

Input on the Development of Transparency and Accountability Management Operating Principles from the gTLD Registry Constituency

The GNSO gTLD Registry Constituency fully supports ICANN's efforts to improve processes and procedures that encourage improved transparency and accountability. In that regard we would like to call attention to the comments we recently submitted in response to the London School of Economics (LSE) GNSO Review Report; our comments can be found on our website at <http://www.gtldregistries.org/news/2006/2006-12-05-01.pdf> or on the ICANN site at <http://forum.icann.org/lists/gnso-improvements/msg00001.html>. Those comments contain a number of suggestions aimed at improving transparency and accountability and are referenced below along with our responses to several of the questions asked by ICANN in the request for input.

How would you define "transparency" in the ICANN context?

It is essential to recognize that ICANN is made up of many different parts and that standards of transparency should be considered for all of those parts, which include: supporting organizations and their various constituencies; advisory committees; ICANN staff; ICANN Board of Directors; and any other participants in ICANN processes such as the members of the technical community and Internet users. Transparency must be defined for all ICANN parts.

What standards of transparency are appropriate in ICANN operations and activity?

A fundamental standard of transparency for each part of ICANN is clarity in terms of purpose and function. It is critical that each part understand what its role is and what its role is not. Otherwise the risk is great that time will be spent on issues that are out of scope and may ultimately not be able to be acted on. As just one example of this, in policy development efforts, the role of each part of ICANN should be clearly spelled out so that expectations are well defined at the beginning of a policy development process. In the RyC LSE comments in response to recommendation 23, we stated, "The scope of GNSO policy development responsibilities should be unambiguously defined, not only in registry and registrar agreements, but also in the ICANN Bylaws. It is only fair to those who volunteer countless hours in support of policy development efforts, that they are assured that those efforts will not later be declared out of scope and therefore result in long hours of wasted time." Whether the scope of policy development processes is defined in the Bylaws or not, they need to be clearly defined and communicated to the broader ICANN community so that expectations are understood from the start.

Another important standard of transparency relates primarily to those parts of ICANN that provide input to policy development efforts. Input should be encouraged from all impacted parties, but there should be maximum transparency with regard to the source of that input so that it can be properly evaluated in terms of its weight relative to the total universe of impacted parties. It should not be assumed that any group providing impact automatically represents a broader community of interests unless their input is accompanied by objective evidence of the level of representativeness. Otherwise, it is

much too easy for the process to be captured by a small group with their own narrow agenda. In the RyC LSE comments in response to recommendation 2, we stated:

“For all policy recommendations to the ICANN Board, specific, objective measurements should always be provided without limitation to the following:

- A quantifiable measurement of the level of consensus achieved in the GNSO – This should certainly include the level of consensus on the Council (e.g., 100%, 80%, 60%), but it should go further and include level of consensus achieved in each of the constituencies represented on the Council. [Note that this would not necessarily require voting; in a rough-consensus policy development approach, participating stakeholder groups could be identified along with their level of representativeness and a statement of their support; similarly, participating stakeholder groups who opposed the recommendation could be identified along with their level of representativeness.]
- Listing of impacted parties including their perceived level of impact (e.g., high, medium, low)
- Data regarding the types and quantity of outreach efforts to GNSO constituents and the community at-large including the success and/or failure of those efforts. (e.g., website request for comments received 11 relevant responses over a 21-day period; GNSO constituency request for comments resulted in statements from 5 of the 6 constituencies; etc.)
- The level of representativeness of participants in the consensus development process including:
 - The level of representativeness of each constituency and/or stakeholder group supporting or opposing a recommendation (e.g., 11 gTLD registries including all of the active registries participated in the process out of a total of 12 gTLD Registry Constituency members and out of a total of 14 eligible members.) Data about constituency representativeness (and/or membership) should be generally available, say on the GNSO web site, rather than re-inserted each time constituency comments on a policy. That would provide a readily available means of validating representativeness claims at any given point in time.
 - The level of representativeness of stakeholder groups from whom input was requested.”

How would you define "accountability" in the ICANN context?

As stated above with regard to transparency, accountability must be defined for all parts of ICANN: supporting organizations and their constituencies; advisory committees; ICANN staff; ICANN Board of Directors; and any other participants in ICANN processes such as the members of the technical community and Internet users. Quoting from Wikipedia (<http://en.wiktionary.org/wiki/accountability>), “accountability is concerned primarily with records”. In the ICANN context, accountability can then be defined as providing accurate record of decision-making by each of ICANN’s various parts.

Records are certainly critical to accountability, because they document the process followed and rationale for decisions made. However, once that documentation happens, what comes next? The bottom line is that ICANN - as a private entity - has a unique ability to establish its own rules, including rules that eliminate any liability for following the rules. So it seems that three things are needed to create real accountability:

1. Clear rules (see the discussion above regarding transparency)
2. Something that prevents ICANN from changing the most important and fundamental aspects of the rules - the “under no circumstances shall ICANN” do certain things.
3. Some meaningful way for individuals/entities to make the case that ICANN is violating those fundamental rules, and for developing a common understanding of how those rules should be interpreted and applied.

What standards of accountability are appropriate in ICANN operations and activity?

With regard to policy development efforts, the standards for accountability are quite similar to those for transparency. Any impacted parties that provide input into policy development processes should provide an accurate and complete record of the source of their input. All policy development input should include verification of constituency/stakeholder representativeness, level of constituency/stakeholder consensus, constituency/stakeholder impact and communication of minority opinions. (See RyC comments regarding LSE recommendation 2.)

Regarding accountability of individual participants in policy development efforts, the RyC stated the following in response to LSE recommendation 12: “If strong procedures were enforced to ensure representativeness of constituencies that is well documented within policy development processes, then individual Councilors would be less able to exercise individual influence that could inordinately favor their conflicting interests. So it may be more important to focus on steps that would improve representativeness of Councilor positions than to deal with individual Councilor conflicts of interest.”

What specific processes and activities need to be included to ensure these standards are met?

In the RyC LSE comments in response to recommendation 2, we proposed that a standardized input template should be used to ensure completeness and consistency of data reported to the Board.

Source of Input

As stated in the introductory paragraph and as referenced in the comments themselves, several of the comments included above are based on statements made by the RyC in response to the LSE GNSO Review Report. All such comments were approved by the full RyC membership as documented in that submission.

Statements above not specifically referencing the RyC LSE comments contain new ideas that are still under discussion within the RyC. As those ideas are further vetted within the

constituency, we will expand on those ideas and add new ones as input to the ongoing process of developing Transparency and Accountability Management Operating Principles.

As of the date of submission of these comments, all of the comments above were approved by eleven of thirteen RyC members.