS)
ICANN gNSO IPC	DIDP - Rec 21	The IPC offers general support for improvements to ICANN's DIDP, which will contribute to needed transparency in ICANN's processes and decision-making. Specifically, we note our support for: Reviewing the DIDP every five (5) years to continue to assess ways to improve it.
ICANN gNSO IPC	Government Interaction - General	The IPC supports recommendations that would improve the documenting and reporting of ICANN's interactions with governments.
ICANN gNSO IPC	Board Transparency - General	The IPC supports recommendations that would improve transparency into ICANN Board deliberations.
Internet Commerce Association	General	We commend the chairs and volunteer members of the subgroup for the delivery of such a comprehensive and well-considered document within an expedited timeframe. Once this comment period is concluded we urge the subgroup to resume its activities, fully consider all comments, and deliver a final set of recommendations as quickly as possible so that the transparency recommendations can be adopted and implemented at the earliest feasible time.
Internet Commerce Association	DIDP - General	We therefore enthusiastically support the great majority of the recommendations made with the aim of converting the DIDP into a far more robust and useful procedure. (SEE RESPONSE FOR DETAILS)

Internet Commerce Association	DIDP - Rec 11	Likewise, the comment filed by the Business Constituency (BC), of which we are a proud member, also questions whether the WG has made the proper case for removing the clauses referenced in Recommendation 11. The BC notes that when businesses are required to share trade secrets or other confidential commercial information in a contractual context, they should have certainty that that information will be protected from arbitrary release. Therefore, notwithstanding our overall support for ICANN's adoption of open contracting for all future agreements exceeding \$5,000 in value, we support continued adherence to the nondisclosure provisions of existing contracts that ICANN has entered into in order to satisfy the reasonable expectations of their counterparties.
Internet Commerce Association	Government Interaction - General	We therefore enthusiastically endorse the recommendations that ICANN begin disclosing publicly the following (notwithstanding any contractual confidentiality provisions) on at least a yearly basis:
Internet Commerce Association	Board Transparency - Rec 01	We therefore enthusiastically endorse the recommendations that
Internet Commerce Association	Board Transparency - Rec 02	We therefore enthusiastically endorse the recommendations that
Internet Commerce Association	Board Transparency - Rec 03	We therefore enthusiastically endorse the recommendations that
Internet Commerce Association	Whistleblower - General	We therefore enthusiastically support the proposed strengthening improvements of ICANN's Hotline Policy and Procedures. In particular, we applaud the proposed broadening of incidents meriting reports beyond "serious issues", to encourage the report of all issues and concerns in potential violation of applicable law or organization standards.
Internet Commerce Association	Whistleblower - Rec 03	We therefore enthusiastically support the proposed strengthening improvements of ICANN's Hotline Policy and Procedures. In particular, we applaud the proposed broadening of incidents meriting reports beyond "serious issues", to encourage the report of all issues and concerns in potential violation of applicable law or organization standards.
Internet Commerce Association	Whistleblower - Rec 07	We also agree that ICANN needs to more effectively address potential fear of retaliation against the reporter by stating unequivocally that alleged retaliation will be investigated with the same level of rigor as alleged wrongdoing. ICANN should also guarantee a meaningful remedy for reporters who experience retaliation, as well as clarify that the good faith reporting of suspected wrong-doing will be broadly protected from liability.
ICANN org.	General	ICANN organization appreciates the opportunity to provide input to the CCWG WS2Transparency Subgroup report. We are providing these inputs to the Subgroup, with a copy to the public comments for the wider community, to identify facts that will support further deliberations among the Subgroup. There are a number of recommendations that are actionable and implementable, and many excellent ideas presented. There are other recommendations where there may have been some misunderstanding of how ICANN org does things, and we provide some facts for further consideration. This input is not intended as an interference into the work of the Subgroup, but a presentation of data for the Subgroup to determine next steps. Within the report, there are some easily implemented and actionable items, such as some of the DIDP recommendations, and hotline improvements that are already underway. 1
ICANN org.	DIDP - General	A presumption of a right to access information and a presumption of availability of information, as identified by the Subgroup, is a positive baseline for the organization. Some of the recommendations, such as Recommendation 4, suggesting that ICANN should provide further assistance to requesters, provide a good baseline for enhancements to the DIDP process. Having documentation of how and when ICANN will reach out to requesters if a DIDP request is unclear makes sense. Similarly, Recommendation 6, encouraging responses as soon as possible, furthers access to information. Enhanced reporting (Recommendation 20) is already under design. Recommendation 21 (setting a regular review cycle of the DIDP) demonstrates how the process can be set for continuous improvement.
ICANN org.	DIDP - Rec 02	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 1. Recommendation 2, as written, could mandate a specific document management practice. While proper record keeping is essential, document retention and maintenance practices designed to organizational needs are matters of operational excellence and legal compliance and not solely transparency.8 - The Information Transparency Initiative and the Open Data Initiative, each discussed in the most recent Board Report prepared through the CEO's office (https://www.icann.org/static_documents/executive-team-reports-march-2017-public.pdf) are expected to result in additional information being available to the ICANN Community and being more easily accessible to the public.
ICANN org.	DIDP - Rec 04	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 4 ICANN maintains a DIDP Response Process document identifying how requests are handled, including a centralization of the response function, at https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf (Recommendation 4);
ICANN org.	DIDP - Rec 05	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 2 Recommendation 5, regarding requester's preference of document format, suggests that it is an appropriate use of ICANN resources to come to ICANN and request documents that are already public be provided to individuals in a different format.
ICANN org.	DIDP - Rec 06	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 5. ICANN has never taken 60 days to respond to a DIDP request, and since 2013 has responded to every request within a 30-day timeframe. - Since 2013, ICANN has responded to every DIDP Request within 30 days of receipt. Request 20121027 was responded to within 31 days.

ICANN org.	DIDP - Rec 08	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 1. Responses reference information that is already public through the development of narrative responses to requests (Recommendation 8) - Narrative responses identifying publicly available information are a regular part of the DIDP response process. Sampling responses across years, a few examples of this practice are: https://www.icann.org/en/system/files/files/didp-20170125-1-sobel-response-24feb17-en.pdf (2017); https://www.icann.org/en/system/files/files/didp-20160502-1-cis-response-01jun16-en.pdf (2016); 6. DIDPs typically are submitted after some level of outreach to ICANN to see if the documentation is already available. : 7. As stated in the DIDP Response Document, "Documents that have been determined as responsive and appropriate for public disclosure are posted in the appropriate locations on ICANN's website." This is in service of the idea that if a document is appropriate to release to a single person or entity within the ICANN community, it is likely appropriate for it to have a home on ICANN's website for more general availability. - See, for example, Request 20150407-1, https://www.icann.org/resources/pages/20150407-1-2015-05-08-en , which discusses which documents will be made available in response to the DIDP Request, and where they are located on the ICANN website. ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN: 3. Recommendation 8, encouraging the use of the DIDP process to seek narrative discussion of information that is known to be publicly available could impose resource and costs.
ICANN org.	DIDP - Rec 11	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 6. A modification of the "confidential business information" nondisclosure condition to focus on harm to ICANN and to "stakeholders" (Recommendation 11) could make the condition broader (to cover stakeholders that have financial interests but are not under a confidentiality expectation) while limiting applicability to a vendor that some may disagree is a stakeholder.
ICANN org.	DIDP - Rec 13	On the role of the Ombudsman, if there is an allegation of unfairness in how ICANN handles a DIDP response, the Ombudsman typically has jurisdiction over that complaint.9 To the extent that the Ombudsman is being tasked with new work (such as Recommendation 13 on labeling a requester as vexatious, or Recommendation 19 tasking the Ombudsman with responsibility for outreach on DIDP and reporting), the WS2 Ombudsman group is also considering the propriety of modifications to the Ombudsman's role. - Under the new ICANN Bylaws, with the expansion of the Independent Review Process to actions of staff, if a response to a DIDP is in violation of the ICANN Articles or Bylaws, that could be a proper dispute under the IRP.
ICANN org.	DIDP - Rec 15	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 4. Recommendation 15, requiring ICANN to proactively waive attorney-client privilege unless there is an ongoing or contemplated lawsuit or negotiation creates a directive on ICANN's internal operations and practices that could impact resourcing and operations.
ICANN org.	DIDP - Rec 16	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 5. Recommendation 16, suggesting open contracting (or the automatic disclosure of all contracts over US\$5,000 or \$10,000, and modification of non-disclosure agreements away from industry standards) represents a shift of ICANN's contracting process, and could have significant impact on ICANN's ability to serve its mission within appropriate budgetary controls and in ways that might be impractical.
ICANN org.	DIDP - Rec 17	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 2. Responses include consideration of "severability" when portions of documents are appropriate for disclosure while redacting other parts; (Recommendation 17); See https://www.icann.org/en/system/files/files/didp-response-20150717-1-morris-14aug15-en.pdf for an example of a partial release of a document in response to a DIDP Request.
ICANN org.	DIDP - Rec 18	ICANN org notes some factual information about DIDP practices already in place within ICANN may be helpful for the Subgroup's further dialogue. The DIDP process in practice already includes the following: 3 Responses identify, by item requested, of the applicable conditions for nondisclosure, if items are not disclosed (Recommendation 18) - An example of how ICANN responds to DIDP requests on an item-by-item basis, including identification of the Defined Conditions for Nondisclosure applicable to a particular item in a request can be found at https://www.icann.org/en/system/files/files/didp-20150921-1-moody-responsesupporting-docs-21oct15-en.pdf . This has been part of ICANN's process since it first received a request with multiple requests in 2009 (https://www.icann.org/en/system/files/files/ruiz-response-05jun09-en.pdf).
ICANN org.	DIDP - Rec 19	ICANN operates within a specific budget. With the limited funding, recommendations that add costs to ICANN's operations then result in trade offs to other items, such as the ability for community to implement new policies, or innovate on programs or other work underway. There are a few recommendations that could impose costs, or otherwise result in unintended effects on ICANN 7. Recommendation 19, identifying a potential role for the Complaints Officer as the ongoing evaluator of the DIDP process, may not be aligned with the ICANN Org vision of the Complaints Officer role. On the role of the Ombudsman, if there is an allegation of unfairness in how ICANN handles a DIDP response, the Ombudsman typically has jurisdiction over that complaint.9 To the extent that the Ombudsman is being tasked with new work (such as Recommendation 13 on labeling a requester as vexatious, or Recommendation 19 tasking the Ombudsman with responsibility for outreach on DIDP and reporting), the WS2 Ombudsman group is also considering the propriety of modifications to the Ombudsman's role. - Under the new ICANN Bylaws, with the expansion of the Independent Review Process to actions of staff, if a response to a DIDP is in violation of the ICANN Articles or Bylaws, that could be a proper dispute under the IRP.
ICANN org.	Government Interaction - General	The subgroup has identified that for "greater clarity with regard to how ICANN engages government stakeholders" and providing awareness of "interactions with governments", that ICANN should produce a detailed register including costs for engagement, engagement activities and topics of discussion for interactions beyond those lobbying activities. This is another area that might impose extra costs or have unintended effects on ICANN. Some questions or issues that could be part of future Subgroup deliberations on this issue could include: (SEE RESPONSE FOR DETAILS)

ICANN org.	Board Transparency - Rec 01	Of the three recommendations presented in this section, ICANN org has some key areas where it agrees with the Subgroup. First, documents/information already provided to a third party (without obligation to keep as confidential) should not be withheld simply because of a deliberative process exception. (Recommendation 1).
ICANN org.	Board Transparency - Rec 02	Recommendation 2, on the types of information appropriate to redact from minutes, will need to be revisited upon the completion of the review of the DIDP, and must be considered in light of the ICANN Bylaws requirements on the process and grounds for basis of removal from minutes. ICANN needs to retain an appropriate scope of redaction to meet its legal obligations. Withholding items from resolutions is not a frequent practice. Notably, if ICANN violates the Bylaws in how items are withheld from posting, the IRP is already available. (SEE RESPONSE FOR DETAILS)
ICANN org.	Board Transparency - Rec 03	Of the three recommendations presented in this section, ICANN org has some key areas where it agrees with the Subgroup. The idea that redactions should only exist for as long as necessary is also important to transparency. (Recommendation 3). For example, negotiation limits for rental of office space need to be kept confidential during negotiations, and likely for a period of time after negotiations are complete. However, at a future point that limit can probably be released. On the other hand, resolutions about specific employment matters are normally never appropriate for publication. Introducing information on when and how decisions on removing redactions are made could be a helpful improvement.
ICANN org.	Whistleblower - General	The Subgroup's recommendations are well aligned with the Navex Report commissioned by ICANN to review the Anonymous Hotline. ICANN has already implemented some of the modifications to the policy, ¹³ and is on schedule for the remainder of the modifications to be in place by the end of the fiscal year. In terms of publication of the policy, ICANN is currently evaluating where this and other employment policies can appropriately be posted on the website. - For now, the collection of policies are accessible off of the W52 Staff Accountability Subgroup wiki page at https://community.icann.org/display/WEIA/Staff+Accountability . When posting the policies, the general publication of the hotline numbers on ICANN's website may be inconsistent with the Navex recommendation that the hotline not be opened up generally to the broader ICANN community. ICANN Org agrees with the Subgroup that the numbers should be easily accessible to any those that are covered by the policy. Internally, there are multiple places where ICANN employees can locate the hotline phone numbers. As the policy is extended to business partners, ICANN is already looking into tools to make the numbers easily accessible without need to make them generally available to anyone visiting ICANN's website.
ICANN org.	Whistleblower - Rec 08	Finally, the Subgroup's recommendation for a regular review of the hotline is also well taken, though imposing a 2-year cycle of review may impose costs that are not practical as a standard operating procedure.
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	General	We recently published a report on Indian participation in international internet governance institutions over the last 5 years (2011-15). ¹ The Berkman Klein Centre for Internet and Society in their 2010 Review of ICANN's accountability and transparency noted that there is a deficit in active, passive and participatory transparency. ² It has also been argued that accountability measures normally seen in private corporations, standards bodies and government agencies are absent in the case of ICANN. ³ As part of our report, stakeholders have also stated that many important discussions take place behind closed-doors, ignoring public input. ⁴ This contrasts with the notion that ICANN operates through an open, bottom-up multistakeholder fashion. Our submission responds to specific recommendations made in the draft report and identifies areas that were not covered by the report. Respondents interviewed as part of our report highlighted specific areas where ICANN needs to be more transparent. The At Large Advisory Committee (ALAC) for instance, has come in for much criticism from Indian stakeholders for resisting accountability measures. ¹¹ ALAC not taking on board transparency recommendations has been singled out for criticism. ¹² In the past, we have noted that the allocation of funds from gTLD auctions functioned without an overarching framework of transparency and accountability-based criticisms. ¹³ Other Indian stakeholders have also questioned the functioning of such a system without oversight or any framework of accountability. ¹⁴ The gTLD auction proceeds and the ALAC review were two areas that were highlighted by Indian stakeholders. With this in mind, we recommend that the sub-group look at other similar processes and document areas where ICANN's transparency can be improved.
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	Board Transparency - General	However, it has been pointed out that there are other ways in which the Board can operate in a non-transparent way. Mueller for instance argues that the critical details of many policies are usually contained in the Board's contracts with private parties, and are not subject to the bottom up policy process or transparency requirements. ⁹ This is noted in Recommendation 11 in section II which recommends the removal of contracts from DIDP exception. ¹⁰ Since contractual terms affect policy issues within ICANN, we recommend that this recommendation be changed to a proactive responsibility to disclose contracts entered into by the board or by ICANN.
CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI	Board Transparency - Rec 02	The ICANN Board of Directors has in the past been criticised by the Berkman Centre among others for conducting closed door deliberations. ⁶ This is problematic as ICANN's bylaws do not contain clear rules for the conduct of Board meetings. ⁷ We agree with the recommendations made in this section with respect to the DIDP exception not applying to the minutes, factual information and deliberations of the Board. ⁸