

March 2000

ICANN's Global Elections: On the Internet, For the Internet

A Common Cause/Center for Democracy and Technology Report on the ICANN At-Large Elections

Prepared By:

Jerry Berman, Executive Director, CDT

Scott Harshbarger, President & CEO, Common Cause

**Donald J. Simon, Sonosky, Chambers, Sachse & Endreson,
General Counsel to Common Cause**

Alan Davidson, Staff Counsel, CDT

Lusan Chua, Policy Analyst, CDT

Andy Draheim, Lobbyist/Organizer, Common Cause

Common Cause (<http://www.commoncause.org>) is a leading advocate for openness and accountability in government. A non-profit public interest group based in Washington, D.C., Common Cause brings its knowledge of fair and democratic electoral processes to this study, as well as a fresh perspective on issues of Internet governance.

The Center for Democracy and Technology (CDT) (<http://www.cdt.org>), also based in Washington, is a non-profit public interest group dedicated to promoting individual liberty and democratic values online. CDT has extensive experience with Internet policy and technology issues relating to free expression, individual privacy, and open access to the Internet.

The full report is available online at <http://www.commoncause.org/icann> and <http://www.cdt.org/dns>. For more information, please contact:

Andy Draheim of Common Cause <adraheim@commoncause.org> or Lusan Chua of CDT <lchua@cdt.org>.

Table of Contents

Acknowledgements.....	i
Executive Summary.....	ii
1. Introduction: The Common Cause-CTD ICANN Election Study	1
2. The ICANN At-Large Election: Goals and Current Plan.....	5
3. Concerns & Issues Regarding the Current Election Plan.....	10
4. Options for Change.....	15
5. Recommended Principles for Moving Forward.....	26
Appendices I - III.....	29

Acknowledgements

Common Cause and the Center for Democracy and Technology would like to acknowledge the many people who contributed time, experience, expertise, insights and support to this study.

First and foremost, we thank the Markle Foundation for the generous financial and logistical support provided to this project. In particular, we would like to thank Zoë Baird for providing Common Cause and CDT with the opportunity to form this unique interdisciplinary partnership in the public interest. We would also like to recognize Andrew Shapiro and Laura Bailyn of the Markle Foundation for helping us to shape the direction of this project from inception to completion.

The Berkman Center for Internet & Society, the American Library Association, and the Carter Center also made outstanding contributions to our efforts. Jonathan Zittrain and Diane Cabell of the Berkman Center shared their extensive experience addressing issues of membership and representation as members of the Membership Advisory Committee (MAC). We would like to thank Frederick Weingarten of the American Library Association for sharing his years of experience with technology policy issues, and Charles Costello of the Carter Center for contributing his expertise in international elections and democracy.

We would also like to thank the experts in online voting, democratic process, and international elections who participated in our election workshop at Harvard University's Kennedy School of Government, and whose expertise and perspective on these difficult issues provided substantive background for our report:

Derek Bok, Charles Costello, Lorrie Faith Cranor, Richard Engstrom, Jeff Fischer, Ron Gould, Steven Hill, Peter Molnar, Joseph Nye, Drazen Pantic, Trevor Potter, Virginia Postrel, Ed Still, Tracy Westen, Fred Werthheimer, and Juliana Pilon.

And finally, we would like to thank the many individuals involved in the ICANN process who generously contributed their time, insights, and honest suggestions, including:

Izumi Aizu, Theresa Amato, Takashi Arano, Karl Auerbach, Mikki Barry, Raimundo Beca, Becky Burr, Marilyn Cade, Diane Cabell, Caroline Chicoine, Roger Cochetti, Tod Cohen, Leslie Daigle, Barbara Dooley, Esther Dyson, Michael Froomkin, Don Heath, Hans Petter Holen, Kim Hubbard, David Johnson, Kanchana Kanchuanasut, Myungkoo Kang, Kathryn Kleiman, Hans Klein, Dori Kornfeld, Sue Leader, Andrew McLaughlin, Eric Menge, Steve Metalitz, John Montjoy, Milton Mueller, Andy Oram, YJ Park, David Post, Nii Quaynor, Oscar Robles, Ellen Rony, Peter Schalestock, Joe Sims, Theresa C. Swinehart, Don Telage, Dany Vandrome, Bill Washburn, Jonathan Weinberg, Frederick W. Weingarten, Daniel Weitzner, Cathy Wittbrodt, Jonathan Zittrain.

While our final report represents only the views of Common Cause and CDT, this study would not have been possible without the invaluable input and support of these people.

Executive Summary

As the Internet becomes an essential part of life for millions of people worldwide, once obscure questions about who manages its underlying technical systems are taking on new public importance.

The Internet community is on the eve of an unprecedented election designed to allow millions of computer users around the world to vote for board members of the Internet Corporation for Assigned Names and Numbers (ICANN), an organization that will manage certain crucial Internet technical systems.

But nearly every member of the Internet community with whom we spoke, as well as respected outside observers, identified fundamental problems with the current plan for the election being put in place by ICANN. Some of these problems can be addressed through improvements in the proposed election process, but others are the products of conflicting goals for the election itself. These problems are compounded by the fact that most of the electorate envisioned by ICANN does not know what ICANN is or what it does. In short, what we found is a proposed election process for ICANN viewed with almost uniform skepticism by informed observers.

ICANN faces the daunting goal of seeking a fair ballot, free from capture or fraud, from a potential electorate of millions of Internet users worldwide who have little knowledge of ICANN and little understanding of its mission, in order to select a high-quality board of technically-capable members – all by September of this year. Realistically, without substantial changes to the proposed process, it is difficult to see how this is possible.

Until these fundamental concerns are resolved, this election can only be viewed as a risky experiment in democracy that must be dramatically improved for it to confer legitimacy on ICANN.

This report explores concerns with ICANN's current At-Large election model and a range of options to address them. Authored by two U.S. public interest groups with expertise in election systems and Internet policy, with support from the Markle Foundation, this report is the product of three months of extensive analysis and consultation with a broad cross-section of stakeholders and election experts. This report does not represent all of the disparate concerns about these elections, nor does it provide a comprehensive "silver-bullet" solution for ICANN to follow in response to those concerns. Rather, it is designed to be a resource to assist the Internet community in having a meaningful debate about the proposed plan for the election before proceeding with it.

ICANN and its Elections: The 19-member ICANN Board of Directors (including its appointed president) was designed to give those affected by ICANN's decisions some voice in its governance. Nine interim board members were seated by appointment in October 1998. Last fall, an additional nine directors were elected by the "Supporting Organizations" representing defined Internet addressing, protocol, and domain name stakeholders. The original nine interim directors are to be replaced by nine new members who are to be elected "At-Large" from among the broader Internet community of public stakeholders, in an election to be conducted by September 2000. While a matter of great debate within ICANN, exactly how that election is supposed to take place is only now being established.

Major features of the current election plan include:

- Electorate – Any person with an email address and physical address who registers can vote.
- Quorum – A minimum of 5,000 registered members must be reached for the election to proceed.
- Internet voting – Members will vote electronically using PIN numbers received in the mail.
- Indirect elections – Members will vote for an 18-person “At-Large Council”, which in turn will elect the nine At-Large board members.
- Two-stage election – One-third of the seats will be filled first, with a second election for the remaining seats to follow an evaluation of the first election.
- Timing – The election of all new At-Large board members is to be completed by September 30, 2000, with the first stage of elections starting this spring and ending by July 2000.

ICANN's Mission: In theory and by design, ICANN's mission is narrow and technical. But even technical decisions about who gets which names and numbers can have broader policy implications. And because of ICANN's central control over Internet functions, it will face pressures to make broad policy decisions.

ICANN is likely unknown to its very broad potential electorate of Internet users worldwide. Its mission and the limitations on its authority have not been stated plainly, and ICANN's activities in areas like intellectual property protection may create further confusion. Without a mission that is clearly delimited, there is a risk that many voters will not understand what they are voting for or why.

Election Goals: There is little agreement among those consulted on the ultimate role of the At-Large election in advancing ICANN's mission. Its goals appear to be several:

- To give a voice in ICANN's governance to those bound by and/or affected by ICANN's decisions and who are not currently represented in the ICANN structure – a diverse population potentially including tens of millions of people all around the world.
- To select high-quality board members capable of fulfilling ICANN's responsibility for management and stability of essential technical systems.
- To fairly represent the diverse interests of those affected by ICANN decisions, as expressed by an engaged and educated electorate.
- To avoid “capture” of the board through disproportionate representation of any one organization or interest group
- To complete the election and seat the new board by September 30, 2000.

These goals are in tension with each other. For example, including millions of potential voters who today have little knowledge of ICANN and are unlikely to vote, creates the potential for capture by a motivated interest group. On the other hand, completing the election by September 2000 will make it difficult to have an educated electorate that will participate broadly in the election and thereby diminish the risk of capture.

Concerns with the Current Election: Almost every person we consulted expressed skepticism about the current election plan. The concerns raised most frequently include:

- Public Engagement – Few in the potential electorate understand ICANN or its mission.
- Capture – There is a 5,000-person quorum, yet millions are eligible to vote. This system is highly vulnerable to “capture” by motivated groups at the expense of those without the resources to organize voters.
- Scope of the Electorate – Not everyone with an email address is sufficiently interested and knowledgeable to vote.
- Indirect Election – An indirect election disengages voters because they do not even get to vote for board members.
- Accountability – At-Large Council members have no accountability for what Board members they support, and there are no current prospects for “slate-making” that would help voters better understand the candidates for whom they are voting.
- Nominations – There is no clear nomination process and no plan for campaigns that educate the electorate.
- Diversity – Minority viewpoints could be submerged by a two-stage, winner-take-all election process where only a few people are elected worldwide at a time.
- Fair elections – There are few safeguards to ensure fairness, guard against fraud and corruption, or provide for monitoring of the election by a third party.

If ICANN proceeds according to its current election plan, it is unlikely that these concerns will be addressed.

Options and Recommendations: The full report explores a wide range of options to address the concerns set forth above. These include options relating to the election structure, the membership, the process for putting candidates on the ballot, the campaign rules and regulations, the voting system to be used and other miscellaneous matters.

No single set of options will perfectly answer all of the concerns and at the same time achieve all of the goals for the election. But based on our outreach and analysis, Common Cause and CDT believe the following ideas hold out the most promise for improving the fairness and legitimacy of ICANN’s elections:

1. **ICANN should develop and promulgate, in some binding fashion, language to delimit the scope of its decision-making authority to technical management**

issues. ICANN must do a better job of explaining to the public what it can and cannot do, and make those limitations a clear and binding part of its structure.

2. ICANN should establish an independent election authority to set the rules for the election, and then audit and monitor the conduct of the election.

3. The “electorate” for the At-large board members should broadly include individual Internet users. Legitimacy can only come if ICANN operates with the consent of the governed – those bound by and affected by its policies. Finding the appropriately inclusive membership that can be practically engaged in ICANN remains a major challenge. At this time, we believe the planned membership open to all persons with an email address is a best, though still a highly problematic, first approximation that at least should be attempted and then carefully evaluated.

4. The electorate should directly elect the At-Large board directors. Having an At-large Council choose the board members diminishes accountability and both the reality and appearance of an open, inclusive, representative and democratic election. On the other hand, if a system of indirect elections is maintained, some accountability mechanisms – such as a commitment to a slate – should be developed for the At-Large Council members.

5. ICANN should develop a clear candidate nominating process and campaign rules. A clear process should be established for putting candidates on the ballot – including a hybrid of a nominating committee and open petitioning by members, coupled with baseline campaign rules.

6. ICANN should use some form of a proportional representation voting for its At-Large elections.

7. ICANN should institutionalize periodic review of the At-Large membership and elections process. A clear sunset for the current rules should be established, along with a review process, to evaluate this year’s election and suggest improvements for moving ahead. This evaluation should be done by a group independent of the existing board.

8. ICANN should place the goal of holding effective elections ahead of the goal of completing them by September 2000. We recognize that ICANN faces intense pressure to hold its elections this year. Regardless of how the election proceeds, however, it must ultimately be viewed as a first experiment in democracy for this new technical management body.

Given the outstanding concerns about matters ranging from membership to capture, the unanswered questions about how the electorate will develop over time, and the rapidly changing nature of the Internet itself, ICANN cannot claim that its proposed election system, as it now stands, will confer legitimacy on it. Much work is needed to address and resolve the myriad of serious issues that have been raised. ICANN’s approach to these elections should be an iterative process of democracy: one that looks at this year’s election as a tentative first step, with rules for subsequent elections to be established in the future upon further community deliberation.

1. Introduction: The Common Cause-CDT ICANN Election Study

1.1 Democracy, the Internet, and ICANN

The Internet is rapidly becoming an important part of life for millions of people worldwide, holding out new promise for empowering individuals, promoting economic growth, reinvigorating civil society, and enriching individual participation in government.

As the Internet grows, once arcane questions about who manages its underlying technical systems have taken on new public importance.

In particular, the prospective transfer of control over crucial Internet naming and numbering functions from the U.S. government to a newly created, non-governmental corporate entity, the Internet Corporation for Assigned Names and Numbers (ICANN), has raised urgent questions about how ICANN itself is to be governed. What is the appropriate democratic nature of a private entity vested with the technical management of the Internet? Who should it represent? Who should elect its board? What voice should the public have in its decision-making? In short, to what extent should principles of democracy play a role in the Internet's new technical governance structures?

The public election of directors to ICANN's board, scheduled to begin this spring and conclude by September 2000, demands that the Internet community now address these critical issues of governance.

In theory, ICANN's mission is narrow and technical. But even technical decisions about who gets which names and numbers can inherently have broader policy implications. Thus, ICANN's technical management of the central Internet name system and root servers unavoidably places it in the position of potentially formulating public policy of interest beyond the technical operation of the Internet's infrastructure.

And so, from its creation, there has been a sense that ICANN's unique role requires it to have a system of internal governance that is informed by a broad participation of interested stakeholders worldwide. This sense was embodied in the structural rule that nine members of the 19-member ICANN Board of Directors be elected by some conception of the public "at-large."

What this means, and how to do it, have proven to be vexing questions, raising virtually unprecedented problems of designing a system of democratic electoral procedures on a literally worldwide scale.

ICANN faces a range of fundamental election issues relating to representation, membership rights, candidate qualifications, and voting procedures that were not resolved – indeed, not even addressed – in its original bylaws.¹ Not surprisingly, participants in the ICANN process have developed very different ideas about how to answer these questions, based on very different conceptions of the electorate, representation, legitimacy and indeed, the very purpose of ICANN itself.

¹ The original bylaws had a blank space in lieu of Article II, marked with the disclaimer, "This Article is reserved for use when the Corporation has members." Full text of the original bylaws is available at <http://www.icann.org/general/archive-bylaws/bylaws-06nov98.htm>.

The interim board of ICANN has provided one set of proposed answers to these questions, by adopting bylaws that provide the outline of its At-Large election process. This outline has been the product of a great deal of debate within the ICANN community, and in-depth analyses by groups such as the Membership Advisory Committee (MAC).

But the current path towards the At-Large elections continues to raise a multitude of legitimate concerns. While ICANN has adopted a basic framework for the election process and is proceeding to implement it, many have expressed extreme skepticism about whether the election as currently structured will fulfill ICANN's interest in a fair, stable, legitimate, representative, and open election, free from capture by narrow interests.

In a basic sense, ICANN faces an age-old question of governance: How can the benefits and energies of democracy be balanced with the need for reasoned and deliberative decision-making?

ICANN carries a narrow technical mandate to manage the naming and numbering system of the Internet, and many believe that the primary goal of the At-Large elections is to produce directors who are technically knowledgeable and dedicated to preventing ICANN from moving beyond its narrow mission into wider regulatory matters (e.g., imposing content restrictions or taxes on domain name holders).

At the same time, ICANN's legitimacy as an international Internet oversight body rests on providing those affected by its policies with a fair opportunity to participate in ICANN's decision-making. How can ICANN balance these interests and establish an engaged electorate appropriate for its mission? And how can this be done within the short timeframe demanded?

This Election Study does not claim to answer all of these questions. Our goal has been to assess the current model for the ICANN At-Large election; to fairly characterize some of the many voices and perspectives in this debate; to identify and catalog outstanding concerns about the current election process and the range of options for moving forward; and to suggest possible principles for ICANN to adopt that we believe have promise and substantial community support. In doing so, our hope is to provide the Internet community with the basis for a serious debate.

1.2. Background on the Common Cause-CDT ICANN Election Study

This report is the result of a study of the ICANN election process undertaken by Common Cause and the Center for Democracy and Technology (CDT) in December 1999. Common Cause and CDT were asked to evaluate proposed plans for the election of the ICANN At-Large board members, and to make suggestions for improvements to assure a fair election that would enhance ICANN's legitimacy and effectiveness. This study was funded through the generous support of the Markle Foundation, an independent charitable organization based in New York. It was conducted independently of ICANN and is *not* an official project of ICANN.

Together Common Cause and CDT bring a range of experiences to this effort:

- *Common Cause* is a leading advocate for openness and accountability in government. A non-profit public interest group based in Washington, D.C., Common Cause brings its knowledge of fair and democratic electoral processes to this study, as well as a fresh perspective on issues of Internet governance. Common Cause was also able to engage electoral experts from a variety of disciplines to provide constructive analysis and recommendations.
- *The Center for Democracy and Technology (CDT)*, also based in Washington, is a non-profit public interest group dedicated to promoting individual liberty and democratic values online. CDT has extensive experience with Internet policy and technology issues relating to free expression, individual privacy, and open access to the Internet. Since its formation in 1994, CDT has also been involved with policy issues relating to the technical management of the Internet and domain name system.

Throughout this collaborative effort, CDT and Common Cause have brought together leaders in the nonprofit, technical, business, and academic communities, along with experts in electoral process, to engage in a constructive dialogue about the purpose of ICANN and the role of the At-Large election in fulfilling that purpose.

1.3. Study Procedure

Common Cause and CDT have conducted this study based on outreach to ICANN stakeholders, consultation with experts, and in-depth analysis focused on the purpose of the At-Large election, the concerns it raises, and prescriptive suggestions for improvement. A detailed discussion of our approach is included in *Appendix I*. Among our major activities:

- We have reviewed relevant background materials and have had extensive and ongoing conversations with a large number of participants in the ICANN process and with other interested parties. In-depth outreach was a key feature of our research. A partial list of parties consulted is included in *Appendix I*.
- We started by asking fundamental questions about the role of ICANN. We sought to uncover what common understanding, if any, existed regarding ICANN's overall mission, its method of operation and policy development, its powers, and the limits on its powers.
- We surveyed the concerns that have been raised about the current At-Large election process, with particular attention to the definition of "membership," the implications of ICANN's current two-tiered election system, and community concerns about representation, potential capture, and preserving stability.
- In early February 2000, we hosted a roundtable workshop of election experts at Harvard University's Kennedy School of Government. Included were high-level participants with experience in electoral theory, electronic voting systems, and the implementation and monitoring of elections around the world in places ranging from Kosovo and East Timor to towns and cities in the United States.
- We cataloged a variety of alternatives, including some new and creative options for ICANN, that have been suggested as ways to deal with the most widely articulated problems.

Finally, based on all this work, we present here some recommended principles for reshaping the ICANN At-Large elections. We believe these principles deserve prompt and serious consideration by the ICANN community.

We would like to acknowledge that our international outreach was limited due to time and resource constraints. However, we made every effort to include international representatives in our conversations with leaders from the nonprofit, business, and technical communities.

We have been mindful of the extensive discussions that have already taken place for over a year within various parts of the ICANN community. In particular, we are indebted to the hard work of the Membership Advisory Committee and the Berkman Center's Study on Representative Government, which studied these issues in depth as a precursor to ICANN's current plan. This study seeks to build on that work rather than duplicate it.

We also note that ICANN's new Implementation Task Force has begun to do a great deal of work to detail the rules to govern the existing election process. Rather than duplicating the work of this new group, our effort has been focused on a broader assessment of the current election process and alternatives for moving ahead, not on the details for specific implementation of the current system.

In considering a possible course of action, we have allowed ourselves to cast a wide net, soliciting and discussing a broad range of election options. We have also been mindful that ICANN's goal has been to elect At-Large board members by September of this year, and that any new steps to improve the election will need to be discussed, adopted and implemented almost immediately if that goal is to be met.

2. The ICANN At-Large Election: Goals and Current Plan

The design and evaluation of an election process is best understood in the context of the mission of the body to be elected. An early and striking finding of this study is how many of the basic questions about the mission of ICANN, and the role of the elections for the ICANN Board, remain open and contentious.

2.1. ICANN and its Origin

ICANN, a private non-profit corporation organized under the laws of the state of California, was created in 1998 as part of an effort by the United States government to privatize certain technical management functions of the Internet. ICANN reached an agreement with the U.S. government to assume management responsibilities for the Internet's Domain Name System (DNS) and other central technical functions concerning numbering and protocols. The DNS is probably the most publicly understood part of ICANN's responsibilities, as it coordinates Internet addresses (e.g., www.icann.org) and translates them into Internet Protocol (IP) numbers understood by computers (e.g., 157.150.192.2), making it possible for computers to communicate across the Internet and allowing users to efficiently navigate the network.

As spelled out in a Memorandum of Understanding with the U.S. government providing for DNS oversight by ICANN, and subsequently in ICANN's articles of incorporation and bylaws, ICANN's mandate is to ensure the universal connectivity of Internet computers by establishing technical standards for network communication and coordinating the assignment of Internet names and numbers. More detailed background on ICANN and its history is provided in Appendix III.

There appears to be some agreement in the Internet community on several key principles related to ICANN:

- ICANN's primary mission is to develop sound policies regarding the operation of the domain name system and the allocation of IP numbers. These policies are to be developed in a bottom-up, consensus-based manner, driven first and foremost by the technical experts and stakeholder representatives participating in ICANN's supporting organizations and working groups.
- ICANN must operate on a global basis to be effective. Because the Internet itself is global in nature, domination of Internet policies by any one country or region would damage its legitimacy and effectiveness, as would domination of ICANN by any single interest group at the expense of other stakeholders.
- ICANN lacks governmental powers and it cannot impose its rules by fiat. Moreover, ICANN is subject to procedural and structural constraints on its activities. Its articles and bylaws impose procedural limitations on its actions. It is subject to U.S. law and the law of the state of California in which it is incorporated, and much of its activity requires the approval of the U.S. Department of Commerce. A primary means of enforcement of its policies is through its contracts with registries, registrars, and other third parties. While ICANN cannot force anyone to enter into a contract, its unique position in the management of Internet technical operations does give it a

unique level of control over the registries, registrars, numbering authorities, and others involved in those operations.

Agreement on these principles is important. But there is a lack of consensus on key questions about the scope of ICANN's mission – and the implications of its authority.

2.2. ICANN's Mission

ICANN's authority is of central importance because of the great power that is inherent to the regulation of the domain name and addressing system and the control over Internet root servers.² In a highly decentralized network like the Internet, the naming and numbering function is a key point of centralized control – indeed, virtually the only one. The possible power to grant or withhold domain names has the potential to be used – covertly or overtly – to impose policies on, and exercise control over, all domain name holders. Such a control point could be sought by interest groups, organizations, or even governments to enforce policies that would impose their own interests on the operation of the Internet.

While many in the ICANN community state that ICANN's mission is limited to the “technical management of central Internet naming and numbering functions,” we have discovered a wide divergence of views as to what constitutes the proper scope of “technical management.”

Because of the power inherent to control of the root server and other central technical systems, and because of the potential that ICANN itself might be swayed someday by the temptation posed by such power, a dominant view in the Internet community is that ICANN should be strictly limited to technical decision making. In theory, ICANN should not develop and impose policies, the impact of which is unrelated to the technical operation of the Internet.

An alternative view places ICANN more squarely in the role of a governance body for the Internet, and sees ICANN as a powerful new alternative to government regulation that can be appropriately used to develop and enforce policies across the Internet. Many have already noted that ICANN could prove an attractive mechanism for dealing with enforcement of the law online, as well as criminal activity, consumer fraud, intellectual property disputes, or undesirable content.³

A third view is somewhere in the middle. By this view, ICANN should – to the extent possible – be limited in its mission to technical issues relating to the naming and numbering functions of the Internet. But those who adhere to this view argue that important policies with broad implications will inevitably be set by ICANN, even assuming it operates only within the sphere of its narrow technical mandate. On one hand, the intellectual property community might view ICANN as an attractive alternative to the courts for arbitrating trademark disputes on domain names. On the other hand, the regulation of domain names alone could easily embroil ICANN in thorny questions of politics or social policy, even if it

² An overview of the domain name system, addressing, root servers, and other technical details can be found at <http://www.cdt.org/dns>

³ For example, in January 2000 two prominent U.S. Congressmen suggested instructing ICANN to establish a “.adult” top level domain to deal with their concerns about Internet content viewed as inappropriate for children.

seeks to avoid them.⁴ Thus, even while it is true on one level that the scope of ICANN's mandate is limited to addressing technical matters of Internet operations, it is true on another level that decisions with potentially far-reaching non-technical consequences can inherently be bound up in the disposition of seemingly technical questions.

How one views this debate about the mission of ICANN significantly influences how one views the questions relating to the election of ICANN's board. To the extent that one sees ICANN as properly limited to a technical role of "making the Internet's trains run on time," the election of the At-Large board members should be structured to emphasize the values of efficiency and the technical competence of those elected. But to the extent that one sees ICANN as involved – whether by design or by inherent practice – in setting policy for the Internet that has ramifications beyond the merely technical, then some broader, more inclusive participation in the ICANN elections, and some more representative "public" voice on the ICANN Board, becomes correspondingly more important.

2.3 The Goals of ICANN Elections.

ICANN, like all corporations, began corporate existence with an interim board appointed by its founders. One of the first tasks faced by this interim board was to design a process to replace itself – in other words, to craft a mechanism for the selection of a permanent board on an ongoing basis.

The organizational structure created by ICANN's founders and its interim board calls for a 19-member board of directors to govern ICANN. The president of ICANN, who is selected by and serves at the pleasure of the ICANN Board, will occupy one board seat. The 18 remaining board members will serve three-year terms. Half will be chosen by ICANN's three "Supporting Organizations" – the addressing, protocol, and domain name groups that provide a formal, institutional forum within ICANN for companies and organizations from the business, technical, and noncommercial communities. The other nine members of the board are to be selected through an At-Large election of the ICANN membership. Additional detail on the structure of ICANN is contained in Appendix III.

When we sought opinions on the purpose of the At-Large election, participants in the ICANN Election Study provided a diversity of responses. This is not surprising given the diversity of views about the underlying questions concerning the scope and limits of ICANN's mission.

While there appears to be little consensus on the ultimate role of the election, several major themes have emerged among the responses that we have heard:

- To give a voice in ICANN's governance to those bound by and affected by ICANN's decisions – a diverse population of potentially tens of millions of people all around the world. A major goal for many is to ensure that ICANN acts "with the consent of

⁴ For example, ICANN might be drawn into the realm of international relations – for instance, a decision like whether or not the Palestinian Authority should be granted a country-code top-level domain (ccTLD). It also might be asked to intervene on behalf of individuals whose websites have been high-jacked by oppressive regimes – just as Network Solutions, Inc. was asked to stop traffic to the Radio B92 resistance web site in Belgrade after Serbian forces captured it. Should or will ICANN make judgements on such matters? Are these not decisions that affect the broader public? Likewise, it will be difficult for ICANN to remain neutral if domain name holders use their domains to violate basic human rights or commit criminal acts.

the governed.” Others articulated this goal as “providing a voice in ICANN to those not already represented in the Supporting Organization structure.”

- To select high-quality board members capable of fulfilling ICANN’s responsibilities for managing and ensuring stability of essential technical systems.
- To fairly represent the diverse interests of Internet users worldwide, as expressed by an engaged and educated At-Large electorate.
- To avoid “capture” of the board through disproportionate representation of any one organization or interest group.
- To complete the election by September 30, 2000 in order to allow the appointed At-Large board members to be replaced, and to inject an elected voice into the board’s ongoing decision-making as quickly as possible.

These goals are in tension with each other. For example, including millions of potential voters who today have little knowledge of ICANN and are unlikely to vote creates the potential for capture by a motivated interest group. On the other hand, completing the election by September 2000 will make it difficult to have an educated electorate that will participate broadly in the election and thereby diminish the prospect of capture.

We believe that many of the ongoing concerns about ICANN’s proposed election result from the fact that these goals cannot be fully reconciled. Any election system undertaken in the short term will inevitably be compromised by fundamental problems.

2.4 Current Plans for the At-Large Election

Over the last year, the interim ICANN Board has developed and begun to implement a plan for the At-Large election. The current plan has been enacted through a combination of bylaws changes and board resolutions based on committee reports and community debate. Its major features are:

- Membership – Any individual with an email address and a physical address can register online to vote.
- Voting – Elections will take place electronically via the Internet, with each member receiving a unique PIN number to be used for voting.
- Indirect elections – Members will elect an At-Large Council of 18. This council will in turn elect the nine At-Large board members, through a process that to-date has not been spelled out.
- Quorum – A minimum of 5,000 registered members is sufficient to form a quorum and begin the election process.
- Two-stage election – The initial election will take place in two stages. Six of the 18 At-Large Council members will be elected in the first stage, and they will in turn select three of the nine At-Large board members. The remaining 12 At-Large Council members and six board members will be elected in the second stage, subsequent to a review of the first election.

- Geographic diversity – ICANN has divided the world into five geographic regions (Africa, Asia/Australia/Pacific, Europe, Latin America/Caribbean islands, North America). According to ICANN's bylaws, there must be two At-Large Council members and one At-Large board director from each of those five regions.
- Terms – Like their counterparts on the Supporting Organization side of the At-Large board, the At-Large board members will serve staggered three-year terms with three seats up for election each year (after the initial elections). The terms of election for the At-Large Council mirrors this structure.
- Timing – The election of all new At-Large board members is to be completed by September 30, 2000, with the first stage to be completed by July 2000.

It is this election structure that we now consider.

2.5 Assumptions

Certain objections to the current election plan are beyond the scope of this study, because they address basic elements of ICANN's existence and structure, such as the Supporting Organization framework or the overall structure of the board itself, that we believe at this point should be taken as givens. These include:

- The basic structure of ICANN to include Supporting Organizations focused on particular management areas.
- The basic structure of the ICANN Board, based on a balance between members selected by the Supporting Organizations and members selected in an "At-Large" process.
- The duty of board members to act in the best interests of ICANN and to comply with the bylaws and any applicable laws and contracts.
- The goal of the ICANN Board to implement a bottom-up policy development process that relies on input from and consensus building among the parties most impacted.

While the larger thematic concerns that challenge these assumptions are important, we believe they are necessarily outside of the scope of this investigation.

3. Concerns & Issues Regarding The Current Election Plan

3.1 The Current Plan and Issues Raised

Nearly every interested party with whom we spoke expressed skepticism or alarm about some aspect of the current election system, and with the ability of ICANN to implement a legitimate and fair election by this summer.

We catalog below the major concerns about the present proposal for the At-Large election. Most concerns stem from the tensions between the several divergent goals for the election, such as representing the diverse range of stakeholders, selecting a board which is technically qualified to achieve ICANN's narrow mission, avoiding capture by interest groups, and operating fairly and accessibly on a global scale.

Many concerns are legitimate, to greater or lesser degrees, even as some are at odds with each other. For this reason, the concerns do not lend themselves to a single "silver bullet" solution that would address and resolve them all. There is a virtual consensus that the existing plan for an At-Large election is deeply flawed. There is far from a consensus on the right solution.

3.2 Major Concerns

There are a wealth of criticisms made of the current model for the At-Large election process. While we do not suggest here that all the criticisms are valid, we note recurring themes, for they suggest the range of problems that members of the ICANN community have identified with the current plan:

a. The election will not be meaningful if the role and mission of the ICANN Board are not clear – A key concern is that ICANN's mission is not well-defined, well-understood, or well-constrained. On its face, this raises a problem with analyzing the election: the At-Large election for the board of a narrow technical organization is appropriately quite different from the election for members of a broad Internet policy-making body for the world.

Others believe that an election cannot be meaningful if the electorate does not understand the mission or purpose of the organization in which it is participating.

As noted above, there remains much confusion about what a "narrow technical management mission" for ICANN really means. Without real limits on ICANN's authority that can be both relied on and enforced by the electorate, many fear that ICANN will inevitably be pulled in the direction of greater policy making. Well-intentioned efforts by ICANN to gather increased public membership might attract many with agendas unrelated to the sound functioning of the Internet. Many fear that such groups could use the elections as a way to select board members who will bow to pressure to expand ICANN's mission or adopt policies without sufficient consensus.

b. The election process will not engage a sufficiently representative and informed electorate – A key threshold concern is the ability of ICANN to engage the broad, diverse, and informed electorate needed to produce a representative election that confers the consent of the governed. This is particularly important because in order to provide legitimacy and avoid capture, the voting membership must include a substantial number of participants, from across a diversity of regions and interest groups, who are informed and interested in the issues confronting ICANN.

The current election plan contemplates a "sunrise" for the election based on achieving an electorate of at least 5,000 members. On the one hand, many commentators express skepticism about ICANN's ability to reach even this level of informed members, given the

relative obscurity of ICANN, the narrowness of its technical management mission, and the indirect nature of the voting system.⁵ International participants raised particular concerns about the challenges of informing and recruiting members in developing nations.

On the other hand, many have expressed doubts that a mere 5,000 members can adequately represent the diversity of interests in ICANN, and that the size of such a small membership – in the thousands, relative to a potential voting population in the tens of millions – creates tremendous opportunities for capture. The ability of ICANN to engage an appropriately large, diverse, and informed electorate thus remains a key unknown and fundamental concern.

c. The electorate is not properly defined, either broadly enough or narrowly enough – We have heard numerous complaints that the interests of many parties – particularly individuals, small businesses, and non-commercial groups, and perhaps certain geographic constituencies – are not now sufficiently represented in the Supporting Organizations. They believe the At-Large election should provide those under-represented interests with a voice in choosing the board.

For some, obtaining the consent of the governed should lead to the broadest possible view of ICANN's electorate. Many have argued that better efforts must be made to make voting simple, cheap, and available globally. Minimal membership criteria, simple electronic voting, and broad outreach – the plans for which are only now being developed – are viewed as essential to an inclusive election.

For others, however, this concern translates into a desire to limit the electorate. Many have expressed a view that only stakeholders *directly* impacted by ICANN's work (such as domain name holders), or those who have made some affirmative demonstration of interest (such as by paying a membership fee), ought to have a vote. They fear that the "consent of the governed" cannot be achieved if the interests of those only remotely affected by ICANN are allowed to dominate the interests of those who are, for example, bound to follow ICANN's rules. They note that there is also a tension between the goal of easy access to the ballot box on the one hand, and the desire to minimize fraud on the other. Limiting the electorate would make it easier to deal with these tensions.

d. The election process is vulnerable to "capture" – There is a substantial risk that large institutions, factions, interest groups, corporations, or even governments will mobilize efforts to "capture" a disproportionate interest in ICANN by obtaining a larger voice in the election of board members than appropriate. The fear is that the current model – even taking into consideration the proposed indirect election – does not adequately guard against this type of capture.

There appears to be an almost universal fear of capture within the ICANN community, with each interest group convinced that *other* interest groups might control disproportionate numbers of board members. The fear of capture is exacerbated by the relatively small number of people expected to vote (in the thousands), the large number

⁵ The Industry Standard reported that on February 25, 2000, ICANN had received 2,599 applications from people in North America, 656 from Europe, 315 from the Asia-Pacific region, 66 from Latin America and the Caribbean and 38 from Africa. (Full article available at <http://www.thestandard.com/article/display/0,1151,12433,00.htm>)

of potential voters (in the tens of millions), and the unprecedented nature of the election which makes it difficult to predict exactly who will vote.⁶

This sort of capture can take many forms. For example, a large corporation with an economic stake in the DNS could mobilize tens of thousands of employees and shareholders to vote, conceivably installing a number of ICANN Board members who support the company's positions. A national or local government could mobilize its citizenry to vote to install board members that favor regional interests. Or a political group could mobilize voters to elect board members committed to using ICANN to further a political agenda unrelated to technical management issues.⁷

Paradoxically, the more limited and "technical" the mission of ICANN appears, the more likely it is that only truly interested members will join – but also the more likely it is that a small, well-organized, and well-motivated group could gain a substantial voice in ICANN and promote its own narrow agenda, perhaps one outside the scope of ICANN's mission.

e. An indirect election discourages and disenfranchises voters – The two-tier membership structure currently proposed – where a public electorate votes for members of an At-Large Council which in turn elects the At-Large members of the ICANN Board – has been widely criticized. A chief concern is that members will be driven away by the complexity of the system and the lack of clarity over what council members will do or who they will vote for when selecting board members. Critics bitterly complain that such a system disenfranchises members, and provides little incentive to vote and little on which to campaign.⁸

Others are concerned that indirect elections strip members of certain legal rights they would otherwise have as "statutory" members of ICANN under California law. Some believe such rights, including the ability to bring derivative suits or impose certain reporting requirements on ICANN, are an essential check. Others, including ICANN staff, argue that ICANN cannot afford the risk of disruption from sweeping legal remedies.⁹

Uncertainty about the shape of an At-Large Council election adds to these concerns. As yet, there are few rules about how the council will vote. Winner-take-all majority rule voting in the At-Large Council, for example, could allow a group capturing just half the council seats to control all nine At-Large seats on the board. Moreover, failure to tie a council member to a particular platform or "slate," as in the U.S. Electoral College, removes accountability and leaves individual members further from the process of electing board directors.

⁶ An excellent overview of the capture issue is included in Jonathan Zittrain's testimony before the U.S. House of Representatives, available online at <http://cyber.harvard.edu>

⁷ The concern was also raised that those most likely to mobilize large numbers of members are the same organized and motivated groups that are already heavily represented in the Supporting Organization structure.

⁸ Many concerned cited the recent and somewhat similar DNSO's 21-member Names Council election of board members, which many believe was characterized by a great deal of gamesmanship and political deal-making outside of the public eye.

⁹ In August 1999, an official report on statutory membership was issued by the ICANN staff. (Full text available at <http://www.icann.org/santiago/membership-analysis.htm>).

f. The election process will not produce high quality board members – For many, a measure for viewing the success of the election process is its ability to put forward and elect good board members who are capable of leading ICANN in its mission. Many have voiced concern that an open election allows for the selection of council members and directors who might have little direct qualification for the task of governing ICANN.

Although some argue that the indirect election is a method of minimizing the likelihood of unqualified directors, others criticize the absence of any sort of nomination process for failing to provide a threshold filter on the suitability of board members.

g. The election process will not produce representation of diverse viewpoints – Much criticism has been leveled at the fact that there is no sure mechanism in the current election system for guaranteeing voices representative of the broad range of stakeholders involved. It is true that the current system does mandate a measure of geographic diversity. But some have noted that diversity cuts along many different, non-geographic lines, and have argued for multiple dimensions of representation.

h. The two-stage election disfavors minority viewpoints – Not only is the election to be indirect, but it is to be fragmented as well. The current plan calls for election of one-third of the At-Large Council and board members first, and then a further election several months later. The well-intentioned motive for this division of the process is to experiment with the election, and allow adjustments to be made. But election experts note that such a system leaves many viewpoints competing for the few truly at-large seats. The smaller the number of seats, the less likely it is that minority voices will be included. The concern is that the current plan makes it difficult for minority viewpoints to be represented on either the council or the board.

i. There are inadequate safeguards to ensure fair elections, and guard against fraud and corruption – There is widespread agreement on the need for further efforts to assure that the elections are fair, both in the sense that votes are counted fairly and that adequate notice and opportunity to participate are provided. Rules must be established and applied even-handedly and should not intentionally disadvantage any particular group. Many fear that the online election mechanisms being put in place can do little to prevent fraud, and that further work must be done to authenticate votes and audit the election. Others have noted that some form of corruption or the appearance of corruption could stem from unbounded expenditures on behalf of a candidate, and the difficulty of establishing and enforcing campaigning rules across national boundaries.

j. It is doubtful that ICANN can conduct fair and effective elections by September 30, 2000 – There is widespread and intense skepticism of ICANN's ability to implement credible, publicly legitimate At-Large elections by September 30, 2000. As many participants pointed out, ICANN just recently opened up its servers for registration; it has not selected a voting system for the elections; it has not explained adequately to potential candidates the roles and responsibilities of the position for which they will run; it has not set up procedures through which candidates will come to appear on the ballot; it does not have systems in place to audit the electorate and prevent fraud.

Given all the decisions that must be made and the tremendous amount of work that must be done, the elections experts we consulted, who have a wealth of experience in building elections from the ground up, indicated that these tasks cannot realistically be done properly in the short timeframe created by the September deadline.

k. ICANN should recognize the experimental nature of these unprecedented elections – Many of those with whom we spoke admitted that even if ICANN established an election process that conceptually met their every wish, they still would not be completely confident that the resulting election would be fair and effective. While participants generally want the best possible election system according to their goals for it, many mentioned that ICANN must recognize up front that these elections are experimental by their nature. There are too many unknowns – particularly regarding the interest of the potential electorate and the future development of the Internet – to conceive of these elections in any other way.

4. Options for Change

This section of the report provides an overview of the primary options available to ICANN in building an At-Large membership and election process. Those consulted as a part of this study offered a wide variety of thoughtful and creative ideas to address the problems and tensions described above.

The following does not attempt to list every idea encountered in the course of this study. Instead, it lays out the arguments for and against what we take to be the most frequently offered and valuable suggestions, excluding those aimed at changing ICANN in ways well beyond the scope of our study.

4.1 Election Structure

As described above, there is widespread dissatisfaction in the ICANN community with the current indirect election structure, under which members would elect an 18-person At-Large Council with the very limited responsibilities of choosing the nine At-Large board directors. Election systems and voting experts from outside the ICANN community also expressed strong concerns about this structure.

Option 1: Direct Elections

Many participants in this study stressed that direct elections are a baseline precondition for the development of an engaged and watchful electorate that will hold the At-Large board directors accountable. There will be much less incentive to join and energetically participate in ICANN if the role of the membership is limited only to selecting an intermediary body of electors.

Indirect elections could also facilitate capture, depending upon the voting system used. If the voting system used by the council is similar to the winner-take-all system used in the DNSO Names Council elections, for example, victory in a simple majority of indirect At-Large Council races could allow an interest to handpick all nine At-Large board directors. Conversely, under direct elections, a would-be captor would need to win every election to gain all nine of the board seats.

Regardless, an elected council voting for the board is much more susceptible to political deal-making and gamesmanship, outside of the eye of the public and without ultimate accountability to the electorate.

Opposing viewpoints: One of the primary arguments in support of indirect elections is that they provide a check on potentially destabilizing influences. Presumably, a deliberative intermediary body could prevent the election of “fringe” candidates – without grounding in ICANN or its mission – to the board. And without such a body, some fear that candidates’ attempts to excite and engage voters will by their nature push ICANN into policy-making arenas in which it does not belong.

A second concern raised is that California state law would give those who directly elect board members certain legal rights that would jeopardize ICANN’s stability.

Option 2: Divide elected seats among bodies representing subgroups of the At-Large membership.

Either the At-Large board seats (in the case of a direct election), or the At-Large Council seats (in the case of an indirect election), could be allocated to subgroups of the At-Large membership.

While ICANN's bylaws already include specific geographic diversity requirements for the At-Large Council and the At-Large board seats, ICANN could set up the At-Large elections so that all elected seats would represent geographic districts and would be filled exclusively by voting members living within those districts. Others have suggested that the elected seats be divided among two or more existing Internet organizations (e.g. the Internet Society), or among two or more sub-constituencies of the At-Large membership (i.e. an individual domain name holders' organization, an e-mail address holders' organization, etc.).

Supporters of this option argue that dividing the elected seats in these ways would disaggregate power in the At-Large process, just as the Supporting Organization structure spreads out power across three separate entities. This would greatly reduce the risk of capture. The subgroups could also serve to educate and disseminate information among the membership, leading to a more engaged and active membership.

Opposing viewpoints: Some argue that the ability of like-minded individuals around the world to coalesce behind candidates and/or platforms would be lost if strictly regional electorates fill strictly regional seats. Others point out that geographic allocation of seats might facilitate capture, because it will be easier for an interest group to organize majority voting blocks in regions where there is currently little native interest in ICANN.

There was widespread skepticism of the practicality of using any other scheme to divide elected At-Large seats among different types of members or organizations. Even some that favored this option in principle admitted the difficulty of finding a fair way to determine which groups merit guaranteed representation and which do not.

Option 3: If indirect elections are pursued, include some accountability mechanism such as commitment to a slate.

If the indirect election structure is maintained, some support the addition of a requirement that any candidate for election to the At-Large Council must bind him/herself to vote on a first ballot for some identified (and qualified) slate of nine At-Large board candidates. Such an approach would force council candidates to make clear who they will try to elect to the board. It would lead interested groups towards the constructive process of finding complete sets of board members that are sufficiently qualified and balanced to attract support from a wide range of constituencies.

Additional ideas regarding the basic election structure:

Enlarge the At-Large Council: Some who opposed indirect elections nonetheless suggested that a larger At-Large Council would provide more opportunities for elected representation to various segments of the Internet community (including those holding minority viewpoints). A larger council will also make capture more difficult by increasing the number of elections that must be won to achieve a majority.

Expand the powers of the At-Large Council: Others suggested that becoming a member in an indirect system would become more meaningful and attractive if the At-Large Council were given a formal and ongoing policy role in ICANN, like its Supporting Organization counterparts. Some roles that were mentioned include the power to propose matters for board consideration and to review board decisions once they are made. Those who oppose direct elections might similarly oppose this option because the attractiveness of the office to potential candidates will increase as the powers of the office increase. A more attractive office will lead candidates to appeal to voters more aggressively, and this might lead to the election process being infused by non-technical, “political” issues that are beyond ICANN’s scope.

We believe the electorate should directly elect the At-Large board directors. Having an At-Large Council as a mediating body diminishes both the reality and appearance of an open, inclusive, representative, and democratic election.

While issues of stability are a concern, the Supporting Organization structure already provides a great measure of stability and expertise to the board. An intermediary council will make it quite difficult to engage a broad electorate, and will be susceptible to unpredictable and unaccountable deal-making that disenfranchises voters. Further, depending on the voting system used and other considerations, indirect elections could facilitate, not diminish, the risk of capture.

Our sense is that the election could be structured under California law to deal with the concerns raised should ICANN choose to do so, and if not there is a significant sentiment that providing members with some rights under law will improve the quality and engagement of the membership.

4.2 Membership

ICANN’s current proposal would open membership eligibility to any individual who possesses an e-mail address and can be reached at a verifiable physical address. ICANN believes that possession of an e-mail address is perhaps the most inclusive measure of an individual’s participation in the Internet today, and a verifiable physical address serves as a necessary check on an individual or organization creating massive numbers of fictitious e-mail address owners, while also providing ICANN a means to investigate irregularities in its membership rolls. While many support this basic definition of the ICANN At-Large electorate, some consider a membership of e-mail address holders too inclusive, while others consider it too exclusive.

Option 4: Limit membership to domain name holders.

Many believe a broad electorate of e-mail address holders will likely be uninformed, susceptible to fraud and capture, and made up of individuals without a real stake or interest in ICANN's decision-making. One of the more frequent suggestions made would allow only domain name holders to be eligible to vote for At-Large board members.

According to this point of view, domain name holders are likely to possess a well-developed understanding of the Internet and the issues faced by ICANN, and will be more likely to elect technically competent representation.

In addition, because domain name holders must register and provide proof of identity, this limitation would create a clearly defined electorate that could be more easily monitored for potential fraud. The costs generally involved in obtaining a domain name will also make it more difficult for a would-be captor to enroll massive numbers of voters.

Finally, since ICANN's primary mandate is to set technical standards for the Internet and coordinate the assignment of domain names, domain name holders are the constituency most directly affected by ICANN policy.

Opposing viewpoints: Contrary to the arguments supporting this option, many have pointed out that some of the most sophisticated members of the Internet community – those involved in IP numbers and technical standards – are not necessarily domain name holders and would be excluded by this option. Obtaining a domain name requires money more than it requires Internet sophistication.

In addition, some argue that an electorate of domain name holders will make it only marginally easier for ICANN to approach the goal of 'one person, one vote,' particularly as the number of individuals with multiple Internet names and numbers continues to grow.

And, among those who see this as too exclusionary and undemocratic, there is a belief that ICANN already is captured by institutional interests through the Supporting Organizations. To these participants in our study, limiting membership to domain name holders would further tilt ICANN in favor of corporations, which possess a large percentage of all domain names, and against individual consumers and Internet users. Since corporate interests already largely control the election of nine board seats through the Supporting Organizations, making corporations a disproportionate segment of the electorate for the remaining nine At-Large seats violates the intended balance of the board.

Additional ideas regarding the electorate:

Open membership eligibility widely, but impose membership fees: Those who support membership fees hope that the time and financial sacrifice of making a payment will lead to a self-selected electorate that is engaged and informed, and will create a meaningful obstacle for those wishing to enlist massive numbers of their constituents as members.

Those who oppose fees point out that this is tantamount to imposing a "poll tax," with all the undemocratic and discriminatory connotations that carries. To these commentators, any such "poll tax" would publicly discredit ICANN as an open and inclusive decision-making body. In addition, a fee might dampen

participation by a broader electorate and make capture easier for an interest with great organizational resources and a passionately held agenda.

Create other barriers to membership: Other barriers to membership which are intended to have an effect similar to a fee have been suggested, such as requiring members to participate in certain ICANN activities (e.g. on-line candidate debates), or to demonstrate substantive knowledge of ICANN and its current issues. Variants of the arguments against a membership fee also apply to these options to a greater or lesser extent.

Requiring members to register a reasonable but meaningful time in advance of an election, and to re-register annually after each election¹⁰, are less vulnerable to the “con” arguments stated above. If implemented in a fair and democratic way, these barriers could help ICANN properly prepare for the elections and audit the electorate for fraud.

Create expanded opportunities for member participation in ICANN: As some emphasize, providing members with opportunities for meaningful participation in ICANN activities, as opposed to requirements of participation, would have the healthy effect of encouraging a more engaged and watchful membership more likely to hold its elected leaders accountable for their decisions. By making membership more attractive, a larger and broader membership that is less susceptible to capture will develop.

*We believe that ICANN is heading in the right direction in defining the electorate to include any individual with an e-mail and verifiable physical address. Given the rapidly changing nature of the Internet and the impracticability of determining today who will claim a legitimate stake in ICANN tomorrow, it is unwise for ICANN to define its At-Large membership more narrowly than it is currently. A more exclusive membership would seriously damage the legitimacy ICANN seeks as an open and democratic body, and is unlikely to yield any benefit in return, particularly since a narrower membership will not necessarily prevent capture or lead to a more informed electorate.*¹¹

In addition, because corporate and other institutional interests already select half the board through the Supporting Organizations, there is both a legitimate need for individual Internet users to have a voice in ICANN and a level of built-in stability that will insulate ICANN against the outcomes feared by those who see an open and democratic At-Large process as potentially dangerous.

4.3 Putting candidates on the ballot

¹⁰ These ideas were also included in the MAC final recommendations, “Membership shall expire 30 days after the annual election of Directors and must be renewed annually.” (Full text available at : <http://www.icann.org/macberlin.htm>)

¹¹ These arguments apply as well to fees and other substantive barriers to membership. Such barriers work against ICANN’s legitimacy and cannot be counted on to achieve other goals like building an engaged membership or making capture more difficult. We do, however, support rules that specifically improve ICANN’s ability to audit the electorate and prevent voter fraud, such as requiring members to register a reasonable period of time before the election.

To date, ICANN has not established detailed procedures governing how candidates become eligible for the At-Large ballot. Several participants in this study stressed the importance of such procedures in creating fair and effective elections.

Option 5: Establish strict criteria for candidates

If a proper set of strict criteria is established for At-Large candidates, unqualified candidates will be weeded out. Among others, these criteria could include: age, experience, demonstration of Internet knowledge, willingness to provide information on issue positions and to appear in on-line debates, or proof that a candidate does not have a conflicts of interest (including documentation that the candidate is not employed, or in some other way compensated, by a Supporting Organization or other group with an interest in ICANN policy).

While there is general agreement that some objective criteria for candidates would be beneficial, there are few specific criteria that are widely considered fair and democratic. In particular, some potential criteria conjure up public images of elitism (i.e. a test of knowledge of ICANN issues would resemble a literacy test) that are arguably inconsistent with ICANN's mandate.

Option 6: Create a clear nominating process

Few, if any, interested parties to whom we spoke disagree with the need to establish a clear process for nominating candidates to the ballot. Some believe that the dangerous potential consequences of an uninformed or captured electorate could be avoided by the creation of a strong and distinguished nominating committee possessing ultimate authority over who appears on the At-Large ballot.

Others argue that determining who is on the ballot is nearly as important as choosing among candidates at election time, and that a strong nominating committee removed from the electorate is undemocratic on its face. Individuals sharing this point of view generally prefer a member-centered process.

A hybrid approach has also been suggested in which a nominating committee would be established to actively recruit high-quality, Internet-savvy candidates, but in which other candidates could also gain direct access to the ballot through nomination by members, such as by meeting some threshold requirement of electronic petition signatures from At-Large members. This hybrid approach would ensure that at least a full slate of qualified candidates – endorsed as such by the nominating committee – would appear on the ballot, but that the ballot remains open to access by others as well.

Additional ideas regarding candidates and ballots:

Slates or endorsements: Candidates could be allowed or required to run as a slate behind a specific issue or platform of issues, and/or a system could be developed to allow candidates to compete for the endorsements of Internet organizations.

Slates or endorsements would help voters make sense of the field of candidates, by allowing them to incorporate in their decision-making the opinions of organizations whose values they share or do not share. This would help prevent the election of candidates who misrepresent their positions to voters, as organizations would have the resources to vet candidates on their past record and viewpoints, particularly before allowing them to appear on the slate.

Some have argued, however, that slates or endorsements would facilitate capture by providing on-the-ballot instructions to voters enlisted by a would-be captor.

We recognize that, at least in the short-term, it will be difficult for voters to develop the knowledge of candidates and their positions necessary to make informed choices. *We believe ICANN can respond by creating a candidate slate process and/or endorsement procedures by which organizations can attach their names to candidates.* These mechanisms will provide voters with important clues about candidates.

A nominating process which provides an opportunity for institutional players in ICANN to place a group of candidates on the ballot will have a similarly healthy effect, as long as it does not deny ballot access to other candidates backed by members. In addition, while we do not believe that establishing strict criteria for candidates will by itself ensure qualified directors, we do support requirements that candidates provide information on their positions regarding key issues, and believe that candidates should be strongly encouraged to participate in on-line debates or discussions.

4.4 Campaign Rules and Regulations

ICANN's current policy documents are also silent on campaign rules and regulations. Such rules and regulations could play a significant role in determining who is elected through the At-Large process and whether or not that process is fair and democratic. ICANN should consider what campaign rules and regulations are appropriate for the At-Large elections.

Option 7: Establish Campaign Rules and Regulations

It is difficult to set rules for the financing and conduct of campaigns for which the level of interest and participation remains unknown. As a starting point, concerns that not enough information on candidates will be available to the electorate – that campaigns will not be sufficiently vigorous – were expressed more often than concerns that campaigns will spiral out-of-control with huge contributions, massive expenditures, and unethical tactics.

Two sensible ideas that have been suggested in this regard are: 1) to encourage formal opportunities for voters to engage candidates through on-line debates and discussion, and 2) to establish disclosure rules for the source and size of campaign

receipts and disbursements, as well as for other information like sources of personal income that candidates receive from entities with potential interests in ICANN decision-making.

Option 8: Encouraging Campaign Activities

As previously indicated, many participants in this study expressed concern that voters will lack familiarity with candidates and will find it difficult to choose among them. Some mentioned the importance of activities like on-line debates, candidate question-and-answer sessions, issue surveys and straw polls, and other activities that allow voters and candidates to express themselves and communicate with each other. In addition to helping voters navigate their ballots, this could also make membership more interesting and encourage a more engaged At-Large electorate.

Of course, there are those who fear a dynamic campaign and election process for its potential to politicize the At-Large elections and threaten ICANN's stability.

We believe that vibrant campaigns are critical considering that candidates and voters will not be well-known to each other initially. We thus support the facilitation of campaign opportunities by ICANN. With regard to campaign rules, we also support requirements that candidates disclose campaign receipts and disbursements of significance, along with other important information like sources of income that might create conflicts of interest.

4.5 Voting systems

ICANN has made no formal decisions on the system of voting to be used for the At-Large elections. Some assume that the intention, at least for the elections of the board members by the At-Large Council, is to use a system similar to the one in the Names Council elections of the DNSO board directors. That system was a winner-take-all system that involved successive run-offs and allowed a simple majority to select all three board directors. There is very little, if any, support among those to whom we spoke for using a winner-take-all voting system in the At-Large elections.

The ICANN bylaws now provide for staggered elections. According to the current plan, the At-Large membership would elect six of the 18 total At-Large Council members in the first round of elections. These initial elections would be reviewed by the ICANN Board for their fairness and effectiveness before subsequent elections would proceed. This notion of staggered elections also was widely criticized in the course of our study.

Option 9: Proportional Representation Voting Systems

For Council elections or board elections, or both, ICANN could employ a voting scheme that yields electoral outcomes in which the proportion of the total seats in the elected body held by representatives of a given constituency approximates that constituency's proportion of the total voting electorate. Cumulative, limited, and choice voting (also known as single transferable vote) are three such systems.

Compared to winner-take-all schemes in which 50 percent (plus one) of the electorate chooses all or nearly all the elected representatives, proportional representation voting systems increase the number of voters whose ballots help

elect victorious candidates. Under such systems, a broader and more diverse range of voices would be represented in ICANN's policy-making bodies, and the risk of capture would be reduced as the seats would be spread out among different constituency groups.

Some people have expressed concerns, however, that proportional representation voting schemes facilitate the election of representatives from constituency groups with viewpoints that are held by rather small percentages of the electorate. Proportional representation voting schemes may lead to the election of board directors or council members with marginally-held views that may be aimed at moving ICANN outside its narrow policy scope.

Option 10: Hold all elections at one time

Many interested parties feel that all open seats should be filled in one round of elections, as opposed to the two-stage process currently outlined in ICANN's bylaws for its initial At-Large elections. This argument applies to member elections for the At-Large Council or the At-Large board seats. According to this viewpoint, member interest in the elections will wane if voters have to vote on two occasions, and the ability of people holding minority viewpoints to coalesce and achieve representation will decrease as the number of seats at stake in an election decreases.

Others note that it is important for ICANN to have a "test run" for its elections, so that improvements can be made before the remainder of the At-Large board members are elected.

Option 11: Deliberative Polling

Deliberative polling in an ICANN context would involve selecting a random sample of the membership, educating that sample thoroughly on the issues, and allowing them to select the At-Large board directors (among other potential roles).

Deliberative polling almost completely obviates the risk of capture as the board electors are selected randomly and are unknown prior to their selection. It also ensures that those selecting the board directors are a representative mix of the entire electorate, while proactively working to educate electors and providing them with a deliberative decision-making setting.

Deliberative polling requires a significant time commitment from those selected randomly to serve as electors or policy-makers – probably an unrealistic expectation of most prospective members. In addition, it is unlikely that At-Large membership would appeal to people if it carried only a slim prospect of being selected to serve as an elector or member of the "deliberative poll." This could well result in a disengaged membership that serves its board accountability role poorly.

We share the basic values behind proportional representation voting systems – increased opportunities for minority voting blocks to win representation and a diffusion of power among different constituencies. We recognize that the direct elections which we advocate will result in a total of only nine seats up for election. This limits the opportunities and potential efficacy of proportional representation voting systems, but ICANN should nonetheless work

to incorporate some form of proportional representation voting in implementing direct elections.

4.6 Other Important Suggestions

Option 12: Limiting language

Many who participated in our study support limiting language for ICANN that delimits ICANN's powers in a very public way – stating the authority that ICANN does and does not possess.

Particularly since there is wide recognition that capture of ICANN by a narrow special interest cannot be avoided to an absolute certainty, it is critical that protections of ICANN's narrow mandate be constructed around ICANN's political processes. Such limiting language would discourage candidates and interest groups from campaigning on issues beyond ICANN's policy-making scope.

Detractors of limiting language point out that ICANN's bylaws already lay out its limited authority, and it is nearly impossible to further delimit ICANN's authority in enough detail to clarify it in every real-life case. In addition, the rapidly changing nature of the Internet counsels against drawing ICANN's powers too rigidly.

Option 13: Policy review role for the At-Large membership

Some have suggested that the At-Large membership, perhaps jointly with the Supporting Organizations, could play a role in reviewing board policy to ensure that it remains within ICANN's narrow mandate. This could be done indirectly through the selection of a review committee or directly through a referendum process.

Supporters argue that expanded roles and responsibilities for the membership will lead to a more engaged membership that will better hold the board accountable for its decisions. The At-Large membership, which is to represent the broad and diverse global Internet community, is an appropriate policing body of board action.

Option 14: Sunset clause for the election process

A sunset clause would provide for a periodic review of the election process and clarify formal procedures for making changes to that process.

Some participants in this study recognized that no matter how well ICANN constitutes its At-Large elections, mass elections for an international organization of this sort are unprecedented. Because ICANN is entering untested grounds, it cannot expect with a high degree of certainty that it will succeed in its first attempt to build elections that will produce the desired fair and democratic results over time. This dynamic is compounded by the rapidly changing nature of the Internet, which leaves open questions like who will desire and deserve representation in ICANN in the future.

It must be recognized, however, that a sunset clause should not create a complacency that results in initial decisions regarding the At-Large elections being

made without full and careful consideration. Certainly, election procedures that seated those holding power will then be more difficult politically to change.

Option 15: Creation of an independent election authority

The election experts who we consulted in this study advocated for an independent election authority with broad powers to implement the At-Large election plan developed by the board and to monitor the elections as they are conducted. These experts argued that such an authority will enhance the public credibility of the elections and the trust of the membership in the fairness of the results, and they pointed out that no matter how open and transparent the process, an election organized by the ICANN staff with direction from the board will lack this public credibility and member trust.

We believe that limiting language, a sunset clause, and an independent election authority are all important steps for ICANN. Limiting language is critical to clarifying for potential voters and candidates the nature and scope of the organization in which they are participating; a sunset clause recognizes the experimental nature of the At-Large elections and the rapidly changing nature of the Internet, as well as the corresponding need for regular review of the election process; and an independent election authority is fundamental to the public legitimacy of the elections.

5. Recommended Principles for Moving Forward

Common Cause and CDT urge ICANN to address the criticisms that have been made of the proposed procedures for electing the At-Large board members. We urge ICANN to adopt the following general principles:

1. ICANN should develop and promulgate as part of its bylaws, or in some comparably binding fashion, language to delimit the scope of ICANN's decision-making authority to technical management of the DNS and IP address system. We believe it is important to explain ICANN's mission to the public, making clear that ICANN is not intended to become some kind of "world government" for the Internet – that is, it is not to engage in policymaking functions that extend generally into contentious Internet issues such as privacy or content regulation. Even though statements about ICANN's limited role have been made in the past, we believe such statements need to be reaffirmed in some binding fashion.

We also recognize, however, that even within the proper scope of ICANN's jurisdiction, there are important policy decisions that will inherently and necessarily arise in the "technical management of the Internet". For this reason, openness, representation, and legitimacy must be considered high priorities for building the election process for the At-Large board members.

2. The "electorate" for the At-Large board members should broadly include individual Internet users. We believe that any severe limitation on who can participate in choosing the At-Large members of the ICANN Board will jeopardize the public legitimacy of ICANN. Further, any such limitation may not achieve the goal of a more engaged and deliberative membership, and may fail to adequately account for the rapidly changing nature of the Internet.

For instance, the leading proposal for limiting the electorate is to allow only domain name holders to participate in choosing the At-Large board members. But this proposal suffers from problems of its own. First, it is not clear that domain name holders, many of whom are corporate entities, are a suitable proxy for all of the individual interests that need to be part of the electorate and are not already represented in the Supporting Organizations. Limiting the electorate to domain name holders potentially excludes others directly affected by ICANN, such as those with an interest in technical standards and number allocation.

For all these reasons, while we are sympathetic to the goal of defining an electorate based on those who are most affected by ICANN, we nonetheless believe that an electorate broadly inclusive of the interests of individual Internet users should be a guiding principle in the design of the election. We are keenly aware of the acute practical difficulties posed by managing an electorate as large, diverse and geographically dispersed as the one we recommend. We believe, however, that it is preferable for ICANN to make a concerted effort to solve these daunting practical questions rather than to risk sacrificing the legitimacy that it needs to carry out its mission.

3. The electorate should directly elect the At-Large board directors. Having an At-Large Council as a mediating body in the election of At-Large board seats diminishes both the reality and appearance of an open, inclusive, representative and democratic election.

An intervening council will not prevent “capture” of these board seats, but it will diminish accountability. In fact, it could make capture by an interest group easier because winning only half the council seats would give that interest the power to select all nine board seats. It could also lead to a disengaged membership that fails to “watchdog” the board, because the very limited and indirect role of selecting electors will not inspire active participation.

3.a. If indirect elections are nonetheless pursued, some accountability mechanism – such as commitment to a slate – should be developed for At-Large Council members. Currently, there is little to bind council members to their ultimate choice of board members. Some mechanism for accountably binding council members to a set of board members is needed.

4. ICANN should develop a candidate nominating process that ensures that qualified candidates will appear on the ballot. As a general principle, ICANN should not impose high barriers to ballot access. Some objective criteria, such as an age requirement and willingness to state positions on issues, are reasonable. So too would be a requirement that a petition demonstrating a threshold level of support is necessary to be listed on the ballot.

In addition, we recommend that the board establish a deliberative nominating committee – either a committee of the board itself or a committee appointed by the board – that seeks highly-qualified candidates and has the power to place them on the ballot, listed as nominees endorsed by the board’s selection process. This would ensure that a slate of candidates judged by the board to be highly qualified, and so endorsed, would be among the candidates presented to the electorate.

5. ICANN should use some form of a proportional-representation voting scheme for its At-Large elections. A proportional representation voting scheme, as opposed to a winner-take-all majority vote system, will disaggregate power, making it more difficult for one interest to capture the At-Large board seats. It will also enhance legitimacy and representation by providing real opportunities for representation to individuals and groups who do not hold majority viewpoints.

6. ICANN should place the goal of holding effective elections ahead of the goal of completing them by September 2000. Even if ICANN had already answered all the preliminary questions that must be addressed before holding elections, it is unlikely that proper voter registration systems, candidate qualification procedures, and voting mechanisms could be established in time to run a fair and effective election before September 30, 2000. We understand the urgency of holding elections for the At-Large seats, not the least of which is the fact that the interim board is proceeding to make important decisions which would benefit from the participation of board members who have been elected to represent public interests in the Internet. Yet, the need to hold quick elections must be tempered by the need to hold responsible and legitimate elections.

We are not certain that any delay from the current September 2000 target date is necessary or, if so, that a long delay will be entailed. But neither do we think that the September date should be viewed at this stage as a fixed deadline. Instead, we urge the board to move forward with all deliberate speed to decide on the procedural framework for an election, and then take the appropriate implementation steps on the most expeditious responsible timetable.

7. ICANN should establish an election authority with a high degree of independence from the board of directors and other institutional players. ICANN needs an independent auditing body to monitor its elections, and should avail itself of the expertise in the international community among groups that do election monitoring around the world, as well as companies that audit corporate board elections. We note that ICANN has taken a good first step in appointing an Implementation Task Force to consider some of these issues; an independent expert body should work with the task force in establishing detailed election rules.

8. ICANN should institutionalize periodic review of the At-Large membership and elections process. The rules and regulations adopted for the At-Large election should be evaluated on a regular schedule to determine if they continue to serve ICANN's goals and mission, and to ensure that changes in the development of the Internet have not made the At-Large election process obsolete. Such a "sunset" rule should include fair procedures by which changes can be made to the election rules – procedures that involve input from sources independent of the board members who are elected through those rules.

Independent of all of these recommendations, we note that there is a great deal of work to be done in reaching out to and educating those in the public who are part of ICANN's potential electorate. The appointment of an Implementation Task Force to do broad outreach all around the world is an essential first step. Ultimately, the success of this election will rise and fall on the ability of the ICANN community to engage an informed electorate.

Conclusion

We recognize that ICANN faces intense pressure to hold its elections this year. But given the serious concerns canvassed in this report, about matters ranging from membership to capture, ICANN cannot claim that the election system it has currently proposed will confer legitimacy on itself without much more work to address and resolve the myriad of issues that have been raised.

Given the unanswered questions about how the electorate will develop over time, and the rapidly changing nature of the Internet itself, ICANN should best view itself as involved in an iterative process of democracy. Rather than seeking to establish rules in perpetuity, ICANN may be best off looking at its initial election as a first experiment in democracy for this new technical management body, with rules for further elections to be established in the future upon further community deliberation.

Appendix I: Study Procedure

Prior to the November 1999 meeting in Los Angeles, the ICANN board adopted an amendment to the bylaws that established a basic framework for the At-Large elections.¹² At the Los Angeles meeting, many members of the ICANN community expressed concern with the amendment, and voiced more general criticisms of the At-Large election process.

Common Cause and the Center for Democracy and Technology (CDT) were asked by the Markle Foundation and others in the public interest community to provide an independent assessment of these concerns and the At-Large elections as a whole. Our procedure for conducting this study involved both reaching out to members of the ICANN community and soliciting input from experts in online voting, democratic process, and international elections.

A. Outreach within the ICANN Community

A significant part of this study involved outreach to the ICANN community to gather opinions on the problems with the current election process and possible solutions to those problems. The scope of our outreach was necessarily limited by time and resource constraints, and we were not able to speak with as many ICANN participants as we would have liked to under ideal circumstances. In particular, we must acknowledge that our outreach to overseas participants was limited, and our perspective on certain issues has been influenced by our experience working primarily on issues involving U.S. policy.

We sought to gather input from a broad cross-section of the ICANN community. Those consulted for this study included leaders from the nonprofit community, corporations and industry groups, intellectual property and trademark interests, registrars and registries, and technical standard organizations. We also made an effort to include international leaders from each of these groups. Our contact with these participants took place via email, phone calls, group conference calls and in-person meetings.

During our outreach, we posed the following three issues for discussion:

- 1) What is the purpose of the At-Large election, and how does it relate to ICANN's mission?*
- 2) Do you agree or disagree with the current election rules? Please describe why you agree or disagree.*
- 3) Do you have ideas for how the At-Large election might be improved?*

We found that these questions provoked an interesting discussion among members of the ICANN community. Although responses that we received varied, we were able to identify some common themes among the concerns raised and suggested remedies proposed. These themes are discussed in detail in Section 3 and Section 4 of this report.

¹² <http://www.icann.org/general/bylaws.htm>

List of Individuals Consulted¹³

Izumi Aizu	MAC, Asia & Pacific Internet Association
Theresa Amato	Consumer Project on Technology
Takashi Arano	ASO Address Council
Karl Auerbach	Boston Working Group
Mikki Barry	Domain Name Rights Coalition
Raimundo Beca	ASO Address Council
Becky Burr	U.S. Department of Commerce
Marilyn Cade	AT&T
Diane Cabell	MAC, Berkman Center
Caroline Chicoine	Names Council, Blackwell Sanders Peper Martin
Roger Cochetti	Network Solutions, Inc. (formerly, IBM Corporation)
Tod Cohen	MPAA
Charles Costello	Carter Center
Leslie Daigle	Rattlenote Technology Inc.
Barbara Dooley	Commercial Internet eXchange
Esther Dyson	ICANN
Michael Froomkin	University of Miami School of Law
Don Heath	Internet Society
Hans Peter Holen	ASO Address Council
Kim Hubbard	ARIN
David Johnson	Wilmer Cutler & Pickering
Kanchana Kanchuanasut	MAC, Asian Institute of Technology
Myungkoo Kang	Seoul National University
Kathryn Kleiman	Names Council, ACM's Internet Governance Cmte.
Hans Klein	Computer Professionals for Social Responsibility (CPSR) Georgia Institute of Technology
Dori Kornfeld	ACM
James Love	Consumer Project on Technology
Sue Leader	ISOCNZ
Andrew McLaughlin	ICANN
Eric Menge	U.S. Small Business Administration
Steve Metalitz	International Intellectual Property Alliance/ Copyright Coalition on Domain Names
John Montjoy	Commercial Internet eXchange
Milton Mueller	Syracuse University
Andy Oram	CPSR
YJ Park	Names Council, APTLD
David Post	Cyberspace Law Institute/Temple University Law School
Nii Quaynor	MAC, Network Computer Systems
Oscar Robles	MAC, NIC-Mexico/ITESM
Ellen Rony	Co-author, Domain Name Handbook
Peter Schalestock	Perkins Coie LLP
Joe Sims	Jones Day (ICANN)
Theresa C. Swinehart	Names Council, MCI WorldCom

¹³ We would also like to acknowledge the many members of the ICANN community that expressed interest in our study, but were unable to participate due to time and resource constraints.

Don Telage	Network Solutions, Inc.
Dany Vandrome	RENATER
Bill Washburn	Real Names Corporation
Jonathan Weinberg	Wayne State University
Frederick W. Weingarten	American Library Association
Daniel Weitzner	WWW Consortium
Cathy Wittbrodt	ASO Address Council
Jonathan Zittrain	Berkman Center

B. Election Experts

In addition to reaching out to participants in the ICANN process, the ICANN Election Study brought fresh perspectives to the At-Large membership debate by engaging elections experts from outside the ICANN community.

On February 9th 2000, Common Cause and the Center for Democracy and Technology invited experts in democratic process, elections, and online voting to Harvard University's Kennedy School of Government for a roundtable discussion on the ICANN At-Large election process.¹⁴ The participants in the discussion contributed many different types of expertise – from monitoring elections on an international level, to designing voting systems, to creating secure mechanisms for online voting, to creating rules for campaign finance and election fraud. They provided their perspectives on the complex issues that ICANN faces in establishing these elections.

Participants generally agreed that evaluating the election system is difficult given that ICANN's purpose and the goals of the election are not clear.¹⁵ The insights and suggestions provided by these experts have been included in our analysis in Section 4 of this report.

List of Elections Experts Consulted¹⁶

Derek Bok, President Emeritus, Harvard University
Charles Costello, The Carter Center
Lorrie Faith Cranor, AT&T Labs Research
Richard Engstrom, University of New Orleans
Jeff Fischer, International Foundation for Election Systems
Ron Gould, Elections Canada
Steven Hill, Center for Voting and Democracy
Arend Lijphart, University of California, San Diego
Peter Molnar, Shorenstein Center on Press, Politics & Public Policy
Joseph Nye, Kennedy School of Government, Harvard University
Drazen Pantic, Center of War & Peace and News Media

¹⁴ The agenda for the roundtable discussion is available at <http://www.commoncause.org/icann/agenda.htm>.

¹⁵ Highlights from this interdisciplinary discussion on the purpose and structure of the ICANN At-Large elections are available at <http://www.commoncause.org/icann/>

¹⁶ Biographies of participants are available at <http://www.commoncause.org/icann>. Some invitees who could not attend this roundtable also provided us input, including Tracy Westen of Grassroots.com (formerly of the Center for Governmental Studies), Juliana Pilon of the International Foundation of Election Systems, Arend Lijphart of the University of California, San Diego, Virginia Postrel of Reason Magazine.

Juliana Pilon, International Foundation of Election Systems
Virginia Postrel, Reason Magazine.
Trevor Potter, former Chairman, U.S. Federal Election Commission
Ed Still, Lawyers Committee for Civil Rights Under Law
Tracy Westen, Grassroots.com
Fred Werthheimer, Democracy 21

Appendix II: Letter to the ICANN Board

February 4, 2000

Ms. Esther Dyson
Chairman of the Board
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina Del Rey, CA 90292

Dear Esther,

As you know, Common Cause and the Center for Democracy and Technology have together initiated a study of ICANN's At-Large Election structure, with support from the Markle Foundation. Based on our preliminary work and the input we are receiving from a broad range of interested parties, we are writing to urge you and the ICANN Board not to take any further irrevocable steps or decisions regarding the At-Large election until the Board's Cairo meeting.

The At-Large membership and election process is critical to ICANN's future. The decisions that ICANN makes with regard to this process may well determine whether ICANN will operate in a manner that is open, accountable and responsive to those affected by its decisions. Members of the ICANN community and outside observers have shared with us creative ideas and perspectives on both the potential problems with the At-Large process and possible remedies. While there is no apparent consensus on one grand solution, we have discovered significant concerns and questions, from a wide range of stakeholders, regarding whether the At-Large elections as now structured will fulfill the mission and public interest goals of ICANN.

Many of the interested parties we have spoken with, from across a wide spectrum of stakeholders, believe you should allow the ICANN community one more formal opportunity to discuss this very important issue, and we agree. To help facilitate this discussion, we intend to present our study to the ICANN community in advance of the March meeting in Cairo. Based on our review to date, we urge the ICANN Board of Directors and staff to be cautious to avoid, prior to the March meeting, irrevocable steps and decisions regarding the At-Large process, which might prevent potentially promising recommendations from being properly considered.

We realize the pressure you and the board face to hold these elections by September 30. We believe, however, that deferring any further final decisions until Cairo should not unduly impact that goal and is in the best long term interests of the ICANN community.

Please forward this letter to the ICANN Board, and we stand ready to discuss this with you at any time.

Sincerely,

Jerry Berman	Scott Harshbarger
Executive Director	President
Center for Democracy and Technology	Common Cause

cc: Michael Roberts, President and Chief Executive Officer, ICANN

Appendix 3: Background on ICANN

ICANN Formation

There are many points of contention regarding how and why ICANN was formed. For those unfamiliar with ICANN, the following lays out some of the most basic events that shaped ICANN's formation and development.

In July 1997, the Clinton Administration published an executive order calling for privatization of the Internet Domain Name System (DNS). In response to this order, the U.S. Department of Commerce drafted a proposal and solicited public comment. The Commerce Department then issued what is known as the "White Paper", a statement of policy calling for the creation of a "not-for-profit corporation managed by a globally and functionally representative Board of Directors" to manage certain central Internet naming and numbering systems. The White Paper detailed the responsibilities of this new corporation, called for the appointment of an interim board to develop its structure and draft its bylaws, and laid out principles to guide the corporation, including:

- Stability in DNS management to ensure the security and reliability of the Internet;
- Competition in assigning domain names and IP numbers to encourage innovation and enhance consumer choice;
- Bottom-up governance to honor the historical development of the Internet; and
- Representation to provide opportunities for participation by the "broad and growing community of Internet users."

Dr. Jon Postel, who was involved in the development of the DNS for decades and is now widely recognized as one of the Internet's founding architects, proposed ICANN as the corporation called for in the White Paper. After a period of public comment on this proposal and negotiations with the U.S. Commerce Department, ICANN was recognized as such in the fall of 1998.

For one detailed explanation of ICANN's subsequent development and consideration of membership issues, see the official history provided on the ICANN membership web site at <http://members.icann.org/history.html#MITF>.

ICANN Structure

The organizational structure created by ICANN's initial appointed board calls for a 19-member board of directors to serve as ICANN's chief policy-making body. The president of ICANN, who is selected by the ICANN board, occupies one board seat. The 18 remaining board members serve three-year terms. Nine are chosen by ICANN's three Supporting Organizations, and nine are selected by an At-Large ICANN membership. The three Supporting Organizations, described below, provide a formal, institutional forum for companies and organizations from the business, technical and noncommercial communities to participate in ICANN.

The Address Supporting Organization (ASO) consists of the combined membership of the world's three Regional Internet Registries, which are non-profit organizations that distribute IP numbers – the numerical Internet addresses that computers understand – to Internet service providers and local IP registries. Within ICANN, the ASO reviews and recommends policies related to the coordination and allocation of IP numbers.

The Protocol Supporting Organizations (PSO) consists of the combined membership of four Standards Development Organizations. The PSO is concerned with the assignment of unique parameters for Internet protocols, the technical standards that let computers exchange information and manage communications over the Internet.

The Domain Name Supporting Organization (DNSO) consists of a wide and diverse range of organizations involved in supporting the alphabetical domain names that people use to locate Internet addresses. These include Internet service providers, companies that register domain names, commercial and business entities, noncommercial domain name holders, and others. The DNSO advises ICANN on policies related directly to the assignment and coordination of domain names.

Each of the three Supporting Organizations has a council chosen by its members that selects the three ICANN board directors to represent that Supporting Organization. These councils have already been formed and have selected the first set of nine elected Supporting Organization board directors.

The selection of the nine At-Large board directors is scheduled to be completed by the end of September 2000, when the appointed board members now occupying those seats are required to step down.