

# PSC Report Supplementary Statement

## Staff Introduction

On May 10th, the ALAC ratified the Summit Statement on the Future Structure and Governance of ICANN and supported it being transmitted to the public comment period on the Report on Improving Institutional Confidence Plan (<http://www.atlarge.icann.org/correspondence/correspondence-15may09-2-en.htm>). On May 11th, Sebastien Bachollet, Chair of the Working Group on the Future Structure and Governance of ICANN, submitted the following Supplementary Statement to the ALAC for its consideration. The ratified Statement has been added under Annex 1 below for clarity. The online vote starting on May 27th and ending on June 3rd only concerns the Supplementary Statement.

---

## PSC Report Supplementary Statement

### At-Large Advisory Committee

#### The Future Structure & Governance of ICANN – English

Following publication of the draft Implementation Plan for Improving Institutional Confidence (dated 26 February 2009 <http://www.icann.org/en/jpa/iic/draft-iic-implementation-26feb09-en.pdf>), and in consideration of the At-Large Summit Working Group 2 final Statement (set for the below, Annex 1 and [https://st.icann.org/alac-docs/index.cgi?statement\\_on\\_the\\_future\\_of\\_icann\\_al\\_alac\\_st\\_0309\\_2\\_en](https://st.icann.org/alac-docs/index.cgi?statement_on_the_future_of_icann_al_alac_st_0309_2_en)), ALAC is offering to the ICANN community the comments and observations set forth below.

#### Background

During the At-Large Summit in Mexico City, a Working Group (N°2) met on the 28th of February and on the 3rd of March 2009 and prepared a statement encapsulating the views of the At-Large community on “the future structure and governance of ICANN”. This topic was, and is still, a major current initiative of ICANN referred to as the “Improving Institutional Confidence” process.

More than two years ago, the President’s Strategy Committee (PSC) commenced a series of consultations on how to strengthen and complete the ICANN multi-stakeholder model. More recently the midterm review of the Joint Project Agreement (JPA) between the United States Department of Commerce and ICANN produced useful comments about ICANN’s performance and its future. More information about this process may be found at <http://www.icann.org/en/jpa/iic/improving-confidence-revised.htm>

The most recent PSC document, Draft Implementation Plan for Improving Institutional Confidence (dated 26 February 2009) was posted, in English only, on the 27 of February 2009. The timing of its posting effectively prevented any in depth study by WG 2 participants prior to or at the Mexico City Summit.

During its monthly meeting on 24th March 2009, the ALAC decided that the five Summit working groups [https://st.icann.org/summit-wg/index.cgi?working\\_groups](https://st.icann.org/summit-wg/index.cgi?working_groups) should continue to follow the issues within their remit. All At-Large community members are being asked to engage with one, or more, of the working groups.

The Summit Working Group 2 is now the At-Large Working Group on “ICANN’s future.”

Some exchanges was organized with: - the “Trans-account” WG (ex-Summit Working Group 4) tasked to address “ICANN Transparency and Accountability”;- the “DNS-security” WG (ex- Summit Working Group 5) tasked to address “DNS Security Issues within ICANN’s Remit”.

The current document is intended to provide the ICANN Community with some additional comments and observations on the Improving Institutional Confidence process, and more specifically on the Draft Implementation Plan for Improving Institutional Confidence.

Document prepared by the At-Large Working Group on “ICANN’s future.”

The following comments respond to the Draft Implementation Plan for Improving Institutional Confidence document prepared by the PSC. Our comments follow the organization of the PSC document and the numbering of the comments correspond to the paragraph numbering (and text) of section 5 – Findings and Recommendations – of the Draft Implementation Plan document and, more specifically, the – Detailed Proposals to Address the Key Areas – discussion within section 5 of that document.

Our comments follow the recommendations addressed to the following 5 key areas:

- I. ICANN has to be safeguarded against capture.
- II. ICANN has to be accountable and responsive to its multistakeholder communities.
- III. ICANN has to meet the needs of the global Internet community of the future.
- IV. ICANN has to be a financially and operationally secure organization.
- V. ICANN has to maintain its focus on ensuring safe and stable operations relating to the unique identifiers of the Internet.

#### 1. Safeguarding against capture

**(RECOMMENDATION 1.6:** Strengthen participation in the Governmental Advisory Committee to avoid capture.)

(1.6.1 Provide simultaneous interpretation in official UN languages as needed for GAC meetings.)

With the development of a number of At-Large Structures from different regions around the globe, it would be useful to offer the same simultaneous interpretation services at At-Large Structure meetings.

(1.6.2 Hold a scheduled meeting or workshop of the Board at least once a year in a city where all or most governments have representation, e.g. New York or Geneva.)

At-Large (ALAC) does not support this recommendation particularly if this meeting is counted towards one of the 3 yearly (general) meetings of ICANN as a whole because it would decrease the opportunity of having meetings of regional structures (RALOs) in the context of ICANN general meetings and would also decrease the opportunity to promote outreach in various countries through ICANN general meetings.

In addition, At-Large (ALAC) supports regional meetings open to all the constituencies and not just select constituencies.

(1.6.3 Provide a travel support program for a GAC representative from each of the United Nations list of 50 Least Developed Countries (LDCs).)

At-Large (ALAC) supports this proposal and hopes the same will be offered to At-Large Structures.

(1.9 ICANN's current funding is highly dependent on registries and registrars. This situation comprises a potential risk as a single source of funding.)

cf. At-Large (ALAC) comments on (4.6)

**(RECOMMENDATION 1.13:** Maintain and strengthen transparency in the constituent parts of ICANN.)

(1.13.1 Require statements on conflict of interest from all members of the Advisory Committees, Supporting Organizations and Nominating Committee.)

At-Large (ALAC) supports this proposal and has already begun to implement such a policy for its members.

(1.13.3 Enhance existing conflict and other rules for the Nominating Committee in order to ensure the appointment of independent directors.)

At-Large (ALAC) would like to clarification on what it means to be an "independent director".

(1.13.4 Create a framework which allows crossparticipation in Supporting Organizations, Advisory Committees and/or constituencies, but which prohibits and considers sanctions for voting by the same individual or organization in more than one ICANN entity.)

At-Large (ALAC)'s position and proposal on this topic are included in the Summit Declaration. This recommendation of the PSC will be very difficult to implement and will create more burden than any real improvement in transparency. At the same time At-Large (ALAC) supports the position that the elected seats in each SO/AC/Board should be easier to follow and be populated with different individuals.

## 2. Accountability

[RECOMMENDATION 2.2. Ensure due consideration of GAC's advice on matters of public policy.](#)

At-Large (ALAC) suggests the Recommendation 2.2 be revised to read:"Ensure due consideration of ALAC's advice."

**(RECOMMENDATION 2.7:** Seek advice from a committee of independent experts on the restructuring of the review mechanisms to provide a set of mechanisms that will provide for improved accountability in relation to individual rights and having regard to the two proposed further mechanisms in RECOMMENDATIONS 2.8 and 2.9 immediately below.)

At-Large (ALAC) believes that ALAC would be well suited to offer ICANN these types of advice.

## 3. Further internationalization of ICANN

**(RECOMMENDATION 3.4:** Continue to improve participation by extending outreach so that all relevant stakeholders around the world are able to interact with ICANN, including by establishing ICANN's presence in additional jurisdictions. Priority should be given to presence/office establishment in south, central and northern Asia and in Africa.)

At-Large (ALAC) thinks that in addition to the 3 yearly general meetings, at-least 2 regional meeting should be organized by ICANN each year one in each of the (2) remaining of ICANN's five geographic regions. All the regional meetings must be open to all constituencies and support must be provided for these additional regional meetings, as it is for the 3 yearly general meetings.

## 4. Exploring alternative sources of funding

(4.4. In view of the rapid widening of ICANN's revenue base due to the expansion of the Internet, and notwithstanding the possible effects of the present economic recession, consideration should be given to the management of ICANN's future revenue growth in line with ICANN's notforprofit status and its core mission and mandate. Broad community discussion on possible uses of any surplus is needed.)

At-Large (ALAC), as an important representative of the end-user community who pays ICANN user fees and responsible for the majority of ICANN's funding, urge the overall community to first consider how not to create a budget surplus.

(4.5. Safeguards might be needed to ensure that the policy making process does not favour revenuegenerating options above those that reflect the broader public interest and community consensus on what is needed for ICANN's technical coordination role.)

At-Large (ALAC) strongly supports this recommendation as it is in line with our comment made to recommendation 4.4 above.

(4.6. ICANN's current funding is highly dependent on fees derived from gTLD registrants, which comprises a potential risk.)

At-Large (ALAC) believes there is less risk in having its fees derived from millions of end-users (funneled through registries and registrars) than from a handful of sponsors. At-Large (ALAC) prefers the structure of this recommendation to the one presented in recommendation 1.9 above ("ICANN's current funding is highly dependent on registries and registrars. This situation comprises a potential risk as a single source of funding.").

**(RECOMMENDATION 4.6** Give consideration to how to manage ICANN's future revenue growth in line with ICANN's notfor-profit status and its core mission and mandate.)

(4.6.1 Include a public discussion and comment period on any surplus as part of the FY10 draft Operating Plan and Budget consultations.)

(4.6.2 ICANN should consult the community on sources of revenue, recognizing ICANN's core mission, so that it is not too reliant on one sector of the community.)

At-Large (ALAC) is willing to participate in these discussions with the understanding that better and wider outreach and participation is a first step to the useful utilization of any increase in ICANN revenues.

## 5. Safe and stable Internet

**(RECOMMENDATION 5.3** ICANN should be a discussion leader and raise awareness of issues linked to stability and security of the Internet)

(5.3.1 ICANN should further define and strengthen its role in relation to security and stability of the unique identifiers and their impact on the Internet.)

(5.3.2 ICANN's strategic and operational planning should involve the organization in interaction with key organizations responsible for security related protocols and standards.)

While the At-Large (ALAC) supports these recommendations, it expects ICANN to be much more than just a discussion leader and awareness raiser. As the current state of the deployment of DNSSEC and IPv6 demonstrate, the unorganized spreading of responsibilities between informal groups and regional entities with no real leadership, has led to a very low adoption rate of these technologies, although the standards have been there for more than 10 years.

We call ICANN to identify the best practices used in other industries like the automotive or aviation ones. A master plan with clear milestones and deadlines needs to be drafted and implemented with the help of relevant organizations.

Obviously, the role of ICANN with regard to new technologies related to the unique identifiers on the Internet does not end with a software and network update of the L root server. As long as these technologies are not being deployed down to the end user premises, they are pretty useless. With a depreciation cycle of an average of 5 years for general hardware and software related to the use of the Internet, a much more aggressive timeline could be drafted for the introduction of new technologies. ICANN should take the leadership on these efforts.

First Draft of At-Large (ALAC) comments made by Sebastien Bachollet and review by Seth Reiss – in English – the 18th of April 2009. With comments received by Patrick Vande Walle.

## Annex 1 / At-Large Summit – Mexico

The Future Structure & Governance of ICANN – English

Working Group 2 final Statement – version (6)

### Background

Working Group 2 will prepare a statement encapsulating the views of the At-Large community on “the future structure and governance of ICANN”. This is a major current initiative of ICANN, referred to as the “Improving Institutional Confidence” process.

More than two years ago, the President’s Strategy Committee (PSC) commenced a series of consultations on how to strengthen and complete the ICANN multi-stakeholder model. In addition, the recent midterm review of the Joint Project Agreement (JPA) between the United States Department of Commerce and ICANN produced useful comments about ICANN’s performance and future. More information about this process may be found at <http://www.icann.org/en/jpa/iic/improving-confidence-revised.htm>

Document prepared by Working Group 21\*\*

Comments responding to documents prepared by the PSC, and specifically concerning “Improving Institutional Confidence,” were organized in 5 areas:

1. Capture
2. Accountability
3. Globalization
4. Financial and Operational Security
5. Security and Stability

Working Group 4 is tasked with addressing “ICANN Transparency and Accountability”.

The Working Group 5 is tasked with addressing “DNS Security Issues within ICANN’s Remit”

To avoid (as much as possible) overlap with these other working groups, WG2 will concentrate its work on the following 3 items:

- Capture
- Globalization
- Financial and Operational Security

During the last ICANN meeting in Cairo, ALS representatives had an in person meeting with PSC members and since then, At-Large participants have attended conference calls with PSC members’ participating.

Meanwhile, Working Group 2 began its work – prior to the Mexico ICANN meeting and our ALS Summit held concurrently with the meeting, and also prior to the most recent revision of the PSC document “Improving Institutional Confidence in ICANN” due out before the Mexico meeting. That revision, posted the 27 of February 2009, is available at <http://www.icann.org/en/jpa/iic/draft-iic-implementation-26feb09-en.pdf>

As At-Large members, we are one of the newer stakeholder groups, having had a long and difficult history to reach where we find ourselves today. We are strong participants and supporters of ICANN’s multi-stakeholder model.

1. Safeguarding against capture

At-Large suggests the following definition of "Capture":

Capture is defined in terms of a decision or a group of decisions taken by a sole party, or when an organization ends up acting systematically to favor particular vested interests.

So, for example, if one entity, interest, or group of interests has undue or out-of-proportion pressure, influence or control over ICANN, or any structural subdivision of ICANN, or any decision or group of decisions made within ICANN, ICANN may be considered to have been captured.

There are different possible ways to capture ICANN. Included among them would be capture of the organization, or capture of the policy making process. Capture may be full or partial, subtle or overt. The capturer could be a person, private or public entity, government, group of governments, or an international organization. The examples given are not intended to be exhaustive.

At-Large suggests the following actions as safeguards against capture:

- maintain easily accessible open public forums for all meetings
- retain the multi-stakeholder model
- broaden participation of all stakeholders
- give special attention to end-user participation
- broader involvement by all communities
- solicit, maintain and address the concerns of all constituencies
- stakeholder education and explanation regarding ICANN and its structures
- stakeholder education and explanation regarding the ICANN policy making process
- (better) facilitate participation in multiple languages
- creation of simple documents (translated into different languages), and/or document summaries and abstracts, to facilitate greater participation (also discussed under "internationalization" below)
- allow sufficient time for outreach and community feedback and comment
- protocol for reporting and investigation claims of capture or attempted capture
- a regular performance review process, to include risk analysis and consideration of complaints and investigations, to ensure the safeguards are actually working

Institutional confidence is a result of the ability to meaningfully participate.

Potential conflict of interests and non-disclosed interests of ICANN participants implicate capture concerns. Should, for example, a single individual be entitled to participate within ICANN wearing different hats? Each individual has the potential to speak on behalf of:

- Oneself, as an individual end-user
- One's organization (e.g., group of end-users)
- One's company or employer, as a business end-user or any other business having an interest in the ICANN process (e.g., registries, registrars, brand owners)
- One's country
- One's religion, tribe, or culture
- One's moral, political or philosophical bent

At-Large suggests that participants be required to (1) disclose all (non-personal) affiliations and (2) state, fully and without reservation, on whose behalf the participant is acting. The ICANNWiki could be a good tool for facilitating affiliation disclosures.

Capture is also implicated by voting and structure participation. At-Large encourages multi-participation but suggests consideration of the following restrictions concerning voting and/or structure participation:

## 1. Restriction on Voting Rights:

1. One vote per person for each structure in which the person participates. If a person is a participant within more than one ICANN structure, that person would remain eligible to vote once in each of the structures; or
2. One vote per person within the whole of ICANN, irrespective of the number of ICANN bodies the person participates in. If a person is a participant within more than one ICANN structure, that person would have to elect which structure she or he would vote in.

2. Restriction on Multiple Roles: A person cannot be elected or appointed to more than one ICANN body with voting rights.

A majority of Working Group 2 participants favored the restriction on voting rights expressed in paragraph 1.2 above and agreed with the restriction on multiple roles expressed in paragraph 2 above.

Capture is also implicated by lack of accountability on the part of ICANN and the Board to issues raised by At-Large. Working Group 2 participants expressed the perception that issues raised by ALS' were either not being listened to or that there was no indication from the Board that the ALS' concerns were being heard. At-Large suggests a mechanism be put in place, similar to that in place with the GAC, requiring the Board to provide some kind of response or feedback to issues raised by At-Large.

Also expressed was that At-Large should have a more substantial way of influencing Board discussion and decisions. This could be through direct elections of Board members and would be in line with the final draft of the Independent ALAC Review document.

## 2. Further internationalization of ICANN

The Internet is a critical resource to all humanity. Given the economic and social importance globally of a safe and stable Internet, the process of internationalization of ICANN must:

- safeguard the global/worldwide role of ICANN regarding domain names and numbers identifiers
- promote larger participation from all stakeholders globally
- ...

At-Large agrees that governments should continue to play a role in the work of ICANN, but should not direct ICANN's functions or decisions. No government should capture ICANN. ICANN should continue to move in a direction such that U.S. influence in ICANN's work and decisions, whether real or just perceived, diminishes. While moving in this direction, ICANN needs to stay vigilant regarding the danger of capture by others.

At-Large already functions regularly in a very international environment. Our experiences can be useful to the larger ICANN community. We:

- regularly work in multiple languages, including in conference calls
- produce documents in multiple languages
- comprise real multi-regional bodies (i.e. ALAC, Ex-com, Secretariat coordination)
- the At Large Summit is fully tri-lingual

The internationalization of ICANN need address, respect and accommodate not only language issues, but also issues arising from cultural diversity. ICANN has made good initial progress in producing important documents in the main UN languages. At-Large believes ICANN should go further to make a summary of all the ICANN documents available in English and in all the UN languages. In our view, having more summary documents translated is better than having some full documents translated. At the same time ICANN should encourage the preparation of original documents in languages other than English and arrange for the translation of these non-English documents as well.

Translations must be prepared in a timely manner with the goal of having the same document available in all languages at the same time, as opposed to the non-English versions lagging the English language versions.

At Large members expressed the view that ICANN should make a greater effort to geographically diversity its organs, staff and activities. One way to accomplish this would be to have important ICANN functions and responsibilities split among various regions, languages and cultures:

- Head quarter
- Chair of the Board
- Vice-Chair of the Board
- President and CEO
- Vice-presidents
- ...
- Chairs of the SO/AC
- ...
- Oversight by?
- ...
- Bureaus
- Staff
- ...

The splitting of functions and responsibility, however, should not be done in a way that would result in inefficiencies or duplication of effort. ICANN must also remain vigilant concerning the efficient use of its resources (topic 3 below).

More activities (to be determined) could be managed from outside the USA, through secretariats, for example, located in different geographic regions of the world.

Also discussed was the possibility of having ICANN comprised of a number of sub-entities or affiliated entities, each being a national of, or having a presence in, a nation state within one of the five ICANN regions. It was pointed out, however, that this would cause ICANN to become the subject of multiple and likely conflicting national laws and regulations, burdening ICANN and hampering its work.

During the process of internationalization, ICANN should avoid developing a burdensome bureaucracy of the type encountered among U.N. organizations. ICANN should remain flexible in order to accomplish its important work.

### 3. Exploring alternative sources of funding

Diversification of funding sources:

- Does ICANN need this?
- What is the goal of a diversification of funding sources?
- Is the goal more sources or/and more resources?

One of At-Large's main concerns is how ICANN is allocating and monitoring resources and funding sources. Working Group 2 members felt ICANN should focus on using its current resources more efficiently, and that it implement a system that measures the effectiveness of its use of resources.

Currently, most of the funds are coming from the registrants (individuals and businesses).

There was some discussion of looking to those businesses who obtain substantial revenues from e-commerce as a source for additional ICANN revenues, but also expressed was the view that ICANN not attempt to levy activities not directly related to the DNS.

Any new funding should be without condition, express or implied. ICANN should have unfettered discretion in the manner it determines to use funds, for example, to subsidize improvements to infrastructure in areas that are economically disadvantaged.

If needed, what other funding sources could be acceptable to the individual end users?

And how will this change ICANN and its relationship with each and all the constituencies / stakeholders?

At Large agrees that capture, internationalization and the continued funding of ICANN are among the more important governance issues now facing ICANN. The ideas and recommendations presented above are offered to assist ICANN to better navigate these concerns. At Large is prepared to work together with the other ICANN constituencies to address and solve these issues.

----1Members of the group

**ALS Representatives:** Carlos Aguirre – LACRALO / Izumi Aizu – APRALO / Louis Houle – NARALOTommi Karttaavi – EURALO / Glenn McKnight – NARALO / Aislan Vargas – LACRALOAntonio Medina Gomez – LACRALO / Sivasubramanian Muthusamy – APRALJose Ovidio Salgueiro – LACRALO / Mathias Altamira – LACRALOMamonia Niangl – AFRALO / Adam Salazar – LACRALO / Chung L.Liu – APRALOTing-Yun Chi – APRALO / Jose Luis Barzallo – LACRALO / Fernando Maresca – LACRALO

**Non ALS:**

Olivier MJ Crepin-Leblond – Europe / Cheryl B. Preston – NA / Joung Im Kim – AP  
Samantha Eisneer – ICANN

Rapporteur: Seth Reiss – NARALO  
Vice-Chair: Sylvia Herlein Leite – LACRALO  
Chair: Sebastien Bachollet – EURALO