

Interim Report of
The NGO and Academic ICANN Study (NAIS)

Executive Summary
June 2001

Introduction

As the Internet becomes increasingly important to people around the globe, a critical question has been raised: How will the voice of a growing community of stakeholders be appropriately included in new mechanisms for the coordination or "governance" of key Internet technical functions? That question is clearly posed today in one such coordination body, the Internet Corporation for Assigned Names and Numbers (ICANN), which is tasked with managing aspects of the Internet's naming system and other critical technical functions.

In 2000, ICANN completed an unprecedented global election for five "At-Large" Directors of its governing Board. ICANN is now in the midst of a major debate over the future of broad participation in its activities. The result of that debate will be closely watched by policy makers around the world and could have profound implications for both the legitimacy of ICANN and the future of public participation in a new breed of non-governmental, global coordination bodies.

This report seeks to address key questions: Why is there a need for a public voice within ICANN? What role does and should ICANN's At-Large Directors and Membership play in providing that voice? What lessons can be learned from the At-Large election with regard to the At-Large Membership and the structure of the ICANN Board? Are there other participation and representation mechanisms that should be considered to enable legitimacy and effectiveness within ICANN?

The observations reported here are based foremost on a series of studies conducted by research teams within each of ICANN's five designated geographical regions. The methodology of these regional assessments varied based on local conditions, but included personal interviews with experts and leaders, intensive review of supporting documents and media coverage, surveys of key participants, and the experiences of researchers who have long followed ICANN activities. Cross-regional comparisons, coupled with a conceptual investigation of ICANN's governance structure, are also included. The Interim Report's analysis and observations are the product of intense communication and collaboration since the formation of the NGO and Academic ICANN Study (NAIS)¹ in early 2001.

This Interim Report is preliminary in nature. A final report, including a more complete analysis and recommendations for action by ICANN, will be presented in September. The Interim report is intended to promote discussion and inform the ongoing debate within the ICANN community. The NAIS team members recognize the potential limitations imposed by the compressed timeframe of this study. We invite and welcome feedback, comments, and discussion.

¹ More information about NAIS and the complete Interim Report is available at www.naisproject.org or by emailing <info@naisproject.org>. A list of NAIS team members is included below.

I. The Public Voice, Legitimacy, and ICANN

The mission, character, and history of ICANN, and its current (and controversial) trajectory of expanding public purpose, requires global public participation and representation for its long-term legitimacy and stability.

This fundamental finding is based on the following observations:

- *ICANN's current and potential range of purposes are not only "technical" but also have broad policy implications.*

Efforts have been made to confine the scope of ICANN's activity to technical coordination of certain naming and numbering and protocol functions. But many of ICANN's 'technical' decisions - such as the creation of new top-level domains - are inextricably linked to 'policy' decisions - such as intellectual property protection, competition policy, or public values about allocating Internet resources. ICANN faces great pressure to address these policy issues and by necessity make decisions on grounds other than technical merit. ICANN's activities in the creation of trademark dispute resolution policy, the allocation of new TLDs, its negotiated agreements with registries, and its attempts to structure a relationship with national ccTLDs are all pointed to as broader, global activities that are not purely technical in nature.

Much here involves the future of ICANN. Its *potential* authority is largely unbounded. Policy authority over the root server system and other central Internet functions make it possible for ICANN to exert much broader control over internet activity. To date, many of ICANN Directors and staff have expressed little interest in doing so and have publicly disavowed such a broad scope of power. But ICANN is likely to face increasing pressure from those seeking ways to control a range of behavior online. The broader its objectives become, the more sweeping the impact, and the greater the need will be for public participation and representation.

- *ICANN is a new type of organization designed to provide coordination on a global scale.* The global nature of the Internet demands new, non-national forms of organization. For many a primary purpose of ICANN is to globalize Internet coordination in a new way. Public participation is seen as a key safeguard against domination by governmental or commercial interests on a national level, and as a source of input as for global interests as ICANN's functions transition away from US control.
- *While ICANN is formally organized as a private, not-for-profit corporation, its functions are largely public and global.* ICANN's activities have taken on the character of "trusteeship" for an emerging global public resource in a way characteristic of serving a public or quasi-public role. ICANN is probably best viewed as a hybrid organization, having important elements in its character and mission of both a private and a public entity. As such, the issue of global public representation - particularly representation independent of the primary industry stakeholders already engaged - must be faced.
- *Global public participation has historically had a role in ICANN.* The notion that the broad community of Internet users should be represented in ICANN's own governance has been a founding - though often poorly defined - principle of ICANN.

ICANN was created, in part, to provide representation to the international Internet community in the decision-making processes for Internet coordination and to reflect the tradition of bottom-up governance of the Internet standards-making process, which has been remarkably successful. This broad view of public participation in ICANN is part of the basic bargain of institutional legitimacy that many relied on when supporting ICANN's development.

- *Globally broad stakeholder participation and representation will be an increasingly important element of ICANN's legitimacy.* Participation and representation are widely accepted governance values. They are based upon the idea that those who are affected by decisions or policies initiated should participate or be represented in the policy-making process. In the context of the Internet, this requires a truly global implementation.

To the extent possible, the entire affected Internet community—from companies in the business of providing DNS services, to domain name holders impacted by ICANN's rules, to individual Internet users and consumers whose activities online could be shaped by ICANN's rules about the cost or use of domain names or the allocation of addresses—should be considered stakeholders in ICANN's activities.

- *The notion of an impacted "public" in ICANN is broad.* Definitions of the "public" affected by ICANN vary widely, in part due to regional differences in conceptualizing the concept of "public" independent of other civil institutions. At the very least there is a continuum of interests in ICANN's activities, which, at their broadest, include all users and potential users of the Internet.

ICANN's internal organizational structures (supporting organizations), or representation by governments, do not provide appropriate public participation.

- *ICANN's internal structures are not likely to provide adequate public participation.* The three existing supporting organizations – the Address Supporting Organization (ASO), the Protocol Supporting Organization (PSO) and the Domain Names Supporting Organization (DNSO) --were originally conceived as the locus of expert technical and business input, and they vary in the degree to which the public can participate. Many feel that despite efforts to make ICANN a "bottom-up, consensus organization" with decentralized policy development, it is the Board and Staff that wield influence and make decisions in a largely "top-down" fashion.
- *Government is not seen as the appropriate avenue of public participation.* While governments play a role in ICANN through the Government Advisory Committee, there are many reasons that role is best a limited one. ICANN was conceived as a non-governmental body. Governments are viewed with skepticism as insufficient or a poor fit for Internet management where rapid change, technical expertise, and responsiveness to new social developments are needed. Traditional multi-lateral governmental organizations have been found lacking in this regard. ICANN in many ways represents an attempt to find alternative methods for non-government coordination.

Representation on the Board through At-Large Directors is therefore an essential channel for public participation.

- At-Large Directors and the At-Large Membership (ALM) were mandated at the founding of ICANN, but so far have been inadequately defined and institutionalized in ICANN's framework of operations.
- The ALM remains the great—and as yet unrealized—opportunity for public participation in ICANN. Broadly conceived, the At-Large Directors serve a diverse set of goals: Global participation - a means for communication and outreach to the ICANN public; Representation - a voice for members directly within the decision-making body of ICANN; and Accountability - to serve as a watchdog over ICANN activities. Developing an ALM is a necessary precondition to successful At-Large director selection. But institutionalizing the other roles of the ALM in providing the means for participation and accountability, as well as representation, will have additional important consequences for establishing the worldwide public legitimacy of ICANN.

II. The At-Large Election: Lessons from the Regional Reports

From its inception ICANN recognized that some form of representation for broad public interests was needed. The creation of nine At-Large Directors - nearly half the 19-member Board - to be selected "At-Large" was a placeholder for that broader representation. But it was only a placeholder, as the exact method for selecting directors was not established at ICANN's founding and has been a subject of great debate.

The October 2000 ICANN election for five At-Large Directors, one from each region, was unprecedented. Voters in the election broadly included nearly anyone in the world with an email address and postal address who completed the web registration. Over 153,000 people worldwide registered, and over 30,000 ultimately voted. Up to seven candidates were on the ballot in each region, selected by nomination or a petition-like member nomination process. Voting occurred online, through preferential balloting, and ultimately five new directors were elected to the Board.

The election has become a point of contention between those who question the need for public participation in ICANN at all and those for whom the At-Large participation was a basic premise of ICANN's existence, and many in between. In many ways the 2000 election was perceived to be successful in selecting directors by a broad membership. In other ways, the election presents challenges for the future, some easily reconciled and others more long-term. Below are some observations about regional experiences and the central election administration.

Common Elements: The 2000 election, though experienced regionally, was developed and implemented globally.

- *A rapidly implemented election based on multiple goals* - In early 2000 ICANN faced the need to design an election that was broadly inclusive, inexpensive to conduct, enhanced participation and legitimacy, minimized capture and fraud, and was completed within the year. These goals were in tension with each other. It is certainly a major achievement that the election was designed and conducted within the timeframe allotted.
- *Technical and administrative problems* - Members and potential members experienced numerous problems with the online registration and voting system. Registration servers were unable to handle demand and some potential members could not register. Some failed to receive a PIN number once registered. Others had trouble actually voting.

These problems damaged the election's credibility but many of them - such as building scalable systems to handle higher peak loads - appear possible to remedy in a future election with more time, resources, and experience.

- *Inherent limitations of online voting* - Online voting presents perhaps the only practical way to conduct a low cost, globally inclusive election. Yet at this time there appear to be inherent problems with such voting. Voters worldwide have little experience with such systems. Experts report a tradeoff between cost and security. Without a well-developed global authentication system, there is little chance of preventing people from registering more than once. The combination of online registration and postal mail confirmation, while inconvenient, seems a reasonable tradeoff for additional security.

Regional Distinctions

Africa: The smallest electorate highlighted the need for outreach and simplification.

- *More education and outreach* - There is a perceived lack of awareness and interest in ICANN despite an understanding among some that Africa has a real stake in ICANN's decisions. Registration was low and very inconsistent across the region.
- *Voting technology choices have impact* - Africa acutely felt the effects of the election system. Reliance on postal mail was a problem in some areas. Those with only email access were unable to register and hence disenfranchised.
- *Simplified process needed* - There is a continued concern about the perceived 'under-representation' of Africa in ICANN and the impact on ICANN's legitimacy.

Asia: The largest region in number of voters was marked by organized efforts to register voters in some countries and highlighted problems with regional representation.

- *Challenges of regional representation, linguistic barriers and need for outreach:* Linguistic barriers were a major problem for broad inclusiveness. Outreach was limited and voter education needed. The Asian election shows the difficulty of one election designed to represent countries with diverse languages, culture, and viewpoints.
- *Organized registration* - There is evidence of efforts by both industry groups and governments within the region to motivate registration and voting. This behavior did not violate any ICANN election rules, since there were few explicit rules set, but it does raise serious concerns about "capture." The efforts highlight the cultural differences in perceived appropriate behavior, and the need for more comprehensive election rules.
- *Nationalistic voting* - Voting appears to have followed nationalistic patterns, and commentators expect future elections to continue the pattern, raising a fear of dominance in the regions by a small set of countries with organized member communities.

Europe: The second-largest electorate saw major differences in attention and participation among countries.

- *Satisfaction and criticism* - Many Europeans are generally satisfied with the At-Large Election, not least because it has been the first on a global scale. Yet there is shared criticism about how ICANN handled the various steps and challenges of the election including technical problems, insufficiently transparent selection of candidates, and poor outreach.
- *Outreach deficit* - Many respondents expressed the need for better communication channels between candidates and voters on the one hand, and among At-Large members on the other. The lack of a Europe-wide outreach campaign and the absence of local public forums, some say, contributed to the interest deficit in most European countries.

- *National focus and regional variety* - The national focus of the European media illustrates the difficulties of creating electorates that are not rooted in political traditions and language communities. Dense networks crossing user communities, politicians and journalists, can partly explain the intense election coverage by the German press and consequent over-representation of Germany within the region.

Latin America: A small electorate highlighted benefits and obstacles to elections.

- *Technical problems acutely felt* - The technical and administrative problems with the election, including the reliance on postal mail and other issues, were highly problematic in Latin America. As a result the opportunities of the potential voting public were limited.
- *Nationalism and language issues* - Some concern was expressed about efforts within a particular country to register voters and seek support for a national candidate.
- *Regional reform needed* - Some suggested a desire for more than one vote per region, or a regional council (with sub-region representation). While geographical representation was seen as important, concerns exist about outreach and engagement of a broad electorate.

North America: The most competitive race appeared free of feared attempts at "capture."

- *Complacency and concern* - Among many interviewed there was a sense of satisfaction with the election given the context and rules established, and at the same time a certain skepticism about the future, including doubts about the sustainability of an informed electorate and concerns about the possibilities of capture.
- *Capture* - The election appears to have been free from organized corporate or government efforts to dominate the election. However, the US did overshadow Canada in numbers of voters and candidates.
- *Turnout* - Turnout was very low (2/1000ths of 1% of electorate) and many expressed skepticism about dramatically increasing it without major changes in ICANN outreach or public perception.
- *NGO role* - In the almost total absence of any structured ICANN outreach, civil society institutions - NGO's and academics - played a substantial role in registering and informing voters.

Cross-Regional Comparisons:

- *Outreach gap* - Communication and education are key elements in developing an enabling environment within which fair elections may take place. In most countries, and particularly in Africa and Latin America, there was little public education about the At-Large elections. In a few countries, such as Japan and Germany, intensive outreach took place. This wide differential raises concerns about the possibility of national capture of a regional election (exacerbated by potential national voting tendencies), or regional domination of elections held on a global basis. Increased and improved voter education by ICANN, taking the complexity of language into account, may mitigate this problem.
- *Voter education* - Across regions, complaints were heard about the absence of almost any serious program of outreach or voter education. Voter turnout remained extremely low relative to eligible voters, and it is unclear how well informed most voters were about the issues.
- *Diversity* - In nearly every region, concern was raised about diversity in dimensions besides geography. While many acknowledge the importance of regional representation, there was also a felt need for a new global coordination body such as ICANN to foster representation along lines other than geography.
- *Participation role* - Across regions, At-Large members sought a role beyond merely voting. Participation can be much more than a ballot; it can include deliberation and

open exchange of ideas that allow the public to inform and to be informed. ICANN to date has provided no platform for integration and deliberation by the ALM.

- *General 'satisfaction and skepticism'* - Across the regions numerous election problems and challenges were encountered. But, taken in context, the At-Large Election was widely seen as a successful step towards public participation within ICANN.

III. Options for Moving Forward

The NAIS Interim Report catalogs major option areas, as expressed to us, to be considered as ICANN moves forward. Our final report in September will include further discussion of the benefits and costs of these options, as well as possible recommendations. For now these options are presented in the spirit of continuing informed debate within ICANN.

- *Options Based on the At-Large Directors Model* – Many options favor some method of retaining At-Large Director seats distinct from those of the Supporting Organizations. Within this strategy, there are multiple dimensions of questions for resolution, including:
 - Number of At-Large Directors - Many favor the current nine At-Large Directors, which are viewed as a part of the basic structural balance essential to ICANN's formation and legitimacy. Other options advocated range from increasing them to 10 (two per region) or more, to reducing the number of seats (five, three, or even zero).
 - Selection Mechanism - In addition to the favored current "direct" election, some support options including an indirect election, or selection by designated representative organizations or councils, or some hybrid.
 - Membership Criteria - These range from inclusive criteria (any Internet user, or even any member of the public), to more restricted criteria such as domain name holders.
 - Membership Role - At issue is whether the membership has an enduring role beyond election of directors.
 - Regional v. Global Structure - Another question is whether to select the At-Large Directors on a regional basis (at least in part), or some other global approach. (This question urgently needs resolution for the four remaining At-Large seats.)
- *Options External to At-Large Board Directors* - In addition or in conjunction with At-Large Directors, issues of public participation might be addressable through other mechanisms:
 - Reforming the Supporting Organizations – Some propose major changes to the S.O. structure, the addition of new S.O.'s, realignment of existing S.O.'s, or even the divestiture of certain S.O.'s from ICANN to ensure substantial public participation.
 - Creating a Check on Board Authority – One possibility is to establish some appeals or oversight body to balance the Board's potential activities. The current Reconsideration Committee is considered by many to be a weak version of this idea.
 - Limiting the ICANN Mission/Slate of Activities – This proposal would limit ICANN's authority to make it less needful of legitimating representation. Methods range from codifying changes in governing documents to radical reconstruction in line with a new philosophy.

IV. Conclusion: Alternate Futures, Alternative Governance Patterns

The NAIS Interim Report, and our observations about the need for representation and participation among At-Large Directors and for At-Large Members, is based on a specific sense of ICANN's purposes and trajectory. But *the purpose of ICANN and goals of its current participatory structure must be better understood to assess the At-Large Directors and Membership.*

It is impossible to have a community assessment of the At-Large Directors without some common understanding of what ICANN is and what purpose is to be served by the At-Large Directors. One view of ICANN places it somewhere on a continuum that extends from a private and narrowly technical group, on the one hand, to the effective equivalent of a government agency, on the other. But there is a broad divergence of opinion about where ICANN lies on that continuum. Another view emphasizes ICANN's role as a new and transformative structure for global, non-governmental coordination of technical functions. At issue is the extent to which ICANN can serve this purpose.

If ICANN is a public entity formulating policy about the Internet, with broad impact on the public globally, then the legitimacy of ICANN will depend on public representation. If ICANN is viewed as a private business engaged in narrow technical work, the case for public participation in its decisions or selection of its directors is weaker. In either case, the need to ensure global participation must be resolved. Differing opinions on these questions may explain highly polarized views regarding global public representation within ICANN.

Last year's election process is a motivating example for considering how to best promote goals of public participation and representation through the At-Large Directors. The election was widely viewed with both some satisfaction and significant skepticism. In general, the election appeared to function reasonably well consistent with its own internal rules and expectations, but surfaced serious concerns about future implementations. Many concerns - problems with election registration servers, the absence of clear election rules - appear addressable in future elections. Others problems - nationalistic voting patterns, voter education and outreach - are likely to be longer-term concerns.

Against this backdrop, ICANN now faces a range of options - some that embrace elections while mitigating concerns, others eschewing direct democracy or reducing the role of the public. NAIS intends to submit a more complete assessment of these options, along with recommendations for Board action, in September with its final report.

Finally, we emphasize the need for a speedy resolution of this issue. In its absence, ICANN's At-Large board seats continue to be filled in part by appointed members who have long since exceeded their initial term of office. The elected Directors themselves will need replacement in 2002. ICANN's own Bylaws call for a study to be completed in June 2001, and a Board decision by November so that work can begin on whatever mechanism is put in place. While the June deadline will not be met, the November deadline is essential. Every day that passes without resolving this issue decreases the legitimacy of decisions that ICANN is making. We urge the ICANN Board to commit to a thoughtful but rapid deliberation, and to avoid action - whether through timing of decisions or allocation of funds - that would preclude it from considering the full range of options that may be placed before it.

We welcome comment and feedback on this document. For more information and a copy of the full NAIS report, please visit our web site at <http://www.naisproject.org/>. Comments or questions can be addressed to comments@naisproject.org.

The NGO and Academic ICANN Study (NAIS) is a collaboration of experts from around the world, formed to explore public participation in ICANN and the selection of At-Large Directors on ICANN's governing board. NAIS mirrors ICANN's own study effort, and was created to provide an independent examination, global in scope and grounded in a belief in the importance of public representation. NAIS team members include:

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This study was conducted through a generous grant from the Markle Foundation (New York, USA), and through an additional travel grant by DENIC (Frankfurt, Germany).