



At-Large Advisory Committee

25 May 2018

Cherine Chalaby, Chair, ICANN Board of Directors,
Khaled Koubaa, Chair, Board Organizational Effectiveness Committee (OEC)
cc: Leon Sanchez, ICANN Director selected by the At-Large Community

Dear Cherine and Khaled,

This letter is in response to the letters you have received from the GNSO Contracted Party House (CPH) dated 07 May 2018 and from the GNSO Non-Commercial Stakeholders Group (NCSG) dated 22 May 2018, both related to the At-Large Review Implementation Overview Proposal. The ALAC would appreciate this letter being distributed to the OEC and the Board, and posted to the ICANN Correspondence page.

History

The Independent Examiner review of At-Large dated 02 May 2017 identified a number of perceived issues and made sixteen recommendations to address them. The At-Large Review Recommendations Feasibility Assessment & Implementation Plan dated 19 September 2017 accepted eight of these recommendation with qualifications, and rejected eight recommendations explaining why the ALAC¹ believed that they would not serve ICANN well.

Due to the disparity between these two documents, the OEC requested that ICANN Organization (MSSI) create a mapping between the underlying issues identified in the Independent Examiner's report and the Feasibility Study & Implementation Plan provided by the ALAC, and to identify gaps between the two documents. On receipt of the mapping document, the ALAC was asked to update its Feasibility Assessment and to provide the OEC with an appropriate timeline by when the ALAC would update the document and/or address questions raised within the mapping document. Based on the MSSI mapping document, the ALAC created the Implementation Overview Proposal mapping the identified issues to its implementation plan; more fully describing the rationale for how each issue was to be

¹ The At-Large Review Working Party worked in concert with the ALAC and Regional Leaders in the replies to the Review and for simplicity, will simply be referred to as the ALAC in this letter.

addressed or why it was not addressed; and providing more specificity in the implementation plan.²

ALAC Response

It is unfortunate that the CPH and NCSG chose to write directly to you instead of approaching the ALAC and/or its leaders to better understand the ALAC's views on the Review. That being said, we are pleased to have this opportunity to address the issues raised in their letters.

GNSO CPH Letter

The CPH letter raises two issues related to the ALAC Implementation Overview Proposal. In particular, the letter states that the ALAC did not respond to the specific criticisms raised in the At-Large Review, and it notes that we did not explicitly address the questions raised in the MSSl mapping document.

Addressing Criticisms

By “criticisms”, we presume the CPH letter means the “issues” raised in the report. In creating the mapping, MSSl extracted all of the substantive issues raised (specifically, the issues that the Independent Examiner felt warranted action as described in its recommendations). The ALAC proposal used these same issues, and it is our understanding that these issues comprise the full set of “criticisms” in the report. The ALAC took great care to respond to each of the sixteen issues identified by the Independent Examiner and strongly believes that it has addressed all of the necessary points.

In some cases, we agreed with the issue raised and we proposed an approach to address it during the implementation of the Improvements. In other cases, we disagreed with the issue and explained why. In some cases, although we disagreed that the issue was a problem, we investigated why it may have been perceived that way and proposed solutions to ensure that such misperceptions will not occur in the future.

Answers to Questions

In its mapping, MSSl asked 89 explicit questions. Significant time was spent in reviewing the questions and beginning to develop answers. The questions ranged from those already well documented, to those of interest but not clearly related to the review implementation, to out-of-scope for At-Large or the review (three examples). Examples (in that order) are:

- [Already documented] *Can you please elaborate on how the functions performed by ALT, ALAC, and ALAC Chair are distinct from each other? If this information is not currently*

² The description of the OEC actions were extracted from the Minutes of the OEC meetings dated 21 September 2017 and 27 October 2017 as well as the Q3 and Q4 Organizational Effectiveness Committee Activities Report.

available on the At-Large website, would it be helpful for newcomers and others not fully familiar with the At-Large operations?

- The roles of the Chair and ALT are fully documented in the ALAC Rules of Procedure (RoP) - <http://tinyurl.com/ALAC-RoP-2016-09>. The ALAC itself is documented in the ALAC RoP and the ICANN Bylaws.
- [Interesting but not helpful] *At-Large states that WGs are dismantled as their tasks are completed. Is there documentation to show the criteria applicable for closing WGs?*
 - Like all parts of ICANN, we close WGs when their work is done, when their activity level indicates it is not worth expending resources on them, or when they are supplanted by some other group or mechanism. It is unclear how documenting this would help address the Review Implementation or encourage more participation.
- [Out of scope] *What are current levels of funding (of At-Large)?*
 - This is a really good question, and one that At-Large has asked repeatedly over the last 12 years. ICANN budgeting tools do not provide for the calculation of that number. And it is unclear how knowing it would allow us to better address the issues facing At-Large. (The Review recommendation was to use New gTLD Auction Proceeds to fund At-Large, something that the Independent Examiner was told had been declared out-of-scope for the Auction Proceeds).
- [Out of scope] *While the issue addresses the need for systematic RALO participation in regional events, the recommendation is focused on travel funding. What is the correlation? [Asked in relation to Issue/Recommendation #13]*
 - That is an excellent question. But it should have been directed at the paid Independent Examiner that conflated the subjects and not to the volunteers at whom the review was targeted.
- [Out of scope] *What were the outcomes of joint ISOC/At-Large outreach? Are there any plans for documenting these activities in the future and if not, would this be feasible?*
 - “Joint ventures” was a review recommendation. There have been no cases of such joint outreach. ISOC does hold gatherings at ICANN meetings, and At-Large Structures (ALSes) which are also local ISOC Chapters might do outreach but neither of these is an event which is jointly organized or sponsored.

As stated in the ALAC Proposal, the MSSSI mapping included a large number of questions which, although interesting, would not likely provide additional guidance to the OEC and the ICANN Board in evaluating the proposed implementation. It was therefore not felt that answering these would be a productive use of ALAC time when there were so many pressing policy and related issues to focus resources on (e.g. GDPR, New gTLD Subsequent Procedures, RDS PDP, KSK Rollover, etc.)

GNSO Non-Commercial Stakeholders Group

We note that the NCSG letter begins with a reasonable statement: *“Even if [the ALAC] does not agree with the provided solutions, it should address the issues, otherwise doing a review would become meaningless.”* We concur, and as noted above, we believe that we have addressed all of the issues. However, we note that the first two issues raised in the NCSG letter are complaints that we have not agreed with the provided solutions, but rather proposed alternative implementations - counter to their introductory position.

The following sections respond to each of the substantive issues raised in the NCSG letter.

“At-Large has not accepted any of the solutions proposed for reforming its election procedures.”

The relevant issue raised in the report was that our process for selecting our Board member was too complex and needed to be simplified. Each SO that has Board members selects those members according to their own processes, without interference from other ACs, SOs, NomCom or the Board. The process used by At-large was developed through a bottom up methodology. Both methods recommended by the Review report involve the NomCom making decisions on behalf of At-Large. One proposed solution then relies on a purely random selection and the other selects that vast majority of electors by random selection. Neither corresponds to the title of the position – “The Director selected by the At-Large Community”.

The NCSG also notes that we have not made a firm commitment to evolve the process. We note that the concept of evolution is a slow one that is not explicitly planned but results from events, external stimuli and changing needs. As shown by ALAC/At-Large in its full completion of the first At-Large Review as well as the plans for implementing the current At-Large Review, we are fully committed to a thoughtful evolution of At-Large.

Lastly, the NCSG letter, like the Review report, makes reference to “allegations of unfairness”, but neither provides any details of what they are referring to.

“At-Large must adopt the proposed Empowered Membership Model in order to facilitate greater direct participation by Internet end-users in its activities.”

Again, the perceived problem is that we have not accepted a specific recommendation, but have accepted the issue and proposed alternative mechanisms for addressing the issue. We have done exactly what the NCSG in its introduction has said is a reasonable way to proceed.

The Empowered Membership Model (EMM) was based on the concept that an Internet user could become a productive worker within At-Large without having to be associated with an ALS.

The ALAC strongly supports this and in fact the concept is allowed in four of the five RALOs³, with the fifth RALO currently developing the rules associated with individual members. The importance (and difficulty) of this issue was understood and was being worked on before the current At-Large Review started.

However, the EMM also included a number of concepts that the ALAC could not support. The key one was that the number of At-Large leaders⁴ would be halved and everyone would have to take on a double workload. Moreover specific roles would often be assigned randomly, without factoring in the person's skills or interests. This part of the EMM, which the Independent Examiner was determined to see implemented, would simply not work.

There were other characteristics of the EMM which, although not as dramatic, did not appear to be practical or effective use of funds. An example was to dedicate five travel slots to each ICANN meeting for people who would do local outreach.

“At-Large must develop a robust conflict of interest policy, in particular for their leadership.”

This is not an issue that was identified during the At-Large review and is out of scope.

The NCSG letter implies that since we do not have a robust Conflict of Interest rule for individuals⁵ in place which would exclude anyone with business or government connections, we are not capable of properly representing users. The ALAC has indeed discussed this issue in the past. We have found that in many cases, particularly in developing countries and small island nations, there are relatively few people who have the interest and skills to participate in ICANN. In such cases, many such people wear multiple hats and play a number of roles. As long as the roles are kept separate we see no problem. We also note that there is no prohibition of such multiple roles in ICANN, except for government officials sitting on the ICANN Board of Directors. Should ICANN wish to adopt such a rule universally, it is certainly something that the community could entertain.

If the NCSG believes that there are specific situations today where business or governments are interfering with At-Large, then these specific cases should be brought to ALAC or ICANN leaderships' attention.

³ The EURALO implementation in fact groups their individual members into a group that for administrative purposes takes the form of an ALS, but like in other RALOS, these individual members are otherwise not affiliated with each other and this “pseudo ALS” has no purpose other than to provide an organizational home for otherwise unaffiliated individual members.

⁴ “Leaders” using the ICANN definition of those who volunteer for key roles such as ALAC Member or Regional Chair or Secretariat. In the GNSO Context, it would include Council Members and the leadership within Stakeholder Groups and Constituencies.

⁵ The At-Large rules do prohibit control of At-Large affiliated organizations from being largely business or government controlled.

“The role of At-Large is not to engage in policy work.”

This again is not an issue raised by the Review and in fact is counter to the position taken by the Independent Examiner. And it is a very confusing point. ICANN is finally at the stage where it is acknowledged that the GAC and ALAC should be active in policy activities and not just submit advice to the Board after the SO has already made its recommendations.

At the end of the section, the NCSG states that At-Large participants may engage in policy development working groups although the title of the section says they may not. And the overall text says that the ALAC, the group overseeing At-Large, must avoid all contact with policy development.

The ALAC, like other parts of ICANN, is regularly canvassed for opinions on ongoing policy matters. This may happen as a result of a Public Comment or as direct request from a WG or other entity. The ALAC works with its At-Large members to formulate replies to such queries. To say that the ALAC should remove itself from policy matters other than to advise the Board is a guaranteed way to strip the ALAC of its ability to represent the need of Internet users.

Overall, turning back the clock to when the ICANN “silos” were rigid and well defended would not seem to serve ICANN well.

“The At-Large Leadership Team (ALT) should be dissolved.”

The issue raised by the Independent Examiner and the NCSG letter is that the ALT should be dissolved and that *“and its decision-making powers be fully resolved [sic]⁶ to the ALAC”*.

As presented clearly in the ALAC Proposal in question, by its definition in the ALAC Rules of Procedure and by actual practice, the ALT has no decision making rights or responsibilities other than those very few decision making rights of the Chair (largely related to urgent matters)⁷ that may be delegated to the ALT or its members. The ALT (which is comprised of one member from each of ICANN’s five region) acts purely as an advisory body to the Chair and serves to ensure that regional balance is a factor in all ALAC matters. The ALT does on occasion make non-binding recommendations to the ALAC.

It is the ALAC’s understanding that many other groups in ICANN have a leadership team (often called an Executive Committee), including the Board and the NCSG. In many such cases, including the Board, this group actually does have significant decision-making rights.

⁶ The word in the Review report was “restored”. The typo was introduced in the MSSl mapping.

⁷ Such emergency powers have been used perhaps 2 or 3 times during the term of the current chair, and have never been delegated to the ALT.

“Given the tightening budget, we ask that no funding be allocated towards the At-Large Summit for a further five years.”

The ALAC is hoping to hold its third At-Large Summit in FY20. The concept of such a meeting was approved by the Board several years ago based on an exhaustive justification presented at that time.

In discussions leading to earlier NCSG comments on the At-Large Review, and in those leading to this letter, it was incorrectly assumed that the next At-Large Summit would include in the order of 250 attendees and cost in the order of \$5,000,000. Statements from ALAC leadership and ICANN staff that these numbers are both GREATLY inflated have been to no avail.

The ALAC is aware of the current ICANN budgetary situation and will act accordingly.

Summary

The ALAC believes that the At-Large Review Implementation Overview Proposal is a balanced and reasonable approach to addressing the salient issues identified by the Independent Examiner. We are confident that what we are proposing is in fact implementable in an efficient and effective manner, and that it will address some of the key issues that have faced At-Large since its inception.

Work began on this At-Large Review over three years ago⁸. The ALAC and At-Large are eager to move forward with the implementation with minimal delay.

The ALAC appreciates the efforts of the OEC, and going forward the Board, ensuring that the At-Large Review results in a fair, effective and implementable result which will serve the At-Large Community and ICANN well.

Yours sincerely,

Alan Greenberg
Chair, At-Large Advisory Committee

⁸ March 2015 based on the inception of the Working Party Mailing list (<https://mm.icann.org/pipermail/atlarge-review-wp/2015-March/000000.html>)