



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

ICC further input on ICANN transition action plan consultation

20 October 2008

On behalf of the members of the International Chamber of Commerce, and the members of the Commission on E-Business, IT and Telecoms and the Task Force on Internet Telecoms Infrastructure and Services (ITIS), we are pleased to provide further input on the President's Strategy Committee's (PSC) consultation on "Improving Institutional Confidence (IIC)" and the "Transition Action Plan(TAP)". ICC members from around the world and across all sectors, appreciate the opportunity to build on the detailed input provided to this consultation process in August 2008, and request that the PSC closely review ICC's comprehensive first input as substantive priorities expressed therein are not repeated in this contribution.¹

As ICC has stated before, members support the continued transition of ICANN towards becoming an independent private sector-led consensus –building organization.

Business sees several areas of improvement that remain of high concern:

- Improved and strengthened representation of the interests of the business community.
- Increased certainty of the processes and balanced outcomes, both in policy development and overall decision-making of ICANN

Given these objectives, ICC's further input provides specific comments on the revised PSC documents, and recommendations and questions to assist in progressing ICANN's transition. ICC looks forward to discussing these points with other members of the community and ICANN.

¹ ICC's input on ICANN transition action plan (July 2008) , available at:

<http://www.iccwbo.org/uploadedFiles/ICC%20input%20ICANN%20final%20TAP%2031%2007%2008.pdf>

Key issues for business and ICC priorities are included in: ICC's informal comments on ICANN's transparency, accountability and structural issues, available at:

http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/ICC_informal_comments_ICANN_21_06_07.pdf

ICC's views on the mid-term review of the Joint Project Agreement (JPA) between ICANN and the US Department of Commerce, available at: <http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/ICC%20views%20on%20ICANN%20JPA.pdf>

Freedom from Capture

ICC members believe that it would be helpful to provide information about the current safeguards against capture for the ICANN community in order to discuss whether additional safeguards are needed. If they are needed, further elaboration on what kinds of mechanisms would strengthen accountability and freedom from capture, and how they would provide additional protection, and be implemented, should be provided.

ICC members agree that freedom from capture should be a significant focus as ICANN proposes a further transition. While balanced participation across diverse geographically distributed stakeholder groups presents a perceived safeguard, this is a significant challenge to develop, and maintain. Specifically, ICC believes that it would be helpful for the PSC and ICANN to discuss how they intend to prevent external capture, since the existing transition documents focus primarily on capture from within.

ICC members believe that many ICANN participants have interests in more than one supporting organization or advisory committee, and this diversity of experience adds value to the policy development processes and allows them to contribute to policy discussions that affect their interests. This should be preserved.

Consultation timeframe and process

ICC members understand the challenges of developing effective and meaningful consultation processes, but reiterate our long standing position that consultations, and policy development processes need to be supported by detailed materials about proposed changes, and provide sufficient comment periods to allow organizations and stakeholders to provide meaningful input. We believe this long standing position applies to the transition consultation process. ICC recognizes that the original due date to release the revised transition documents was difficult for the PSC to meet (7 September) but in turn more time should have been allowed for this comment period given that the documents were only released on 19 September, and the original comment period was only extended by 5 days. The consultation needs to take steps to ensure a deliberative process that benefits from the input of experts and builds the necessary support from the community in a bottom-up process. It is essential that the policy development processes include sufficient time for the development, dissemination and consideration of details regarding various proposals and their implementation. Such processes do not lend themselves to short timeframes.

Overall, ICC appreciates the efforts of the PSC and ICANN leadership and staff to produce the revised documents and continue the consultation process. However, we noticed with great interest that notwithstanding the many substantive comments received in the initial consultation only minimal revisions were made to the new

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versions. In order to provide more substantive input, additional detail is needed on several elements in the transition action plan and the accompanying IIC document in order for ICC to work with its membership to provide consensus answers to certain questions or assess certain suggestions.

For example:

a) “Meeting the needs of the Global Internet Community of the Future”

In order to answer the proposed question “yes” or “no”, additional details are needed. We believe that an informed decision about whether or not ICANN should have global legal presences, requires a deeper understanding of the rationale behind the proposal. More information is needed about how they would be or could be structured; how they would be organized; what functions they would have, where they would be located and what their relationship would be to the ICANN Board, staff and leadership. ICC has strongly supported the continued efforts to internationalize ICANN, while maintaining the private sector-led and inclusive multistakeholder nature of the organization with decisions based on bottom-up consensus policy development processes.

Moreover, it is essential to understand how the establishment of additional legal presences can be protected from capture. The IIC document provides some information about the comparative structure evaluation, which is helpful but they should be enhanced with information about the purpose of establishing such legal presence. Additional information about the options both in terms of legal structure, e.g. non-profit status and countries that can provide such legal status, would assist the community in providing substantive input on the proposal.

b) Additional accountability mechanisms and suggestions for enhancing accountability have progressed but further detail on their elaboration and implementation will facilitate input. For instance 2.1.1-2.1.2 on page 5 of the IIC document suggests “Establish an additional accountability mechanism...” What circumstances would make it appropriate for the ICANN community to move for changes to the composition of the Board? What would be a “very significant portion of the designated Supporting Organizations and Advisory Committees”?

We appreciate the suggestion that similar mechanisms have been adopted by prominent companies, and details could be elaborated based on the collective experience of those companies to clarify how this mechanism would function and meet its objectives. ICC would note, however that ICANN is unique among non-profit corporations, given its capacity to make decisions that directly impact industry financially. As such, unique accountability mechanisms may be needed.

Given the concerns raised by the community about the two major new accountability mechanisms proposed by the PSC (the wholesale removal of the board

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and the request for board reconsideration), ICC would be interested in what other accountability mechanisms ICANN has considered to ensure that business, and other stakeholders have recourse.

Accountability mechanisms would also benefit from metrics to assess how successful they are.

ICC recognizes the steps taken by ICANN so far to improve transparency and accountability, and its work to develop new mechanisms. ICC suggests that relevant improvements be incorporated into ICANN's bylaws. Doing so would bolster confidence in ICANN's long term commitment to these vital principles and mechanisms.

ICC's members reinforce the importance of effective and useable accountability mechanisms. We will respond further when there is sufficient detailed information for our members to develop further substantive comments.

c) Financial and operational security:

The IIC document suggests on page 7 that the community should be requested to identify and approve alternative sources of funding to lessen dependence on current funding streams (4.1.1). ICC supports the principle in this suggestion. Further information regarding ideas proposed to date and how the identification and approval process would be managed, would be helpful.

d) Expert Advisory Group:

We note that the revised PSC TAP suggests that it will "explore the value to be gained from the formation of an Expert Advisory Group to assist with consultations on the Analysis and Design project" and this point is not elaborated upon in the IIC document. As mentioned on page 2 of this contribution, we believe that drawing upon the expertise that exists in the community will benefit the further development of the documents, and even more importantly, will build understanding and support for the Analysis and Design phase of the transition process.

We suggest that experts may be used in each of the five areas identified to support and provide expertise to the PSC's considerations. The names of such experts should be made public.

ICC continues to support the efforts of the PSC, ICANN's Board, leadership and staff to manage an inclusive consultation process, and encourages the points made in this contribution to assist ICANN in making informed choices about aims of the transition action plan, which are an integral part of effective implementation.



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ICC Commission on E-Business, IT and Telecoms (EBITT)

Business leaders and experts drawn from the ICC membership establish the key business positions, policies and practices on e-business, information technologies and telecommunications through the EBITT Commission. With members who are users and providers of information technology and electronic services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade. ICC has also led and coordinated the input of business around the world to the World Summit on the Information Society, Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda, through its initiative, Business Action to Support the Information Society (BASIS).

For more information please visit:

<http://www.iccwbo.org/BASIS>

<http://www.iccwbo.org/policy/ebitt/>

About ICC

The International Chamber of Commerce is the largest, most representative business organization in the world. Its tens of thousands of members companies in over 130 countries have interests spanning every sector of private enterprise.

A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

The United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC.

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