Joint letter from Chairs of the gNSO, ccNSO and ALAC

17 February 2010

To:

Mr Peter Dengate-Thrush	Mr Rod Beckstrom	Ambassador Janis Karklins
Chair – ICANN Board	ICANN CEO & President	Chair - ICANN GAC

By Email

Concerns regarding AoC review processes

Dear Peter, Rod and Janis,

We are writing to you in your roles as "selectors" for the various reviews required under ICANN's Affirmation of Commitments (AoC), to convey our concerns regarding the structure, conduct and timing of the AoC review processes.

We are extremely concerned that the timeframes for public consultation and for the initiation of AoC-mandated reviews have been very compressed. As a result, the consecutive stages of the review process are being advanced concurrently. Review frameworks are still being developed as nominees are being sought for review team positions and while the ccNSO, GNSO and ALAC are still developing internal mechanisms for the endorsement of these nominees. Given the need for the finalisation of the Transparency and Accountability (T&A) review by the end of 2010, we acknowledge that there is limited opportunity for refinement of methodologies and Terms of Reference, though would highlight a few issues for immediate attention.

Of particular concern is the nominee endorsement process for the current T&A review. In developing a procedure for selecting representatives, ICANN failed to consult adequately with affected constituencies and issued call-for-volunteers before any consensus had been reached. As a result, a number of individuals have already responded to ICANN's call for review team members[1], though these people do not currently have the endorsement of any constituency.

The ACs and SOs have in place well established mechanisms for selecting representatives to various working groups and task forces. The call-for-volunteers has forced us to move outside of these established processes and necessarily undertake this work without the full level of consultation expected by members and required by ICANN's Bylaws.

We acknowledge that ICANN has made efforts to accommodate AC/SO endorsement requirements by extending the deadline for applications to 22 February (and a further offer of a proposed extension just received), undertaking to forward all direct applications to the relevant constituency for consideration, and limiting selectors' final deliberations to endorsed nominees. While we are appreciative of these efforts, we recommend that the *ad hoc* nature of these arrangements, are avoided in subsequent calls for volunteers. We look forward to actively working with you and

[1] http://icann.org/en/announcements/announcement-03feb10-en.htm

ICANN staff to codify an efficient and effective process for the endorsement of nominees that is consistent with established AC/SO precedents.

Also, given this focus on endorsement, constituencies have had limited opportunity to undertake the usual depth of discussion and consultation on the actual substance and structure of proposed reviews. We are being forced by schedules to move with haste that limits our ability to be truly representative of our respective memberships. As a result, ICANN's fundamental tenet of bottom-up, consensus-based policy development is being compromised by processes which were actually intended to review and strengthen ICANN's multi-stakeholder structure. Current practices are also inconsistent with ICANN's commitment under the AoC to: *"maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders".* Most urgently, and somewhat ironically, this is especially true for the Transparency and Accountability review.

As another priority, we also call on ICANN to reconsider the proposal for the retention of a "pool" of nominees across multiple AoC reviews. Given the broad subject matter (T&A, security, competition, trust, choice and WHOIS), it is foreseeable that ICANN's constituencies would choose to endorse different volunteers for each review, based upon their particular skill-sets. Constituencies may also choose to vary their mechanisms of endorsement – nominating either only the required number of candidates, or a group for final decision by the "selectors". In addition, it is possible individuals in the pool may be overlooked for consecutive reviews, leading to the possibility of ill-feeling and pressure to utilise all available candidates.

ICANN should also move promptly to assess and respond to the contributions made by stakeholders to the draft document circulated for public comment by ICANN staff in December 2009.[2] As these draft processes have only been subject to one, compressed consultation period, ICANN must also continue to refine these procedures for subsequent AoC reviews in order to ensure clarity, accountability, representativeness and full stake-holder engagement and support. This necessarily includes issues such as:

- review team size and structure;
- clarification of the status of constituency "representatives";
- clarification of the roles of the selectors, facilitators and independent external experts; and
- co-ordination and harmonisation of AoC activities with existing ICANN review processes.

In order to develop a better mutual understanding of these and other issues at hand and how best to resolve them, we would welcome the opportunity to discuss these matters at length at ICANN's upcoming Nairobi meetings.

Yours Sincerely,

Chris Disspain	Chuck Gomes	Cheryl Langdon-Orr
Chair – ccNSO Council	Chair – GNSO Council	Chair - ALAC

[2] http://icann.org/en/announcements/announcement-26dec09-en.htm