Independent Review
of the
Board of ICANN

MAIN REPORT

November 2008

The Boston Consulting Group

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A. EXECUTIVE SUMMARY

In May 2008, The Boston Consulting Group and Colin Carter & Associates were retained to conduct an independent review of the board of ICANN. The Terms of Reference were extensive but centred on whether the board was fulfilling its purpose and whether any change was appropriate. The analytical process involved interviews with directors, former directors, executives and members of the ICANN community, surveys, and benchmarking of relevant organisations. The work also draws upon our decade of experience working with boards on effectiveness issues.

The report contains important survey data and extensive discussion of the rationale for all the recommendations made. And so this executive summary should be read in conjunction with the full report.

1.   Summary of conclusions

Overall, we find the ICANN board is working well given its organisational model and board structure. There are many important issues to discuss and opportunities for improvement but we emphasise that the board is in no sense dysfunctional.

Individual board members appear to be hard-working and demonstrate a strong commitment to the public trust principles guiding ICANN. Behaviour in the boardroom is mostly seen to be constructive. The survey results show very strong confidence in the leadership of the board, and are comparable to those we would expect from a well performing board anywhere in the world.

ICANN faces quite a difficult governance task to resolve the principles of transparency and public access with the need for efficient oversight of operations. That it functions as well as it does is a tribute to the people involved.

Quite different opinions can be seen in the survey results but it is not really surprising that a diversity of views emerges. Our view is that this reflects the truly challenging complexity of ICANN and its governance task as well as the diversity of background of the board members themselves. On a large range of issues – particularly on those relating to role, structure, process and people – the board members are not of one mind.   These are mostly the areas where opportunity for improvement exists.

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As regards our recommendations, all of this means two things. Firstly there are a large number of proposed changes. This reflects the interrelationship between issues raised and should not be seen as evidence of a poorly functioning board. And secondly, care needs to be taken in accepting or rejecting individual recommendations because they may be connected to other recommendations.

Three broad areas of change are recommended:

(a) **Structure**

- *Reducing the size of the board:* With over twenty members the board is too large. Effective boards are closer to half this size and we propose several ways to achieve a reduction while preserving ICANN's values.

- *Reducing meeting frequency:* The board meets more frequently than do most boards and yet like all boards there is a struggle to find time to spend on important strategic issues. We propose fewer but longer meetings as well as working to shift the agenda from less detail towards more strategic discussions.

- *Consolidating board committees:* We propose a reduction in the number of formal board committees but creation of a risk committee. Some committees can be consolidated into a single committee while some are focussing mainly on matters that should be left to management.

(b) **Capability**

- *Broadening the skills of the board:* All boards need to review their composition in light of changing environments. Overall, the ICANN board is quite diverse but there are a few gaps to address. Also, the ICANN board should have formal input into the NomComs process.

- *Making board membership more sustainable:* For a variety of reasons, the average tenure of board members is a little too short – which diminishes the capacity of the board to perform its tasks. The workload, the amount of time required each year and possibly the lack of remuneration are contributing factors. The workload and time issues are addressed through meeting frequency and

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agenda management. Also proposed are extension to terms and trial introduction of board remuneration.

- *Building a 'high performance' board culture:* Boards everywhere are expected to take time to evaluate their performance. We suggest a number of ways to enhance performance including individual appraisal of directors and finding ways to probe cultural values in the organisation.

(c) **Purpose**
- *Strengthening the strategic focus of the board:* All boards struggle to spend time on important issues. Instead they find themselves getting into detail that should be left to management or spending more time on compliance issues than on value-creating matters. The format of board meetings and agenda management can assist in securing the right focus.

- *Clarifying the accountability of the board:* ICANN's structure is complex and the roles and accountabilities are not always clear. Certainly, there are divergent views in the ICANN community around accountabilities and, while much of this discussion extends beyond the scope of this project, some steps to clarify and better align divergent opinions will be important.

The eight specific recommendations contained in the report are summarised below. However, we emphasise again that full discussion of the analysis is critical to understanding the changes proposed.

2. Summary of recommendations

Recommendation #1: Reduce the size of the board:
(a) Assess option 1: reduce the board to a maximum of 15 persons
- Redefine the Liaisons as an expert group of non-board members available to advise directors as required and develop a new communication protocol to ensure frequent exchange of views.
- Provide ALAC with the right to nominate one or two voting board members.
- Reduce the number of directors provided through the NomCom process from eight to six.
- Provide one 'observer' position for the GAC and also, if thought necessary, for the technical community.

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(b)　Assess option 2: halve the size of the board to around nine voting persons plus two observers

- One from each of the SO/ACs and possibly one from ALAC.
- Four from the NomCom process.
- The President.
- An observer from each of GAC and the technical community.
- Consider maintaining a majority of members sourced from the NomCom process (that is, four from SOs and ALAC, the President and five from NomCom).

(c)　Institute communication processes between board and technical community (such as a formal meeting at each of the three public meetings).

Recommendation #2: Move to fewer but longer board meetings:

(a)　Introduce six two-day 'in person' board meetings, three of which would be held adjacent to public meetings.

(b)　Discontinue monthly teleconferences except in special circumstances.

(c)　Schedule 'fireside chats' before each board meeting with senior executives to discuss important issues.

(d)　Hold two one- or two-day strategy retreats - adjacent to regular board meetings.

(e)　Review arrangements for inter-meeting approval of urgent matters.

(f)　Ask regularly, after board meetings, whether the board spent its time on board work – or is getting too deep in management matters.

Recommendation #3: Consolidate the board committees:

(a)　Consolidate the Reconsideration and Conflicts Committees into the Governance Committee.

(b)　Redefine the scope of the Governance Committee to incorporate all matters relating to legal issues, conflicts of interest, reconsideration and fairness. Also assign to this committee the task of defining the skills and experience required on the board.

(c)　Redefine the scope of the audit committee to include overseeing the legitimacy of the budget process and other key aspects of the existing finance committee.

(d)　Discontinue the Finance and Executive committees.

(e)　Consider establishing a Risk Committee of the board.

(f)　Consider establishing (but sparingly!) temporary committees with clear sunset clauses to deal with important issues – such as the JPA matters.

(g)   Limit the size of board committees to three or four board members with management attending by invitation.

(h)   Allocate responsibility for setting the board agenda to the Chairman, Deputy Chairman and President in consultation (with other board members able to add items as they wish).

Recommendation #4: Broaden the skills of the board:

(a)   Formally define the skill and experience and independence mix required for the board to operate effectively – in the short and longer terms.

(b)   Form a view about the main gaps in skills that should be met.

(c)   Formally define the participation of the ICANN chairman and the chairman of the Governance Committee as part of the Nominating Committee's process for choosing new board directors.

(d)   Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required.

(e)   Offer training in director's responsibilities to all board members.

(f)   Encourage each director to nominate an area of 'learning' for the year.

(g)   Occasionally invite prominent company directors to meet the board over dinner to talk about 'the role of the director'.

Recommendation #5: Make board membership more sustainable:

(a)   Retain a tenure limit but increase the average term served by board members by extending the tenure limit from two three-year terms to two four-year terms.

(b)   Invest in more board support including the establishment of a senior company secretary role to augment the existing provision of dedicated logistical/secretarial support for board members.

(c)   Abandon extensive minutes for board meetings in favour of discussion summaries and a record of decisions and requests.

(d)   Review the value of and need for the 'board list'.

(e)   Reduce the volume of board papers by assigning all document appendices and 'for information' papers to a separate part of the existing secure internet site.

(f)   Develop clearer and more extensive formal delegations to management and document these generally within a board governance charter (example attached as appendix (a)).

(g)   Introduce payment for board members with the chairman paid at 2.5 times the amount paid to other directors. Explore numbers of around USD50,000 for board members and USD150,000 for the chairman.

(h) Assess whether any additional payment is justified for Committee Chairs as well as the consequential impacts for other ICANN community organisations.

Recommendation #6: Build 'high performance' culture at the board level
    (a) Introduce individual performance evaluation for all board members based on a simple peer review process conducted every two years.
    (b) Review the process for evaluating the performance of the President.
    (c) Design ways to test regularly the values and attitudes of ICANN staff.
    (d) Discuss the 'bad news', confidentiality and conflict survey responses at the board.

Recommendation #7: Strengthen the 'strategic' focus of the board
    (a) Allocate some time after a board meeting (several times each year) to discussing whether the board is getting too deep into detail that should be left to management.
    (b) Define annually the five most significant issues facing ICANN and build extensive regular discussion of these issues into the board meeting agenda.
    (c) Measure and track the board time spent on strategy, policy and operational issues.
    (d) Initiate a robust assessment of work done at the board to ascertain what can be delegated to management. Schedule one or a series of conversations between the board and the management group to discuss views on the respective roles.

Recommendation #8: Clarify the board's accountabilities. Initiate a program of discussions that explore the following propositions:

    (a) Agree the accountability of ICANN's board – to ICANN itself, the ICANN community and/or the Internet?

    (b) Affirm that ICANN directors owe their loyalty to the board and not to their sponsoring organisations.

    (c) Support proposals for a process to dismiss the board but ensure that the hurdle is quite high.

    (d) Discuss possible conflict issues in the board's role overseeing the ICANN community where its members are appointed by those who are doing the work. Agree that a key role of the independent directors (via NomCom) is to ensure that the board continues to carries out its role without compromise.

    (e) Discuss the future work division between paid staff and volunteers and form a view as to what this will look like in five years time.

    (f) Consider the proposition that the stakeholder groups get together to appoint a board acceptable to all of them – rather than directly appointing their own representatives to the board.

B. PROJECT SCOPE AND OUR APPROACH

This report summarises the findings from our review of the board of ICANN conducted over the period June – October 2008. The terms of reference for this project have been published by ICANN with the main purpose of the review being to determine:

- 'Whether the Board is fulfilling its purpose within the ICANN structure and;

- Whether any change in structure or operations is desirable to improve its effectiveness'.

Throughout this report we use the term 'Board members' to include voting directors and Liaisons.

Board effectiveness is mostly about how the persons seated around the table choose to work with each other – how they define their role, how they allocate the work, how they come to grips with the issues and how they work together. Much of this is within the board's power to control.

There are, of course, other factors driven from outside the boardroom that influence the board's performance. For member organisations, effective processes for managing interactions between board and members and for allocating roles and responsibilities between board and members are crucial to performance.

ICANN is formally a non-member organisation. In practice however, because ICANN exercises control over important aspects of the internet, the ICANN board needs to be responsive to a very wide range of different stakeholders all with a legitimate interest in influencing ICANN decisions. Paradoxically, although ICANN is a non-member organisation, the influence of interests outside the boardroom on board effectiveness is probably greater for ICANN than for member organisations. Public companies, for example, have equally diverse stakeholders but are accountable primarily to their shareholders whose interests are typically far more homogeneous. The accountability of public company boards to their shareholders is also much more clearly and formally defined than the ICANN board's accountability to different stakeholder groups.

The organisation is unusual in that its legitimacy, (and that of the board), derives less from its legal basis and more from the collective acceptance and

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support of the ICANN 'community'. As such, the ICANN board needs in practice to be responsive to a wide and diverse range of stakeholders. These characteristics surely have an impact on the structure and decision-making of the board. Representation and election rules reflect ICANN's bottom up principles and support its continued legitimacy as a policy maker. But to whom is the board really accountable? It is beyond the scope of this review to determine ultimate organisation accountability but we have certainly recognised it as an issue. The question of accountability is discussed at length in Section C of the report and recommendations for change have been designed to be affirming of ICANN's continuing legitimacy.

ICANN's governance model is very different to that of public companies. In contrast to conventional public company governance models, ICANN seeks to protect stakeholders and the 'public trust' by giving all interested parties, including vested interests, a voice at the policy-making table – and then ensuring that no sectional interest can 'capture' the policy making process. Governance wisdom these days seems mostly directed towards ensuring that public company boards are quite independent of vested interests.

As reviewers, we have no intrinsic problem with ICANN's model. A unique approach is required to respond to ICANN's unique situation. In fact, we are also rather sceptical about much of the new corporate governance landscape which often seems to emphasise 'ticking boxes' that can be monitored from outside the organisation.

ICANN's terms of reference ask us to assess what 'best practices of both not-for-profit and for-profit boards are applicable to ICANN' and this we have done. But our strong view on governance models is that many of the so-called 'best practices' are simply 'common practices' and, in any case, only include those practices that can be monitored by analysts who are outside the boardroom. Rather, while working inside boardrooms we observe different structures and different processes working successfully in similar situations. The professionalism and goodwill of individuals involved also tends to overcome any inherent structural difficulties. As someone once put it – "good people will compensate for a bad structure but the reverse is certainly not true".

That said, we also have observed many good ideas and practices which are transferable and any appropriate to ICANN have been included in this report. But we make the important point that we come to this review with few dogmatic views about board structures or practice. To the extent that ICANN's governance structures are unique and in some instances seem to run counter

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to conventional governance thinking, this isn't a problem for us. Rather, we are interested in whether it works or can be improved. And we do understand and appreciate ICANN's mission which is to ensure bottom-up control and avoidance of 'capture'. The recommendations in this report are designed to strengthen and not to erode these attributes.

This is important to emphasise because some recommendations may, at first sight, appear to run in the opposite direction. To take an example, we will recommend a significant reduction in the size of the ICANN board. There will be some who believe that a large board is an effective way of ensuring wider participation and distribution of power. It certainly looks this way on paper but our experience is the opposite. Large boards breed concentration of power and also are much less effective at holding the executive team to account. A chief executive, for example, who wishes to gain control over his or her board would do this much more successfully with a large board than with a small one. And so, all of our recommendations are, we believe, consistent with, and affirming, of ICANN's mission.

This review has been conducted by The Boston Consulting Group (BCG) and Colin Carter & Associates (CC&A). The key principals of CC&A are former BCG partners who work in collaboration with BCG when working with boards. Details of the key individuals involved are attached as an appendix.

The process employed in this review has been designed around the four areas of board performance we believe are critical to overall effectiveness. These are:

- ***The role*** – how does this board define its role and execute around that? The conventional 'job description' of a board, both for profit and not-for-profit, is widely published and does not vary much around the world. It includes tasks like agreeing strategy, monitoring performance, approving certain capital expenditures and evaluating the chief executive. What is generally more interesting is how the board interprets this list. What responsibilities does the board reserve to itself and how does it carry these out? Does the board get too involved in micromanaging the executives or is it so remote that it cannot even challenge management's view? Where does it add value? Does the board bring insight to strategy discussions and does it adequately oversee major areas of risk? Does the board effectively review the President's performance? And ultimately, to whom does the board see itself as accountable?

- ***The people*** – are the right people around the board table? Does the board have the right mix of skills and are the directors putting in the work? Is the board too large or too small to be effective? Are poorly performing directors dealt with? And does the nomination process produce the right candidates and does it adequately involve all the directors in the decisions?

- ***The processes*** – do the board's practices (agendas, meeting frequencies, information, and committees) add value or do they hinder the board's capacity to learn about the business and monitor what is going on? Are the meetings well used and do board agendas focus attention on the important issues? Is the information that goes to the board relevant and timely? Does the board committee system work well?

- ***The behaviours*** – does the group work constructively or not? Is this a group that really gets the important issues onto the table and deals with them productively? Is 'bad news' brought quickly and openly to the board or does the board 'shoot the messenger'? Is management transparent? Is the boardroom a place where there is both 'support' and 'challenge'? Do the chairman and CEO work well together?

These four areas contain the drivers of board effectiveness. Obviously, many of them are controlled by the board itself while some are imposed from the outside. Compared to the conventional company board, the ICANN board is more subject to influences from outside the boardroom and so in this project we are very interested how these have an impact on board performance. The selection of board members is an obvious case example. In most organisations – be they companies or not-for-profits – the board largely controls who is selected to serve on the board, in practice, even though these selections are usually subsequently approved by shareholders. At ICANN, the board has little say in who joins the board and the impact of this is very much of interest to us.

In carrying out this project, our work has consisted of four areas of activity:
- Interviews: we have interviewed the ICANN directors and most of the senior ICANN executives who see the board in action. We have also interviewed several former board members as well as a representative group of leaders from the Supporting Organisations and Advisory Committees to get their perspective on the ICANN board.

- Survey: we have adapted our boardroom survey and ICANN directors, senior executives and SO/AC members have completed it. This survey is designed around the four drivers of board performance (role, people, processes and behaviours) and has been completed by hundreds of directors and executives across many organisations during past assignments. And so it not only provides feedback about ICANN's board but it enables us to compare ICANN with many other boards.

- Benchmarking: we have sought to identify other organisations against which we can compare ICANN practice where this is meaningful to do so. The learning from this work is incorporated into this report while the raw material is attached as an Appendix.

- Experience: we have been working with boards on board effectiveness issues for over ten years and are able to bring this experience to this project.

All of this work comes together in this report. Our assessment of the ICANN board and our recommendations for change are included in the next section.

C. CONCLUSIONS AND RECOMMENDATIONS

There are eight core areas of change recommended as a result of the review, each of which contains a number of recommendations. They are:

1. **Reduce the size of the board:** The board is too large to be effective and should be substantially reduced in size. Our recommendation is to reduce it to between 10 and 12, but at most, 15 members.

2. **Move to fewer but longer board meetings:** The board meets too often but still struggles to deal with the long term strategic issues. Fewer but longer board meetings –six two-day meetings (including two longer meetings that incorporate 'retreats') is the preferred way forward.

3. **Consolidate the board committees:** There is opportunity to streamline the board committees from seven to three while reducing the size of the committees as well.

4. **Broaden the skills of the board:** The skill base of the board is diverse but lacking in mainstream commercial and CEO experience. The selection processes should be modified including the role of the board in making input to the Nominating Committee's processes.

5. **Make board membership more sustainable:** Strategies to lengthen average tenure are needed. At present, average tenures are too short due in part to a combination of excessive workloads and possibly a lack of remuneration. Tenure that is too short hinders effective policy development.

6. **Build 'high performance' culture at the board level:** Boards today can't expect their organisations to seek constant improvement if they don't seek it themselves. This will mean accepting individual performance appraisal, embracing training and personal development opportunities available to each director, and actively seeking to build consensus where division threatens board cohesion. And the board has a special role in guarding against hubris.

7. **Strengthen the 'strategic' focus of the board:** Boards everywhere struggle to get the balance right between focus on short and long term issues, between value-creating and compliance issues. ICANN can, like other boards, deal with these pressures through active

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management of the board agenda and by constantly clarifying the role distinction between board and management.

8. **Clarify the accountability of the board:** In the corporate world, the accountabilities of a board and the constituencies to which the board is accountable are quite clear. But ICANN's bottom-up and distributed power bases are creating special challenges when aligning accountability and responsibility. Lack of agreement or confusion impedes organisation effectiveness and clarification will bring benefits.

In the following commentary, each of these recommendations is discussed in detail. Reference is made to the survey results where appropriate. The survey results in their entirety are included in Chapter E of this report.

Our recommendations are as follows:

1. Reduce the size of the board

We recommend that the size of the ICANN board be reduced from the current 21 to between 10 and 12 members. But we recognise that there may be pressures that will make this very difficult to achieve. Our view, therefore, is that a board with 15 members should be viewed as an absolute upper limit and might be a first step towards a board of 10 to 12. Each option is discussed in this section.

Any board needs enough members to do its job effectively. This generally means two things. Firstly, the board needs to cover all the skill and experience categories necessary to govern the organisation. More complex, multi-business corporations generally need larger boards than focused single business organisations. Secondly, global organisations with board representatives in different countries tend to be larger so that committee memberships don't overlap and committee meetings can be scheduled simultaneously. And not-for-profit organisations often have representation rules that lead to larger boards – particularly in some countries where the board members are mostly intended to raise money.

We believe ICANN's board is too large and should be reduced. The average size of commercial boards is a little under eleven in the US, a little under 13 in Europe and about nine in Asia. On average, not-for-profit boards in North America are only slightly larger.

Exhibit One

ICANN board compared to benchmarks

Number of board members

1. Includes non-voting board members
Source: (L to R) 1. Heidrich & Struggles 2007 (sample includes 294 companies from 10 countries); 2. SpencerStuart 2005 Board Index; 3. Spencer Stuart 2007 Board Index (sample includes all S&P 500 companies); 4. India: Sample includes 30 BSE-Senex companies, 2005; China: Sample includes 102 SOEs, 96 Private, 93 Foreign organisations - Source: Heidrich & Struggles, Fudan University, 2007; Korea: Source: ADB 2001; Philippines: Source: ADB 2001; 5. Korn/Ferry International with Egan Associates; 2007 (sample includes 350 organisations); 6. Ibid. (sample includes 159 organisations); 7. BoardSource 2007 (sample includes 1026 organisations); 8. Strategic Leverage Partners 2006 (sample includes 1319 organisations); 9-13: company websites

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Our interviews in the course of this project as well as the responses to our questionnaire also indicate a widespread view that the board size is an issue. Only one third of board members and less than 15 percent of management agreed that the board size (21 members) works satisfactorily (Proposition B2). In the Supporting Organisation survey, only 5 percent of respondents agreed that the current board structure and membership rules are the best way to protect the public trust. There seems to be an appetite for change and this was confirmed by our interviews.

It is always difficult to reduce the size of a board other than by natural attrition. But we believe it is important to do so. Smaller boards, provided they satisfy the skill needs discussed earlier, are easier to manage and contribute more to the strategy and direction of the organisation by being able to have deeper discussion of issues. Some might think too that a large board is better able to exercise its duty of oversight over management than would a small board. But experience indicates that the opposite is true. Large boards actually encourage a lessening of accountability because it is possible for a director to relax in the job unnoticed. Papers are easily left unread. Conversely, small boards encourage accountability and participation.

We have asked the question of directors and executives a thousand times – what is the best size for a board – and the answer is always somewhere up to

around ten. Most of the commercial boards that we have worked with range from between eight to twelve members (including the one or more executive directors) and all of these can work fine. But a board of 21 members is completely out of the range of normal commercial practice and it is time for ICANN to make a change.

Halving the size of the board is our recommended goal but an initial step might be to reduce the board to 15. On balance, we believe that the easiest and most appropriate way to achieve this is by redefining the role and position of the board Liaisons. The Liaisons are important contributors to ICANN but need not be board members to make that contribution. As regards, technical expertise, it is good governance practice for boards to get the independent advice needed. This can still be done. But it is done either by commissioning specific reports, by appointing suitably skilled experts to board subcommittees formed to address a specific issue or by simply defining a communication process so that important views are taken into account. As regards communication between the ICANN board and the organisations represented by the Liaisons, this can be done through a purpose-built communication process. It may even be appropriate to make the relevant board committee the primary point of contact. And given the breadth of matters raised at the board, it could be argued that communication will improve if the Liaisons move off the board.

That would reduce the board size to 15 – eight selected by the Nominating Committee, six selected by the three Supporting Organisations and the President (we agree that the executive leader should be on the board as he/she is in almost every commercial organisation around the world).

We would go further. To adjust the board to a more workable size, we recommend that the Nominating Committee select six members rather than the current eight. These nominations are very important and they play an important role and safeguard independence in ICANN governance but their oversight mission can be just as effectively played with six as with eight appointments. (We do have some comments about the role of the Nominating Committee and how it might interact with the board process and will come to that in a later section of this report when discussing the skill mix of the board).

These proposals would bring the board size down to 13 – being 12 non-executive directors plus the President.

The ALAC review is relevant to this discussion – particularly given our proposal to remove the Liaisons from the ICANN board, as well as the debate

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inside the ICANN community over whether ALAC should have voting rights at the board. Obviously, this is outside our formal scope but in principle we do not have any problem with the 'users' being represented as voting members on the ICANN board as are the 'producers'. This might mean one member being appointed by ALAC which would bring the board back to 14 members.

We accept too that the removal of the GAC Liaison is a problem with this proposal. Government support is critical and so we accept that a GAC observer at the board meetings may be important. We understand there would be many practical difficulties in appointing a GAC director although we have no in principle objection to this. Observer status with the right to participate (as is now the situation with Liaisons) appears to be a workable solution.

Thus, our suggestion which is practical but not our preferred recommendation is for a board that has six members nominated by the Nominating Committee, six members selected (as at present) by the Supporting Organisations and Advisory Committee, and possibly one from ALAC as well as the President. That comes to 14 voting members plus, we suggest, an observer from GAC.

As indicated above, this suggestion which takes the Liaison members from the board requires that an adequate communication process be established between the board and the technical community. This can be done in various ways but our suggestion is to build in a formal meeting between the board members and the various technical representatives during each of the three pubic meetings each year.

In recommending such a reduction in board size, we emphasise that we encourage the ICANN board ultimately to halve its size. We truly believe that very large boards are less effective in carrying out their oversight and governance functions. But we recognise the political and 'representational' issues that are very real for ICANN and which barely concern the typical board. A board of 13 to 15 is workable – but just - and would be some improvement over 21 while still preserving its 'representative' character.

But there may be appetite for a bolder change and we have talked at some length about simply dividing the existing numbers by two which would maintain existing political balances. Such a board would have nine voting members: four selected by the Nominating Committee, one by each of the three Supporting Organisations/Advisory Committees, the President and possibly one from ALAC.

A nine person board is much closer to corporate benchmarks and closer to the size that we believe enhances effectiveness. But as well, it easily permits the extra observers – an observer from the GAC as well as an observer from the technical community – without again making it too large.

So this is our preferred recommendation about board size – that the ICANN board is restructured to nine voting members and two observers.

We note that if this is done, the number of NomCom appointees will number four out of nine voting members (a minority) rather than eight out of 15 at present. We don't see this as a problem because 'independent' members can express their voice whether they are a majority of not. But if this seen as an important issue, the NomComs process could supply five board members rather than four. In this situation, there will be ten voting members (four from the SO/ACs and ALAC, the President and five from NomCom) plus two observers (GAC and the technical community).

We emphasise too that reduction in the board size as we have suggested should not increase the workload for the remaining directors. As long as the board is large enough to service the committees adequately – and generally this would mean around eight to twelve people depending on the number of board committees – the addition of board members above that number simply adds persons who replicate what other board members are doing.

Finally, some have asked whether consideration should be given to adopting the two-tier board model – with separate policy and management boards. We know of no advantage that this structure would bring. In fact, our view is that the differences between this model and the unitary board model are far less than appear on the surface. To a large extent, the 'management board' in a dual board has the same role as would the 'executive committee' in a company with a unitary board structure. The ICANN board currently has 20 non-executive members plus one executive director. With two levels of board, there would still be 20 members on the Policy (or Supervisory) Board and the CEO would be on the Management Board with his executive colleagues. It is difficult to see how this would make any difference. In both instances, the board is too large to be productive.

Recommendation #1: Reduce the size of the board:

(a) Assess option 1: reduce the board to a maximum of 15 persons

- Redefine the Liaisons as an expert group of non-board members available to advise directors as required and develop a new communication protocol to ensure frequent exchange of views.
- Provide ALAC with the right to nominate one or two voting board members.
- Reduce the number of directors provided through the NomCom process from eight to six.
- Provide one 'observer' position for the GAC and also, if thought necessary, for the technical community.

(b) Assess option 2: halve the size of the board to around nine voting persons plus two observers

- One from each of the SO/ACs and possibly one from ALAC.
- Four from the NomCom process.
- The President.
- An observer from each of GAC and the technical community.
- Consider maintaining a majority of members sourced from the NomCom process (that is, four from SOs and ALAC, the President and five from NomCom).

(c) Institute communication processes between board and technical community (such as a formal meeting at each of the three public meetings).

2. Move to fewer but longer board meetings

We recommend reducing the number of scheduled meetings from the current substantial schedule (three public meetings, two retreats and monthly teleconferences) to six longer 'in-person' meetings.

The board survey shows solid though not unanimous support for board meetings continuing at their current frequency (C1). Management is less supportive and this is consistent with most boards we deal will.

The board has done a good job in trying to make the current meeting structure more effective. Teleconferences appear to have reduced in frequency and 'retreats' have been introduced to cater for longer, more strategic discussions.

Nevertheless, we believe meeting arrangements can be improved. In the interviews, a number of board members expressed concern that too much was scheduled for discussion and too little time was available for the most important issues – concerns that seem common to most boards these days. The survey shows that only 53 percent of the board feels it sees enough of ICANN management (C6) and only 32 percent believes appropriate time is allocated to the important issues (C7). Certainly it seems that board time is spent overwhelmingly on operational, process or compliance issues.

Exhibit Two
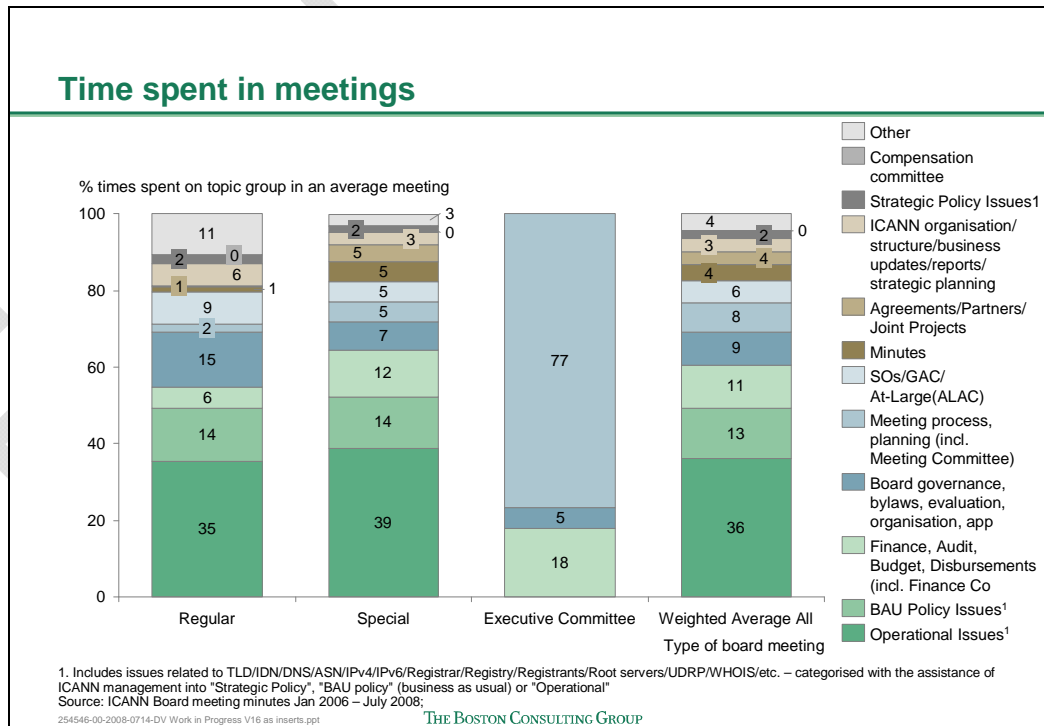
Getting the meeting structure and focus right is a concern for most boards we work with. Boards today are mostly not wasting their time on unimportant matters although some spend too much time on matters that should be delegated to management. But most boards struggle to allocate sufficient time to issues that are important but not immediately urgent. Agendas are full with compliance items, approvals and reviewing current results but focus on 'those things that will determine success five years out' can be difficult to achieve.

In particular, boards find it difficult to schedule open-ended discussions in the board meetings themselves. The pressure of the agenda – and, in fact, the very sobriety and formality of most board meetings – works against open-ended discussions. There are very few instances where the board can sit with an executive and have a deep *discussion* about what it is that might keep that executive awake at night.

In response to this, some boards are seeking to create more time for *open* discussion with various executives about important issues. We find that in most companies there are very few *discussions* between the board and management (below the President). And most of the interactions are carefully rehearsed PowerPoint presentations and these are often hurried because of pressure on the agenda. Every board seems to want more time on strategic issues and more time getting to know the management group.

When working with other boards, this usually leads to a productive discussion concerning board meeting frequency and agenda management.

Meeting frequency is one of the many deep mysteries of board practice around the world. There seems to be no correlation between the size and complexity of the business and the frequency of board meetings! Rather, practice around the world is largely driven by history and habit.

There is no underlying business logic to variations in practice. Rather, they are mostly to do with what has been accepted practice in that country. As such, there is no such thing as observable 'best practice'. And so, we encourage boards such as ICANN to take a clean sheet of paper to this issue – assess the requirements and then design a meeting format that meets these needs and, at the same time, is sustainable for both board and management. This will lead to different answers for different companies.

BHP Billiton is an interesting commercial example for ICANN because more than most global companies it has sought to have a board drawn from all parts of the world. It is the world's largest resources company with operations

on every continent and its directors are resident in Africa, Asia, Australia, North and South America and Europe. It is arguably one of the most 'multi-national' of boards – many multi-national companies seem to have given up on widespread international representation on their boards because it gets all too hard.

BHP Billiton's response is interesting. BHP Billiton has reduced the number of board meetings from 'monthly' about ten years ago to around seven per year. These are mostly split between Melbourne and London but each year at least one or two are held in other geographies. And each meeting lasts for at least two full days.

The ICANN board reduces the travel demands on directors by meeting by teleconference a number of times each year but, in total, meets more frequently than most boards meet. On average, US and European company boards meet between seven and eight times each year and not-for-profits meet a little less frequently than that.

Exhibit Three

Board meetings per year

Board meetings per year

1. Based on 3-4 general board meetings plus 11-16 special board meetings via teleconference (based on 2003-2007 history)   2. Average 6-7 meetings (including 2-3 teleconferences)
Note: Exchange rates used: 1 Euro = 1.4956 U.S. dollars; 1 British pound = 1.9171 U.S. dollars
Source: Spencer Stuart 2007 Board Index; Heidrich & Struggles, 2007; BoardSource 2007; company websites
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When discussing meeting frequency with boards that meet monthly, the points we make are as follows:

- There is no empirical evidence to suggest that monthly board meetings leads to better governance or business performance. (It would be very hard to establish this given that the average meeting frequency across the US and Europe today is around seven to eight meetings per year!)

- Monthly meetings encourage a board to focus on detail and rarely give enough time to address the larger strategic issues. And company directors are today mostly looking for more *discussion* time on key issues.

- Monthly results mean little in most businesses. Trends are usually only discernable after a few months.

- Monthly meetings are hugely distracting for management trying to run a business, particularly one that is global. We estimate that CEOs in companies with monthly meetings can spend 15 percent or even more of their time on board-related issues – the prior preparation, participation and follow up. In a business where a substantial portion of the employees are spread throughout the world, the monthly meeting is a substantial impost on management time

- Monthly meetings often preclude really good board candidates from other geographies or create time zone issues when conducted by telephone – and particularly when directors are resident in countries where the phone system doesn't work very well.

The monthly teleconferences at ICANN are short with an increasingly crowded agenda.

Exhibit Four

Analysis of issues and time spent

Historically, the number of agenda items per meeting has increased as number of meetings has tapered

Overall, there are more issues per month with time spent per issue decreasing to undesirable levels

The 2008 board is dealing with an average of 15-16 items per 2 hour meeting (equating to ~8 minutes per item)

1. Assuming an average 2 hours per board meeting
Note: 2008 annualised values are estimated using available board documents as at August 2008
Source: ICANN board documents

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Our recommendation is that the board moves to a schedule of six formal meetings per year – a meeting every second month. These should be two-day meetings but two of these meetings would be three- or four-day meetings to accommodate what is called the 'retreat'. As well, the three public meetings would be adjacent to these six meetings as well.

A typical suggestion for a 'two day' meeting would be as follows:

- Board committees meet on the first morning and possibly during the early part of the afternoon.

- In the afternoon, a couple of special 'strategic topic' reviews of an hour or two each are scheduled allowing good time for discussion.

- An evening dinner concludes the first day at which any of the following may take place: a topic is discussed, guests or management team members are invited to get to know board members, or the non-executive directors meet alone.

- The second day is when the formal board meeting takes place.

The objective here is to use the agenda to improve the quality of engagement and discussion. As mentioned previously, most boards are struggling to spend

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enough time in *discussion* about important issues and so the time allocated to topic discussions on the first day is very important.

We mentioned BHP Billiton's board meeting format and point out as well that this board actively seeks to create space for meaningful and informal discussions around key business issues. Several years ago, the board instituted what it calls 'Fireside Chats' on the evening before the board meeting – a deliberately informal discussion between a key executive and the board for an hour or two over a key business issue. The ground-rules are that written materials are assumed to have been read – the emphasis is on informal *discussion* rather than formal presentations.

An 'in-person' meeting every second month would be sustainable for ICANN directors – though still tough in terms of travel demands. But as well, some directors may be concerned about getting out of touch. Additional meetings can always be organised if absolutely necessary by phone link up and, of course, monthly results can still be provided by email to each director during those months in which there is no board meeting. Some boards also receive from their chief executive a 'one-page-dot-point-summary' of things that are happening which assists directors to stay in touch. Approval of urgent items between meetings may sometimes be necessary and it would be useful to review existing arrangements to ensure they are effective.

The proposed format also preserves the 'retreats' – the additional one or two days added to two of the six proposed meetings. Here, the board and senior management meet 'off campus' to review the past, where the business is heading and the major issues to be addressed. Follow-up on agreed topics can be scheduled at the various meetings through the year.

We acknowledge that most ICANN directors seem comfortable with the current meeting frequency but the board might seriously consider this alternative model. We are not talking about reduced time commitment although we are talking about less executive time in preparing board papers. And there are a number of advantages to fewer but longer meetings and time for deeper discussions is just one. Dinners help with building the board/executive team and are also the vehicle for non-executive directors to meet periodically to discuss the President's performance. As well, discussions over a meal achieve something very different to those in the more formal environs of the board meeting!

Finally, the board should regularly ask itself whether it is getting too deep into management territory – trying to manage the business rather than overseeing

it. We will return to this issue in Recommendation 7 where we discuss the 'strategic focus of the board'. The survey responses confirm that this is an issue. Little more than half of the board members believe that the delegation to management is appropriate (Proposition A4) or that board members 'avoid intruding inappropriately on management tasks' (A5). Needless to say, management is even less convinced.

The ICANN board is comprised of persons drawn from many different governance environments and many members have not had prior experience serving as directors on boards. As well, many have quite detailed knowledge of the workings of the industry and so will be easily drawn into the detail. And so, the survey responses are not surprising. The board is probably too much into the detail. One of the important duties of a chairman is to ask whether 'this issue is one that should be left to management'. And some boards conclude their board meeting with a brief discussion about 'whether we got the level of our discussions about right?' We suggest the same at ICANN.

Recommendation #2: Move to fewer but longer board meetings:
   (a) **Introduce six two-day 'in person' board meetings, three of which would be held adjacent to public meetings.**
   (b) **Discontinue monthly teleconferences except in special circumstances.**
   (c) **Schedule 'fireside chats' before each board meeting with senior executives to discuss important issues.**
   (d) **Hold two one- or two-day strategy retreats - adjacent to regular board meetings.**
   (e) **Review arrangements for inter-meeting approval of urgent matters.**
   (f) **Ask regularly, after board meetings, whether the board spent its time on board work – or is getting too deep in management matters.**

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3. Consolidate board committees

Our recommendation is to review the scope and operation of the board committees with the objective of reducing the overall number of board committees and reducing the size of the committees as well.

Board committees are used to divide up the work among board members to accomplish more in their limited time. They are important and can be very effective with most boards focusing on the core governance committees of audit, remuneration and nomination/governance.

In some organisations – and particularly in not-for-profits – we can have an 'in principle' objection to some board committees because they deal with matters that should be part of management's accountability. For example, board committees that deal with property, finance, marketing and the like are not appropriately committees of a board. These are executive responsibilities and the board's role is to oversee management's performance. When these matters are driven by board committees, the oversight role of the board is compromised because those who are supposed to be overseeing management are themselves deeply involved in the executive task. In these situations, we prefer to see these committees as management committees reporting to the chief executive. If appropriate, board members can attend or even serve on these committees as long as the CEO wants them there.

We don't have any such 'in principle' objections to the ICANN board committees except perhaps to the Finance Committee. We accept, however, that many not-for-profit boards do have a Finance Committee and we also note that at ICANN the Finance Committee is viewed by both board and management as doing its job well (Survey Proposition C11). So that is not a major focus of our attention although we do question its rationale and suggest that it be re-defined as a management committee with some board-member support. Rather, we see opportunity to streamline the whole committee structure.
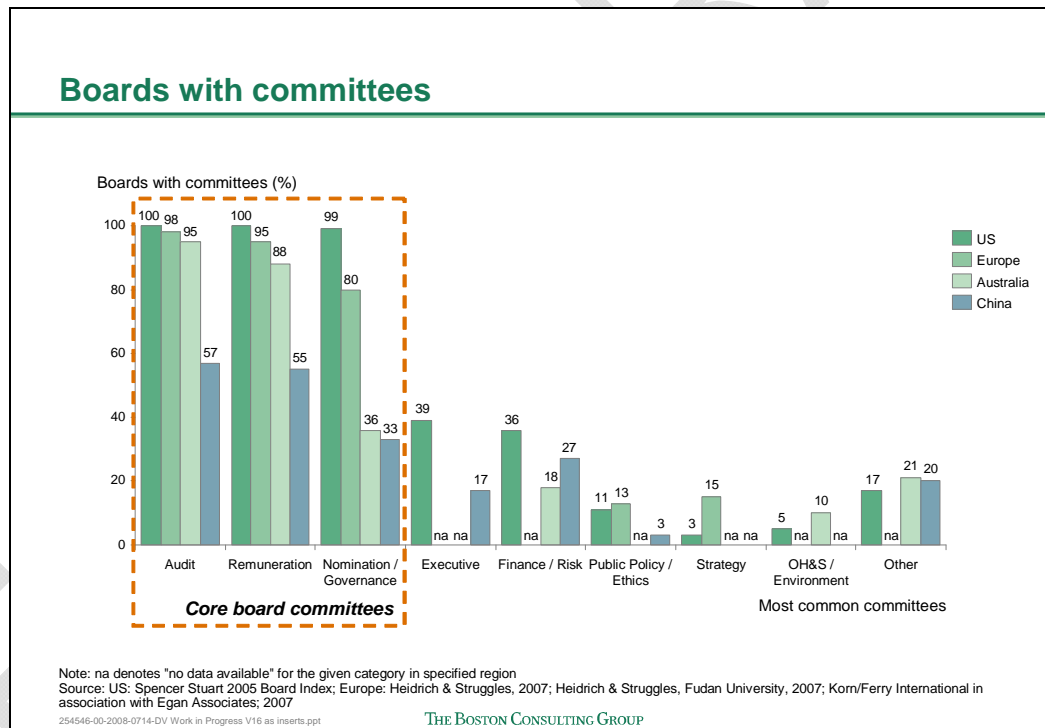
At ICANN there is almost no support for the current committee structure. In the survey, most of the directors disagreed with the proposition that 'the current committee structure is an effective way to conduct the board's work' (C15). Only 16 percent of the board members agreed that the committee structure is effective and management's view was much the same.

As well, there is lukewarm support for the performance of the committees (C9 to C14).

Three committees are universal – and increasingly mandated by regulators and governance activists. These three committees are Audit, Remuneration and Nomination (increasingly known in the US as the Governance Committee). These are the essential oversight committees that cannot be driven by management for obvious reasons. The Audit Committee ensures that executives aren't 'cooking the books', the Remuneration Committee determines what the senior executives should be paid, and the Nomination Committee determines who should be overseeing the executive team. These are appropriately committees of the board and not of management.

Looking across board practice, these three committees are now almost universal in the US and Europe and increasingly so in the developing world.

Exhibit Five

Boards with committees

Boards with committees (%)

Core board committees

Most common committees

Note: na denotes "no data available" for the given category in specified region
Source: US: Spencer Stuart 2005 Board Index; Europe: Heidrich & Struggles, 2007; Heidrich & Struggles, Fudan University, 2007; Korn/Ferry International in association with Egan Associates; 2007
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The ICANN board has many more committees than do most boards and our surmise would be that dissatisfaction with the performance of the committees at ICANN derives from this fact. Committees which are excessively operational or have unclear focus can be frustrating and also create a great deal of work for management that is unnecessary.

Exhibit Six

Board committees benchmark summary

Number of board committees
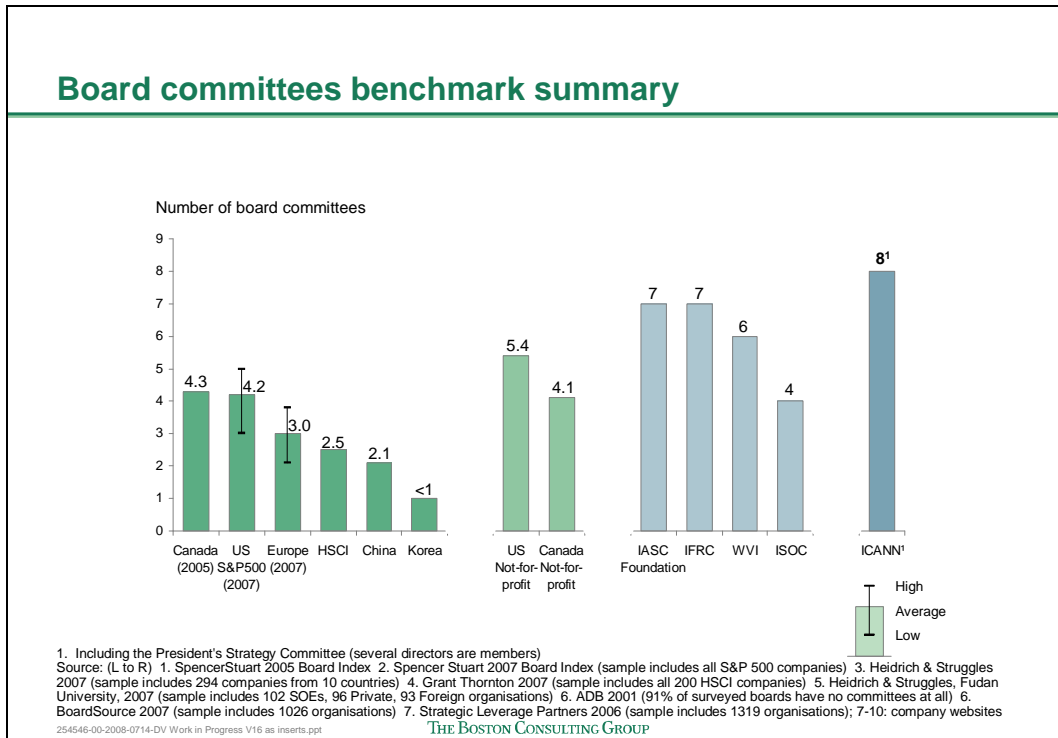
All this argues for a detailed review of the structure and scope of ICANN's board committees and this should probably include the President's committees because board members participate in those.

In the interviews, there were a number of issues raised. There was no conceptual logic seen in the way that responsibilities were allocated. There was a view that important finance/audit skills were concentrated in too few individuals, major issues of personal interest to some directors were seen as being directed to committees rather than delegated to management, and there was a feeling that the board governance committee was a dumping ground for all matters not easily classified.

Our first recommendation is the restructure of the Governance Committee to include matters currently dealt with by the Reconsideration and Conflicts Committees. These two committees should be discontinued and their duties consolidated into the scope of one committee – the Governance Committee. The issues addressed by both the discontinued committees are quite appropriately part of 'governance'.

We are usually sceptical about 'Executive Committees' of a board because they tend to create an inner cabinet which leads to an 'A' team and a 'B' team

among the directors. We are told that this committee at ICANN hasn't had this outcome and that its duties are limited to agreeing agendas for coming board meetings and approving 'out-of-session' matters like travel requests. We recommend that ICANN considers discontinuing this committee and handling required approvals through delegations as other companies do. And the agenda for meetings can be prepared by the Chairman and President as happens with other boards – of course with any director entitled to ask for any item to be added to the agenda.

As indicated above, subject to the requirements of California law as it relates to ICANN, we also recommend that the need for a Finance Committee be re-assessed. There is no doubting the importance of the finance function but it isn't truly a governance function for the board. Finance is central to the management task. In most boards, the chief financial officer attends most of the board meeting and is fully available for comment. As well, the board can ask for special analyses or any information it wants about the finances.

The possible gap in the committee structure is that of a 'risk committee' which is an appropriate committee of a board. We support the creation of a risk committee if its scope is carefully defined in terms of keeping an eye on the *major* risks facing ICANN. These would include major political risks, technical risks, business risks, key relationships risks and the like. It would also include oversight of the processes adopted by management for dealing with operational risk, health and safety, and environmental risk etc. Less than half of the board as well as the management believe that the board 'has adequate focus on the major risks facing ICANN' (Proposition A12).

The ICANN board might also consider forming *temporary* committees to deal with very important issues. This should be done sparingly and these committees should have 'sunset' clauses lest they outlive their usefulness. Their risk is that important matters are dealt with by only a few members of the board - but against this is the advantage that comes from giving an important issue stronger focus. And such a sub-committee will report fully to the whole board. A possible example at ICANN would be the 'Post JPA' environment and strategies. A board sub-committee to give this added focus may be useful – particularly given that a threat to ICANN is that it loses legitimacy.

In summary, the committee structure is clearly an issue. Some committees are struggling to define their role. We propose that ICANN consider:

- Discontinuing the Reconsideration and Conflicts Committees and folding their responsibilities into the Board Governance Committee.

- Discontinuing the Finance and Executive Committees and making other arrangements for the value-adding activities currently in their scope.

- Consider establishing a Risk Committee.

- Consider sparing use of 'temporary' committees that have clear 'sunset clauses'. One such committee focussing on the post JPA environment should be considered.

This would mean that the standing committees of the ICANN board in future would be four - Audit, Governance, Remuneration and Risk. Furthermore, consideration will be given to establishing temporary committees of the board to deal with particularly important issues.

The general 'rules' of board committees are:
- Make sure the chairs of the core governance committees (Audit, Remuneration and Governance) are both technically independent (according to common requirements of governance standards) and 'personally' independent with the skill and integrity to do what is right.

- Keep each committee small so it is an effective working body and so all board members can participate. (In a 12 person board the committees should comprise about three to four directors with management present by invitation).

- Make clear that the role of the committees is to present recommendations to the whole board and not to abrogate the board's responsibility to make decisions (but also make sure that the board doesn't try to re-work everything and instead accepts that it has delegated responsibility to the committees).

- Seek occasional rotation of chairmanship and membership so a spread of directors learn about specific aspects of the organisations' business (though don't compromise the skill requirements of the committee in doing so).

- Be prepared at times to co-opt necessary skills from outside the board onto committees when this is required.

- Regularly ask whether the work being done in the board committee is really 'board work' or whether it is dipping unnecessarily into management's domain.

It is worth pointing out that in the corporate sector, the 'Governance Committee' is typically another name for Nominations Committee and the selection of board members is one of this committee's most important duties. At ICANN, of course, the nomination process is dealt with by parties external to the ICANN board (such as the NomCom) and so it is not part of the Governance Committee's scope. We have a point of view on this and believe strongly that the existing board should have some substantial input into the selection of new board members. We will return to this matter in the next recommendation which deals with board skills. We will recommend that the ICANN board should have formal input into the selection of new board members and the preparatory work involved in this should be a duty of the Governance Committee.

Recommendation #3: Consolidate the board committees:
  (a) **Consolidate the Reconsideration and Conflicts Committees into the Governance Committee.**
  (b) **Redefine the scope of the Governance Committee to incorporate all matters relating to legal issues, conflicts of interest, reconsideration and fairness. Also assign to this committee the task of defining the skills and experience required on the board.**
  (c) **Redefine the scope of the audit committee to include overseeing the legitimacy of the budget process and other key aspects of the existing finance committee.**
  (d) **Discontinue the Finance and Executive committees.**
  (e) **Consider establishing a Risk Committee of the board.**
  (f) **Consider establishing (but sparingly!) temporary committees with clear sunset clauses to deal with important issues – such as the JPA matters.**
  (g) **Limit the size of board committees to three or four board members with management attending by invitation.**
  (h) **Allocate responsibility for setting the board agenda to the Chairman, Deputy Chairman and President in consultation (with other board members able to add items as they wish).**

4. Broaden the skills of the board

The structures and processes of a board are important but arguably amount to little if the skill mix and energy of the board members is lacking. And so, any review of a board must have a central focus on the people who sit around the table and how they get there in the first place.

Our recommendations are intended to help institutionalise those processes that lead to relevant skills being brought to the board.

A majority of ICANN board members believe that the current mix of skills is appropriate to carrying out the board's tasks (Proposition B1) although a sizable minority is unsure or disagrees. And management is quite sure that the skill mix is lacking – a result typical of most boards we see. The Supporting Organisation survey shows that only one-third of the respondents agree that the current board members have the necessary skills and experience (Question 12).

It is clear from our interviews that there is a range of views about what skills might be lacking. There are even contrary views – such as whether more or fewer lawyers are needed and the importance of 'big company' experience. But where the board members suggested more or different skills were needed, the areas mentioned most consistently were:

- Finance, accounting and audit skills.

- Top management experience – former CEOs or leaders of significant organisations

- Policy development skills and experience. That is, individuals who are familiar with the political process and have useful relationships with government

- Communication and stakeholder management skills.

Strong technical skills are viewed as important and shouldn't be compromised. Most interviewees viewed the board as having strong expertise in the industry.

In passing, it is worth noting again that so-called 'governance best practice' principles would place question marks against the ICANN board composition because some of the directors would be viewed as 'non-independent'. Their

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current or recent employers might be viewed as having a conflict of interest or the director would, by virtue of his or her involvement in work related to ICANN projects, be viewed as too connected to ICANN's work to be truly regarded as independent. Quite wrongly, we believe, the demands for board 'independence' have led to a situation in the corporate world where directors of public companies have little experience or understanding of the industries within which their companies operate. Mercifully, ICANN doesn't seem to have this problem. It has been able to recruit persons to the board who have deep industry experience, even persons who have been closely involved in those supporting and advisory organisations who do much of the ICANN community's work. But to the extent to which ICANN might in future be subject to the same governance pressures being placed on mainstream corporations, this practice may become a problem.

When thinking about board composition, the starting point is to search for personal qualities and then consider the appropriate mix of career and functional experience. The personal qualities apply across all industries while the mix of relevant skills will vary. In ICANN's case, skills and experience that are not commonplace in most corporations are important.

The most important personal qualities are, in our view:

- The intellectual capacity to understand a business in which the director has not actually worked. If the director cannot do this, he or she will be limited to reciting the experiences that they have had in another job.

- The ability to deal with issues at the appropriate level - to see the 'big picture' issues and get enmeshed in the detail only to the extent necessary.

- The director's ability to work as part of a team – to listen well, to draw the best out of other people rather than turn them off.

- Insight and judgement – does the person understand where the 'value' is? Can they cut through to the essence of the issue?

Then using these personal qualities as the essential platform, it is important to seek diverse perspectives. These might involve different industry or technical skills. Typically, boards will seek at least a few directors who have managed comparable organisations. Global organisations will seek a couple of directors who have global executive experience. Boards will seek diversity in functional skills – for example, an understanding of relevant technologies in a Telco or

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supply chain experience in a retailer. Some bench strength in the finance and accounting areas is a given for all organisations because financial viability is a necessity and these skills also form the backbone of a good audit committee.

Today, the main debates in corporate boards about their composition centre on gender and geographic diversity, what depth in industry skills is necessary and the balance between former CEOs and those whose experience has been as advisers.

As can be seen from the two analyses below, prior executive experience is probably the main attribute sought in company boards these days – to such an extent that we often argue that this emphasis is overdone.

Exhibit Seven

Background of new directors

Total (%)

Category	2000	2005	2006	2007
Others[1]	9	9	13	6
Division/subsidiary president/gm	4	5		5
Investment mgmt/investors	2	6	5	5
Academics/nonprofit	2	10	6	7
	6		8	
Other corporate executives[2]	4	11	10	16
Accountant	3	2	3	1
Banker/investment banker		4	4	5
CFO/treasurer	8	8	11	8
CEO (retired)	9	13	11	14
CEO (active)	53	32	29	33

1. Includes four other categories, each with 4% or less (e.g., lawyers, consultants, government and military officials; 2. Mostly executive/senior vice presidents or heads of functional units (eg marketing, human resources)
Note: Sample includes all S&P 500 companies
Source: Spencer Stuart 2005, 2006, 2007 Board Indices
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Exhibit Eight

Professional expertise represented on boards

Expertise	%
Business Management	89
Finance	85
Organisation's Field	76
Legal	69
Entrepreneurship	67
Investments	64
Marketing	55
Fundraising	53
Human Resources	48
Government Relations	41
Technology	30

Source: BoardSource 2007 (sample includes 1026 organisations)

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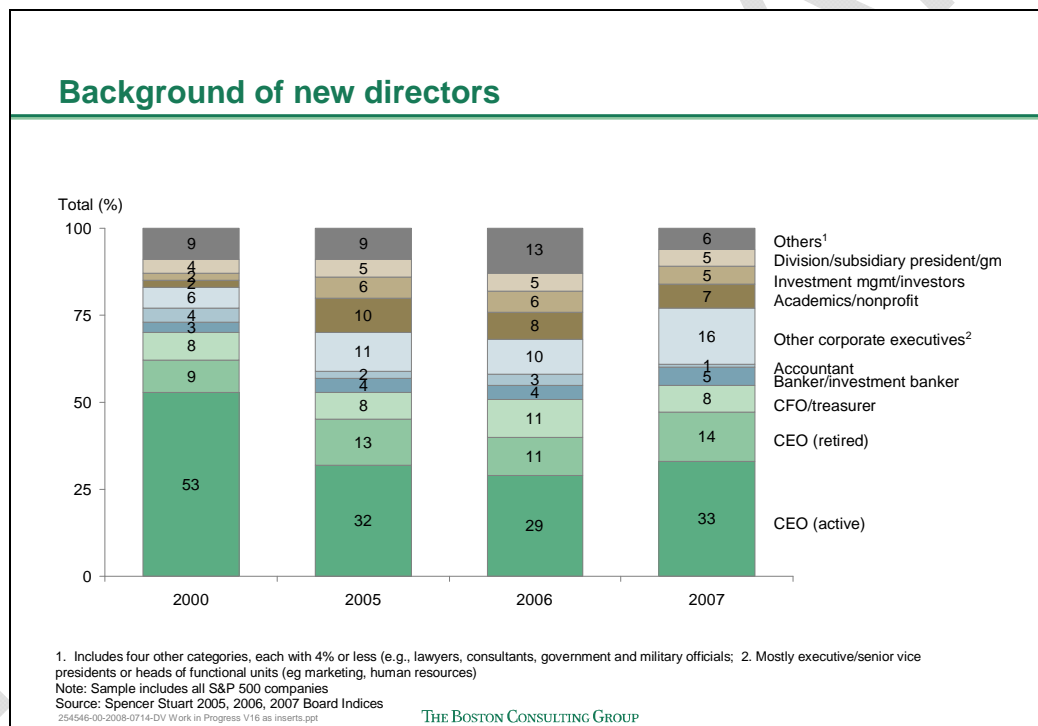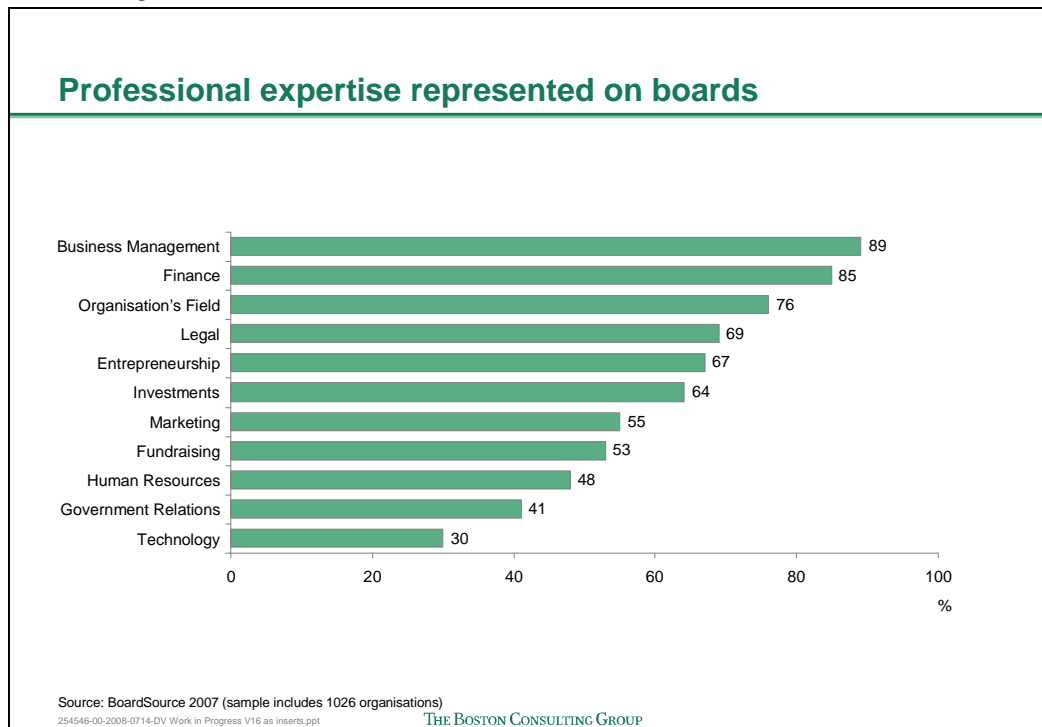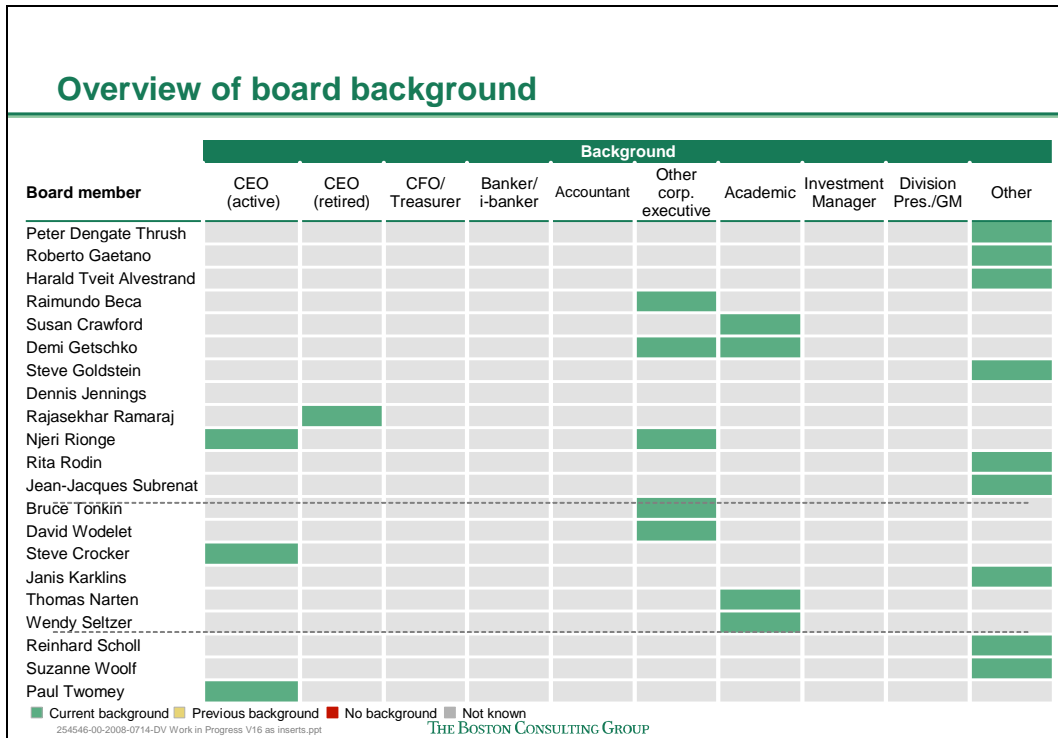
While company boards may over-focus on prior executive experience, at ICANN however, this attribute may be underdone. One of our suggestions is to continue to attract a few more people with good quality general management executive experience.

ICANN's current board, as we said, is very focused on technical and legal expertise. These are important skills and we have no disagreement about their importance to ICANN but there is a lack of breadth and the board should expand its experience base.

The following summary of directors' background is clearly incomplete having been developed from publicly available information about ICANN. It was not possible to be certain where previous experience existed. Nevertheless, our assessment is that high level executive leadership experience is lacking. But our main point is that such a skill/experience summary was not readily available and this points to another recommendation which involves a strengthening of the process. Good boards analyse their skill mix and form views about their desired board composition today - and in several years time. They update these summaries regularly and use them in board succession planning and board recruiting.

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Exhibit Nine

Overview of board background

Board member	Background									
	CEO (active)	CEO (retired)	CFO/ Treasurer	Banker/ i-banker	Accountant	Other corp. executive	Academic	Investment Manager	Division Pres./GM	Other
Peter Dengate Thrush										■
Roberto Gaetano										■
Harald Tveit Alvestrand										■
Raimundo Beca						■				
Susan Crawford							■			
Demi Getschko						■				
Steve Goldstein										■
Dennis Jennings										
Rajasekhar Ramaraj		■								
Njeri Rionge	■					■				
Rita Rodin										■
Jean-Jacques Subrenat										■
Bruce Tonkin						■				
David Wodelet						■				
Steve Crocker	■									
Janis Karklins										■
Thomas Narten							■			
Wendy Seltzer							■			
Reinhard Scholl										■
Suzanne Woolf										■
Paul Twomey	■									

■ Current background ■ Previous background ■ No background ■ Not known

In our work with other organisations we encourage boards to consider the make-up of the board *in total* rather than simply to fill vacancies as they arise.

It is useful to adopt a structured way of describing the *aspirations* of the board, and how those aspirations would manifest in people, skills, behaviours and external perceptions. This has two important advantages. Firstly, it forces a five to ten year view of the board which takes the discussion beyond the mechanics of managing impending retirements. It is akin to taking a clean sheet approach and should crystallise issues of behaviour and values as well as structure and skills. Secondly, by incorporating the organisation's vision and strategy as context, it legitimises a discussion of future board personnel changes necessitated by changing business focus and need - and even today there are few boards that have been willing to change their composition simply because the business has changed.

Underperformance is normally the only basis for proactively changing directors, but in future we believe that boards will have to do a better job of 'managing out' even good performers when the requirements have changed. Linking the shape of the board to the strategy of the underlying business cannot simply be done by reacting to vacancies arising from year to year.

All of the above makes good sense for most companies and not-for-profits because their boards have most of the say in who is invited to join the board. But at ICANN, the director selection process doesn't work this way. Directors are selected by parties who are *outside* the boardroom – the Supporting Organisations and the Nominating Committee. For example, in every corporation that we know, the Nominations Committee is a committee of the board and not a committee that is external to it.

We understand the logic that leads ICANN to this structure – the need for 'bottom-up' control and representation to ensure that the internet community is effectively represented on ICANN's policy-making bodies. We have no desire to challenge this but point out that there is a significant flaw that should and can easily be addressed. The flaw is that the only reliable view of a board's skills and capacities is from *inside* the boardroom. Only those seated around the table can judge who truly contributes and whether important skills are seriously lacking.

This leads us to argue that the board itself should be a formal participant in the process that leads to new directors being selected for the ICANN board.

We appreciate that there is a review being undertaken of the Nominating Committee and so we regard this matter as somewhat (though not completely) outside our scope. But our suggestion is this. The board should be represented on the process that is responsible for selecting new board members. How this should be done (given that the Nominating Committee has duties other than selecting ICANN board members) can be worked out later. But, we recommend that the ICANN Chairman and the Chairman of the ICANN Governance Committee be formal and full members of the Nominating Committee's process that leads to ICANN director selection. Their views about the skill gaps that should be addressed are important. Any process that only chooses board members from outside the boardroom fails to deal with the true dynamics of boardroom effectiveness.

While on the question of skills, we offer some other suggestions. One involves the use of professional executive search firms in at least some of the director search processes. These are increasingly used by boards around the world in an attempt to broaden the candidate base.

Another involves offering on-going training as well as improved induction for directors. The survey responses indicate room for improvement here (Propositions B7 and B9). We hesitate to propose anything that might

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increase an already heavy workload for directors but a few ideas might be worth exploring.

One suggestion that has worked well in other places is to encourage each board member to nominate an area in which he/she would like to enhance their knowledge of the business in the coming year. Typically, this would be agreed with the Chairman and the President and an interview program (mostly inside the company) would be agreed. Occasionally too, participation in an external training event or seminar would valuable.

Participation in certified 'director training' as typically provided by the professional associations that represent company directors is mandatory for some boards and might also be considered here. These courses give an overview of director responsibilities, legal accountabilities and director roles (as opposed to management's role) and are valuable to new directors. Our understanding is that many of those appointed to the ICANN board have limited or no experience of being a director and so this may be a particularly useful suggestion. It is also possible that some of these courses might be brought in-house and provided to the board.

We suggest too that ICANN consider occasionally inviting a prominent director (from corporate and not-for-profit sectors) to meet with the board over dinner for an informal discussion about that director's view of the role of a director and the characteristics of a good board. Listening to leaders from other organisations – for example, the NFL Commissioner, the Chairman of the Red Cross or a senior director from Royal Dutch Shell - is a good way to challenge our own assumptions about the role of a director.

Finally, as part of this discussion about developing the skills of the board members, we emphasise again the need to ensure adequate time for discussion about the really important issues. These discussions are an opportunity for the board members to learn about the business or important policy matters. We discussed the value of these sessions in a previous section (Recommendation #2).

Recommendation #4: Broaden the skills of the board:

(a) Formally define the skill and experience and independence mix required for the board to operate effectively – in the short and longer terms.

(b) Form a view about the main gaps in skills that should be met.

(c) Formally define the participation of the ICANN chairman and the chairman of the Governance Committee as part of the Nominating Committee's process for choosing new board directors.

(d) Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required.

(e) Offer training in director's responsibilities to all board members.

(f) Encourage each director to nominate an area of 'learning' for the year.

(g) Occasionally invite prominent company directors to meet the board over dinner to talk about 'the role of the director'.
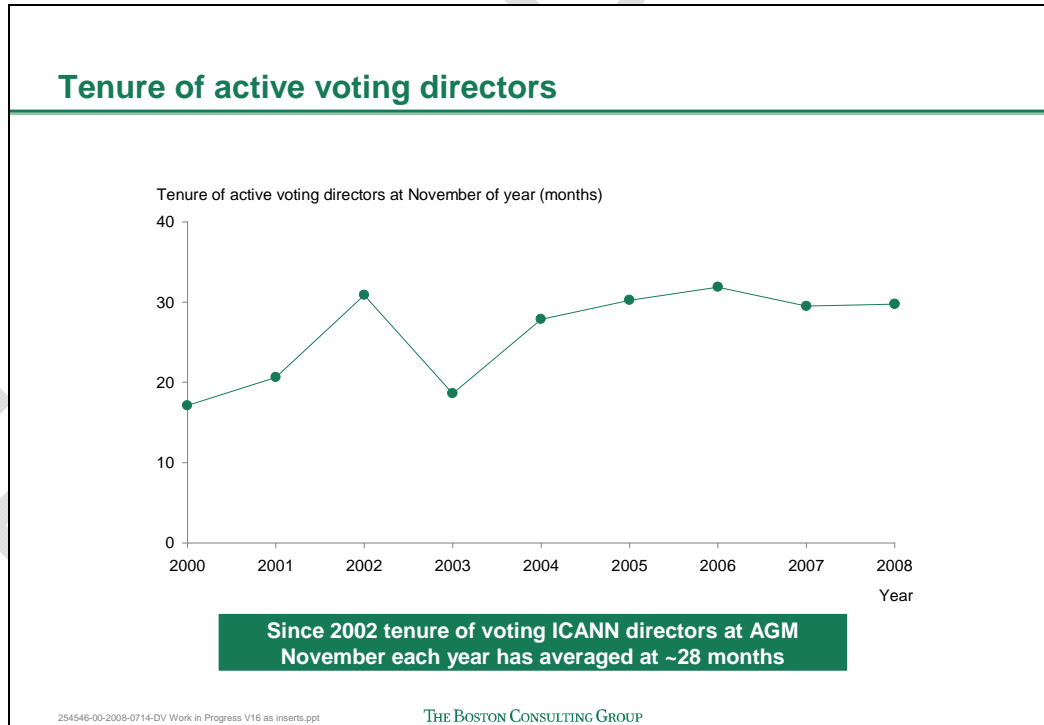
5. Make board membership more sustainable

The workload and time commitment required of ICANN's non-executive board members is beyond anything we have seen in other boards. And the average tenure of directors is much less than we see in other boards, arguably too short to enable the board to be truly effective. We see these as major issues that are related and which need to be addressed. These issues are also related to the 'board member remuneration' issue as described to us.

Only one-third of the board members believe that the time commitment is reasonable and more than half believe it is unreasonable (B11). Virtually all the executive group believes that the time commitment required of board members is unreasonable (B11). The *average* estimated commitment for ICANN directors is almost 30% of available time and one director spoke of receiving more than 7,000 emails per annum. It is unsurprising that many board members are unable to serve more than one term.

And so, tenure is a problem. At any given time the average tenure of the ICANN board is about 30 months.

Exhibit Ten

Tenure of active voting directors

Tenure of active voting directors at November of year (months)

Since 2002 tenure of voting ICANN directors at AGM November each year has averaged at ~28 months

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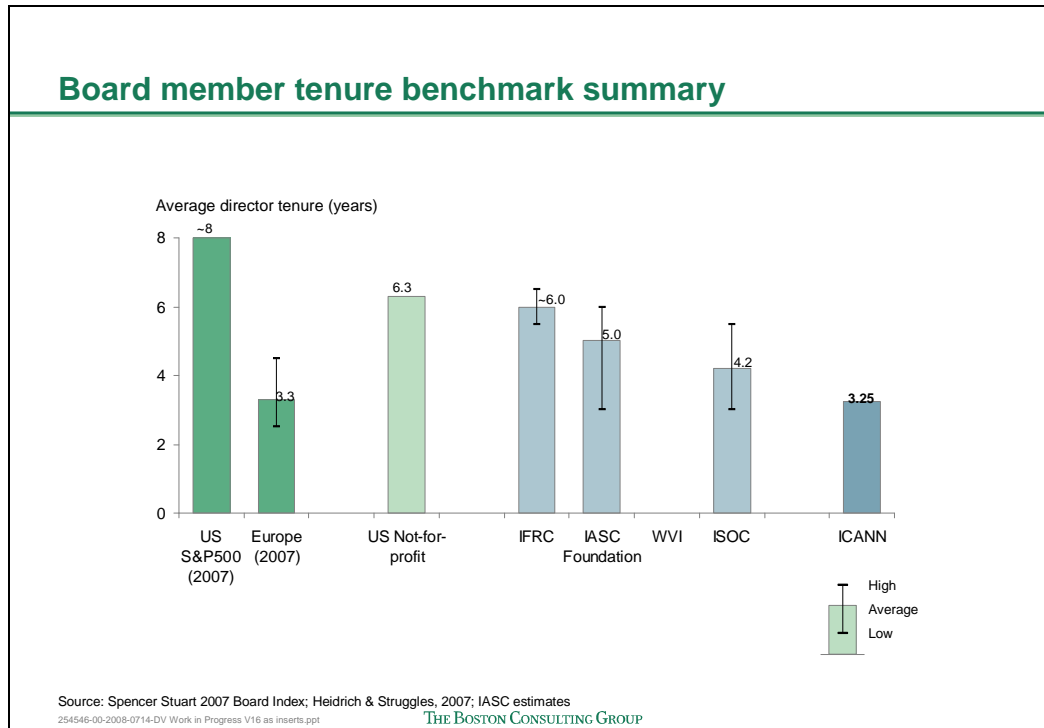
The average tenure of all ICANN directors has been about 3.25 years and this figure would fall to about 2.5 years if the 'outliers' of founding directors who

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served nine or more years were excluded. The 3.25 year figure is very brief in our experience and compared to benchmarks.

Exhibit Eleven

Board member tenure benchmark summary

Average director tenure (years)

Source: Spencer Stuart 2007 Board Index; Heidrich & Struggles, 2007; IASC estimates
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Short average tenure was both explained and defended in our interviews. It was explained by the enormous time commitment required of directors which made it difficult for many to contemplate a second term. It was also explained by the nomination/voting processes which made reappointment uncertain even when there was a desire to continue serving. On the other hand, short average tenure was defended as acceptable given that most directors came to the board with an industry background and a reasonable knowledge of ICANN's operations.

But there is clearly a problem. Although many directors are assumed to have industry knowledge when joining the board, the survey response indicates that around half the board members and executives believe that the board struggles to understand the factors that determine ICANN's success (Proposition A10) and even fewer believe that the board is able to effectively review implementation of policy or monitor ICANN performance (A8 and A9). Furthermore, only around one-third of Supporting/Advisory Committee members believe that 'the average tenure of board members is sufficient for them to understand the issues that the board has to address' (Proposition 9 in that survey). In a situation where the time taken to develop a substantial policy

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initiative exceeds average director tenure, the board will not only struggle to add value but will also delay the process while newly arrived directors come up to speed.

In other environments – such as in corporations or not-for-profit enterprises, a director serving for about six years is seen as desirable minimum (assuming that they are competent) because it takes two to three years to truly understand the business which allows three to four years of adding real value.

Governance thinking on tenure limits varies around the world and there is no widely accepted view. Some companies impose tenure limits on directors and others do not. Mostly, where we see limits imposed, they are in the range of nine to twelve years and so ICANN's formal tenure limit is not out of line with any current standards. And there is not much pressure for change in the board – 68 percent agree the existing limits should be maintained (B6) and no one disagrees.

If ICANN wants a broader skill base on its board and more commercial experience, then it must find ways to retain high performing directors beyond a single term. Addressing the nomination process, considering director compensation, and directly attacking the workload of individual board members is part of the answer and we make recommendations in all these areas.

Increasing terms to four years is one way of supporting and reinforcing other changes which might be made. At the very least, it would delay the political risk of reappointment by one year and should in and of itself lead to longer average tenure. There is, of course, a balance required here because the legitimacy of the ICANN board rests on the community's ability to change the board if it sees fit to do so. But balancing this against the complex nature of the board member task, we believe that four-year terms are more appropriate. (We also note that there are proposals under consideration that would enable the community to remove the board in extreme circumstances – as will be seen later in this document we support such a proposal).

In most boards, the starting point for a discussion on workload is the meeting frequency and the board information pack. We have already discussed reducing meeting frequency (Recommendation #2) and believe that this will be a major contribution to the 'workload' issue. As well, we believe that there is scope to re-assess how enmeshed the board becomes in detail that should be left to management. As already indicated, barely half of the board believes that the board members 'avoid intruding inappropriately on management

tasks' (Proposition A6) and this was a view confirmed in our interviews. We recommend a robust exercise that assesses what comes to the board as well as the content of the work being carried out in the board committees – the objective being to substantially reduce the amount of work that comes to the board. We will return to this issue shortly when discussing how to strengthen the 'strategic' focus of the board (Recommendation #7).

As regards the board information pack, only half the board agrees that the information provided is adequate and timely (Proposition C8).

We have reviewed several ICANN board packs and found them quite similar to those we have seen in good organisations elsewhere. And the issues relating to timeliness raised in interviews seemed to involve the mechanics of receiving hard copy, so the survey result is a bit surprising. Nevertheless, the perception, if not reality, is there.
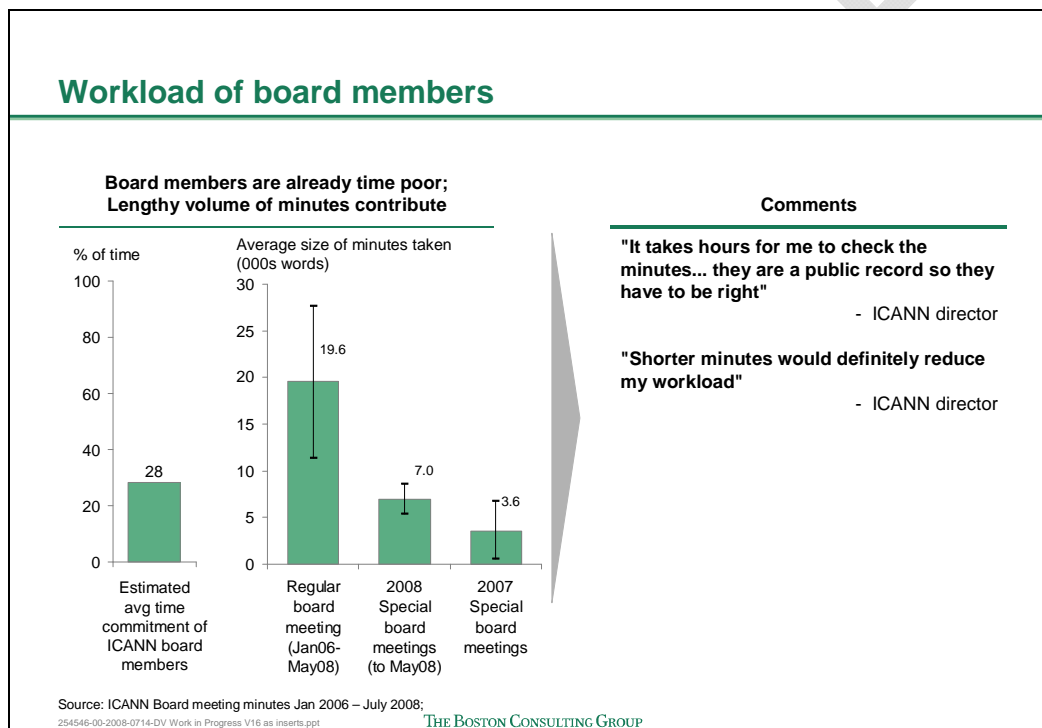
There is often reluctance by directors to impose on management the burden of creating all new reports. But on balance, we believe it is reasonable that board information be specifically designed to meet the needs of the board. This starts with a deeper understanding of exactly what directors would like to see. In a large board with many different opinions this can be difficult to identify. We understand ICANN management has been working to this end and we encourage perseverance and to consider (if not already implemented) the following:

- An overall content analysis (this could result in more qualitative data such as staff/management morale measures)

- More stringent volume restrictions

- Continued discipline in sending out information at least a week before the meeting

- Proformas for both papers and summaries

- Agreement on how to present key points/key data

- More extensive use of appendices or follow up data for directors wanting detail

- Assigning appendices or background information to a separate part of the existing secure site.

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Our experience is also that the visual design of information is critical and this should be part of any action taken. Further discussion to make clear the needs of directors would be a first step in helping management.

We also suggest a reconsideration of the practice of providing extensive (though not verbatim) minutes of meetings. There is a transparency issue here and we understand that but the workload issue must be attacked on many fronts. The average size of minutes taken for regular ICANN board meetings is a novella. And the cost of staff time is significant.

Exhibit Twelve

Workload of board members

Board members are already time poor; Lengthy volume of minutes contribute

Comments

"It takes hours for me to check the minutes... they are a public record so they have to be right"
- ICANN director

"Shorter minutes would definitely reduce my workload"
- ICANN director

Source: ICANN Board meeting minutes Jan 2006 – July 2008;
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Most boards provide a record of decisions or requests and a short summary of the matter discussed and this is the approach we recommend.

Logistical support for the board should also be continually assessed. Recent changes to increase the level of support have been appreciated by board members. A number of respondents suggested establishing a senior Company Secretary position in addition to the current support and separate from the critical General Counsel position. Such a change would be consistent with the structure we observe in many organisations.

We also recommend a further review of management delegations. Only 58 percent of board members and 25 percent of executives believe the current level of delegation is appropriate (Proposition A5). Disbursement authorities have certainly increased in recent years.

Exhibit Thirteen

Disbursement limits

October 2006		February 2008	
Who approves?	**Disbursement Obligations**	**Who approves?**	**Disbursement Obligations**
Any one ICANN Officer	Up to USD25,000	Any one ICANN Officer	Up to USD50,000
Any two ICANN Officers	Up to USD50,000	Any two ICANN Officers	Up to USD100,000
Any two ICANN Officers - SVP or operations	Up to USD75,000	Any three ICANN Officers, two of whom must be the CEO, COO, or CFO	Up to USD500,000
President/CEO	Up to USD100,000 for general disbursement of ICANN funds and payment authorization	Board of Directors	USD500,000 or more.
President/CEO	Up to USD300,000 for general contractual commitments that fall within the overall annual approved budget		

- The Board Finance Committee reviews the policy and the appropriate limits at least annually
- Approvals may be structured as "up to" approvals
  - eg, the Board of Directors may approve of a known commitment in advance with a maximum amount approved. If the item is negotiated for a greater amount, then the approval must be requested again

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These financial obligations are fairly easy to define although it is not clear that they are set using external benchmarks. More difficult, and more important, are the non-financial authorities and responsibilities of the President.

As discussed elsewhere in this report, we believe these should be discussed in the context of clarifying respective roles and documented in a board charter which could supplement the by-laws.

Finally on the issue of workload, directors should review the need for the 'board list'. The list seems to generate much of the email traffic that becomes time consuming for board and staff. Indeed, if our recommendations on reducing the size of the board are accepted the need for the board list may disappear in any event.

In summary, there is a serious issue at ICANN regarding the sustainability of board roles. Average tenures are too short and there is general agreement that the workload is inappropriately heavy for non-executive directors. These

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problems need to be addressed even aside from the difficult question of compensation for board members, a subject which we now address. We emphasise this because director compensation should not be a default solution to excessive time commitment and workload. While non-executive directors are spending anywhere from one-third to over 40 percent of their time on this board role, contemporary governance principles would argue that the directors are at risk of losing their capacity to carry out their governance responsibilities. They are so enmeshed in the work of ICANN that they are now deeply engaged in the management and policy development process. As such, they are less and less able to evaluate ICANN's performance because that performance is materially dependent on their own contribution. This is the classic mixing of the 'game-keeper' and 'poacher' roles, and too much blurring of these lines erodes accountability.

However, even if workload is reduced somewhat, the compensation issue remains. We realise that this is a contentious issue with no single correct answer but we recommend that the board introduces compensation for directors.

Interestingly, opinions were fairly evenly divided in the board survey (Proposition B12). Slightly more directors are in favor than are opposed although as many again are undecided. The executive group is also largely unsure. Interestingly, a majority (58 percent) of the supporting organisation survey respondents believe board members should be paid while only 21 percent are actually opposed (Question 13).

The survey responses suggest that a proposal to introduce payment for directors would only be vigorously *opposed* by a small minority of directors and supporting organisation leaders. Admittedly, the contrary proposal to reject payment would likely be vigorously opposed by only a small minority as well – which reflect the large 'unsure' number of respondents.

Our view is that a simple logic supports the proposal to pay directors. While legally a not-for-profit, ICANN's business model is to earn revenues from commercial activities. It isn't a not-for-profit taking donations from the public to feed the hungry. And so, some appropriate payment for services rendered is reasonable. And being an ICANN director will always involve onerous time commitments because of the travel and meeting time involved.
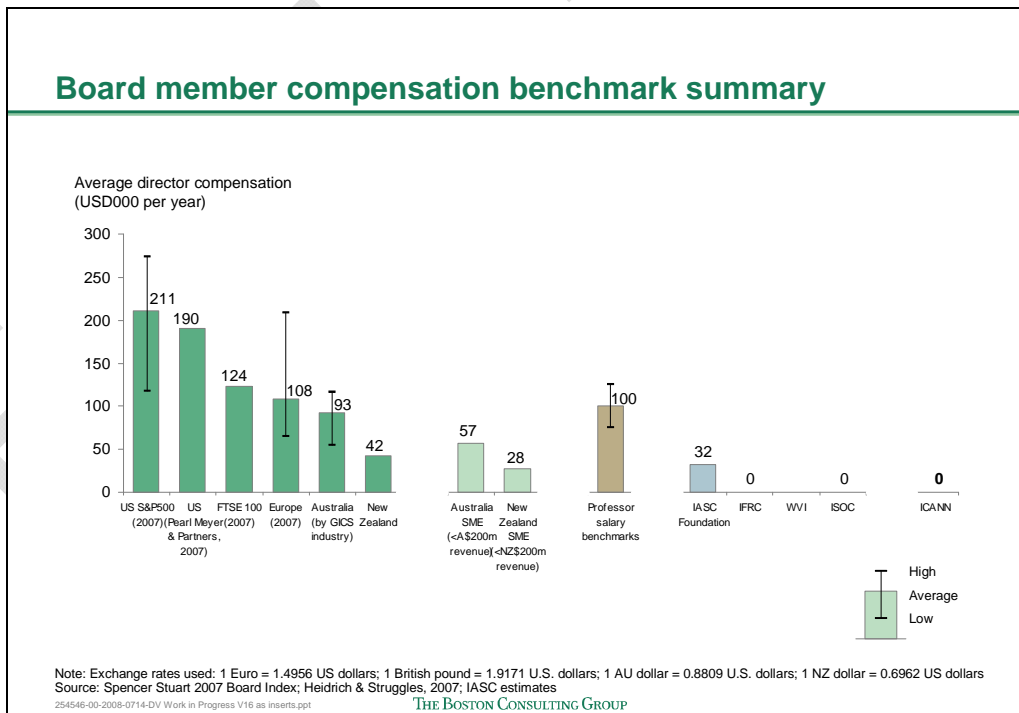
We note too that some directors will be serving while on full pay from their employers. Fairness suggests that other directors who are not in this position should receive some payment.

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Thus, we suggest a relatively modest fee schedule that offers some compensation for the time and commitment required but which cannot be viewed as in any way excessive.

Relevant benchmarks are hard to find – in part because there is no particular logic underlying director compensation. Typically, for example, directors of large companies earn much more than do directors of small companies but the differences don't reflect the amount of work required or the legal risks involved. And, of course, the directors of most charitable organisations are not paid at all.
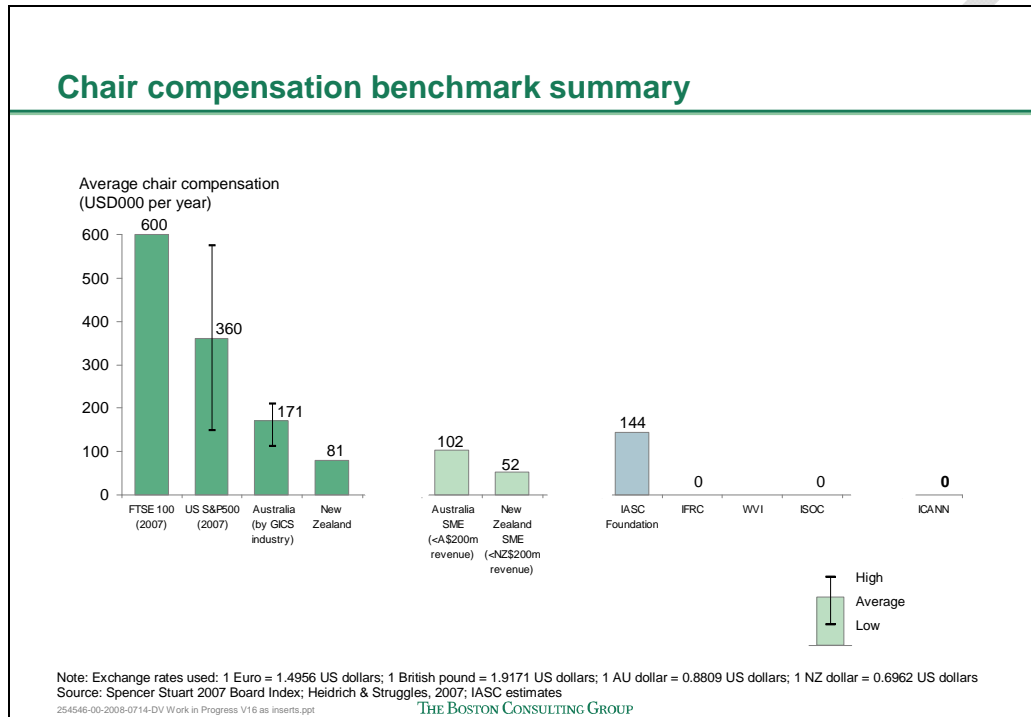
The following exhibit gives some guide to the current level of compensation to directors in different jurisdictions – but probably doesn't mean that much. We did look for not-for-profit organisations with a commercial rationale to them – such as the International Accounting Standards Council, and while most do not pay their directors we can safely assume that most of the board members are there because their employers want them to be there and that they are being remunerated fully as part of their full-time jobs. That said, the IASC paid its directors around USD32,000 in 2006 and its chairman around USD140,000.

Exhibit Fourteen

Board member compensation benchmark summary

Note: Exchange rates used: 1 Euro = 1.4956 US dollars; 1 British pound = 1.9171 U.S. dollars; 1 AU dollar = 0.8809 U.S. dollars; 1 NZ dollar = 0.6962 US dollars
Source: Spencer Stuart 2007 Board Index; Heidrich & Struggles, 2007; IASC estimates
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This compensation paid to non-executive board chairmen is typically higher – commonly between 2.5 and 3.5 times that of other non-executive directors – which reflects the much greater time commitment required of them. Some boards have extra fees for committee chairmen, particularly where the committees (such as Audit) are very time-consuming.

Exhibit Fifteen

Chair compensation benchmark summary

Average chair compensation (USD000 per year)

Note: Exchange rates used: 1 Euro = 1.4956 US dollars; 1 British pound = 1.9171 US dollars; 1 AU dollar = 0.8809 US dollars; 1 NZ dollar = 0.6962 US dollars
Source: Spencer Stuart 2007 Board Index; Heidrich & Struggles, 2007; IASC estimates
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In considering the relevance of these benchmarks, two factors stood out. The first is that the workload of ICANN directors is very large compared to corporate boards or even other not-for-profits. For example, the Chairman of the International Accountancy Standards Board is paid over USD140,000 per annum based on expected 25 percent time commitment. Most ICANN directors seem to put in at least this much time.

The second is, as already pointed out, that the revenue of ICANN comes from commercial activity rather than the voluntary contributions of donors as is the case with World Vision and Red Cross/Crescent. There is less of a moral dilemma in allocating commercial funds to pay people for their efforts. It is probably this fact that leads us to take the view that it is time to introduce some payment for directors.

Having said that, there is then a question of how this should be determined? This will be a matter for discussion within the board and with stakeholder groups but there are at least three approaches that might be considered:

- The Leadership Model: Recognise the special workload and responsibility placed on the chairman of the board by compensating him or her while maintaining all other director positions as voluntary. Based on our benchmarking and taking into account ICANN's particular circumstances we suggest an annual payment of USD100,000 would be appropriate here.

- The Standard Model: adopt the position employed by most corporate boards and pay all directors the same fee except the chairman who would receive a multiple of around three times the amount paid to other directors. In this case, a fee structure more appropriate to smaller to medium sized public companies would be more appropriate than the fees paid to directors of the largest corporations. Here, a chairman's fee of USD150,000 and a director's fee of USD50,000 per year might be in the ballpark.

- The Variable Model: here we might recognise that the cost of living and comparative income-earning opportunities in the home countries of directors will vary significantly and directors' fees might to some extent reflect these differences. This is difficult territory for boards but it is common practice in companies where remuneration levels paid to their employees in Munich, Melbourne and Manila are quite different. Setting directors' fees at a percentage, say, 50% of a tenured professor's salary in the respective director's country of domicile might be one way of approaching this.

Our suggestion at this stage would be to keep it reasonably simple – and we recommend what is described above as the 'standard' model: that ICANN introduces payment for its directors (suggest USD50,000) and that the chairman is paid three times that paid to a non-executive director. We are talking about amounts that are not excessive (we would start discussions with these numbers). And there is also scope for some limited additional payment (up to USD20,000 per year) for committee chairmen where the role is particularly time intensive (as, for example, is often the case with Audit Committees). And we also acknowledge that such a recommendation may, in turn, have an impact on other ICANN community positions and that these will have to be taken into account.

Overall, we doubt that we are saying anything on this subject that hasn't already been said many times within ICANN. On balance, our opinion is that payment is justified. But in an environment that places great store on building consensus, the board has to tread carefully lest it appears self-serving and ignoring of strong opposition. It is hard for us to read the strength of views in the community on this but we note that only 20 percent of the SO/AO survey respondents are opposed to payment of the ICANN board members. Perhaps a high level of agreement is not far away. Perhaps the sensible step would be to introduce payment as a three year trial with a view to confirmation or rejection in 2011?

Recommendation #5: Make board membership more sustainable:

    (a) **Retain a tenure limit but increase the average term served by board members by extending the tenure limit from two three-year terms to two four-year terms.**

    (b) **Invest in more board support including the establishment of a senior company secretary role to augment the existing provision of dedicated logistical/secretarial support for board members.**

    (c) **Abandon extensive minutes for board meetings in favour of discussion summaries and a record of decisions and requests.**

    (d) **Review the value of and need for the 'board list'.**

    (e) **Reduce the volume of board papers by assigning all document appendices and 'for information' papers to a separate part of the existing secure internet site.**

    (f) **Develop clearer and more extensive formal delegations to management and document these generally within a board governance charter (example attached as appendix (a)).**

    (g) **Introduce payment for board members with the chairman paid at 2.5 times the amount paid to other directors. Explore numbers of around USD50,000 for board members and USD150,000 for the chairman.**

    (h) **Assess whether any additional payment is justified for Committee Chairs as well as the consequential impacts for other ICANN community organisations.**

6. Build 'high performance' culture at the board level

Boards today can't expect their organisations to seek constant improvement if they don't seek it themselves. This will mean accepting individual performance appraisal, embracing training and personal development opportunities available to each director, and actively seeking to build consensus where any division threatens board cohesion. And the board has a special role in defining ICANN culture and guarding against hubris.
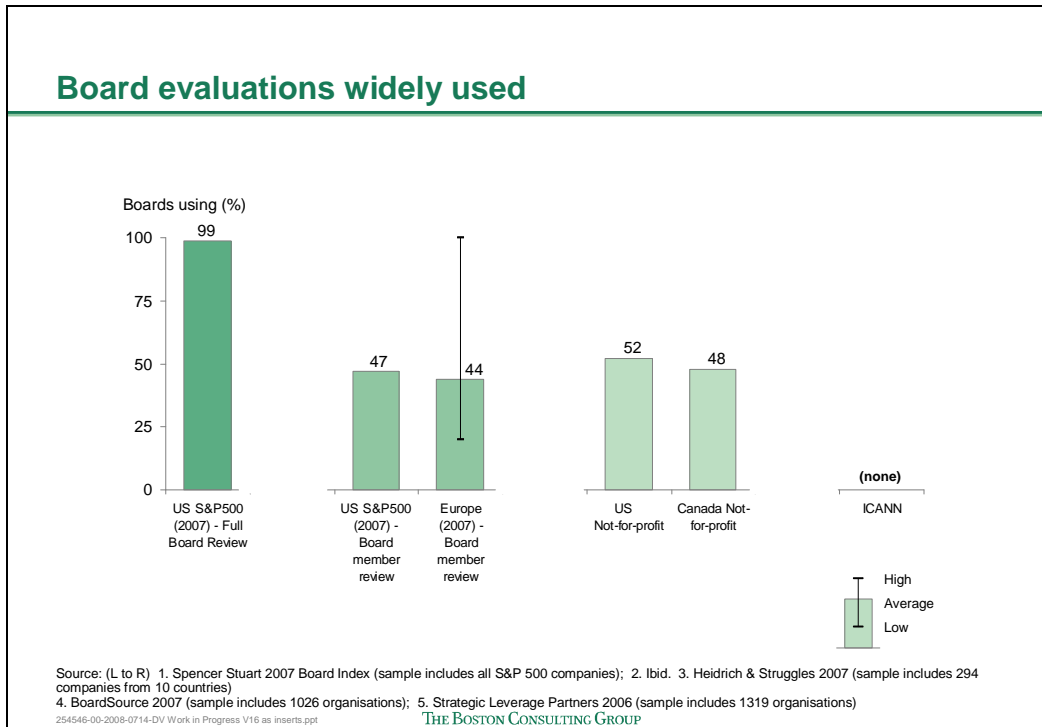
As with every other institution, boards can be high or low performing. But it is very difficult to say which boards are in these categories. The work of a board is largely behind closed doors and the only persons who can truly assess where the contributions are made are those who are inside the room.

This means that most board assessments are self-assessments which risk being 'soft'. But notwithstanding this, boards today are accepting higher accountability including more rigorous performance appraisal. Here, ICANN should be a pacesetter. The current review of the board is a good start and the next step is to introduce regular, formal performance feedback for each board member.

The questionnaire responses indicate that neither ICANN directors nor executives believe that the ICANN board has adequate procedures in place to deal with poor performance by directors (Proposition B7). In this exercise, ICANN is undertaking a 'whole of board review' but individual feedback should become part of the review process in future years.

Regular 'whole-of-board' evaluation is now relatively widely used and stock exchanges in some jurisdictions (such as the NYSE) now mandate it for publicly listed companies. Individual appraisal for directors is becoming more common as well now that executives who have been accustomed to receiving feedback during their careers are being appointed to boards. However, many directors still want to avoid an individual feedback process but it is hard to see how they can justify this while at the same time expecting their executives to accept it.

Exhibit Sixteen

Board evaluations widely used

Boards using (%)

Source: (L to R) 1. Spencer Stuart 2007 Board Index (sample includes all S&P 500 companies); 2. Ibid. 3. Heidrich & Struggles 2007 (sample includes 294 companies from 10 countries)
4. BoardSource 2007 (sample includes 1026 organisations); 5. Strategic Leverage Partners 2006 (sample includes 1319 organisations)
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Our suggested approach to individual feedback is to avoid the complex feedback tools that are often used and which, with their long lists of questions, become onerous to fill out. The forms we suggest using and a pro-forma individual director feedback report are included as Appendix B.

We view this process as separate to the formal review of a director at the time of his/her re-nomination to the board. This latter process is to decide whether the director's re-nomination should be supported whereas the individual feedback process is more focussed on 'development' matters.

It is, we believe, a mistake to carry out board and director appraisals each year. Little that is new can be added in a year because the board spends little time together and the whole process will become debased if it doesn't add value. Accordingly, we suggest that it be done every two years – possibly with the whole-of-board appraisal in one year and the individual feedback carried out in the next – and so on. In this way, the board can always tell external commentators that it has carried out a board effectiveness appraisal during the year.

In addition to providing individual feedback, there are opportunities to enhance board performance through the training and personal development opportunities available to each director. We have already discussed 'training'

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for board members under Recommendation #4 while discussing the skill mix of the board. In particular, we believe that ICANN board members should pursue the suggestions made in that discussion because they are intended to enhance the board's performance. The recommendations include taking 'director's responsibilities' courses (this is particularly important given that many ICANN directors have limited prior experience of being a company director), periodically inviting a prominent director to join the board over a meal to talk about the attributes of high performing boards, and each director nominating an aspect of ICANN's business that he/she will spend a little more time learning about in during the coming year.

Another attribute of a high performance board is that it is largely agreed upon what is important. This is not to say that there is no disagreement – a good board will have robust discussions around the issues - but if the board is all over the place when it comes to how it should manage itself and which directions it should pursue, it is likely to dissipate its energies in argument rather than resolution of business issues. A high performance board will build consensus around key areas of performance

Looking back across our interviews and also through the survey results, we are struck by the divergence of views on almost every question. In some cases, this doesn't really matter. For example, divergent views on maximum tenure for board members are unlikely to lead to a diminution of board performance. But many other issues raised by the survey point to extraordinarily divergent views about ICANN performance.

For example, the board is quite divided in its view on whether it effectively reviews implementation of policy, monitors ICANN's business performance or has adequate focus on risks (Propositions A8, A9 and A12). There is no agreement about whether the board is well-informed about the health of the ICANN Community (A13). Only two-thirds of the board members are confident that the board understands the scope of its role, how its role differs to that of management and whether the board does indeed avoid inappropriately stepping into management territory (A1 to A6). The board is split on whether ICANN's policy development process works well (C5).

How can the ICANN board set priorities when it cannot even agree what is working well or poorly? The risk is that such divergent opinions can easily become the source of conflict and dysfunction inside the board, particularly if business conditions get tough.

Our suggestion to the ICANN board is that it identifies from the survey some of the more important areas of disagreement, and that it seeks to build greater consensus through discussion or even some further analysis. For example, some believe that the policy development process works well while others disagree or are not sure (C5). What is the basis for these views and what steps might be made to reach a more common view and/or fix the problem?

Importantly, the time to do this is now because relationships around the table are good. The Chairman's leadership style is strongly endorsed as is the working relationship between the Chairman and the President (Propositions D1 and D2). Relationships and discussions are mostly seen as constructive though not by all (D4 and D7) and most agree that board members can raise issues without difficulty (D6).

A high performance board works hard at these 'behavioral' issues. When a board starts to 'put the management down' or 'shoot the messenger', the spiral downwards soon starts. And when a management group takes the board for granted or treats it as a rubber stamp, the board will soon become difficult to work with.

Another key 'high performance culture' question in the survey is whether 'bad news is communicated by management to the board quickly and openly' (D12). The issue is so important that our benchmark is 100 percent agreement. Without this, there is potential for distrust which soon can become corrosive. At ICANN, a sizable minority (nearly 40 percent) are not sure or do not agree that bad news is communicated quickly - and the board needs to discuss this. But it should also note that not everyone believes that conflicts of interest are handled appropriately (D10) nor that boardroom confidentiality is always respected (D11). In particular, if management has concerns about boardroom confidentiality (and it appears that ICANN's executives do have this concern), it is obvious that communication with the board will be adversely affected. The board should set aside this topic for a dinner discussion.

One of the most important duties of a board is to appoint and evaluate the chief executive. But few boards do it well although one of the better outcomes from the focus on governance over the past decade has been that boards are starting to take this task seriously. Arguably, the single most important contribution that a board can make is to appoint, encourage and challenge the chief executive to increased levels of performance. Central to this is the CEO evaluation process but there is little satisfaction expressed with this process at ICANN. Scarcely any of the board members agree that it is effective (Proposition A14).

While this sounds serious, it is a common finding in many boards. But it is a major opportunity for improvement. And dealing with this is centrally important to building a high performance culture. The board needs to understand where the problem lies and so this issue should be discussed at a board meeting. There may be dissatisfaction with the process. Or, as we find in many boards, the issue may simply be that many board members are not involved in the process because the evaluation is carried out by the chairman or one of the committees and the views of other board members are not adequately sought.

As a basis for a board discussion, some general principles for designing a CEO evaluation process might be:

- It should allow the CEO to provide the board with his (or her) assessment of his performance for the past year, as well as the non-quantitative goals he sets for himself for the next year.

- It should allow each director to make his/her own individual assessments of the CEO. This can be done in many formats – a written questionnaire; by asking each director to write a memorandum describing his/her thoughts; by having each director interviewed by the Chairman or by having a discussion between all the non-executive directors. Then, a consensus view should be prepared.

- This consensus view should be shared with all the independent directors, and there should be an opportunity for a discussion among them before a final version of the evaluation is reached.

- More than one director (the board chair and one other director) should meet with the CEO to discuss the evaluation. Performance feedback can be an emotional process and having more than one director involved assures a more accurate communication process.

Finally, as part of its commitment to a culture of high performance, the board should focus more explicitly on the values and attitudes of the ICANN organisation. Fertile ground for the ICANN board to consider is what additional steps might be explored that would increase the capacity to "smell smoke" but which would not place additional workload on already busy executives.

Working with other boards, we ask ourselves how a board these days can find out about what is going on deep in the company? It is easy to see how, when companies get into trouble, the board is among the last to know.

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We believe that boards will have to develop some better ways of independently testing their organisations – and good senior management will be supportive of this because they need to have answers to the same questions. The reality is that when good companies get into trouble, it is both directors and senior executives who lose their jobs. When it comes to "smelling the smoke", both directors and senior executives are in the same boat.

We see considerable value in carefully crafted attitude surveys to drill down into the attitudes and values of the organisation. At ICANN, this might not only apply to ICANN staff but also those many persons involved in the other ICANN community organisations. A board may not realise that executives are not trusted or respected by subordinates, or be aware that their company is one where bad news is routinely suppressed. Similarly, safety matters in companies handling hazardous materials may be treated casually by management. A simple and brief employee attitude/culture survey of ten questions or less – preferably managed by an outside organisation to ensure confidentiality – can be an important step in helping a board "smell smoke" before a fire gets out of control.

The attitude survey could be simple and conducted by email, at most twice each year. As a starting point it might look something like this:

Exhibit Seventeen

	To be completed and return to independent third party to preserve confidentiality
Please rate the degree with which you agree or disagree with each of the following statements by ticking the appropriate column	

Statement	Strongly Agree	Agree	Sometimes Agree Sometimes Disagree	Disagree	Strongly Disagree
"My Manager is clearly committed to the company values"					
"I have a high degree of trust in my manager"					
"Communication is open and honest in this section/department"					
"The highest standards of ethical behaviour are always upheld in the section/department"					
"My colleagues would always do the right thing even at the expense of company profit"					
"Motivation and morale in this section/department is high"					
"Senior management is fully informed of the problems and issues in this section/department"					
"The level of trust in senior management is high"					
"Bad news is dealt with appropriately by my superiors and is not suppressed"					
"My superiors have a strong commitment to workplace safety"					
"My workplace is free of harassment"					

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Beyond attitude surveys, our other suggestions for boards (and CEOs) wanting to delve deep into their companies (or tackle hubris) are as follows:

- A discussion at the board and with the President about whether the pressure for growth and or performance will lead to management 'squeezing' the numbers or sweeping problems under the carpet;

- The Chairman spending time with ICANN's major stakeholders without any management present. One of the lessons from past corporate casualties is that the industry is usually awash with rumours about a company while the board itself is unaware of a problem;

- Exit interviews (by an independent third party) with all senior and middle managers who leave the organisation;

- Extensive discussions with auditors and other advisors on questions and areas outside their brief;

- Regular review of the actual application of existing processes – such as the review of project proposals – to identify understaffing, inappropriate staffing or declining effort and attention. In some organisations, peer reviews (audit and constructive criticism) of major project proposals are conducted by colleagues of the proposing executive.

Some of these practices may already exist in some form at ICANN. But our point is that we encourage the board – and the senior executive group – to explore ways in which the organisation might be 'stress tested' for hubris or behaviour inconsistent with stated values. This area is one in which boards might be able to take a new step forward.

Our recommendations here are designed to assist the board to enhance its accountability for performance. They involve individual performance appraisal for directors, the performance appraisal process for the President, finding ways to bridge divergent views about performance issues, and finding ways to regularly test the values and attitudes of ICANN staff.

We use the word 'accountability' but want to be clear that we don't think there is a *personal* accountability problem at ICANN. Our interviews revealed the board and senior executive group to be hard-working and deeply committed to the well-being of ICANN and the health of the Internet as central concerns. Nor do we want to generate more work for directors – simply to make the work more appropriate and ways to achieve this are discussed elsewhere in this report.

And so, what we are talking about here are ways to build upon an already positive situation.

Recommendation #6: Build 'high performance' culture at the board level
(a) **Introduce individual performance evaluation for all board members based on a simple peer review process conducted every two years.**
(b) **Review the process for evaluating the performance of the President.**
(c) **Design ways to test regularly the values and attitudes of ICANN staff.**
(d) **Discuss the 'bad news', confidentiality and conflict survey responses at the board.**

7. Strengthen the 'strategic' focus of the board

The nature of ICANN's business is different from that of most commercial organisations. The development and implementation of policy and the management of key stakeholders would seem to us to be the core functions. The strategic focus required by the board is therefore less to do with traditional strategy (competitive advantage, acquisition, portfolio structure, etc) or conventional monitoring of monthly results, and much more to do with spending time on the key policy issues and understanding what are the issues with key stakeholders. The future of the JPA is an obvious case in point.

Our interviews as well as the survey results indicate that it is time for the ICANN board to focus on the few most important matters. According to the survey:

- Only one-third of directors believe that appropriate time is allocated to the important issues (C7)

- Even fewer agree that the policy development process works well (C5)

- A sizable minority is not certain that the board contributes effectively to policy/strategy development (A7)

- Hardly any believe that the board focussed sufficiently on the development of ICANN's executive talent

- Only two-thirds of the directors believe that the board understands the scope of its role and responsibilities (A1)

- And only half believe that the board avoids intruding inappropriately on management tasks (A6).

Clearly, some important matters are not getting the necessary attention and the board's focus needs to be refined.

The recommendations made elsewhere in this report on meeting structure and frequency, board skills, workload, etc are all designed in part to support greater strategic focus. But what else can be done?

First, discussing the *role* of the board and how this differs to the role of management might sound a bit theoretical but it is a very important issue to address. On almost every board, we find that some directors and executives

feel that the level of engagement is either too deep into 'management detail' or too detached. Ideally, there will be broad agreement about the board's level of engagement – not trying to micromanage the business nor so remote that it lacks understanding about what is going on.

We discussed this briefly earlier in this report but the ICANN board needs to take time out to explicitly discuss how deeply it should get involved in detail of running the business. There is no hard and fast answer to this question and the answer can legitimately vary with business conditions – for example, if the business is in trouble or if the new CEO is untested. But while different views can be legitimate, it is important that the whole board is pretty much on the same page. If they are not, conflict is likely and the task of management becomes much more difficult.

A good description of the director's role is "noses in but fingers out". The ICANN board has a strength in that it includes persons with deep knowledge of the industry but this can also be a source of weakness if the board spends too much time getting into deep detail.

Reaching agreement on the role of the board is also important for management. We received the distinct impression that management tended to put some matters before the board because it was often impossible to know what directors would see as within their purview. This adds to the size of the agenda, and reinforces the existing heavily operational focus of the board.

ICANN is a very young company and it is obviously going through a transition. A little over five years ago it had less than 10 employees and now it has over 100. Every organisation that we have seen make this transition goes through a difficult phase when the board has to retreat from quasi- executive roles. In the early days, the board members assist a very small executive team by bringing expertise and in many instances actually carrying out executive tasks. But as the organisation grows and professional management structures are put in place, an uncomfortable phase ensues. Management want the board to step back and it takes some time for the board to realise what is happening.

Our evidence is anecdotal but our understanding is that this is what is happening at ICANN. And we have seen this happening many times as organisations (both for-profit and not-for-profit) grow from start-up to more professionally managed status. The board is involved in many tasks that should be left to management. As recommended under 'Recommendation #3', a robust project to reach a view on this division of work is timely.

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The whole relationship with management should be the subject of some honest discussion. The very existence of a professional management group in a bottom-up organisation like ICANN is enough to create suspicion within some constituencies. And despite an improving situation it is not clear to us that management has the full support of every board member. In the survey the board-management relationship was seen as constructive by most but not all directors and by only 50 percent of management (D4). Board and executives have clearly different perceptions about whether the balance of support and challenge of management is right (E1, E2).

Measuring and tracking how time is spent and which issues are most important is a good way to build discipline. Other boards we work with nominate in advance the time expected to be spent on each agenda item (although it is important not to be imprisoned in the timetable).

Some boards take time at the end of the occasional board meeting to discuss "whether we got the balance right". Was the board too much into detail and trying to micro-manage the executives or was it focussing on the right level? We suggest that the ICANN board do this after at least two meetings each year.

It is also useful to agree the big issues facing the organisation and to build discussion of these into the annual board schedule. Board members and the President might agree "what are the four or five issues that go to the heart of ICANN's success over the next 5 to 10 years". This might be done at a strategy retreat when the key issues can be discussed and agreed.

This sounds too simple but it mostly works. In many organisations, there is no explicit discussion and agreement around these major issues. And there is no special time set aside for these in the annual agenda. But without this, the board will struggle to raise its sights to focus on the right issues and instead will head for the detail.

Management succession is an example. All boards know that this is a key responsibility of the board. But few boards allocate much time to it because it doesn't have to be dealt with this month – unlike necessary approvals and the like. So the matter slides. It appears to have been sliding at ICANN where less than 20 percent of board members and executives believe that the board 'focuses sufficiently on the development of ICANN executive talent' (A15).

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Creating an agenda around the five key issues facing ICANN will substantially enhance a board's agenda. These might, for example, deal with management succession, the JPA negotiations, development of policy-making capacity, major over-the-horizon technologies, emerging potential competitors, etc.

What all of this seeks to achieve is a radical shift in the board's time towards devoting time to issues of great importance.

Recommendation #7: Strengthen the 'strategic' focus of the board
   (a) Allocate some time after a board meeting (several times each year) to discussing whether the board is getting too deep into detail that should be left to management.
   (b) Define annually the five most significant issues facing ICANN and build extensive regular discussion of these issues into the board meeting agenda.
   (c) Measure and track the board time spent on strategy, policy and operational issues.
   (d) Initiate a robust assessment of work done at the board to ascertain what can be delegated to management. Schedule one or a series of conversations between the board and the management group to discuss views on the respective roles.

8. Clarify the accountability of the board

Clarity of accountability is one of the important building blocks on which organisation effectiveness is built. But it is clear that ICANN's unique structure and its commitment to bottom-up and widely distributed power create special challenges when it comes to the application of accountability and responsibility.

Just to be clear, we respect the ambition behind the design of the ICANN multi-stakeholder structure. There is clearly a commitment to be inclusive and avoid capture. Our comments here are intended to strengthen these commitments. And the issue of accountability has been the subject of a separate review and much discussion by board and management. The *ICANN Accountability & Transparency Frameworks & Principles Report*, completed in January 2008, contains discussions and recommendations on the issue of board accountability and transparency. Generally, board members have an expansive view of accountability and often speak of their responsibility to the ICANN community and the health of the Internet itself. This is entirely consistent with the public trust principles of the organisation.

Nevertheless, our interviews suggested issues about clarifying accountability and roles and the survey confirmed it. Two-thirds of the ICANN board members agree that the board understands the scope of its role and responsibilities (Proposition A1) or is clear about the constituencies to which it is accountable (A2). Half of the Supporting Organisation/Advisory Committee respondents believe that the ICANN board understands the scope of its role and responsibilities and even less – around 20 percent - believe that the ICANN board is clear about to whom it is accountable (Questions 1 and 2).

In some respects this is due to there being so many layers of accountability. And so it is not a surprise to find that clarity of accountability is an issue. ICANN has neither a full owner nor a membership community with rights but nonetheless is engaged in an activity for which legitimacy is hugely important.

Finding ways to better communicate and align the different views about accountability at ICANN will be important. Confusion about accountabilities – which can cause disagreement - saps the energy of an organisation. It can be pulled in different directions and vested interests will find easy targets for their criticisms.

The issues that have been raised in the review are as follows:

- *Accountable for ICANN or much more?* Is the ICANN board responsible only for the performance of the organisation entity known as ICANN (the management and staff) or is it also responsible for the health of 'the ICANN community' or even the Internet itself?

- *To whom must directors give their loyalty?* ICANN's board is comprised, in part, of persons chosen by stakeholder groups (such as the Supporting Organisations). To whom is their loyalty – to their sponsoring organisation or to the ICANN board?

- *Can the board really be held accountable?* At present, the ICANN board cannot be dismissed. If a board cannot be dismissed, can it really be held accountable?

- *Is the governance structure 'conflicted'?* Given that much of the ICANN community's policy development work is actually done by volunteers in the Supporting Organisations and Advisory Committees, how can proper accountability be exercised when these same organisations place their own nominees on the ICANN board?

- *Is it really a board?* Some don't really see the ICANN board as a real board. Rather, they see it as a purely representative body overseeing the world of ICANN's interests.

These issues prompt a discussion that some may regard as outside our scope. Also, we know that a great deal of very good thought has gone into designing ICANN's governance structure and we don't wish to imply that in a few minutes we can come up with something far better. And so, this section simply places on the table some 'accountability' issues that need clarification or a re-think. Each of them goes to the heart of board performance because without clarity of accountability, the board (and ICANN) will be pulled in different directions and more vulnerable to conflict. And so, to prompt discussion, our initial views are as follows.

What is the ICANN board's remit? Is its responsibility primarily to ensuring the success of the ICANN organisation or something much larger? What is absolutely clear is that the ICANN board is responsible for the organisation that is called ICANN – that entity that now employs over 100 persons and controls a substantial budget. The directors are legally liable for this entity and could face prosecution if ill-practice occurs on their watch. And so, the ICANN

board members must devote serious effort to making sure that ICANN performs well – which is why the skill mix of the board and the way it manages its agenda is so important.

But ICANN must do more than this. The parallel here is to the corporation that acknowledges responsibility to groups beyond its owners – to other stakeholder groups as well. To truly achieve its objective, ICANN should be seen as having a responsibility for the health of the 'ICANN community'. But – and this is important - this is not exactly the same as saying that ICANN has a responsibility to each of its stakeholder groups. There will be times when the interests of particular constituencies are not identical with the wellbeing of the whole ICANN community. Over time, new interests will need to be accommodated which will necessitate the re-balancing of existing influences. We would argue that the ICANN board task is to act in the interests of the whole rather than particular parts. Has this been discussed and is there a consensus position?

To whom are board members loyal? This discussion leads us to the second issue - to whom must the ICANN board members give their loyalty? One of the problems of boards made up of representatives chosen by particular constituencies is that their loyalty can be confused and this is why 'representative' boards often run into trouble (and for this reason we don't like them).

However, ICANN is a board comprised of members appointed by various interest groups and so, there must be no confusion. ICANN board members have a legal duty to act always in the interests of ICANN and not in the sectional interest of those bodies that might have elected them. Any doubts about this should be quickly put to rest. Each director of ICANN regardless of the basis and source of their election to the ICANN board has a primary duty to advance the interests of ICANN and not any sectional interest or stakeholder. This also includes the duty to maintain boardroom confidentiality.

But can the board be accountable if it cannot be dismissed? Our understanding is, at present, that the answer is 'no'. ICANN is incorporated under California law as a not-for-profit without members. We understand that this protects ICANN from anti-trust problems but the obvious drawback of this structure is that boards can become self-perpetuating and even captured by particular interest groups. ICANN's procedures deal with this problem in that the board members are chosen by persons outside the board but, as we understand it, once appointed there is no mechanism for replacing the board even in a failed state. To us, this signifies a flaw in the accountability model. A

board that cannot be dismissed can become a law unto itself or even completely useless.

We understand that there are proposals in ICANN to rectify this by defining the circumstances under which the ICANN community might dismiss the board. We would support this – because a board that cannot be fired is one that is potentially unaccountable. But the proposed rules should ensure that dismissal cannot be for frivolous or capricious reasons. A very large majority vote of the community bodies should be required and a process that incorporates some time for cool heads to prevail would be important as well.

The reasons for dismissing a board are, in our view, two-fold. The board may be driving the business in directions that are unacceptable to the vast majority of owners/stakeholders whose interests the board is supposed to represent. Or, the board may be dysfunctional. Sometimes boards fail and become battlegrounds split not by substantive issues but by personalities. These can be very hard to resolve and the festering sores can destroy the organisation. In these situations, there should be a mechanism whereby an overwhelmingly large vote of the relevant stakeholders (70-80 percent or more?) can terminate and replace the board.

Is the governance structure 'conflicted'? The fourth issue raised involves role confusion – between those who do the work and those who are supposed to oversee that work. Much of the ICANN community's policy development work is actually done by volunteers in the Supporting Organisations and so the 'governance' issue is this: How can proper accountability be exercised when these same organisations place their own nominees on the ICANN board? It mixes the 'gamekeeper and poacher' roles. The independence of board members is compromised.

We offer two comments on this. First, this 'conflict' is manageable if it is quite clear that one of the duties of the independent board members provided by the NomComs process is to ensure that the board is able to oversee ICANN's performance without fear or favour. We note that only a few of the survey respondents believe that the 'policy development' process works well and we assume that this has to be more than a critique of ICANN's paid staff – it has to be a comment on how the whole system is working, including the volunteer components. A key duty of the independently selected board members is to ensure that the ICANN board stays honest on this score.

Our second comment is directed more to where the work will be done in future. There seems to be a view that the role of the ICANN paid staff is to

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service and support the volunteers who will do the actual policy work. We can see where this view started – it was a noble ideal to rely on volunteers and also realistic given that ICANN had no staff. But is it the future? We doubt it.

In a world of increasing speed and complexity (in part caused by the Internet!) this structure could prove unsustainable. Increasingly, the ICANN staff will do the actual work. Highly capable professionals will be hired, trained and overseen as they do it.

Today, there are examples of successful volunteer based organisations such as LINUX and Apache. But these organisations are working towards an agreed structure goal and are building the process and institutions to support a clear development path. If this is ICANN's desire it should be discussed and agreed.

None of this need undermine ICANN's 'multi-stakeholder and bottom-up' governance. Those who do the work need not be the same persons as those who make the final decisions. Here, the role of the Supporting Organisations, Advisory Committees and even the ICANN board will be to agree and approve the agendas, the work programs and the outcome of the work.

If this is what happens in future, the existing conflict in roles – between those who do the work and those who are supposed to oversee the work – will diminish.

Is it really a 'board'? The final issue concerns the view expressed by some that the ICANN board is a group of individuals representing the interests of their nominating constituencies. We are aware of the history to this – as we understand it, when ICANN was first established the intention was that the policy work be actually done at the ICANN board table. It was intended that a key role of the board was to provide balance between contesting participants. This may have made sense when ICANN had no staff and the journey was being started. But today, the ICANN board oversees a substantial organisation and is responsible for the effectiveness of a complex and multi-stakeholder policy development process.

So while representation remains important the image of a 'house of representatives' no longer makes sense. Boards of directors are not – and cannot be - parliaments. Boards oversee organisations and are responsible for their effectiveness. Political representation involves majorities and minorities and there is no requirement for these to reach agreement. In fact, the different factions will often exaggerate their differences and seek to

undermine the other's positions in hope of securing electoral advantage. This behaviour might work in politics but it will destroy a business or a not-for-profit venture. Boards need robust discussions but when the decision is taken, the board must unite behind it. If a director feels very strongly to the contrary on the direction being taken by the organisation, he/she should consider whether resignation is the preferred path forward.

All of these issues are obviously important and we have offered a view to initiate an important discussion. A process to build greater consensus should be initiated in both the board and in the wider community. In the corporate sector as well as in much of the not-for-profit sector, it would be unusual to find this lack of clarity and agreement. Here, the board's primary accountability is clearly to the owners or the members – and there is little ambiguity about the fundamental role of the board. In some jurisdictions, the needs of other stakeholders must also be taken into account but, in general, the accountability to the 'owners' is straightforward.

The role of the board is pivotal in modern corporate governance. The board exists to protect the owners/stakeholder interests. And only through this lens can much sense be made of the corporate governance debate of the past decade.

In *developed* economies, such as in the US, the main accountability problem for public companies was seen to be professional management disregarding the owners. Over many decades, the ownership of major companies became highly dispersed and individual shareholders were effectively without voice – what the researchers called the 'separation of ownership and control'. As someone once put it, professional managers had 'stolen' the corporation. The corporate governance response has been to ensure that boards are not controlled by the executives and almost all of the new governance rules now applied to publicly listed companies (and imitated in other sectors) are designed to ensure that this is the case.

In *developing* economies, the major issue for public companies has been a little different. Here, the common problem has been the dominant shareholder controlling management at the expense of other minority owners. Here, the thrust of corporate governance reform over the past decade has been to demand that boards adequately protect the minority interests. The legal duty of a board – and each director – is to act on behalf of the *whole* corporation and all stakeholders and not just a few.

And so, boards exist to ensure that the interests of the *absent* owners or *minority* stakeholders are looked after. These themes resonate in this discussion about ICANN. The board's duty is to protect all stakeholders and not only those who currently have votes at the table. The board's duty is to ensure that the owners have ultimate control over the agenda regardless of how competent are the management team.

There is one other final (and quite large!) suggestion that might be considered. As we have already discussed, boards comprised of persons chosen by particular constituencies can run into trouble because the directors feel it is their duty to defend the interests of their sponsoring organisation. This makes it difficult for the board to approve initiatives that are counter to the interests of particular constituencies and almost impossible to approve proposals that run against the interests of a number of the constituencies.

But what happens if what is right for ICANN and even for the Internet is not simply the sum of the interests of the organisations that provide the board members? Here, the likelihood is that the right thing will not be done.

There is likely to be another problem in an environment that will change markedly over time. Where voting rights are fixed among stakeholders, it is highly likely that these will not adjust over time to reflect new realities. We have seen this with various non-profits where, for example, constituencies were awarded voting rights based on their population share. But as the world changed, the voting rights aren't changed. Everyone knows that it isn't right, but change cannot be forced.

There is a possible alternative and one that is absolutely consistent with ICANN's mission and values. This solution would see the various constituencies who currently separately appoint board members get together and collectively agree on the slate of candidates who they believe will make decisions in the best interests of the whole. The two most successful sports organisations in the US (the NFL) and in Australia (the AFL) are examples of enterprises where the constituent clubs no longer directly appoint their own representatives to the governing body. Rather, the clubs collectively agree on a Commissioner (or board members) who is then charged with making decisions in the best interest of the sport. In other words, the clubs retain ultimate power of appointment but step back from appointing their own people to the board. Rather, they are obliged to reach agreement and appoint persons who will govern in the interests of the whole.

We believe that this structure would strengthen ICANN's capacity to survive and succeed. And in a situation where there are no legal members, a structure that increases the likelihood that ICANN will govern on behalf of the whole community – even elements that are yet unknown – rather than existing constituencies is very consistent with ICANN's mission and values.

Specifically, at ICANN this would mean that the various stakeholder groups would *together* appoint a committee (joining together with the NomCom) and this group would choose directors who have the confidence of all stakeholder groups. We believe that this approach would prove to be a better defence in the long term of the values that ICANN holds dear.

Recommendation #8: Clarify the board's accountabilities. Initiate a program of discussions that explore the following propositions:

(a) Agree the accountability of ICANN's board – to ICANN itself, the ICANN community and/or the Internet?

(b) Affirm that ICANN directors owe their loyalty to the board and not to their sponsoring organisations.

(c) Support proposals for a process to dismiss the board but ensure that the hurdle is quite high.

(d) Discuss possible conflict issues in the board's role overseeing the ICANN community where its members are appointed by those who are doing the work. Agree that a key role of the independent directors (via NomCom) is to ensure that the board continues to carries out its role without compromise.

(e) Discuss the future work division between paid staff and volunteers and form a view as to what this will look like in five years time.

(f) Consider the proposition that the stakeholder groups get together to appoint a board acceptable to all of them – rather than directly appointing their own representatives to the board.

In conclusion:

A high performance board will have all of the following building blocks well in place. It will have a clear understanding of its role. It will have capable and appropriately skilled persons around the table. It will have designed its processes (such as meeting frequency and content) in ways that truly assist directors to do their job. And the board members will know how to behave. There will be no limitation on asking tough questions but equally, the board's discussion will always be constructive and designed to bring out rather than suppress insights.

Our summary description of a good board is one that is both *supportive* and *challenging* of management. Some boards are neither. Some get one right – they might be supportive but they are not able to challenge which means that the board becomes a rubber stamp. Others like to challenge forcefully but are not supportive and here the management will eventually avoid raising the tough issues with the board.
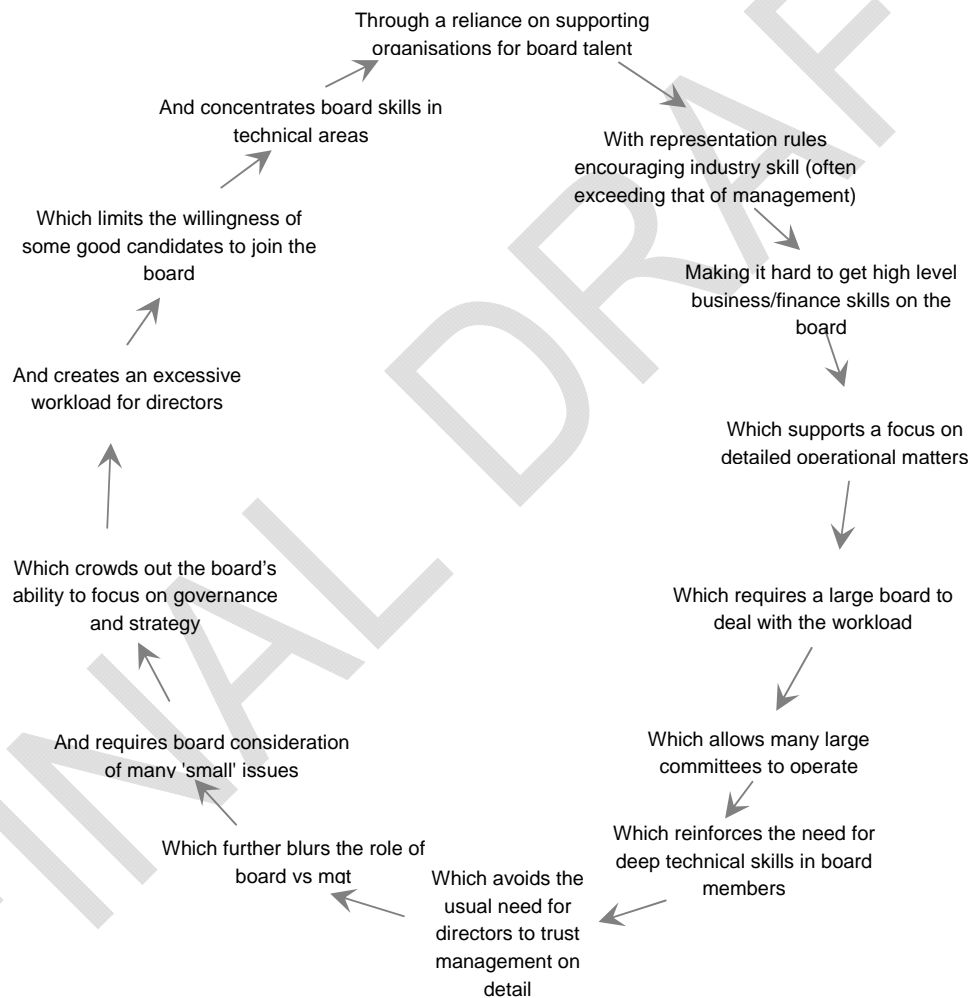
The ICANN board is a functional body that is working very hard in a very difficult situation. But improvements can be made. And so we have made a number of suggestions. These include changes to board size, skills, workload, meeting arrangements, strategic focus and the like – and these are the typical

concerns of board directors everywhere. Some of our recommendations are fairly straightforward and others, eg, accountability, are very complex which will require deep consideration and extensive discussion. And again, while we are suggesting a large number of changes, this should not be seen as evidence of a poorly functioning board.

Many of the issues are interrelated and part of a self reinforcing cycle. One such cycle might be viewed as follows:

Exhibit Eighteen

Through a reliance on supporting organisations for board talent

And concentrates board skills in technical areas

With representation rules encouraging industry skill (often exceeding that of management)

Which limits the willingness of some good candidates to join the board

Making it hard to get high level business/finance skills on the board

And creates an excessive workload for directors

Which supports a focus on detailed operational matters

Which crowds out the board's ability to focus on governance and strategy

Which requires a large board to deal with the workload

And requires board consideration of many 'small' issues

Which allows many large committees to operate

Which further blurs the role of board vs mgt

Which reinforces the need for deep technical skills in board members

Which avoids the usual need for directors to trust management on detail

The interconnected nature of the issues means that care needs to be taken in accepting or rejecting individual recommendations. For example, it may not be appropriate to introduce compensation for directors if nomination and selection processes are not simultaneously adjusted to deepen the talent pool.

Some believe the pace of change in ICANN's business will now slacken, however our experience is the opposite. If recent events have tested the robustness of current governance arrangements there is every reason to believe this will continue. With the wealth of information and recommendation available from the various reviews commissioned by ICANN, now is a good time to embrace meaningful change.

D. SURVEY RESULTS – BOARD/MANAGEMENT/SO SURVEYS

Two surveys were carried out as part of this project. The ICANN board members and the senior ICANN executive staff completed a survey that is based on the one that we have used in many different boards but modified for ICANN's use. Where the questions are comparable, ICANN's responses can be compared with those from many other boards.

The second (smaller) survey sought responses from the cross-section of leaders of Supporting Organisations and Advisory Committees.

ICANN's survey results show great diversity of opinion – much more so than we normally see with boards. Of the 56 propositions tested with respondents, none attracted unanimous agreement and only five scored zero disagreement.

Diversity of view is not necessarily a bad thing. It is one of the key characteristics of a well constructed board. But some different opinions can become a corrosive influence when those differences are not understood or discussed or when differences relate to the fundamental structure and functioning of the board. Importantly, the ICANN board's behaviour (survey section D) is good – there is no apparent lack of cohesion.

Where the survey results suggest to us a need for action, they have been referred to in our conclusions and recommendation. However, directors may want to conduct their own analysis of the survey data. The survey results are included in the report immediately after the brief explanatory notes that now follow:

Interpreting the data – the survey of ICANN board members and executives:
The results are presented separately for each of the four sections of the survey. Where applicable results are broken into responses from the board members (including executive directors) and from executives who are not on the board. The propositions were scored on a 1 to 5 scale where 1 was 'strongly disagree' and 5 was 'strongly agree'. In presenting the results 1 and 2 are combined to mean 'disagree' and 4 and 5 are combined to mean 'agree'. 3 was taken to mean the respondent was unsure or the data was very mixed.

In general, it is the level of disagreement with the propositions in the survey that indicates there may be an issue for the board. This will vary according to

the question, particularly in terms of its importance and the range of opinions that exist on it. For example, the open communication of bad news to the board is such a threshold issue that any disagreement about it should be an issue for discussion. On the other hand, disagreement on the retiring age for directors is an issue on which there are many different views and therefore is probably to be expected.

Role of the Board

This section probes the board's view on how well the board is discharging its role in overseeing the business. A central issue in this section is the board's understanding of its role and how this differs from management (A4), which is critical to effective operation of the board. The other major focus of this section is the quality of the board's contribution in discharging the key elements of its role, specifically in:

- Developing and implementing the policy and strategy (A7, A8)

- Monitoring ongoing performance and risk management (A9-A12)

- Evaluating the CEO and senior management (A14, A15)

Senior management tends to be sceptical about the contribution of the board, especially in areas like the development and implementation of strategy. While this scepticism needs to be taken into account in interpreting their responses to these questions, management's level of confidence in the board's knowledge and ability to probe on the major business issues (A11) is important in giving an overall indication of the board's effectiveness.

People on the Board

This section of the survey deals with the people sitting around the board table. There are four areas of focus in this section of the questionnaire. They are the structure of the board, the processes for selecting new directors and for moving existing directors on, the education and development of directors, and finally the quality of their application to the job.

The structure and composition of a board is always a compromise between the competing needs to avoid it getting too big to support the quality of discussion, too small to ensure that all the necessary skills are present around the table and too narrow to provide for adequate diversity of opinion and experience. Questions B1, B2, B3 and B4 address this issue.

A closely related issue is the process for selecting new directors and the Chairman, and for terminating existing directors, either because of the length of their tenure or their individual performance (B5-8). This is probably the most sensitive issue for boards. Interpreting the responses to the question on the appropriate tenure for directors (B6) is a little more problematic as there are often quite polarised and strongly held views on this issue. We don't believe there is any single correct answer here.

Disagreement on the question of the board's diligence (B10) is a serious matter and often points to dissatisfaction with the performance of one or a few directors. Poor results here will often be related to disagreements on the procedures for dealing with inadequate performance (B8), suggesting the absence of a robust performance evaluation process.

Procedures and Practices

This part of the questionnaire addresses the arrangements for, and structure of board meetings. There are broadly two types of propositions in this section- those that deal with the operational procedures surrounding the board meetings, and those that deal with the practices within the meeting itself. There is obviously some potential interaction between the two, for example, between the frequency of meetings (C1) and the adequacy of the time to discuss issues facing the business or see management in action (C6-7).

There are often divided opinions on the frequency of board meetings (C1). It's quite common to find disagreement from management on this question, often reflecting the burden of the reporting cycle and paper preparation. There are also often divided views on the related questions of the appropriate location for meetings (C4) and the adequacy of exposure to stakeholder groups (C2).

Other procedural issues covered in this section include the adequacy of the structure and operation of the committees (C9-15). There are a number of practices expected in terms of the structure and composition of committees these days, and poor results on any of these questions may suggest the need for a discussion of these matters by the board. This is certainly the case at ICANN.

The section on the practices of the board refers to the effectiveness of the use of time in the board meetings. Clearly a threshold issue for any board is whether appropriate time is allocated to important issues (C7). Another important requirement for the board is to have an opportunity to see management in action, enabling them to make an assessment of their

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capability (C6). Finally, there is the opportunity for discussion and sharing of views, with other directors (C3) and with the responsible senior managers (C5). Disagreement on these questions reinforces the need to review the structure of the meetings in terms of participation, agenda and time allocation.

The Behaviours

This section deals with the leadership and cohesion of the board and senior management and is where the results for ICANN are very strong. Well performing boards are characterised by open, often robust but constructive communication between directors and managers, and discipline in terms of contact and communication outside the boardroom, within the organisation and elsewhere. The questions in this section that explore this cover four areas:

- The quality of the relationship between management and the board (D4-6)

- The quality of the discussion in the boardroom (D6-7, E1-2)

- The cohesion and integrity of the board process (D8-11)

The leadership provided by the chairman and CEO is critical to the effective functioning of the board (D1, 3). They not only have to demonstrate this individually but also collectively and therefore need to have an effective working relationship (D2). Significant disagreement on any of these questions are a concern and suggest some important issues for the board, management or both.

A measure of the effectiveness of the leadership provided by both the chairman and CEO is the quality of the relationship between the directors and management more widely. This will be reflected in the constructiveness of the engagement between them in the boardroom (D4) and in the appropriateness of the contact outside the boardroom (D5). Most important of all it will be reflected in the speed and openness with which 'bad news' is communicated by management to the board (D12). This is so fundamental to the relationship between management and the board that any disagreement on this question should be discussed.

In order to be effective the discussion in the boardroom needs to have a number of features: it should be easy for directors to raise issues for discussion which produce dissent (D6); the discussion of all issues should be conducted on a constructive basis (D7); and finally the discussions should be

driven to an outcome that provides guidance for management (D9). In this way the board needs to be both supportive of management and challenge them at the same time (E1-2). Boards often struggle to get this balance right, and to drive their discussions to the point where they provide sufficiently clear guidance for management.

(a)   Board/management survey

ICANN Board Survey (19 directors and 8 senior mgt)		All Directors %			All Directors (ex Liaison)%			Senior Management %		
		Disagree	Unsure	Agree	Disagree	Unsure	Agree	Disagree	Unsure	Agree
A	The Role									
A1	The board understands the scope of its role and responsibilities	16%	16%	68%	15%	15%	69%	25%	25%	50%
A2	The board is clear about the constituencies to which it is accountable	16%	16%	68%	15%	15%	69%	13%	0%	88%
A3	Board meeting Minutes provide sufficient insight into the rationale for decisions	11%	11%	79%	8%	15%	77%	13%	13%	75%
A4	Board members understand how their role differs to that of ICANN management	11%	21%	68%	15%	8%	77%	50%	25%	25%
A5	The board's level of delegation to management is appropriate	21%	21%	58%	8%	23%	69%	38%	38%	25%
A6	Board members avoid intruding inappropriately on management tasks	11%	37%	53%	8%	31%	62%	38%	50%	13%
A7	The board contributes effectively to the development of policy and strategy	11%	21%	68%	8%	23%	69%	25%	25%	50%
A8	The board effectively reviews implementation of policy	37%	21%	42%	38%	15%	46%	25%	50%	25%
A9	The board adequately monitors ICANN's business performance	26%	37%	37%	23%	38%	38%	13%	25%	63%
A10	The board understands the factors that drive ICANN's success	16%	26%	58%	8%	38%	54%	50%	0%	50%
A11	The board is sufficiently knowledgeable about the major policy issues to provide adequate probing and advice	16%	16%	68%	15%	8%	77%	38%	25%	38%
A12	The board has adequate focus on the major risks facing ICANN	16%	42%	42%	15%	31%	54%	50%	13%	38%
A13	The board is well informed about the health of the ICANN Community	16%	37%	47%	15%	23%	62%	25%	38%	38%
A14	The process for evaluating the performance of the President is effective	42%	42%	16%	38%	38%	23%	14%	57%	29%
A15	The board focuses sufficiently on the development of ICANN executive talent	53%	32%	16%	54%	23%	23%	43%	43%	14%

		All Directors %			All Directors (ex Liaison)%			Senior Management %		
		Disagree	Unsure	Agree	Disagree	Unsure	Agree	Disagree	Unsure	Agree
B	The People on the ICANN board									
B1	The mix of skills on the board is appropriate for carrying out the board's tasks	16%	11%	74%	15%	8%	77%	50%	38%	13%
B2	The board size (21 members) works satisfactorily	42%	21%	37%	62%	15%	23%	50%	38%	13%
B3	The split between voting (15) and non-voting members (6) is appropriate	53%	37%	11%	62%	38%	0%	50%	38%	13%
B4	The right stakeholder groups are represented with voting rights on the board	21%	42%	37%	23%	38%	38%	0%	50%	50%
B5	The procedure for choosing new board members – Supporting Organisation and Nominating Committee selections - works well	26%	37%	37%	23%	38%	38%	38%	38%	25%
B6	The existing tenure limits for board members should be maintained	0%	32%	68%	0%	23%	77%	38%	50%	13%
B7	Induction procedures for new board members are adequate	47%	26%	26%	46%	23%	31%	50%	38%	13%
B8	Effective procedures exist to deal with inadequate performance by board members	53%	32%	16%	54%	31%	15%	50%	38%	13%
B9	Adequate training/development opportunities are available for individual board members	21%	32%	47%	8%	31%	62%	25%	38%	38%
B10	Board members put in the required effort and do their preparation	16%	21%	63%	15%	15%	69%	0%	63%	38%
B11	The time commitment required of board members is reasonable	53%	16%	32%	54%	8%	38%	75%	13%	13%
B12	Board members should be paid for carrying out their roles	26%	42%	32%	31%	31%	38%	13%	75%	13%

		All Directors %			All Directors (ex Liaison)%			Senior Management %		
		Disagree	Unsure	Agree	Disagree	Unsure	Agree	Disagree	Unsure	Agree
C	The ICANN Board's Procedures and Practices									
C1	Board meetings should continue at the current frequency (3 public, 2 retreats and monthly teleconference)	11%	16%	74%	8%	15%	77%	13%	50%	38%
C2	Board members have appropriate exposure to Supporting Organisations and Advisory Committees	37%	26%	37%	46%	15%	38%	13%	25%	63%
C3	Board members have adequate opportunity to share views with each other	16%	5%	79%	15%	0%	85%	0%	43%	57%
C4	The location of public meetings and retreats is satisfactory	5%	21%	74%	0%	31%	69%	25%	50%	25%
C5	The policy development process works well	32%	47%	21%	23%	54%	23%	38%	50%	13%
C6	The board sees enough of ICANN management to enable it to assess senior management capability	42%	5%	53%	38%	8%	54%	13%	38%	50%
C7	The board uses time effectively - appropriate time is allocated to important issues	37%	32%	32%	38%	23%	38%	63%	38%	0%
C8	Information provided to the board is adequate and timely	26%	26%	47%	23%	15%	62%	25%	13%	63%
C9	The Audit Committee performs its tasks well	0%	44%	56%	0%	38%	62%	0%	50%	50%
C10	The Board Governance Committee performs its tasks well	28%	56%	17%	31%	46%	23%	14%	43%	43%
C11	The Finance Committee performs its tasks well	0%	22%	78%	0%	8%	92%	0%	38%	63%
C12	The Executive Committee performs its tasks well	6%	39%	56%	8%	31%	62%	0%	50%	50%
C13	The Reconsideration Committee performs its tasks well	6%	65%	29%	8%	58%	33%	0%	57%	43%
C14	The Conflicts Committee performs its tasks well	11%	44%	44%	15%	38%	46%	0%	57%	43%
C15	The current Committee structure is an effective way to conduct the board's work	68%	16%	16%	77%	0%	23%	13%	63%	25%

	All Directors %	All Directors (ex Liaison)%	Senior Management %

		Disagree	Unsure	Agree	Disagree	Unsure	Agree	Disagree	Unsure	Agree
D	The People on the ICANN board									
D1	The Chairman's leadership style is effective	5%	11%	84%	8%	8%	85%	0%	13%	88%
D2	The Chairman and President have a good working relationship	5%	11%	84%	8%	8%	85%	0%	14%	86%
D3	The president encourages contributions from board members during board discussions	16%	21%	63%	15%	31%	54%	0%	38%	63%
D4	The relationship between board members and management is constructive	11%	21%	68%	8%	23%	69%	13%	38%	50%
D5	There are agreed procedures for contact between management and board members outside board meetings	37%	21%	42%	38%	8%	54%	38%	25%	38%
D6	Individual board members can raise issues for discussion without difficulty - dissent is OK	5%	11%	84%	8%	0%	92%	0%	13%	88%
D7	Board members express their views in ways that are constructive	0%	16%	84%	0%	15%	85%	13%	25%	63%
D8	The board works well as a team and isn't divided into different camps	6%	17%	78%	8%	17%	75%	13%	38%	50%
D9	Board discussions are more than that; they drive to outcomes	21%	32%	47%	23%	31%	46%	25%	38%	38%
D10	Conflicts of interest are dealt with appropriately	5%	11%	84%	8%	15%	77%	29%	43%	29%
D11	Boardroom confidentiality is respected	5%	5%	89%	8%	8%	85%	38%	25%	38%
D12	'Bad news' is communicated by management to the board quickly and openly	21%	16%	63%	15%	15%	69%	13%	38%	50%

		All Directors %			All Directors (ex Liaison)%			Senior Management %		
		Disagree	Unsure	Agree	Disagree	Unsure	Agree	Disagree	Unsure	Agree
E	A good board is described as supportive and challenging of management. The ICANN board is									
E1	'Supportive' of management	0%	16%	84%	0%	15%	85%	38%	38%	25%
E2	'Challenging' of management	42%	26%	32%	46%	15%	38%	0%	25%	75%

(b)   Supporting organisation/advisory committee survey

ICANN Supporting Organisations (19 responses)	%		
	Disagree	Unsure	Agree
1. The board understands the scope of its role and responsibilities	26%	21%	53%
2. The board is clear about to whom it is accountable	47%	32%	21%
3. The board contributes effectively to the development of policy and strategy	32%	53%	16%
4. The board effectively oversees implementation of policy	32%	42%	26%
5. The board appears well-informed of attitudes and opinions in the wider ICANN community	42%	21%	37%
6. Board members have adequate exposure to Supporting Organisations and Advisory Committees	53%	11%	37%
7. The board conducts its business in a manner consistent with the transparency principles of ICANN	32%	21%	47%
8. The current board structure and membership rules prevent capture by any particular interest group	39%	50%	11%
9. The average tenure of board members (currently less than 30 months) is sufficient for them to understand the issues that the board has to address	37%	26%	37%
10. The current board structure and membership rules are the best way to protect the public trust	58%	37%	5%
11. Board meeting notes and minutes provide sufficient insight into the rationale for board decisions	53%	16%	32%
12. The current board members have the skills and experience to oversee properly the activities of ICANN	42%	26%	32%
13. Given the substantial workload, board members should be paid for carrying out their roles	21%	21%	58%
14. The current arrangements for voting members and non-voting liaisons are appropriate	47%	21%	32%

E. DATABASE COMPARISONS

The detailed comparison of the ICANN survey results with our board survey database is included as item (c) in the Appendices. In this section, we have highlighted the twelve propositions, (six from the directors survey results and six from the senior management survey results) where the difference between ICANN and the database is greatest. All of the areas highlighted here have been discussed in the Conclusions section and most are associated with one or more recommendations. There are two propositions where the results are significantly different for **both** directors and senior managers. (B2) relating to size of the board and (C7) how effectively the board uses its time.

Director's Survey Responses

The major database differences are as follows:

(A8) "The board effectively reviews implementation of policy". Here 42% of ICANN directors agreed with the proposition and 37% disagreed compared to the database average of 69% of directors agreeing and 6% of directors disagreeing

(A9) "The board adequately monitors ICANN's business performance". Here, 37% of ICANN directors agreed with the proposition and 26% disagreed compared to the database average of 79% agreeing 4% disagreeing.

(A14) "The process for evaluating the performance of the President is effective". Here, 16% of ICANN directors agreed and 42% disagreed compared to the database average of 63% agreeing and 10% disagreeing.

(B2) "The board size works satisfactorily". Here, 37% of ICANN directors agreed and 42% disagreed compared to the database average of 71% agreeing and 17% disagreeing.

(C7) "The board uses time effectively – appropriate time is allocated to important issues". Here 32% of ICANN directors agreed and 37% disagreed compared to the database average of 67% agreeing and 14% disagreeing.

(E2) "The board is appropriately challenging of management." Here, 32% of ICANN directors agreed and 42% disagreed compared to the database average of 78% agreeing and 7% disagreeing.

Senior Management Survey Responses

The major database differences are as follows:

(A4) "Board members understand how their role differs from that of management". Here, 25% of ICANN senior management agreed and 50% disagreed compared to the database average of 81% agreeing and 6% disagreeing.

(A5) "The boards level of delegation to management is appropriate". Here, 25% of ICANN senior management agreed and 38% disagreed compared to the database average of 85% agreeing and 10% disagreeing.

(A6) "Board members avoid intruding inappropriately on management tasks". Here, 13% of ICANN senior management agreed and 38% disagreed compared to the database average of 63% agreeing and 7% disagreeing.

(B2) "The board size works satisfactorily". Here, 13% of ICANN senior management agreed and 50% disagreed compared to the database average of 68% agreeing and 17% disagreeing.

(C7) "The board uses time effectively – appropriate time is allocated to important issues". Here, none of the ICANN senior management agreed and 63% disagreed compared to the database average of 54% agreeing and 14% disagreeing.

(E2) "The board is appropriately supportive of management". Here, 25% of ICANN senior management agreed and 38% disagreed compared to the database average of 83% agreeing and 2% disagreeing.

F.   TERMS OF REFERENCE CHECKLIST

Terms of Reference	Comment	Report Reference (Page/ Section)
1. Role of the board		
(a) What best practices of both not-for-profit and for profit boards are applicable to ICANN?	There are many and these are mentioned throughout the conclusions and recommendations	Section C
(b) Specifically, what are the various policy, corporate governance and corporate decision-making roles?	The traditional roles of corporate and not-for-profit brands are discussed in Section C under the heading relating to Role, Committees, etc	Section C
(c) Do ICANN board members have sufficient clarity and understanding of their role, duties and obligations to ICANN?	Understanding is sufficient but there are differences in conception of role between individual members	Section C
(d) How effective is the board in providing strategic guidance for the organisation? How effective is the board in managing the long term and short-term strategy formulation?	This is an area for future improvement. Board focus is currently at a very operational level and efforts to raise the level of debate and discussion should continue	Section C pp64-67
(e) What are the major characteristics of the relationship between the board and staff? How do these compare to current best practices? What implications does the board's policy development responsibility have for interaction with staff?	The relationship is improving but some tension is driven by lack of clarity as to board versus management responsibility. The board is more operational and more questioning of detail than we normally see. Raising the level of board debate and clarifying/extending delegations to management is appropriate	Survey results pp64-67 pp79-89

Terms of Reference	Comment	Report Reference (Page/ Section)
(f) What time commitments are required of board members? How do these compare with the expectations of members of other boards?	At the moment, about 30% and we believe this is too high to be sustainable. Board members appear to be coping but the level of commitment is higher than generally expected	Section C p49
2. What is the appropriate structure to address this role?		
(a) Are the boundaries between operational and board policy activity clear? How do they compare to other Boards and should they be changed?	No, and the ICANN board is much more operational than other boards we see. Changes to refocus on strategy and governance are recommended	Section C p24 pp64-67
(b) Are there any changes in ICANN board structure that might improve its effectiveness?	Many changes in size, meeting frequency, membership and recruitment are suggested	Section C
(c) Are there advantages to boards with separate management and policy boards and do they have applicability to ICANN?	Separate boards have some advantages but we suggest those advantages are limited and this structure is not appropriate for ICANN	p22
(d) Do the board's decision-making processes follow the ICANN by-laws? Do these processes meet the standards of transparency set out in the ICANN by-laws?	We found no evidence of non-compliance with by-laws and we understand the recent transparency review was generally supportive of ICANN's current arrangements. In an few minor instances, we recommend less transparency to improve effectiveness	Section C
3. What are the skills and experience needed by Board members to fulfil their roles?		

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Terms of Reference	Comment	Report Reference (Page/ Section)
(a) Does the composition of the board, as mandated in the by-laws, provide Board members who have the necessary criteria and qualifications?	Not always. We believe there are gaps in the skills/experience mix necessary to govern ICANN and suggest changes to address this are contained in Section C	Section C pp37-44
(b) How effective is the process through which board member are selected?	A number of improvements to the selection process are recommended	pp37-44 pp68-78
(c) Do the skills and experience resulting from Nominating Committee and Supporting Organisation selections provide candidates with sufficient experience to assume the roles of Chair and Vice Chair positions? Does the process provide sufficient diversity (culturally, geographically and in terms of professional background)? Is this diversity impacted by the number of board members selected by the NomCom?	Existing processed deliver candidates with sufficient experience to assume the board leadership roles. Geographical and cultural diversity is difficult to achieve but ICANN does a better job than most. Diversity of professional background is an issue and we deal with this under the recommendation on skill mix. the number of NomCom selected members is not a problem but the NomCom selection process requires some change	Section C pp37-44
(d) The Supporting Organisations and Nominating Committee selections are disjoint and the overall geographic representation is constrained by the by-laws. Further, there are no by-Law constraints regarding specific skill and experience	Skill mix is an important issue for ICANN and is the subject of major recommendation within the report. We are not in favour of defining skill requirements in the by-laws. However, the various recruitment processes do require resolution and a	Section C pp37-46 pp68-78

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Terms of Reference	Comment	Report Reference (Page/ Section)
mixes. How does this affect director nomination? Do these disjoint processes need to be resolved? If so how? If the Supporting Organisations choose board members in the middle of the NomCom process, does the NomCom have to revise its deliberations in light of the Supporting Organisation choices?	comprehensive set of suggestions for change has been included in this review	
(e) Does the process provide Corporate board experience that may benefit ICANN such as audit experience, technical skill and corporate governance knowledge?	Yes, but not to the extent we believe is most appropriate for ICANN. Suggestions for broadening the skill mix on the board are discussed in Section C	pp37-46
(f) Does the selection process provide board members with sufficient experience and qualifications to perform the functions of the board at a high standard?	Yes. Current directors display high standards of integrity, effort and commitment to the organisation. Breadth of experience is a different issue and the report addresses this	Section C
(g) Does the selection process provide adequate representation of stakeholder groups and adequate geographic representation?	Generally, yes. We have discussed including an ALAC representative as a voting director. we have also discussed ways to better secure the skills required by the board from stakeholder representatives	Section C pp18-23
(h) Are board Members provided sufficient educational opportunities on	No. Training for directors in both board responsibilities and more general areas has	pp42-43

Terms of Reference	Comment	Report Reference (Page/ Section)
how to be effective board members?	been recommended	
(i) Are the basic governance structures of the board consistent with current best practice in corporate governance globally? Does the board currently have the skills and experience to meet the requirements of this new emphasis on corporate governance?	There are a number of differences between current ICANN practice and traditional governance thinking. Some of these are explained by ICANN's unique situation and are entirely appropriate. In other areas we have made suggestions for change	Section C
(j) Noting that the issue of compensation will be countenanced in the Strategic Plan, does compensation improve the performance of boards and does it increase the pool of available talent for Board membership?	Compensation is a contentious issue and we discuss the arguments for and against. We believe a modest level of compensation is appropriate and we have outlined three compensation models for the board to consider and discuss with stakeholders	pp51-55
(k) How do organisations that have structures similar to ICANN address the issue of compensation?	Benchmarks provide no real guide. There are relevant examples of both paid directors and volunteer directors among not-for-profits	pp51-55
(l) Should board members only be compensated? Should members of Supporting Organisations and Address Councils be compensated?	We have discussed the issue of compensation for board members and suggested extending this policy is a matter for the board and supporting organisations to resolve	pp54-55
(m) Does compensation create an inherent conflict of	This is covered in the compensation discussion	pp51-55

Terms of Reference	Comment	Report Reference (Page/ Section)
interest given the nature of ICANN's technical remit?		
4. Board effectiveness and processes		
(a) Is the board furthering ICANN's mission and core values, and achieving its purpose?	The board appears very focused on and committed to ICANN's values and mission. Our suggestions are aimed at increasing its effectiveness in pursuing its purpose	Section C
(b) How effectively does the board perform its functions?	Very well in some cases but with room for improvement in others	Section C
(c) How effective are the processes used by the board and its Committees? How does this compare to best practices?	The structure and performance of board committees is an area where we believe improvement is possible	pp31-36
(d) What are the similarities and differences between ICANN's board processes and general 'board best practices,' and how do the bottom-up policy development and public-private partnership issues, which are prevalent in ICANN's structure impact, this?	The practical differences and philosophical issues associated with bottom up policy development are discussed throughout Section C and in particular through the discussion of accountability	pp68-78
(e) Are the board members provided sufficient access to submission materials on the topics before it? How do these compare to current best practices?	Access to materials is generally good but we suggest reducing the volume of board materials through the design of papers and focusing more on strategic/governance matters	pp48-49
(f) Do the board's decision-making processes follow	The practical differences and philosophical issues	Section C

Terms of Reference	Comment	Report Reference (Page/ Section)
the ICANN by-laws? Do these processes meet the standards of transparency set out in the ICANN by-laws?	associated with bottom up policy development are discussed throughout Section C and in particular through the discussion of accountability	
(g) How effective is the board's agenda management?	Current processes lead to long, operationally focused, agendas and we suggest ways to change this	pp33-34
(h) How effective are the induction and orientation processes for new board members and for board members taking on new responsibilities (eg, Committee Chair)? How do these compare to current best practices?	There is no best practice here as most boards struggle in this area. ICANN does as well as most but we make some improvement suggestions	pp79-89
(i) What standards of confidentiality exist in the ICANN board? How does this compare to best practices?	The transparency principle makes ICANN the most 'open' board we have seen. Confidentiality is critical to a board, but much more difficult to achieve with the ICANN structure	p59
(j) How effective are the Bylaw provisions for the selection of Board Officers (Chairman and Vice-Chairman)?	Many boards have only the most basic documented process for Officer selection. we have no problem with ICANN's by-laws	
(k) How effectively is succession managed on the board? Does the board have the depth of talent to provide new Board Officers from within the existing	Succession can be managed better and chairing committees is the traditional way to train directors for Officer roles. We suggest greater rotation of committee	Section C pp37-44 pp68-78

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Terms of Reference	Comment	Report Reference (Page/ Section)
board members? What are the ways of improving the experience, knowledge and performance of candidates for office whilst on the board?	chairs. Initial selection and recruitment is the other way to ensure appropriately skilled directors are available	
5. Board accountability standards		
(a) How accountable is the board to its stakeholders?	The board appears committed to its stakeholders but accountability is a more difficult question to answer	pp68-78
(b) How do the board's accountability standards compare to other corporate and other not-for-profit boards?	This is discussed in a dedicated section on the issue of accountability	pp68-78
(c) How do the board's Accountability standards compare with best practice?	This is discussed in a dedicated section on the issue of accountability	pp68-78
(d) What further improvements can be made to the board's level of accountability?	This is discussed in a dedicated section on the issue of accountability	pp68-78
6. Representation		
(a) Are there advantages to board members from At-Large community and the Governmental Advisory Committee being elected to the board by way of a vote by the specific supporting organisation or council?	The size and membership of the board is the subject of a detailed recommendation which covers ALAC and GAC representation	pp18-23
(b) Is the Board Liaison role valuable given that they do not have voting rights? Should the entities that the Liaisons represent for example, the Technical	The position of Liaisons is discussed in the recommendation relating to the size of the board	pp18-23

Terms of Reference	Comment	Report Reference (Page/ Section)
Liaison Group, have board membership?		
(c) Is there value in Liaisons not being able to express a voting right?	The position of Liaisons is discussed in the recommendation relating to the size of the board	pp18-23
(d) How does the board compare to other boards in terms of its size?	This is discussed in Section C	pp18-23
(e) Should the terms of directors be aligned and of the same length?	Tenure is discussed in Section C	pp45-55