



## USCIB INPUT ON ICANN TRANSITION ACTION PLAN AND IMPROVING INSTITUTIONAL CONFIDENCE

OCTOBER 20, 2008

The United States Council for International Business (USCIB) appreciates the opportunity to provide input to ICANN on its Transition Action Plan (TAP) and Improving Institutional Confidence (IIC). USCIB is a business association whose membership includes some 300 leading U.S. companies, professional services firms and associations, representing a wide array of Internet stakeholders, including general business users, ISPs, IP Rights Holders, registries, and registrars. USCIB is a founding member of the ICANN Generic Name Supporting Organization (GNSO) Business Constituency and was very active in the formative stages of ICANN. The technical coordination of the Internet is of critical importance to all of our members given the amount of their business that is conducted over it.

USCIB recognizes ICANN's positive efforts thus far to engage the Internet community on the critical issues involved in improving institutional confidence. USCIB also feels that ICANN has appropriately identified the key areas where our members share concerns in this regard, namely in the areas of capture, accountability, internationalization, financial and operational security, and security and stability. Furthermore, USCIB applauds ICANN for its various efforts to engage the business community more fully in ICANN policy processes and we look forward to working with ICANN to expand the voice of business within ICANN.

USCIB actively contributed to and supports the extensive comments submitted by the International Chamber of Commerce (ICC) in their July 2008 input on the TAP, and USCIB will not attempt to reiterate all the points included in that input again. Rather, USCIB's comments here focus on our concerns that some of the important points made by the ICC and other respondents to the first part of the consultation have not been fully incorporated into the second drafts of the TAP and IIC documents, particularly in the areas of capture and accountability. USCIB comments will also respond to some of the new questions that have arisen during the second round of the consultation. As a general comment, additional details on various aspects of the TAP and IIC documents would be helpful in order to provide more substantive input.

We look forward to monitoring the IIC initiative.

### Safeguards Against Capture

USCIB fully supports the ICC's July 2008 recommendation for *"further elaboration by the PSC on ideas to prevent external capture, which is an area of concern for global business. Such mechanisms should be calibrated to prevent ICANN from being forcefully subsumed by external government interests and to ensure that ICANN does not willingly abdicate private-sector leadership in favor of government control."*

Neither the TAP nor IIC revisions provide any further elaboration on the concept of preventing external capture of ICANN within the relevant sections. USCIB acknowledges and supports the additional language later in the IIC document providing that "the Government Advisory Committee should maintain its advisory status." However, ICANN must more actively discern ways by which to prevent external capture by governments or intergovernmental entities. This includes, but certainly not limited to, developing mechanisms to ensure effective and timely consideration of the advice from the GAC by all ICANN bodies, not just the Board of Directors. A distinguishing feature of ICANN is its private-sector leadership, and this must be maintained without doubt beyond the conclusion of the JPA.

### Strengthening Accountability

USCIB recognizes the effort on behalf of ICANN in considering accountability mechanisms, including the possible requirement for a Board re-examination of decisions, and extraordinary mechanisms for Board removal. ICANN should be proactive in further developing details of these instruments, and in introducing further external accountability mechanisms.

With regard to the mechanism by which the ICANN community could require the Board to reexamine a decision, USCIB is concerned that ICANN's suggestion to require 2/3 of the councils and advisory bodies to vote for reconsideration may not adequately account for legitimate minority interests.

Furthermore, the second iteration of the IIC document provides some elaboration on the idea behind the mechanism for Board removal, but questions remain as to what circumstances might prompt such a decisive measure and what threshold of support within the community would be required. USCIB is also concerned that ICANN's proposal to permit recall of the board as a whole is an extraordinary measure that would seldom or perhaps never be utilized, more like a poison pill than an accountability enhancement. Moreover, USCIB is concerned about the details of any 'caretaker' approach that would suitably address the continuity of the organization while a new Board is being reconstituted. At present, there is no legal requirement that would allow for group dismissal of the Board, and it appears that the board in existence could bring legal action opposing their removal, thus putting the organization in limbo. Such issues require careful consideration. There may exist less drastic but nonetheless effective accountability measures to be considered.

If ICANN is serious about accountability, it should consider mechanisms to be answerable to an independent non-governmental body in which the actions of the staff and board can be measured against an agreed upon standard.

### Internationalization

USCIB supports continued global outreach by ICANN, and appreciates ICANN's efforts undertaken so far to further internationalize the organization. We feel, however, that ICANN needs to provide more details regarding its suggestion to establish legal presences in jurisdictions outside the United States. Though the intent to garner international not-for-profit status to aid in certain administrative functions seems clear from the elaborations given in the second draft of the IIC document and in the recent public consultations, ICANN should provide more detail, namely in which jurisdictions it is considering and why these jurisdictions are being considered. A deeper analysis of how multi-jurisdictional presence might affect the functioning of ICANN, such as with regards to its non-for-profit status, Board, leadership, liability and staff, should also be presented to the ICANN community before recommending a particular course of action.

USCIB notes that there are a variety of mechanisms used to ensure the ability to meet the needs of diverse global stakeholders, including translation, globally distributed staff, and developing further substantive materials that provide the kind of detailed information needed regarding policy actions, issues, and processes, and ICANN's overall activities and functions.

USCIB also strongly supports ICANN's statements to keep the organization headquartered both in name and operational presence in the United States. The strong legal protections and accountabilities afforded under California law remain important as ICANN continues to grow and evolve.

### Security and Stability

Safeguarding the Internet's unique identifiers is one of ICANN's most important tasks, and USCIB fully supports efforts by ICANN to ensure the security of the DNS. USCIB members notes the PSC suggestion that ICANN should be a 'thought leader' on issues of security and stability issues consistent with its narrow but critical role in the secure and stable operation of the Internet. In order to understand and comment effectively on what the ICANN stakeholders support for activities and focus in the areas of security, it is very important that this role be clearly identified, detailed, and presented to the stakeholders for comment and agreement.

A PSC recommendation proposes to "amend the ICANN bylaws to include the process of developing annual Strategic and Operating Plans, in which stability and security play a principal role." USCIB urges ICANN to provide more detailed information about what is the 'principal role' of security and stability. Furthermore, USCIB's members note that it may be important to increase the amount of time that is devoted to community input into development of the Strategic Plan and Operating Plan.

### Consultation Timeframe

As a consultative organization itself, USCIB recognizes the difficulties facing organizations in developing appropriate consultation timeframes. Yet USCIB feels that consultation periods need to be long enough to adequately digest and respond to policy suggestions. Shortening the second IIC consultation period from the original schedule constrains the ability for stakeholders to contribute effectively, especially large membership organizations. USCIB has stated in past positions that ICANN's policy development processes need sufficient timeframes for comments to allow organizations and constituencies to provide meaningful support and input from experts and stakeholders. The current timeframes fail to meet this basic threshold.

Thank you for this opportunity to comment. USCIB appreciates the work of the PSC and ICANN leadership and staff on its work to date, and we look forward to continuing involvement in the IIC process.