DRAFT 1.0 -- Terms of Reference for the 2007 Review of the ICANN Board

As part of ICANN's ongoing commitment to its evolution and improvement, the Board approved a comprehensive plan for independent review of ICANN's structures, as well as of the Board itself. The reviews are intended to ensure an independent examination of the role and operation of key elements of ICANN. Although ICANN's Bylaws do not require a review of the ICANN Board, the Board has determined that it would be good practice to conduct a "Review of the Board" in a manner consistent with the independent reviews conducted pursuant to Article IV, Section 4 of the ICANN Bylaws.

As with the mandated reviews of ICANN's Supporting Organizations and Committees, a Review of the Board would be conducted in an objective manner by independent evaluators, under guidance from the Board on the review's terms of reference, and with the opportunity for public comment on the results of the reviews.

Included below are proposed Terms of Reference, which detail the proposed questions that would guide the review. There are several important questions that the Review should address, which are listed below. This list is not intended to be exhaustive, particularly as the initial results of the Review may suggest related questions that should also be answered.

Scope of the Review

Consistent with Article IV, Section 4, Clause 1 of ICANN bylaws, the review of the Board should 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.

Both of these questions should be answered as comprehensively as possible. An assessment of whether changes in the Board's structure or operations are needed depends, in part, on how well it currently performs its function, and whether there are general or specific ways to enhance its effectiveness in the future. Due to the importance of the Board as a decision-making body in the ICANN corporate structure, special consideration must be given to the role of the ICANN Board as it relates to the entire organization. In making these assessments it will also be important to consider limitations presented by the governing laws relating to ICANN's current legal organizational structure.

1. Role of the Board

a. What best practices of both not for profit and for profit boards are applicable to ICANN?

b. Specifically, what are the various policy, corporate governance and corporate decision-making roles of the ICANN board and how do they interplay? To what degree are they separable?

c. Do ICANN Board Members have sufficient clarity and understanding of their role, duties and obligations to ICANN?

d. How effective is the Board in providing strategic guidance for the organization? How effective is the Board in managing the long-term and short-term strategy formulation?

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?

f. What time commitments are required of Board members? How do these compare with the expectations of members of other Boards?

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?

b. Are there any changes in ICANN Board structure that might improve its effectiveness?

c. Are there advantages to Boards with separate management and policy boards and do they have applicability to ICANN?

d. Do the Board's decision-making processes follow the ICANN Bylaws? Do these processes meet the standards of transparency set out in the ICANN Bylaws?

3. What are the skills and experience needed by Board members to fulfill their roles?

a. Does the composition of the Board, as mandated in the Bylaws, provide Board members who have the necessary criteria and qualifications?

b. How effective is the process through which Board member are selected?

c. Do the skills and experience resulting from Nominating Committee and Supporting Organization 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?

d. The Supporting Organizations 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 mixes. How does this affect director nomination? Do these disjoint proceses 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?

e. Does the process provide Corporate Board experience that may benefit ICANN such as audit experience, technical skill and corporate governance knowledge?

f. Does the selection process provide Board members with sufficient experience and qualifications to perform the functions of the Board at a high standard?

g. Does the selection process provide adequate representation of stakeholder groups and adequate geographic representation?

h. Are Board Members provided sufficient educational opportunities on how to be effective board members?

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?

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?

k. How do organizations that have structures similar to ICANN address the issue of compensation?

l. Should Board members only be compensated? Should members of Supporting Organisations and Address Councils be compensated?

m. Does compensation create an inherent conflict of 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?

   b. How effectively does the Board perform its functions?

   c. How effective are the processes used by the Board and its Committees? How does this compare to best practices?

   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?

   e. Are the Board Members provided sufficient access to submission materials on the topics before it? How do these compare to current best practices?

   f. Do the Board's decision-making processes follow the ICANN Bylaws? Do these processes meet the standards of transparency set out in the ICANN Bylaws?

   g. How effective is the Board's agenda management?

   h. How effective are the induction and orientation processes for new Board members and for Board members taking on new responsibilities (e.g. Committee Chair)? How do these compare to current best practices?

   i. What standards of confidentiality exist in the ICANN Board? How does this compare to best practices?

   j. How effective are the Bylaw provisions for the selection of Board Officers (Chairman and Vice-Chairman)?

   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 Board Members? What are the ways of improving the experience, knowledge and performance of candidates for office whilst on the Board?

5. Board Accountability standards

a. How accountable is the Board to its stakeholders?

b. How do the Board's accountability standards compare to other corporate and other not-for-profit Boards?

c. How do the Board's Accountability standards compare with best practice?

d. What further improvements can be made to the Board's level of accountability?

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 organization or council?

   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 Liaison Group, have Board membership?

   c. Is there value in Liaisons not being able to express a voting right?

   d. How does the Board compare to other Boards in terms of its size?

   e. Should the terms of directors be aligned and of the same length?