

Review of the

Technical Liaison Group (TLG)

Prepared for the Internet Corporation for Assigned Names and Numbers

--PUBLIC DISCUSSION DRAFT #1--

16 October 2010

Founded in 2003, JAS Communications LLC is a unique professional services firm delivering risk management, technology, and governance solutions to a wide range of commercial and government clients.

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1 Preface to the first public draft

JAS would like to thank all of the individuals that have participated in the review process to date. This draft is the first being released for public comment; we will continue to conduct interviews and receive feedback on this report until the close of the ICANN comment period. It is our expectation that the final report will be released prior to the Cartagena meeting.

We look forward to the community's careful review and feedback. Please don't hesitate to schedule a telephonic interview or to provide written commentary to us at tlg-review@jascommunications.com.

2 Summary

The Technical Liaison Group (TLG) is designed to connect the ICANN Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities. The TLG consists of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB). The TLG is described in ICANN's bylaws under Article XI-A, Section 2.¹

ICANN's bylaws describe an ongoing organizational review process as a part of its commitment to evolution and improvement. As specified in the bylaws, the goal of the review shall be to determine:

- Whether that organization has a continuing purpose in the ICANN structure, and
- If so, whether any change in structure or operations is desirable to improve its effectiveness.

Additionally, the ICANN Structural Improvements Committee (SIC) tasked the external reviewer to answer the following questions:

- Has the TLG been effective in achieving its objectives as defined in Article XI-A, Section 2 of ICANN Bylaws?
- What elements –if any- prevented the full achievement of TLG's objectives?
- Did the establishment of the TLG impact –positively or adversely- the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?
- Does the rationale for TLG as spelled out in the Bylaws need to be revised, and in which sense?
- What structural and operational measures can be imagined to enhance the effectiveness of the TLG?
- Does the TLG have a continuing purpose in the ICANN structure?
- Any other question that is relevant to the overall scope of this review and that is considered appropriate to address.

JAS Communications LLC was engaged to perform the first such review of the TLG in August 2010. We solicited feedback from the ICANN community, namely the Board, Management, GAC, Supporting Organizations, Advisory Committees, and TLG organizations and have collected qualitative data through interviews and email communications from 14 individuals to date.

In summary, JAS found that the TLG is an antiquated structure of limited utility in the ICANN of today. The TLG: (1) does not and never did function as intended; (2) grants significant governance privileges to organizations with no reciprocity; and (3) places individuals on the Board for only a one-year term making it nearly impossible for them to be effective contributors.

¹ Bylaws For Internet Corporation For Assigned Names And Numbers. Internet Corporation for Assigned Names and Numbers. 5 August 2010. Accessed 11 October 2010. http://www.icann.org/en/general/bylaws.htm#XI-A JAS Communications LLC

Moreover, the continued existence of the TLG poses some risk to ICANN due to the lack of role clarity and the very real opportunity for questions of loyalty and conflicts of interest to arise in the Boardroom. As such, JAS recommends that ICANN disband the TLG and replace the inter-organizational liaison function with other more typical non-bylaws level constructs.

Recognizing that completely disbanding the TLG may not be possible or desirable, JAS considered incremental improvements that ICANN could choose to implement; these improvements are described as recommendations in the analysis section of the document.

2.1 Summary of Recommendations

RECOMMENDATION 1: Dismantle the TLG.

RECOMMENDATION 2: Reaffirm the Nominating Committee's present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

RECOMMENDATION 3: If the TLG is not dismantled, consider removing region-specific representation from the TLG, specifically ETSI.

RECOMMENDATION 4: If the TLG is not dismantled, consider inviting the Unicode Consortium to participate.

RECOMMENDATION 5: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

RECOMMENDATION 6: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

RECOMMENDATION 7: Address the issue of role clarity for all liaison roles, including the TLG. Clearly specify a duty of loyalty to ICANN for the tacit full Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

3 JAS Review Methodology

JAS was engaged in August 2010 and data collection started immediately. Unlike previous organizational reviews, this review did not span an ICANN public meeting.

Phone interviews were conducted with all individuals that were interested and made themselves available. Our questions were open ended allowing participants to interpret the question in a manner that best fit their perspective and role. Follow-up questions were asked to help ensure that the discussion stayed on track and that we gathered the necessary information from each participant.

Interviews shared common elements by design to enable responses to be directly compared and contrasted. All interviews were conducted with at least two JAS representatives present enabling one to take the lead and the other to document and cross-check responses in real time with previous interviews (potentially leading to clarifying questions). Interviews were recorded with advance permission.²

JAS solicited feedback by email to ICANN structures, past and present TLG members, and by reaching out to individuals that were referred to us or through research we determined would have valuable perspective. JAS will solicit institutional responses to the first public draft of this report from the TLG members; at the institutions discretion, part or all of these responses will be included in the final report.

JAS will consider all feedback to the first public draft, including the results of the ICANN public comment period, in preparation of the final report.

3.1 Weaknesses

The greatest area of weakness in our analysis was the relatively small number of respondents. Geographically, North American and European respondents outweighed other areas of the world. JAS made an effort to market the study as broadly as possible including: announcements on ICANN mailing lists, posting an email address on the public ICANN Organizational Review web site, emailing the Chairs of all relevant ICANN structures, and through networking and seeking referrals. However, this did not translate into broad participation.

We believe this is a result of straightforward self-selection bias and the reality that the TLG is relatively obscure. While it is important to be mindful of this bias, we do not believe it is debilitating for the purposes of this study. Moreover, we hope that the release of this public draft will encourage more broad participation in the review process.

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 $^{^{\}rm 2}$ These recordings will be destroyed at the completion of the engagement.

4 Findings

4.1 Mandate and guidance

The Technical Liaison Group (TLG) was established under Article XI-A, Section 2 of the ICANN bylaws.³ Pursuant to the bylaws, TLG's purpose is to "connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities."

The bylaws further describe two modes of operation for the TLG:

- a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.
- b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.⁴

The bylaws also specifically prohibit TLG from forming an identity, organizing, or becoming a body in and of itself, and from becoming involved with the IANA function or ICANN's work with the IETF/IAB:

The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

The TLG shall have no involvement with the IANA's work for the Internet Engineering Task Force, Internet Research Task Force, or the Internet Architecture Board, as described in the Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.⁵

⁴ ibid.

³ ibid.

⁵ ibid.

4.2 Participation in ICANN governance

The TLG directly participates in ICANN governance in two ways: through an annual rotating Board liaison seat, and an annual rotating delegate to the Nominating Committee. A historical list of the individuals holding these seats is available on ICANN's web site.⁶

4.2.1 Individuals of high caliber

All interviewees described the individuals occupying the TLG Board liaison seat and the TLG delegate to the Nominating Committee as being exceptional in their individual capacity and additive to the respective ICANN bodies. The value of these individuals is realized informally through participation in discussion and debate rather than through any formal TLG mechanism.

4.2.2 Institutional relationships are not reciprocated

The level of participation in ICANN governance granted via the Board and Nominating Committee seats is not reciprocated. ICANN does not possess a comparable level of participation in the governance of ETSI, ITU-T, or W3C (note that IAB does not participate in these rotations so there is no question of reciprocity).

4.2.3 Concern around conflicts of interest and lack of role clarity

Most interviewees described a level of concern around the participation of possibly competing entities in the governance of ICANN. The core issue is a lack of role clarity around the Board observer positions and competing fiduciary responsibilities. The ITU-T participation was of particular concern because of the occasionally competing agendas of ICANN and ITU-T. Some interviewees described reduced ability for the Board to openly and fully discuss specific topics as a direct result of this lack of clarity.

4.2.4 Concern around the prohibition of TLG meetings or policy advice

A minority of interviewees noted that the specific prohibitions against the TLG organizing, holding meetings, and providing policy advice to the Board as a committee are odd at best and insulting to TLG member institutions at worst.

4.3 Resourcing

TLG is not resourced by ICANN beyond travel support and some limited administrative and IT support. While not trivial, the level of financial resourcing does not appear to be significant.

4.4 Historical Activity/Performance

4.4.1 Limited performance of roles described in the bylaws

We have found no evidence that the formal invocation (the "a" mode of operation described in the bylaws) has ever occurred. No written record of such an invocation can be located, and none of the interviewees could recall a single invocation. The more general liaising role (the "b" mode of operation

⁶ *ICANN Board of Directors.* Internet Corporation for Assigned Names and Numbers. 5 June 2010. Accessed 9 October 2010. http://www.icann.com/en/general/board.html>

described in the bylaws) is more difficult to quantify; however, most interviewees described limited historical utility of this function.

4.4.2 Informal value of individual contributors

All interviewees described the individuals occupying the TLG Board liaison seat as having valuable technical skills which were additive to the overall Board discussions. No feedback was available regarding the individuals occupying the Nominating Committee seat.

4.4.3 No concrete value of TLG aside from individual contributors

A minority of interviewees offered "nice to have" and "not doing any harm" arguments in favor of maintaining the TLG in present form, but failed to articulate concrete value outside of seating technically competent individual contributors.

4.4.4 Lack of documentation

Aside from the administrative appointment of new members and recognition of exiting members, no written records of TLG activity could be located. An email list does not appear to exist. Because of the bylaws' prohibition of TLG meetings and other self-organization, it is not clear whether the lack of documentation is appropriate or expected.

4.4.5 Structural disadvantage created by forced one-year terms

There was wide agreement that the forced one-year rotation of the TLG Board observer position made it nearly impossible for the individual filling that seat to be an effective Director. Board continuity and the significant amount of time it takes to get "up to speed" as an ICANN Director was discussed at length in the ICANN Board Review.⁷ The forced one-year rotation of TLG members further exacerbates the issue.

4.5 Comparisons to peer organizations

JAS was unable to locate any peer organization with a similar mechanism. Bylaws-level interorganizational relationships absent an investment, joint venture, or other obvious construct are rare for a host of reasons, particularly their inflexibility. The vast majority of international organizational relationships are handled through management constructs, non-fiduciary Board advisory committees and other liaison processes/activities. The reviewers note that the use of non-fiduciary advisory committees in other organizations alleviates conflict of interest issues.

⁷ Independent Review of the Board of ICANN. Boston Consulting Group and Colin Carter and Associates.

November 2008. Accessed 3 October 2010. http://www.icann.org/en/reviews/board/report-02nov08-en.pdf

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5 Analysis and Recommendations

5.1 Overview and key issues

In general there was very little disagreement about the facts regarding TLG; however, there was a wide range of opinions about how best to improve the TLG – or whether to dismantle it altogether. During the interview process, JAS Communications identified several recurring issues which we feel must be addressed:

- The TLG is atypical and not well understood
- The TLG is not used as intended
- ICANN governance participation privileges are not reciprocated by TLG organizations
- TLG Board observers are disadvantaged by forced one-year terms
- ICANN is harmed by conflicts of interest and lack of role clarity of TLG members

JAS found nearly universal recognition that TLG is odd and awkward – but enough to require action? We believe so. We find that the TLG has not functioned as designed, is not adding material value, and continued existence in the current form is damaging ICANN. Historically, the structural issues have been partially obscured by the outstanding, honorable, and highly qualified people filling the roles.

RECOMMENDATION 1: Dismantle the TLG.

JAS believes the TLG is the product of a previous chapter of ICANN's history and has limited ongoing value to ICANN.⁸ As such, JAS recommends that ICANN dismantle the TLG. We believe the primary benefit of the TLG – placement of qualified technical persons on the Board – is more appropriately realized through the existing Board selection mechanisms, namely the Nominating Committee. As noted, previous TLG Board observers are of exceptional caliber and as such would have been outstanding candidates for Board placement through the Nominating Committee.

Dismantling the TLG provides an excellent opportunity to work toward a smaller and more efficient Board, as recommended by the independent Board review⁹ and several interviewees. However, JAS recognizes that completely dismantling the TLG may not be possible or desirable. As such, we provide some incremental recommendations for improvements in the discussion sections below.

5.2 The TLG is atypical and not well understood

JAS found nearly universal recognition that TLG is odd, awkward, and not well known – even within the ICANN sphere. As discussed previously, despite fairly wide solicitations for input for this review, few individuals had input or views to share. Several individuals we contacted proactively had no familiarity

⁸ Note that question of whether the TLG provides value to the other organizations is, of course, beyond the scope of this report. This report is solely from an ICANN perspective.

⁹ Independent Review of the Board of ICANN. Boston Consulting Group and Colin Carter and Associates.

November 2008. Accessed 2 October 2010. http://www.icann.org/en/reviews/board/report-02nov08-en.pdf>

with the TLG. The only value of the TLG clearly and consistently articulated to the reviewers was the placement of qualified technical persons on the Board.

QUESTION: Does the TLG provide a unique source of qualified technical Board members?

The rather odd nature of TLG as specified in the bylaws – specifically the prohibition on becoming a cohesive body, holding meetings, or providing policy advice to the Board as a committee – essentially limits the TLG to individual contributors. The only concrete value of the TLG articulated to JAS through the review process was the identification and appointment of technical expertise to the Board. A minority of interviewees made a "nice to have" and "not doing any harm" argument but failed to articulate concrete value.

However, JAS believes that maintaining the mix of skill sets on the Board is the duty of the Nominating Committee and sees little value in maintaining TLG solely for this purpose. Article VI Section 3 in whole, and particularly Section 4, clearly obligates the Nominating Committee and Supporting Organizations to staff the Board with appropriately skilled persons, including those with technical skill. JAS notes that the outstanding individual contributors previously placed by the TLG could have easily come through the Nominating Committee process.

It is clear that the TLG does not provide a vector for accessing uniquely qualified individuals that the other Board selection mechanisms lack. JAS believes that maintaining the TLG solely as a source of technically qualified Board members is neither necessary nor advisable.

RECOMMENDATION 2: Reaffirm the Nominating Committee's present obligations under Article VI Section 3 to monitor the skill set mix of Directors and appoint technically qualified Directors as necessary.

QUESTION: Does the rationale for TLG as spelled out in the bylaws need to be revised, and if so, in what sense?

Again, JAS believes the TLG is the product of a previous chapter of ICANN's history and has limited ongoing value to ICANN. The rationale for creating the TLG was based on an upstart ICANN; now that ICANN has matured, more traditional and more flexible vectors for inter-organization relationships are appropriate. As an example, the ICANN Board and/or Management could establish active consultation mechanisms for liaising with other organizations. Board observer seats and ICANN's tacit full board membership construct is difficult.

QUESTION: Did the establishment of the TLG impact – positively or adversely - the institutional relations between ICANN and each of the TLG organizations? How did this evolve over time?

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¹⁰ http://www.icann.org/en/general/bylaws.htm#VI

It is not clear whether the TLG construct had an impact on the institutional relationships between ICANN and the TLG organizations. JAS hypothesizes that the relatively obscure nature of the TLG and limited historical activity are indications that there has been little overall impact for the better or worse. Furthermore, JAS believes that ICANN's relationship with ITU-T is far more influenced by factors well removed from the TLG for there to be any impact from the limited TLG activities. JAS believes the TLG is largely a "token" construct without any real meaning or function, and has had limited to no historical impact on any participating organization.

That being said, JAS believes the existence of the TLG has caused loyalties in the ICANN Boardroom to be questioned at times, an unfortunate and damaging occurrence. This will be discussed at length in a subsequent section.

5.3 The TLG is not used as intended

QUESTION: Has the TLG been effective in achieving its objectives as defined in Article XI-A Section 2 of ICANN bylaws?

No. We have been unable to find any evidence that formal invocations of the TLG have ever occurred. The he liaising function with the W3C, ETSI, and ITU-T is largely ineffective. We believe liaising with these (and other) organizations is better accomplished through other mechanisms.

As ICANN has matured, policy decisions have been steadily pushed out of the Board and into the policy constructs, which is where they belong. Injecting technical advice at Board level actually makes it more difficult to sustain this model, and it creates the undesirable opportunity for lobbying at the Board level as opposed to within the policy constructs.

QUESTION: Are W3C, ETSI, and ITU-T the right organizations to be represented on the TLG?

Several interviewees found it inconsistent that a region-specific standards body, ETSI, is a part of the TLG construct while no other regions are represented in this way. JAS finds ETSI's membership troubling in that it blurs the line between a pure technical advisory body and a body representing regional interests. JAS wants to be clear that we have no evidence of misuse or abuse; rather we are pointing-out the inconsistency in the design of the TLG. If TLG is a representative body, then all regions should be represented equally. If it is a pure technical advisory body, then it should include no region-specific members. In present form, the TLG has no natural constituency to represent or grouping of any sort.

There are an abundance of regional standards bodies in the world, so it is unclear why Europe has a seat while other regions do not. It is also unclear to what extent ETSI's subject area overlaps with ICANN's. We believe ETSI's membership in TLG is historical more than beneficial to either organization.

W3C and the IAB are certainly appropriate organizations with which ICANN should have a formal relationship. ICANN's relationship with ITU-T will be discussed at length in a subsequent section.

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QUESTION: Should other regional standards bodies be added to the TLG?

This issue opens a "slippery slope" problem for ICANN. As the saying goes: *The beauty of standards is that there are so many to choose from.* Opening the TLG to additional regional standards body membership would likely open a flood of "if X then why not Y?" arguments which would be damaging and counterproductive.

RECOMMENDATION 3: If the TLG is not dismantled, consider removing region-specific representation from the TLG, specifically ETSI.

QUESTION: Should other organizations in general be added to the TLG?

Several applicants noted that the IEEE and the Unicode Consortium may be appropriate additions to the TLG. Fewer applicants recommended ACM, ISO, and ANSI be considered. JAS believes that, given the current work on IDNs, if a TLG construct were to persist, adding the Unicode Consortium would be the most appropriate, and the linkages between ICANN and the Unicode Consortium are concrete enough to avoid a slippery slope problem.

RECOMMENDATION 4: If the TLG is not dismantled, consider inviting the Unicode Consortium to participate.

QUESTION: What elements – if any - prevented the full achievement of TLG's objectives?

The TLG is not used as intended because: (1) it does not receive formal tasking from the Board; (2) is prohibited from proactively offering counsel in many areas; and (3) the utility of TLG organizations liaising with ICANN through the TLG construct is in doubt.

QUESTION: What structural and operational measures can be imagined to enhance the effectiveness of the TLG?

JAS is concerned that lifting the prohibition on proactive TLG advice to the Board would effectively create a lobbying body under the guise of a technical advisory body. Therefore, we do not recommend that the limitation on proactive advice be removed.

5.4 ICANN governance participation privileges are not reciprocated by TLG organizations

JAS found it surprising and atypical that none of the TLG organizations have reciprocated the governance participation privilege that ICANN has granted through the TLG mechanism. We believe this too is an artifact of the past when ICANN was a very different organization. We strongly believe

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governance participation privileges at the highest level – participation on the Board – should and must be reciprocated to form effective peer relationships.

RECOMMENDATION 5: If the TLG is not dismantled, consider making reciprocity a condition of participation for TLG organizations.

5.5 TLG Board observers are disadvantaged by forced one-year terms

The Board review and a majority of interviewees noted that continuity of the ICANN Board is an issue. Even with three-year terms, the significant learning curve together with the historically low reappointment rate of Nominating Committee-selected Directors creates a high level of Director churn – in JAS' opinion, an unacceptably high rate of churn. The TLG-appointed observers are further disadvantaged by a forced one-year term with limited reappointment potential.¹¹ This makes it extremely difficult for the TLG-appointed Director to be a meaningful contributor to the Board.

That being said, extending TLG Board appointments involves a number of moving parts. At present, the seat is determined by a three-year institutional rotation, making continuity impossible.

RECOMMENDATION 6: If the TLG is not dismantled, allow the TLG organizations to collectively elect their Board liaison for a term of three years.

This would put the TLG-appointed Director on par with the rest of the Board and give them an opportunity to be a contributor. Note that this recommendation must not be considered in a vacuum as the issue of term is highly related to subsequent discussion and recommendations; further, care must be given to the design of the nomination and voting mechanism to ensure functionality and fairness.

5.6 ICANN is harmed by conflicts of interest and lack of role clarity of TLG members

Almost all interviewees noted concerns about ITU-T's participation in the TLG. The core issue is one of role clarity: when an ITU-T representative sits in the TLG-appointed Board observer seat, is that individual an ICANN fiduciary concerned with ICANN's best interests, or an ITU-T fiduciary concerned with ITU-T's best interests? The question moves from unclear to untenable when the observer is an employee of, or under contract with, a competing organization. JAS finds it impossible to rectify the conflict of interest in such a scenario and sees no alternative but to remove actual or perceived competitors from the fiduciary Board.

Any scenario where the loyalties of the individuals in the Board room are unclear sets in motion a host of undesirable activities to "work around" these issues. JAS has some evidence that such "working around" has occurred in the past as a direct result of such a presence in the Board room. We find it challenging at best for a competitor to have such a significant role in ICANN's governance spelled out in the bylaws and again note that ICANN has no such role in any TLG organization's governance.

¹¹ Noting that the seat rotates through three organizations; the earliest opportunity for reappointment would be in three years.

Few would argue that ICANN and ITU-T are occasionally competitors. At present, the other TLG organizations are not perceived as ICANN competitors, so this concern was directed specifically at ITU-T. However, JAS believes this is a symptom of larger governance problems: the lack of Board observer role clarity and the atypical nature of the TLG construct. ITU-T is the present concern, but any of the TLG participants could be of concern now and in the future. If TLG is not disbanded, it must be rearchitected to address this issue systemically.

JAS finds this to be a serious and dangerous issue that ICANN must address. Absent a resolution on this issue, the ICANN Board will be forced to avoid or postpone critical conversations, or to fragment. This is a serious risk and is damaging to ICANN.

RECOMMENDATION 7: Address the issue of role clarity for all liaison roles, including the TLG. Clearly specify a duty of loyalty to ICANN for the tacit full Board member liaisons, or move liaisons off of the full Board into a non-fiduciary advisory capacity.

Absent a clear duty of loyalty to ICANN, one option is a periodic mutual briefing structure where the TLG liaison is invited to brief the ICANN Board on the activities of TLG organizations and the TLG liaison is briefed on ICANN's activities. JAS notes that effective liaison relationships rarely require the capacity of a dedicated Board member; structured mutual briefings are often much more effective as they don't present ongoing conflict of interest concerns and likely have a much higher signal to noise ratio allowing the organizations to effectively focus on the topics where liaising is necessary.

6	Institutional	Responses
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(To be included in the Final Report)

7 Sources

(Includes scheduled interviews)

Anonymous (n=1)	Cheryl Langdon-Orr	
Steve Crocker	Thomas Roessler	
Francisco da Silva	George Sadowsky	
Peter Dengate Thrush	Jonne Soininen	
Chuck Gomes	Fernando Soriano	
Richard Hill	Richard Thwaites	
Dennis Jennings	Paul Twomey	