THE PUBLIC VOICE, LEGITIMACY, AND ICANN

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THE INTERIM REPORT OF THE
THE NGO AND ACADEMIC ICANN STUDY (NAIS)

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

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

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

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http://www.naisproject.org

Introduction

As the Internet becomes more widespread, pervasive and mature, policymakers worldwide are recognizing the need for new modes of governance and coordination to address the global challenges that the Internet poses. Some nation-states are deferring to nontraditional, global coordinating or policymaking organizations, either for guidance in harmonizing national lawmaking or for the actual creation of binding policy. These entities are making decisions that once would have been made by nation-states through traditional legislation and administrative rulemaking.

This shift in the locus of societal decision-making represents an important development for governance and social coordination as we know it. Such a trend may fulfill its promise to enable efficient, stable and international policymaking to support a rapidly growing industry, but will not do so legitimately without adequate mechanisms for protecting the public interest.

The Internet Corporation for Assigned Numbers and Names (ICANN) represents such an effort to create a new mode of coordination or governance outside the traditional framework of international organizations and national governments. Its key objectives include promoting core principles of administration for the Internet:

- Stability
- Competition
- Private, bottom-up coordination
- Representation[1]

As such, ICANN was designed to represent stakeholders directly, rather than through nation states. Moreover its decisions are to be guided by consensus. Yet, the legitimacy of ICANN s structure and policies have been questioned by various players in the Internet community. The central plank of this criticism is that ICANN s organizational structures and activities do not comply with the ethos of good and democratic governance. This need for new global governance structures on the one hand and the inclusion of the public voice on the other underpins the current debate of ICANN s At-Large Membership and forms the subject of this interim report. In particular it aims to offer some insights in how to address the current debate about democracy and legitimacy at ICANN.

The idea that Internet coordination should include some sort of membership body of Internet users has been apparent in Internet policy debates since at least 1992 (then in

[1] See U.S. Department of Commerce Statement of Policy (the White Paper), *http://www.icann.org/general/white-paper-05jun98.htm.*

reference to the Internet Society[2]). Since ICANN s formation, it has been plagued by a deep confusion concerning who exactly it is meant to represent. Its bylaws called for an At-Large Membership of Internet users from which just under half of the ICANN directors should be elected, yet its Initial Board of Directors did not appear to represent what some saw as user interests. [3]

The first At-Large Membership election was therefore widely seen as an important experiment to establish representation, accountability and transparency, by giving interested individuals a means to be informed about and connected to the policymaking structure for certain of the Internet's domain name, numbering systems, and protocol functions. Following the election last year, an independent Study Committee is now embarking on an At-Large Membership Study (*http://www.atlargestudy.org/)* to evaluate the 2000 election and to assess the role that a user membership body should play in ICANN and how to structure individual user participation and representation. It was emphasized that *such a study should be structured so as to allow and encourage the participation of organizations worldwide*.

This Interim Report is a response to the above call for participation and study of the At-Large Membership. It is the result of research conducted by the NGO and Academic ICANN Study (NAIS) group that addresses the need to ensure inclusion of most regional, sectoral and disciplinary viewpoints and approaches; and connects advocacy groups and experts of all regions that share certain public interest concerns and that can produce a valuable, independent and legitimate study. Its main objectives include:

- To review the At-Large Membership and ICANN s governance structure;
- To conduct regional assessments of the 2000 election;
- To conduct an inclusive, interdisciplinary and comparative analysis of key governance issues behind ICANN Governance (including accountability, transparency and legitimacy);
- To recommend participation and representation structures for individual users within ICANN; and
- To provide input into ICANN s deliberations on the future of its At-Large elections and the structure of its Board.

This interim report poses a variety of questions and probes answers with regard to: Why is there a need to include the public voice within ICANN? And how was it reflected

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[2] For more information about the Internet Society (ISOC), *see* A Brief History of the Internet (*http://www.isoc.org/internet/history/brief.html*) and History of the IETF/ISOC Relationship (*http://www.isoc.org/internet/history/ietfhis.html*).

[3] Article II of ICANN s bylaws deals with At-Large Membership and elections, and has seen multiple changes, most recently at the Board s July 2000 meetings in Yokohama, Japan.

during and since the creation of ICANN? How is the At-Large Membership organized and structured worldwide? How did the At-Large election take place regionally? And what models of representation, elections and governance exist in the region and is there a relationship? How were the election results and possible complaints communicated, perceived and evaluated by the different stakeholders? What improvements with regard to participation and representation of different interests within ICANN were suggested? And perhaps more importantly: What lessons can be learned with regard to the procedures and processes of an At-Large membership and the structure of the ICANN Board? Are there other participation and representation mechanisms for individual Internet users that should be considered that enable legitimacy, effectiveness and efficiency within ICANN?

As such the report is structured along three parts. The first part considers the need to include the public voice within ICANN, first from a value-based approach and then by analyzing ICANN s founding documents, public statements made by its officers, and its agreements with the U.S. government which committed ICANN to meaningful representation of the Internet user community on its board of directors. The second part reviews comparatively the At-Large Election and the way the At-Large Membership is structured. Finally the third part combines the findings of the two previous parts and probes options for improved and restructured user participation and representation within ICANN.

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

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We welcome comment and feedback on this document. For more information and a copy of the full NAIS report, please visit our web site at *http://www.naisproject.org/.* Comments or questions can be addressed to *comments@naisproject.org.* Those interested in following the deliberation of NAIS may subscribe to the NAIS project advisory list by sending mail to *advisory@naisproject.org.*

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1. The Public Voice, Legitimacy and ICANN

The need for user participation and representation to legitimize Internet governance and consequently, ICANN itself is the proper basis of all debates with regard to the At-Large Membership. While ICANN's founding documents and other communications indicate an institutional commitment by ICANN to "At-Large" or other public representation on the Board, we begin our defense of public representation s abiding importance with a value-based analysis of ICANN s need for a strong public voice, rooted in the impact that ICANN's activities have on the Internet community.

1.1. A Value-based and Conceptual Approach

Participation and representation are widely accepted governance values and are based upon the concept that those who are affected by decisions or policies initiated by the relevant bodies should participate or be represented in the policy making processes. Participation creates empowerment and empowerment yields a sense of collaboration. The more comprehensive the level of participation, or the more inclusive the level of representation, the less likely that those subject to a resulting policy will consider that policy unfair or illegitimate.

The appropriate structure of internal governance for ICANN is therefore largely a question that depends in important part on two related threshold questions: what is the essential organizational *character* of ICANN? And what is the essential nature of its *mission?*

The relationship among these questions arises because, to the extent that ICANN functions as a public or quasi-public entity that engages in the formulation of public policy about the Internet, i.e., decision-making that has broad impact on the general public, then the legitimacy of ICANN depends, at least in substantial part, on having some public voice as an important part of the structure of its decision-making.

Character: Private or Public?

The threshold questions about the character and mission of ICANN are significant because they define its location on a continuum that extends from a purely private business, on the one hand, to the effective equivalent of a government agency, on the other. Where an entity is located on this continuum can, in a strong sense, inform the question of whether public participation in its internal governance is essential to the organization s legitimacy.

Thus, for instance, to the extent that ICANN is viewed as a purely private business, the case for a public role in the selection of its directors, or otherwise in its decision-making process, is weak; to the extent ICANN is viewed as the functional equivalent of a

governmental or quasi-governmental agency, the case for public participation in its internal governance is strong.

A model of ICANN that describes the organization as a private company engaged in a service business would likely not include any need for a public voice in its decision-making. Private organizations or companies are governed by boards of directors. The boards of private for-profit companies are typically chosen by the company's shareholders. The boards of not-for-profit companies can have electorates that vary widely, from self-selection by sitting directors to election by the membership of the organization. But in almost no case would the public-at-large choose the directors of a private company.

On the other hand, an organization or agency exercising public influence is usually seen as legitimate only to the extent that it is headed or controlled by one or more decision-makers who are directly or indirectly accountable to the public.

Much of the debate (and confusion) on the issue of what, if any, the proper role should be for public participation in the election of ICANN s directors, is due to the indeterminacy of the underlying question of how to best locate and describe ICANN on the continuum between a purely private and a purely public organization.

This indeterminacy about ICANN, in turn, arises from the fact that ICANN is best viewed as a hybrid entity, having important elements in its character and mission of *both* a private and a public entity.

ICANN is formally organized in the United States as a private, not-for-profit corporation. In this sense, its structure is the same as other corporate entities with strictly private effects on society. Yet ICANN was formed through contract with a U.S. government agency (an arbiter of public authority, at least in the U.S.), and carries out functions that may impact millions of Internet users worldwide. Thus, its legal structure is consistent (again, at least in the U.S.) with a *private* set of activities, but those activities are in many ways *public*.

This indeterminacy is not unintended; indeed, it is the whole point of the organization. ICANN was formed for the purpose of *privatizing public functions*. It was formed to be the private organizational recipient of powers of public import but for which no public institution yet existed to exercise them efficiently, fairly, and in a manner consistent with the global nature in the Internet.

But to say that ICANN was intended to privatize authority over the Internet does not resolve the underlying question about the location of ICANN on the public-private continuum, for two reasons.

First, the decision by the U.S. government to press for the privatization of functions now performed by ICANN[4] was due not simply to a judgment that those powers should be privately held, but to a belief that the Internet s unique, global character called for a new administration system that mirrored its trans-national quality.

This goal could have been achieved by a transfer of functions to a multi-lateral quasi-public entity such as an international treaty organization. But instead, ICANN was created and structured to incorporate global participation in its internal governance. Thus, the creation of ICANN was as much an effort to internationalize control of central Internet functions as it was simply to privatize them.

But in any event, the coalescence of authority in ICANN as a private entity does not alone resolve the issue of how ICANN itself should be governed in order to legitimately exercise the power it has been given. Simply to say that ICANN is a creation of privatization does not mean that ICANN should be governed like a private corporation. If ICANN retains substantial attributes of the character and mission of a public entity, then ICANN should be grounded on a governance model that confers the legitimacy of a public or quasi-public entity.

The questions about the character and mission of ICANN are closely interrelated. In many ways ICANN retains the character of a public entity because of its mission. That character is additionally influenced by the fact that some of the most important functions ICANN carries out have been transferred to it by, and in a sense ICANN is the immediate successor to, an agency of the U.S. government for the purpose of performing those functions. Because those functions were performed by a government agency, and especially because of their broad public effect, they retain the characteristics of basically *public functions*. And ICANN as the entity now performing those functions inevitably thereby assumes the character of a public agency, at least to some extent.

There is an ongoing effort by some, at least rhetorically, to re-characterize ICANN. When ICANN staff refer to it as the company, a reference they increasingly use, that is a subtle linguistic attempt to stress the private, corporate nature of ICANN, as opposed to its public character. And of course that characterization in turn reinforces the view that as a private company there is no basis for public participation in its governance.

More directly instructive, however, is the actual experience of ICANN, which has now been in operation for over __ months. Over the course of that time, ICANN has exercised its decision-making authority in a variety of matters. And it is the analysis of that experience — a review of the kinds of decisions that ICANN actually makes --which provides the best basis for assessing the character and mission of the organization.

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[4] Prior to ICANN s creation, many of the functions now under its administration were performed on an *ad hoc* basis by a wide variety of individuals and organizations many of whose participation was supported by research grants from the American government.

In the first analysis, it is important to take account of ICANN s overall mission, which is to manage the DNS and ultimately, the root server system. The DNS is a fundamental operational attribute of the Internet. And of course the operation of the root server system is at the core of the Internet — in an important sense it *is* the Internet In this regard, the role of ICANN in managing the DNS and the root server system is central to the good functioning of the Internet.

This of course makes ICANN tremendously important to the worldwide public at large. As the Internet has become more pervasive, more international, more accessible and more multi-faceted, it has taken on the character of a global public resource. The custody and trusteeship of that resource — the management of the policies that determine the functionality of the resource — certainly take on the characteristic of serving a public or quasi-public role.

Indeed, it is ultimately the public at large which has the greatest stake in those policies because it is the public that is the end user and beneficiary of the Internet. Issues which go to the accessibility and functionality of the Internet are questions in which there resides an inherent public interest because of the increasingly pervasive utilization of the Internet in a broad set of applications — commercial, governmental, educational and inter-personal -- that cut across the spectrum of daily global life at the individual level. As such public participation within ICANN is a prerequisite to ensure that the public interest is taken into account when implementing its mission.

Mission: Technical and/or Policy?

The argument made contrary to this broad view of ICANN is not to deny the importance of the Internet, but rather to minimize the importance of the role ICANN plays in regard to the Internet. Under this argument, ICANN s role or mission is not to manage or regulate or govern the Internet, but rather to serve merely as a technical coordinating body.

Indeed, much (but not all) of ICANN s work neatly fits this more modest description. And it is assumed by those who make this argument that technical coordination is a function so arcane or inaccessible that it should be exercised by experts whose decisions are dictated — and thereby narrowly bounded -- by the objectivity of the science or technical reasoning involved, rather than by unbounded discretionary policy-making. Within this bounded sphere of technical reasoning, it is argued, legitimacy is sufficiently conferred by expertise alone, and there is simply no need for a broader reference to public will or public accountability in order to ground the decisions made.

There are at least two major flaws with this argument.

The application of expertise to decisions that affect matters of public interest does not thereby insulate those decisions from the need for public accountability. To claim a decision is technical does not mean it can be made without oversight that protects the public interest in the decision being made correctly.

Much of what governments do is highly technical — from operating air traffic control systems to predicting the weather -- and at least as arcane as what ICANN does. Those functions are performed by experts, but experts who are ultimately subject to public control through elected officials. If experts running the air traffic control system repeatedly fly planes into each other, there will certainly be public pressure brought to bear on elected officials who will — undoubtedly in consultation with new experts — replace those who have not performed well. If such steps are not taken, the public will likely replace the officials who fail to act. Thus, to describe a function as technical does not in any important way address the question of whether it pertains to a matter of great public interest, and therefore whether there should be public accountability for, or a public voice in, the management of that function.

The second flaw in the argument based on technical coordination is more important. Even though much of what ICANN does can be characterized as technical coordination, it is sometimes nonetheless inextricably intertwined with policy-making of precisely the sort that requires a grounding in some form of public legitimacy. Further, some of what ICANN does is simply and forthrightly policy-making that has no particular patina of technical expertise to it. Several of the most important decisions that ICANN has made since its founding are exercises of discretion of the kind typically associated with public agencies. Three examples illustrate this point.

First, arguably the most important (and certainly the most publicly visible) decision made by ICANN to date was the award of new gTLD s. Both the decision on how many gTLD s to award, and then the selection of the chosen gTLD s themselves, were exercises in discretionary policy making, not technical coordination. The ICANN Board s discussion on the selection of new gTLD s had all the characteristics of a public agency exercising subjective policy judgment in the application of its values about how to best serve the public interest in expanding the DNS. In this instance, the judgments were based not simply on how best to run a test of the introduction of new gTLD s, but rather on which new domain names would best serve public purposes. There is nothing improper in that basis for judgment — indeed, it is arguably the correct basis for judgment -- but it highlights the need for the decision-makers to have some underlying legitimacy to make inherently value-laden policy choices, particularly where they result in the granting of an economically lucrative franchise to a quasi-public resource.

A second example of a policy-type decision making is the creation of the UDRP process. ICANN established this process in order to create a tribunal for resolving issues relating to the protection of intellectual property rights in the DNS. In establishing the UDRP process, the ICANN board has responded to the claims that *it* should protect, or provide a mechanism for protecting, the rights of trademark holders. Making this judgment was itself a substantive policy decision, and certainly the design of an adjudication process involved a host of policy determinations about how to balance the rights and interests of Internet users and trademark holders, how to allocate the costs of dispute resolution, and how to establish a means for fair, legitimate and supposedly neutral adjudication. None of these are technical questions . All involve policy judgment based on some underlying conception of whose interests should be protected, to what degree and how.

Finally, even though ICANN does not conceive of itself as a regulatory body, it has in fact engaged in a process of regulation by contract, which has resulted in a range of substantive policy making not through the issuance of rules, but through the drafting of private contracts. For instance, in recently renegotiating its contract with VeriSign, ICANN argued that modifying the contractual terms of its relationship with VeriSign would promote competition in the DNS marketplace. That may be a legitimate, even desirable, goal for ICANN to implement, but a policy of enhancing competition — a kind of policy typically implemented by a government, not by a private company -- depends on judgments about the nature of the marketplace and the degree and form of competition that will best serve the public interest.

Similarly, the contracts ICANN has negotiated with the registries that were awarded the new gTLD s contain a host of regulatory provisions about the permissible uses of the new domain names. These contractual rules in many instances go well beyond what is strictly required to implement a test of expanding the DNS. Such collateral policy goals of ICANN may be laudable, certainly they are controversial, but in either event they again illustrate a kind of substantive regulatory policymaking that ICANN engages in through contract.

These three illustrations — the award of newgTLD s, the creation of the UDRP process and the imposition of regulatory-type controls through private contracts — are among the most important, visible and controversial actions that ICANN has taken. None of these actions can be accurately described as technical or arising from mere technical coordination of parameters necessary for the operation of the Internet.

Instead, each involved overt policy making — decisions about how to facilitate the development of the Internet as a public, global resource, about how to shape the marketplace for key Internet services to best create competition, and about how to balance the protection of private economic rights against claims of free speech in the management of the DNS. All of these decisions must be based on some underlying substantive conception of how the DNS, and hence the Internet, is to function best. And to the extent that the Internet is, or will become, a global quasi-public resource, these decisions must at a deeper level involve some conception of the general public good. For that reason, these decisions — all of which lie within the sphere of authority that ICANN claims to have — resemble the kinds of decisions typically made by public agencies.

Thus, the minimalist account of ICANN as a merely technical coordination body that is not engaged in broad policy-making affecting matters of the public interest is, at the very least, an incomplete description of the organization. Even though ICANN is in the form of a private company, its functions, at least in part, appear very much to embody the consideration of public issues. Thus, even as a unique and experimental hybrid entity, its legitimacy to resolve these issues must be based on a process that reflects some reference to the public will or public accountability.

Additional reasons

There is an additional reason this is true as well. In many ways, ICANN rests on unstable ground. It is a voluntary association which has the ability to implement its decisions only to the extent that those decisions are perceived as legitimate by the relevant community — governments, private companies and Internet users.

ICANN has little in the way of coercive authority through which to enforce its decisions. Thus, legitimacy for its decision-making is particularly crucial for ICANN since it is constantly in danger of being discredited or ignored. ICANN ultimately has no ability to stop the creation of alternative root servers with alternative DNS systems. The voluntary adherence by the worldwide Internet community to its decisions will likely continue only to the extent those decisions appear to be based on a decision-making process that is fair and legitimate.

Nor can ICANN borrow the legitimacy of another institution, or of any government, since ICANN is structured as a freestanding private entity. The legitimacy of its decision-making must be generated by its own internal governance procedures. And if it fails to do so, it runs the risk of being deemed irrelevant, or inviting governments to take control of it or to regulate it in the name of imposing governmental policies of consumer protection, competition or other nationalistic goals.

The need to limit ICANN s mission

Finally, it is important to recognize one limiting principle of overriding importance: that however ICANN resolves the issue of how to provide for adequate public participation in its internal governance, it still must -- in a clear, explicit and binding fashion -- impose constraints on the scope of its mission.

The argument for some form of public participation in the internal governance of ICANN is dependent, in part, on the fact that any reasonable description of ICANN s current mission includes policy-making that ranges well beyond a mere technical coordination of Internet parameters.

In grounding the need for public participation on the fact of ICANN s policy-making, there is a tension with the widely shared view that ICANN s mission is, and should remain, highly limited. On the one hand, ICANN must provide for public participation because it inherently engages in a form of public policy-making, yet on the other hand, even with public participation the scope of that policy-making should remain as constrained as possible.

One common fear expressed about ICANN is that it will gradually lessen its resistance to undertaking more forthrightly policy decision-making, and thereby extend its agenda into highly charged areas of substantive regulation of the Internet, such as content regulation, privacy, speech protection, taxation and other such matters.

This fear is fuelled by a concern that pressures will be brought on ICANN to assume responsibility in these and other similar areas because there is no alternative forum for the

global resolution of these kinds of controversial questions of Internet policy. ICANN may be pressured to fill the vacuum. Further, there is a well-recognized tendency for organizations to succumb to mission creep, and to extend their jurisdiction bit by bit into related areas. In ICANN s case, this kind of mission creep would almost inevitably embroil it in matters of even more overt policy-making than it has to date ventured.

For some, these fears are heightened by proposals that there be some strong form of public participation in ICANN s internal governance, particularly in the form of elections for its board. The fear is that elections for ICANN s board may make it look like a legislature, and then the board may start to think of itself as a legislature, and in particular, as having the public legitimacy to undertake a decision making role on broader questions of substantive policy. In other words, the concern is that too much legitimacy could be conferred on ICANN if it addresses the need for public participation, with the result that others will start viewing ICANN, and ICANN will view itself, as freer to engage in forthright and unbounded policy making.

This is a real concern, and we do not diminish it. But there are three responses that should be considered as well.

First, if the concern is that ICANN may be tempted to abuse its legitimacy, it is a poor answer to state that it should therefore be kept illegitimate. In other words, ICANN engages in a bounded policy-making now, within the mostly respected confines of its current mission. For the reasons stated above, it is necessary to base its current policy making on some form of public participation. The fear that ICANN may extend its policy making to additional areas should not be used as an excuse for blocking the legitimacy ICANN needs for what it actually does now.

Second, some believe that a stronger public voice in ICANN s decision making will retard rather than accelerate any impulse within ICANN to extend its jurisdiction. The public voice may well serve as a check on internal pressures to extend its mission.

Finally, and most importantly, ICANN should address the question of its mission creep directly, effectively, and independently of the need to provide for public participation in its internal governance. The suggestion has been made repeatedly that ICANN find a way to constrain its jurisdiction in a binding fashion. Whether this is by amending its Articles of Incorporation, by writing a limitation into its bylaws that is not easily altered, or by issuing some strong prime directive that limits its jurisdiction, ICANN should directly confront the reasonable fear that it will venture into an even broader policy agenda than it now does.

The limitations currently in ICANN s bylaws do not effectively serve this purpose, both because ICANN has shown a distressing tendency to amend its bylaws casually, and because there is little public confidence in the restraints that already exist. ICANN needs to address this problem squarely, and in so doing, to lessen the fears that it will abuse the very legitimacy it needs to gain.

1.2. ICANN s History and its Commitment to Public Representation

As a new and unique body in need of a long-term system of public representation, ICANN has a special need to review its own past and to learn what it can from the discussion of the last several years. Many of the issues that the community now faces have persisted from ICANN s early days; they are of obvious importance but are complicated and, frequently, divisive.

From the time it was conceived, through its formation, and in its current infancy, ICANN has had a clear responsibility to establish a public role in its decision-making. Such responsibility in itself has frequently placed ICANN at the center of controversy. While the organization has several times declared its intention to build in a lasting role for the community of Internet users (sometimes in response to pressure from outside interests), consensus on the form and responsibilities of that role has been elusive, and progress has been slow.

In this section, we attempt to trace the development of ICANN s responsibility to public participation, and the obstacles it has encountered along the way.

Early Commitments to the Internet Public. While responsible management of the Internet s addressing, naming, and protocol resources are of clear international concern, the history of ICANN s development as an organization was largely the result of negotiation with the American government.[5] In 1998, partly spurred on by recent international efforts to promote globally responsive naming and addressing administration,[6] the U.S. Department of Commerce (Commerce) released two policy documents calling for the creation of the corporate entity that eventually became ICANN. Known as the Green and White Papers, these documents provided an early conceptual sketch of the founding principles, authorities and responsibilities, and proposed organizational structure on which ICANN would be built.

Representation was one of the four founding principles that these documents laid out for ICANN. As the White Paper, put it:

> The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users.

[5] The U.S. government maintains policy authority over the A-root server that is the nexus of the DNS root system. As a result, USG has played a significant role in negotiations regarding the fate of the DNS, and, by extension, other centralized Internet resources.

[6] Especially notable was the Internet Ad Hoc Committee (IAHC), a group of concerned volunteers who in 1997 proposed that an international non-profit body be established in Geneva to deal with the Internet s centralized naming/addressing/protocol issues.

> Mechanisms should be established to ensure international participation in decision-making.

In imagining a governance structure for ICANN that would serve this principle, the Green and White Papers suggested a Board of Directors that would balance — in a roughly even way — the interests of specific domain name and IP number stakeholders with those of Internet users. But these documents did not provide a specific blueprint for how the user half of the Board would be constituted or created. They suggested only that commercial, not-for-profit, and individual users were all likely participants. Thus, the key questions that would have to be addressed in providing opportunities for public or user participation in ICANN were left unanswered in the principal DOC policy documents regarding ICANN.

Initial Board Authority Over the At-Large Process. In early October 1998, ICANN submitted its proposal to become the corporation envisioned in the Green and White Papers. The proposed bylaws submitted in this process established a governing structure for ICANN that attempted to strike the balance called for in the Green and White Papers. ICANN proposed a 19-member board, which would include the corporation s appointed president. Nine board members would be selected three each by three Supporting Organizations created to represent specific Internet stakeholders — the IP number registries, domain name registries, domain name registrars, and the technical community. The remaining nine seats would be occupied by At-Large Directors though once again the form and function of those Directors was largely undefined.

To guide ICANN in its formative stages, a nine-member Initial Board of experienced people from industry, academia, and the research sector was created. ICANN s process for selecting this Initial Board was widely criticized for its lack of openness and inclusiveness, and many questioned the fundamental legitimacy of this Board (and still do, as four of its members remain on the ICANN Board today).[7]

One of the chief responsibilities placed this Initial Board was to determine the process for selecting the At-Large Directors who would later replace the Initial Board itself. Early drafts of the bylaws suggested that this would involve the creation of an At-Large membership to elect these nine directors. However, these bylaws left the Initial Board with broad discretion to fill in the details regarding the selection of the At-Large Directors, and even to determine whether or not a membership system would be part of the process.

These initial bylaws received significant criticism from groups like the Boston Working Group[8] for giving overbroad authority to the Initial Board. Should they so desire, there

[7] It should be noted that the Initial Board was originally known as the Interim Board, and that they were generally expected to act only as placeholders for a later, more legitimate set of Directors.

[8] The Boston Working Group (BWG) is an informal coalition that has participated in some of the deliberations and discussion surrounding Commerce s call for the creation of an entity like ICANN. It has taken, and continues to take, a position in favor of strong representation for the broad user community in ICANN.

were no protections against the Initial Board simply deciding not to have any kind of At-Large membership whatsoever. Some went so far as to express concerns that the Initial Board had the power to reject not only the notion of a At-Large membership, but also the more general underlying principle of having At-Large Directors who would represent users to begin with.

The BWG strongly lobbied Commerce for revisions to the ICANN that would require the Initial Board to create some kind of membership structure (the specifics of which had not yet been determined). Ultimately, Commerce agreed, and ICANN, under pressure, revised its bylaws accordingly. Shortly thereafter, a Memorandum of Understanding was signed between ICANN and Commerce, under which ICANN began assuming the responsibilities set forth in the Green and White Papers.

The MAC Report. Since neither the MoU between ICANN and Commerce, nor the Green Paper, nor the White Paper, included any strong definition of what the At-Large Membership would look like or how it would run, ICANN appointed a 13-member Membership Advisory Committee (MAC) to address these questions. As MAC Co-Chair George Conrades put in an early committee conference, the questions the MAC faced boiled down to: Who will be the members of the corporation? And what will the members do?" After thoroughly discussing these issues, the MAC made its final recommendations to the ICANN Board at its May 1999 meeting in Berlin. Among them were the following:

- Only individuals (not organizations) should be eligible for At-Large membership;
- Membership registration should be open to all individuals worldwide willing to provide their name, e-mail address, and a verifiable physical address;
- A committee should be set up to identify high-quality candidates to join self-nominated ones from the membership; and
- An election should be held for the At-Large Directors with all members registered at least 30 days in advance of the election eligible to vote.

Yet the ICANN Board did not immediately implement the At-Large membership structure envisioned by the MAC. While reaffirming its intention to move forward with a system that would allow individuals to select At-Large directors, the Board resolutions passed in Berlin also recognized that developing such a system could be complex and expensive, and they directed the ICANN staff to to analyze the MAC principles in the light of its discussion, and report back prior to the Santiago meeting.

Community Pressure for a Timely Election. In the period immediately following its Berlin meeting, ICANN continued to face strong outside pressure to realize the its founding principle of representation and replace its appointed Initial Board with an elected one. In June 1999, ICANN submitted its six-month status report to Commerce. In Commerce s response, Becky Burr wrote, ICANN s top priority must be to complete the work necessary to put in place an elected Board of Directors on a timely basis. This urgency to provide elected representation on the Board was restated in testimony that

another Commerce official gave before the U.S. Congress[9] and in letters to ICANN from the chair of a U.S. House of Representatives subcommittee.

Similar pressure also mounted in the online community. In responding to these concerns, ICANN reaffirmed its commitment to a representative Board of Directors. For example, in a July 1999 letter to Burr, ICANN said that putting in place an elected board is our highest priority and we have been working diligently to accomplish this objective as soon as possible.

The At-Large Council Concept. Just before the August 1999 meeting in Santiago, Chile, ICANN staff posted its report following-up on the MAC s work. The staff report reflected the MAC s notion of an open membership consisting of individuals. However, it also recommended that the Board create an At-Large Council with largely analogous to the councils already formed to represent professional stakeholders in the Supporting Organizations (SOs). The staff report argued that this would create parity between the At-Large membership and the SOs, and that it would equip ICANN with a formal entity to help build the At-Large membership and help oversee the At-Large elections.

A legal analysis that accompanied this report also suggested that ICANN could protect itself from burdensome derivative lawsuits under California state law, if it removed the power to directly elect the At-Large Directors from the At-Large membership and placed it in the hands of this At-Large council instead.

While the staff report did not explicitly recommend that an At-Large Council select the nine At-Large Board Directors, the Board discussed and passed resolutions to that effect at its meeting in late August 1999 in Santiago. It adopted the necessary bylaws changes that October.

Under the new bylaws, when the At-Large Membership reached a threshold population of 5,000, it would elect 18 members of an At-Large Council in two installments. The Council would then select the nine Board members.

Opposition to the Indirect Election. Some in the ICANN community liked the notion of indirect elections of the At-Large Board Members through an At-Large Council because it guarded against the threat of derivative suits, and would create a more deliberative setting for selecting directors than an direct popular election would provide. Many others attacked the plan as an effort to highjack the broad Internet user voice in ICANN, reasoning that no one would participate in a body that only provided the right to select individuals who would in term select policy-makers. According to this critique, indirect elections also would result in no direct lines of accountability between the ICANN Board and the public.

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[9] As an agency of the American government, the Department of Commerce is directly answerable to the President (then Bill Clinton), but also to the Congress, which maintains control over the budget available to Commerce and to all federal agencies.

At its March 2000 meeting in Cairo, the ICANN Board faced intense pressure to scrap the indirect election plan proposed by staff and hold direct At-Large elections. Advocates for the direct model argued that it offered enhanced accountability and legitimacy for a Board that, it was felt by some, was lacking in both. Ultimately, the Board accepted the validity of the direct election model and passed a compromise resolution, Resolution 00.18 also termed the Cairo Compromise.

Resolution 00.18 instructed staff to draft bylaws amendments that would:

- Establish a system for direct election of five At-Large Directors
- Adjust the terms of the Initial At-Large Directors
- Establish a committee to nominate candidates, as well as a system for member-nomination
- Initiate a study of the At-Large Membership
- Suspend any selection of At-Large Directors after the five until completion of the study

Instead of filling all nine Directors at once, the compromise stated that only five would be elected in 2000, after which the election process would be studied before future action. At the time, the compromise seemed acceptable to most parties; direct democracy advocates avoided setting a precedent of indirect elections and placed five elected Directors on the Board, while those with stability concerns were assured that, should the election go badly, the five At-Large Directors would constitute a minority of the nineteen-member Board.

At the Yokohama meeting in July 2000, however, the spirit of the Cairo Compromise was revisited.

The Bylaws Amendments in Yokohama*:* When the Board asked staff to prepare new bylaws to flesh out the Cairo Compromise, neither those at the meeting nor the ICANN community as a whole had reviewed all the Compromise s possible implications. When the proposed bylaws were published immediately before the Yokohama meeting, the Board once again encountered strong opposition from the community, and criticism that it had both betrayed the spirit of the Cairo Compromise and failed to accurately gauge community sentiment. Members of the public interest community strongly criticized both the proposed bylaws and the process behind it.

While the proposed amendments did provide for the direct election of five At-Large Directors, followed by a period of study, they were self-extinguishing, deleting themselves from the ICANN bylaws as soon as the 2000 At-Large Election was finished. In the absence of direct action by the Board, this left ICANN with no process for ever selecting At-large Directors to the Board after 2000. At the same time, the amendments proposed that the placeholder At-Large Directors those Directors of the Initial Board would leave the Board at the end of 2001.

Since no process had been established to replace the departing Board members, the At-Large seats they occupied would vanish when their terms expired, leaving the At-Large community represented by just the five Directors elected in 2000. And even those Directors terms were set to expire in 2002. Barring direct action by the Board, At-Large representation on the Board would dwindle from nine seats, to five, to zero. Advocates urged the Board to rethink the proposed amendments, and to secure At-Large Directors positions for the foreseeable future.

Once again, the Board reversed course. It amended the bylaws to secure the positions of all nine At-Large Directors until late 2002 though the bylaws setting up an At-Large Election self-extinguished after the 2000 election. Under those terms, the 2000 At-Large election took place and ICANN was left, once again, without a clear concept of how to represent the public s interest in ICANN s activities.

Where we find ourselves. In a certain sense, the ICANN of 2001 and the ICANN of 1998 are not as far apart as they might seem. For both organizations, persistent questions demand quick resolution and for both, community sentiment is deeply fragmented in its ideas about ICANN s future direction. Yet where the ICANN of 1998 had little idea of what the At-Large Membership might mean, or the role it might play, the ICANN of 2001 at least has the benefit of hindsight in seeking to resolve those issues.

1.3. Public Participation and the At-Large Membership

For structural and historical reasons, there is a need for improved public participation in the current internal governance of ICANN in order to establish its legitimacy as a quasi-public body that has a mission to decide policy matters of public interest and importance relating to the functionality of the Internet.

Addressing the need for public participation in turn suggests two subordinate questions: what is meant by the public? and what is understood by participation?

1.3.1 Definition of the public.

There are various ways to define which public has an interest in ICANN. The answer is perhaps best thought of as a sliding scale from a narrow definition focused on domain name holders, those stakeholders who are most directly affected by ICANN policies, to a much broader definition that includes all those who use the Internet, such as all email address holders. And even beyond this, the broadest definition would essentially include the entire public — both those who currently use the Internet and those who are potential users in the future.

ICANN should recognize that its decisions have a broad impact. Because the Internet is a global resource, decisions about the functionality of the Internet have a global impact. And because the Internet is used directly by individuals on a global basis, that impact extends down to the individual level.

It is important as well to acknowledge that the class of those affected is dynamic. As the Internet expands, particularly in underdeveloped regions, the class of individuals who begin using it will grow. Yet these potential users of tomorrow will be impacted by the decisions ICANN makes today in setting domain name policy that will structure the Internet in the future.

For these reasons, we believe that ICANN should broadly construe the public affected, and potentially, affected by its decisions.

1.3.2 Definition of participation

Even if the public is defined broadly, that does not mean there must be only a single means for individuals to participate or be represented in ICANN s decision making . ICANN s structure suggests not one, but several avenues for the public to participate in ICANN s work. By far the most important — and under-developed — is the At-Large Membership (ALM). Before discussing the untapped potential of the ALM, we want to take note of the other existing avenues, as they ultimately impact the role the ALM can and should play

1.3.2.1 Participation through the Supporting Organizations.

The three existing supporting organizations — the Address Supporting Organization (ASO), the Protocol Supporting Organization (PSO) and the Domain Names Supporting Organization (DNSO) -- provide open routes of input into decision-making by ICANN.

The supporting organizations each directly elect three members to the ICANN board. Further, each of the SO s, at least in principle, is consulted prior to board decisions affecting their particular area of interest. The supporting organizations in turn are as a formal matter open to participation by anyone who attends their meetings or participates in their listserv discussions.[10] Thus, any member of the public can indirectly participate in ICANN decision-making through participation in the supporting organizations.

There are, however, several limitations on the adequacy of this avenue for public participation. First, the supporting organizations are each forums of particularized and specialized interest — they do not easily contain the interests of the general public in ICANN s issues. The ASO and PSO in particular are viewed as bodies of technical specialists which, although formally open to any member of the public, are not natural or comfortable forums for general public participation. And past attempts to house the concerns of the general public within the DNSO have been unsuccessful. Indeed, the lengthy, and as yet unresolved, debate over whether even to create an Individual Domain Names Holder Constituency suggests that there is not any constituency group within the

[10] This is a matter of theory, rather than practice. In practice, none of the Supporting Organizations nor their independent constituencies has achieved target levels of efficiency, activity, and openness simultaneously.

DNSO that provides a forum for general public concerns. Even the IDNH constituency, were ICANN to charter it, would speak only for a small class of the general public—those with individual domain names but not for the public at large.

Further, the supporting organizations are largely viewed as forums for corporate and business interests within ICANN, not for individual interests. This perception weakens the ability of the SO s to serve as an effective vehicle for public participation within ICANN. It is one available route for expression of public voices, but an avenue within inherent limitations.

1.3.2.2. Participation through governments.

Democratic governments themselves are institutions that embody and represent the public (although governments can vary widely in the degree to which they are truly representative). But to the extent that governments, as such, have input into the decision-making process of ICANN, this is another avenue for public participation in ICANN s internal governance.

Again, however, this is an avenue with significant limits. Governments play a formal role in ICANN through the Government Advisory Committee (GAC), which provides institutional views to the ICANN board on matters of relevance to it. But the role of GAC is poorly delineated. Although it is supposed to be advisory only, the GAC exercises apparently significant influence. But it does so with poor mechanisms for transparency, and for public input and participation because it operates largely in a closed and inaccessible fashion.

In its current form, the GAC s influence may be unavoidable. Though their formal authority in ICANN is minimal, the actual effect of strong government statements or policy initiatives should not be discounted. In that light, *transparency* and *openness*, not attempts at structural limitations on influence, offer the best hope for equitable participation by governments.

Public participation in ICANN through representation by governments in the GAC is an unsatisfactory solution for a deeper reason as well.

The underlying principle of ICANN is that it is a *non-governmental* institution. Indeed, the very point of ICANN is as an experiment in non-governmental self-organization. Governments are viewed with suspicion by the Internet community, mainly because of their inefficiency and lack of responsiveness to rapidly changing social and technological developments that have marked the growth of the Internet.

As is discussed above, ICANN was deliberately structured to be non-governmental. Although it is to operate on a *global* basis, it is not to be an *inter-national* or *multi-lateral* organization such as other inter-governmental treaty entities. In this sense it is not, like many other international entities, an organization formed by governments or consisting of governmental representatives. Instead, it is to be a global organization operating on a quasi-public basis outside of international governmental control.

Public participation on a global basis should reflect this underlying premise of ICANN s structure. Thus, although governments, through the GAC, may indirectly reflect the views of their citizens, and thus provide another vehicle for indirect public participation in ICANN, this is again a highly restricted form of participation by the public.

1.3.2.3 The At-Large Membership

The third avenue for public participation in ICANN is through the At-Large Membership (ALM).

A concept that is anticipated in the foundational documents of ICANN (such as the White Paper), the ALM has yet to be adequately defined and institutionalized in ICANN s framework of operations. The ALM remains the great — and as yet unrealized — potential opportunity for public participation in ICANN.

The ALM has been organized to date only in the context of the election for five board seats held in October 2000. Although voting for board members may remain an important function of the ALM, its role does not need to be limited to serving as the electorate for At-Large director seats. Indeed, if the only role of the ALM is to participate in elections, the full potential for public participation in ICANN will remain unrealized, and even the role it plays in electing directors will be under-developed.

The ALM can serve diverse goals of participation, representation and accountability. In fulfilling each of these functions, a fully developed ALM will strengthen the legitimacy of ICANN to make the kinds of policy-based decisions about the functioning of the Internet in which it is now engaged.

In fostering *participation*, the ALM could become a means for communication and outreach to the broader public for ICANN. The ALM could create empowerment of the public and empowerment yields a sense of collaboration. It could also be a channel for consultation and input into organizational decision-making. Institutionalizing this sort of participation might be done through ALM forums or meetings that can be convened in conjunction with each ICANN meeting, or through the development of on-line mechanisms.[11] The ALM could be structured into more manageable sub-units or committees by region or by issue, or by some combination of both.

In fostering *representation*, the ALM can serve as the electorate for the At-Large board seats. Representation through election can make participatio*n* operative and give it meaning. The election could be structured in different ways, including the direct election not only of directors to the ICANN board, but also, for instance, to an At-Large Council which can serve as an intermediary entity between the general At-Large membership and the ICANN board. When the ICANN board is perceived as *representative*, then the mode

[11] There have been a number of attempts at such self-organization of the At-Large Membership as it was constructed for the 2000 election, but their activities have been complicated by the lack of certainty about the ALM s future role and form.

and degree of participation can be balanced to adapt to the goals and mission of the ICANN, the heterogeneity and size of the community, the need for stability and efficiency.

And in fostering *accountability*, the ALM can serve as a kind of public watchdog on the actions of the board, and can be a means to ensure that at least the elected At-Large directors reflect the views and interests of Internet users at large and act in a responsible manner. Accountability devices may include, for instance, the specific creation of substantive and procedural rules designed to enable board member responsiveness and a set of ex post mechanisms to allow responses to decisions taken (including rationales and justification for decisions made).

The ALM is a key piece of the structure of ICANN that has not yet been brought to maturity. Developing the ALM is necessary to make elections work in virtually any form. But institutionalizing the other roles of the ALM in providing the means for participation and accountability, as well as representation, will have additional and equally important consequences for establishing the public legitimacy of ICANN.

2. Lessons and Challenges: The 2000 At-Large Election

If ICANN must incorporate public participation in order to gain its required legitimacy, how can it do so in practice? One starting point to answer that question is an assessment of the 2000 At-Large election, which is the subject of this chapter. The first section deals with cross-regional elements of the election, while the second section comprises the regional reports, and a final section discusses comparative themes between regions.

2.1. Cross-Regional Elements: Board and staff election administration

This chapter focuses on the effects of the 2000 election in each of the five geographic regions. But many decisions governing the election belong to no particular region e.g. the decision to hold direct elections, or the technical specifications of the election system itself. The implications of these decisions were felt universally, and this section provides an overview of lessons about the common elements of last year s election.

From ICANN s incorporation in 1998 through the conclusion of the 2000 At-Large election, the organization devoted substantial time, energy, and resources to finding a process by which the community At-Large would select Directors to the Board. The largest part of that effort came from ICANN staff Chief Policy Officer/Chief Financial Officer Andrew McLaughlin, Outside Counsel Joe Sims, and Vice President/General Counsel Louis Touton. Staff has historically played a major role both in developing ICANN policies and advising on Board action regarding those policies.

As underresourced volunteers, the ICANN Directors reliance on staff is to be expected. However, both the staff s accountability and its transparency have been the subject of criticism from a number of sources, and some have asked whether the staff plays too large a role and has too much autonomy in establishing ICANN policy. In that light, the Board s dependence on them raises questions about the nature of decision-making in ICANN.

ICANN s accomplishment in coordinating an election of this scope on a short timeline and with limited funding deserves recognition. ICANN s decisions regarding the 2000 election reveal important lessons for future decisions affecting the entire Internet community.

There are several considerations to bear in mind while reviewing ICANN s election administration. First, both the Board and the community share a responsibility to prevent avoidable mistakes from interfering with future selection of Directors. Second, there are indications that some Board actions regarding public input were inconsistent with the ICANN process as it s generally understood; discussion of the frequency, circumstances, and implications of these instances appears below.

This section identifies three main areas of central decision-making: Election Structure, Membership Relations, and Technical Provisions.

2.1.1. Limitations Faced by the ICANN Election

The 2000 ICANN election broke new ground not just for ICANN as an organization, but for the world as a whole. While, for ICANN, the election was an untested first attempt at representing the public interest through election of Directors, for the world the election was an untested attempt at a fully online, truly global election of unknown size and scope. The experience of the election offered insight into the core strengths and weaknesses of such an election.

In the offline world, certain elements are considered baseline components of any legitimate election. For example, we generally assume that, in a given political election, it s possible to know with reasonable certainty who the electorate is and is not, and that each of the voters is a verifiable human being. We assume that elections takes place in an environment where rules and laws will define appropriate behavior, and that those rules and laws will be enforceable by some authority (usually the state).

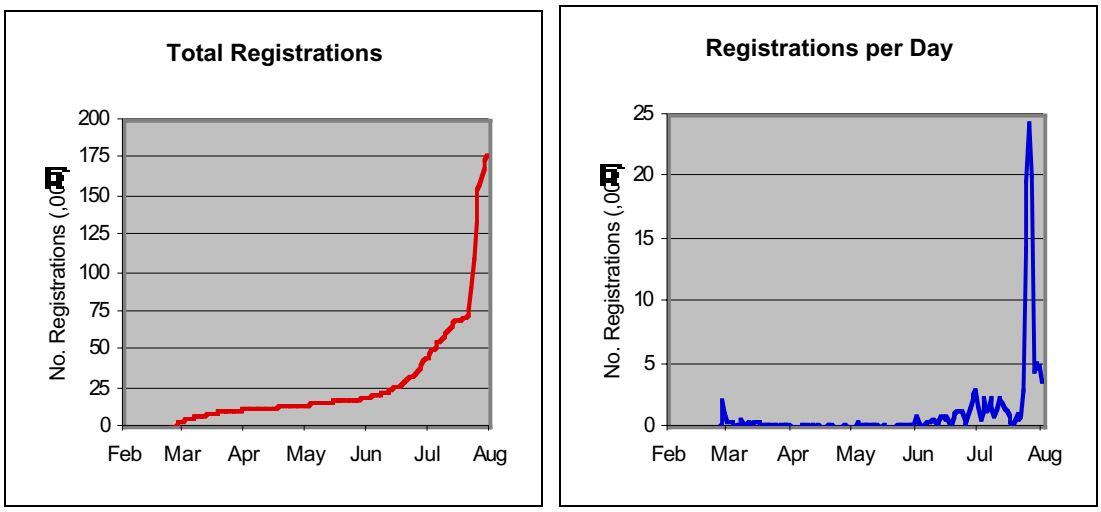
But these assumptions do not apply to the online world in which the 2000 ICANN election took place. In an environment unbounded by the rules of physical space, simple tasks like verifying that a given voter registration represents a real, unique individual become much more difficult. Similarly, there is no single authority capable of enforcing rules on a global electorate. National laws are unique and are likely to offer little help in establishing a single rule set for an online ICANN election.

These difficulties made the 2000 ICANN election into a series of trade-offs. Authentication of voters and therefore protection from ballot-stuffing and other fraudulent activities was sacrificed to keep election expenses manageable and registration globally accessible. Rules were limited and, of necessity, self-enforcing.

These and other limitations of online, global elections make the questions that ICANN faces all the more difficult to answer, and should be kept in mind as we look towards future participation in ICANN.

2.1.2. Description of the 2000 Election

ICANN began to accept registrations for its new At-Large Membership on February 25, 2000 about eight months before the actual election and five months before the direct election system were approved in Yokohama. Registration was handled in-house by ICANN, and extended from February through July 31, 2000.



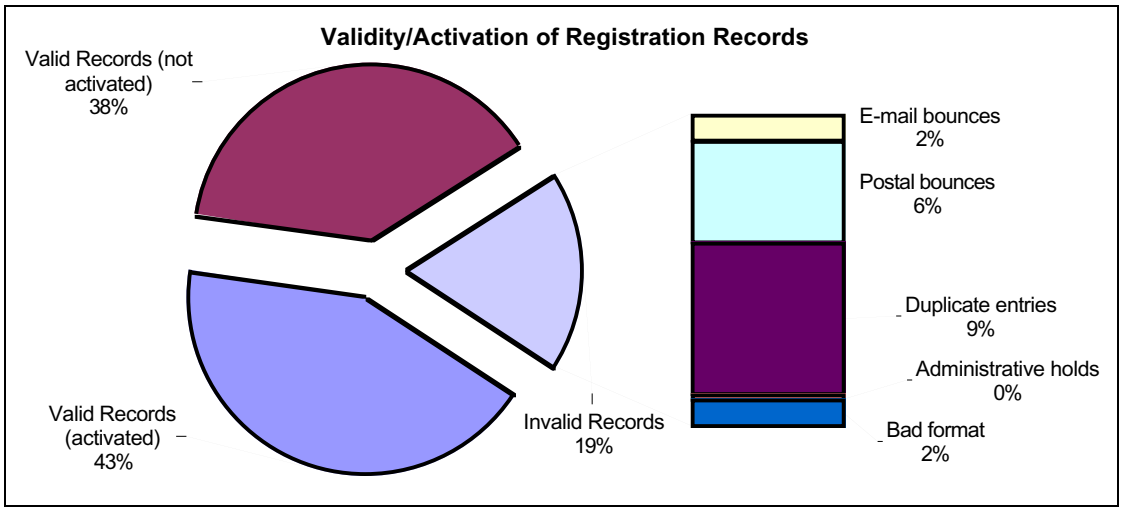
Demand for registration services proved to be extremely high, particularly near the end of the registration period. Registrations peaked on June 25, with 24,310 registrations in twenty-four hours. In total, ICANN received 176,837 registrations far more than had been expected.

As is discussed below, ICANN encountered significant technical problems during the registration phase, stemming back to early expectations about the Internet community s interest in an ICANN election. For that reason, the 176,837 registrations successfully processed are only a subset of the registration attempts of Internet users. While anecdotal accounts of denied registration are many, quantitative evidence on the subject is scarce, and it is not possible to say just how many Internet users may have been denied the opportunity to register due to server failure.

Registration was the first step towards voting. Through a second step, Activation, ICANN attempted to authenticate voters by mailing (by surface mail) each registered voter a password and PIN number, which the voter would then use to activate his or her membership on the ICANN Web site, *members.icann.org*.

The activation process encountered difficulties as well. As is discussed below, many voters found the postal return system unintuitive and unreliable. Some were unaware of the need to activate one s membership at all, or of the existence of an activation deadline. These and other circumstances contributed to a low rate of membership activation.

Postal return difficulties and other problems eliminated 33,043 records from the ICANN database.



The chart above shows some of the shortcomings of the activation system. Besides the registrations for which the letters containing activation information were returned to ICANN (10,334, or about 6% of the total registrations), many more letters may have gone undelivered, particularly in countries using non-Roman alphabets. Counting, or even estimating, the number of such letters lost in the postal system is impossible.

The activation phase began while the registration phase was still underway; voters began activating their memberships as early as May 22. Activation ended on September 8, about three weeks before the start of voting.

September 8 was also the date on which the ballot for the October election was finalized. The ICANN ballot had two types of candidates, Board-nominated candidates, selected by a Nominating Committee established by the Board, and member-nominated candidates, chosen by voters themselves. Any member of the At-Large Membership could post his or her name on *members.icann.org* and solicit endorsements from voters. Election rules stated that would-be candidates had to collect endorsements from at least two percent of their regional electorate in order to be added to the ballot[12]; beyond that, top vote-getters would be added, to a maximum ballot size of seven candidates (both Board- and member-nominated) per region. Results of the member-nomination process are discussed below, but every region had at least one member-nominated candidate on its ballot.

After the ballot was finalized, a three-week campaign period began. ICANN supported the campaign by providing each candidate with Web space at *members.icann.org*, as well as a Question and Answer forum where members could

[12] In regions with extremely small electorates, such as Africa, candidates were required to show support from at least twenty At-Large Members in order to be nominated to the ballot.

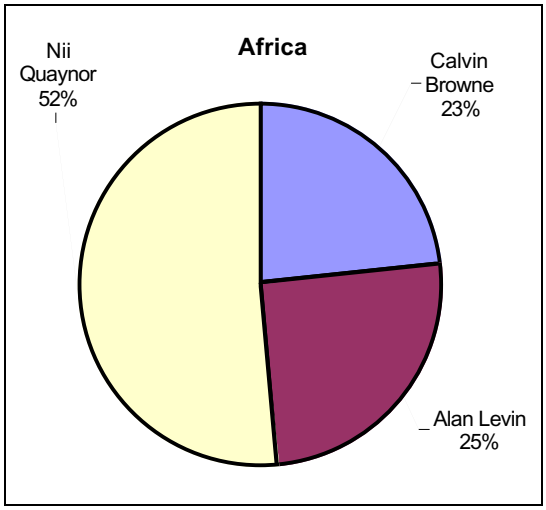
submit questions for public response by candidates. These forums were fairly well populated; indeed, many of the candidates interviewed complained only about the volume of questions that they produced.

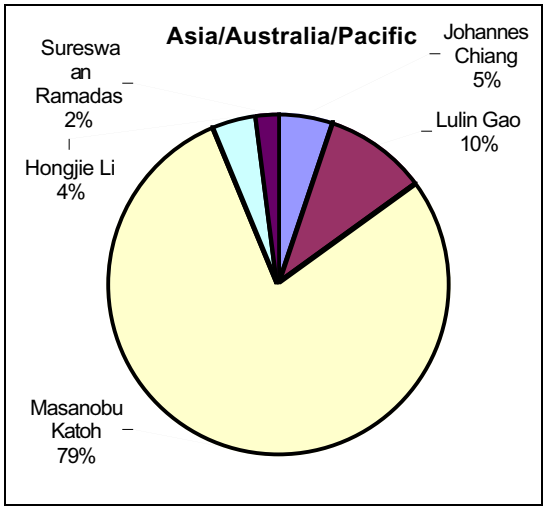
Some candidates did engage in campaigning beyond *members.icann.org*. Their activities are described in the regional studies below.

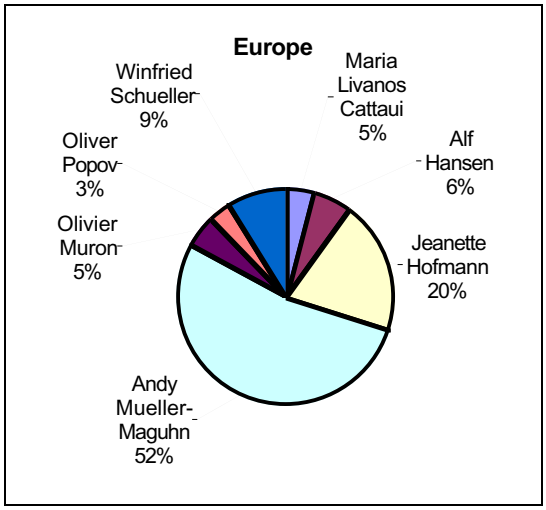
Actual voting began on October 1 and lasted for ten days. Unlike earlier phases of the election, ICANN contracted out the voting phase of the election to *election.com*, an online voting vendor located in the U.S. Voters entered their ID numbers, passwords, and PINs, then ranked the candidates in their region in order of preference. As in earlier phases of the election, some technical problems were seen: in ten days of voting, the servers were completely offline twice. The first instance was relatively early in the election period, lasting about an hour, and the second was at the very end of voting, lasting approximately forty minutes. ICANN and election.com extended voting for about thirty minutes beyond the stated deadline, then closed the polls.

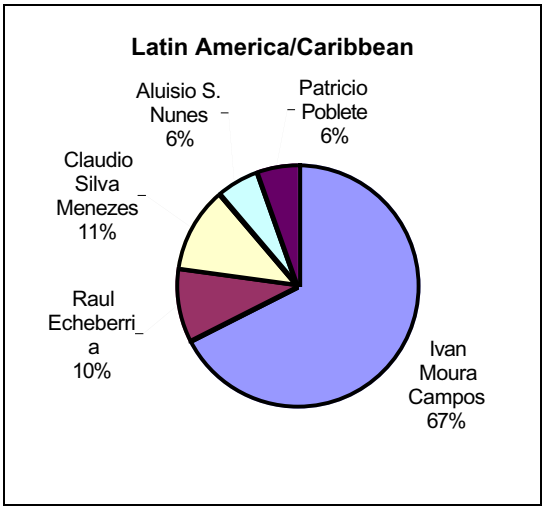
election.com tallied the votes, and results were announced the next day. In four of the five regions, one candidate had a clear majority of votes; in North America, several automatic runoffs were held to determine the victor.

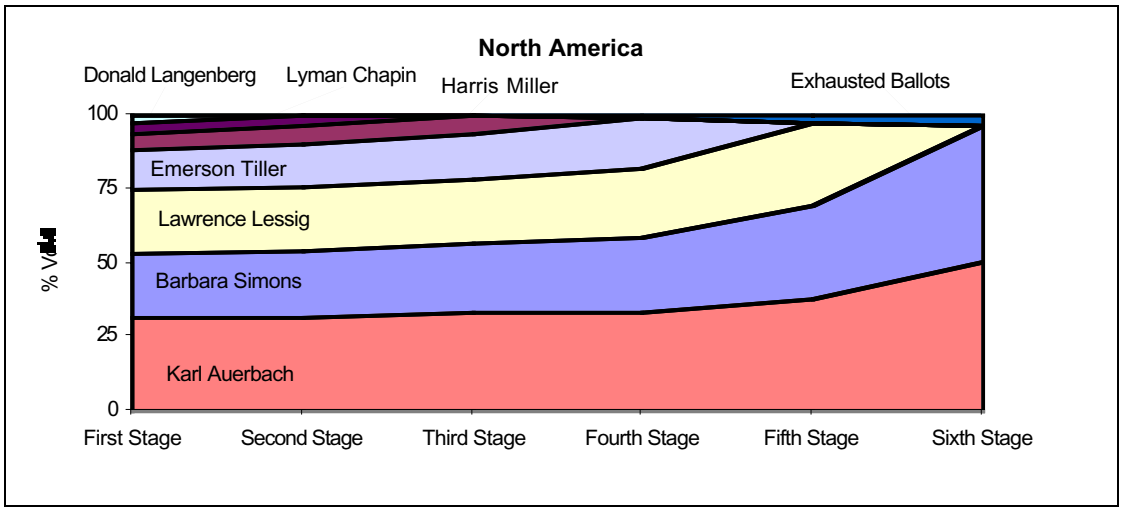
Election Results










North America
Donald Langenberg
Lyman Chapin
Harris Miller
Exhausted Ballots
100
75
50
25
0
% V
Emerson Tiller
Lawrence Lessig
Barbara Simons
Karl Auerbach
First Stage
Second Stage
Third Stage
Fourth Stage
Fifth Stage
Sixth Stage

2.1.3. Decisions Regarding Election Rules

Absence of Community-Wide Election Goals

One of the signal difficulties for the 2000 At-Large election seems to have been the lack of a well-defined, widely supported list of the community s goals for the election a consensus on what the election was really supposed to accomplish and in what cases it could be considered a success. Not only did this make objective post-election analysis difficult, it significantly complicated the development of the election system itself. Choices about election systems, voting models, technical provisions, membership requirements, and even nominations were all made without reference to shared priorities, and as a result they were seen by some as inconsistent, even at times suspicious.

Ultimately, this problem stems from a series of quick and unexpected shifts in the way the Board presented the election. From the MAC report to Cairo to Yokohama, ideas about what the 2000 election would look like and how it would work bounced around the spectrum of possibility before finally coming to rest (on the direct election model) in July 2000 just three months before voting began, and over four months after registration for the election had opened.

This uncertainty as to the form and function of the election system had complicated roots in ICANN s history and political landscape. As is discussed above, strong direction on the subject of public participation could be found neither in ICANN s founding documents nor in the opinions of the men and women who had a hand in creating the new organization. Not surprisingly, quick resolution of the election question eluded ICANN throughout its early history. Still, the Board, under strong pressure to move quickly, pressed forward in circumstances where delay, had it been possible, might have been preferable.

Some have also voiced concern about the privileged position occupied by staff not only to prepare proposals on important policy matters like the development of an election system, but to advise the Board on approving those proposals. It seems clear that some staff proposals, such as those in Cairo and Yokohama, were made in the absence of even the roughest community consensus. Fortunately, the Board detected community dissatisfaction in those cases. In the future, though, one hopes that the Board and staff would attempt to move forward only in cases of demonstrated consensus, not merely an absence of popular outcry.

The Regional Election System

The importance of geographic diversity to ICANN, especially at the Board level, can be traced back to the organization s early history. But while most of the ICANN community has agreed on the importance of such diversity, debates about how best to achieve it were extremely contentious. The election bylaws passed by unanimous consent

in October 1999 called for an At-Large Council divided into five now-familiar geographic regions.[13] In defining those regions, the risk of privileging (accidentally or otherwise) certain nations, language groups, or vested interests over others was substantial, and could have had lasting effects on ICANN. In recognition of this problem, the short time available and ICANN s limited funds, the Board defined its geographic regions based on standards previously established by the United Nations.[14]

The five-region model was low-resolution but high-efficiency. Its adoption cleared the way for a speedy and manageable election, but did so at the cost of representative legitimacy. Some members of the ICANN community have pointed out that At-Large members in, say, Israel, India, and Indonesia (all members of the Asia/Australia/Pacific region) will have extremely different points of view on many ICANN-related issues, and that a single Directorship fails to represent all the interests involved. The point is well taken.

On the other hand, ICANN s relationship with the Internet community is built less on political theories of representative legitimacy than on the idea that ICANN s activities will be defined by community consensus.[15] A certain geographic diversity greatly assists ICANN in identifying that consensus. But an over-broad system of political representation in the traditional sense could interfere with ICANN s consensus-based processes, even pushing ICANN into areas of policy-making it ought not to enter. Balance is necessary, and in that light the five-region model seems reasonable. It brings diversity to the Board, without implying unrealistic notions of authority.

At the same time, the regional model offers structural protection against the problem of capture the risk that a populous country or well-organized interest group could seize control of the Board and interfere with the Internet s basic mode of administration. Even a large and well-organized group would find it difficult to coordinate the capture of Board seats across all five regions.

The Election Committee

The Election Committee also seems to have suffered from definitional problems. The Board created the Election Committee in May 2000 to make recommendations on procedures regarding the At-Large elections ,[16] but that mission seems overbroad, given

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[13] Africa, Asia/Australia/Pacific, Europe, Latin America/Caribbean, and North America.

[14] United Nations Statistics Division, Composition of macro geographical (continental) regions and component geographical regions. 16 February 2000. Available at *http://www.un.org/Depts/unsd/methods/m49regin.htm*.

[15] This consensus-based relationship presently exists only in the theoretical sense. As is discussed below, it has not yet matured nor been adequately codified. Strong evidence of dysfunction in ICANN suggests the need to better define this relationship, or to find a new one.

[16] *Resolutions Approved by the Board*, 00.32.

the shortage of available time and the lack of clear community consensus on precisely what the elections were supposed to accomplish. Subtle differences in election systems, fraud protections, and even candidate campaigning weigh heavily on the election s ultimate character and results. Uncertainty about what that character and results ultimately should look like seems to have hindered the Election Committee s ability to proceed surely in its work.

This was perhaps most evident in the technical support for the election provided by *election.com*. While the specifics of the technical problems encountered are discussed below, ICANN s request for bids from election contractors would have benefited substantially from the Election Committee s collective expertise. Vague instructions about the election s purposes and goals may have prevented the development of thorough recommendations.

The Election Committee encountered substantial criticism and controversy as a result of its attempt to propose rules for member-nomination. Advocates for the public interest have repeatedly emphasized the importance of the member-nomination process as a way to provide the user community with easy access to the ballot, outside the control of ICANN-related bodies. In its initial recommendation of election rules, the Election Committee proposed that all would-be member-nominees be required to show support from at least 10% of their regional electorate a figure widely decried as an unrealistic one, and one that would put the ballot out of reach of all potential member-nominees. Under pressure, the Election Committee revised its recommendation to the fairer (and basically successful) 2% showing.

On balance the Election Committees final recommendations were good ones. The low barrier to ballot access for member-nominated candidates was successful; the preferential voting system, though perhaps not perfect, struck most participants as intuitively fair;[17] and, as discussed above, the regional voting system made sense in its context.

2.1.4. Decisions Regarding Membership Relations

Creating the Ballot

The Nominating Committee: The Nominating Committee was constituted at the same time as the Election Committee, tasked with naming qualified candidates to the At-Large ballot on behalf of the Board. However, the Committee was basically unaccountable for its decisions and opaque in its process, raising critical questions about the Board-nomination process as a whole.

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[17] Putative fairness notwithstanding, the preferential voting system was unfamiliar to many voters, and the documents describing it were lengthy and complicated. Many Internet users from non-English language groups, and those with limited bandwidth, have announced their frustration in downloading and deciphering the often-complicated list of Frequently Asked Questions.

Concerns about Committee process evoked suspicion among many in the community both about nominees qualifications and about their legitimacy. This probably affected the election differently in different regions, but seems likely to have led to greater dependence on the member-nomination process in Europe and North America.

As is discussed below, the Nominating Committee s additions to the ballot ranged from only two candidates in Africa to five in Europe, though the Committee did not volunteer the reasoning behind such differences. While the ultimate consequences of this, and of a ballot limited to seven participants total, varied by region, questions remain. Since it added candidates to the ballots before the end of the member-nomination process, and because ballot size had already been capped (by Election Committee rules) at seven candidates, the Nominating Committee effectively controlled the number of member-nominated candidates on the ballot.

Member-Nomination: Although not every region was able to name the same number of candidates through member-nomination, the process worked well within its limits. As discussed above, potential candidates were required to show support from at least two percent of their regional electorate. Such a level proved reasonable, and at least one member-nominated candidate appeared on every ballot.

Member-nomination took place on *members.icann.org*, where all would-be candidates were provided Web space and the opportunity to describe their platform. Users visiting *members.icann.org* during the nomination period were also offered statistics on how many endorsements each candidate had so far received. While this may have helped voters gauge candidates relative levels of support, it may also have unintentionally favored those candidates who made strong early showings in the member-nomination process. Voters endorsing candidates late in the process would have been more likely to support candidates already near the 2% line, leaving candidates who submitted their names for member-nomination just a few days late out of the running.

Candidate Support

ICANN did not provide candidates in the 2000 election with direct access to the rolls of the At-Large Membership. This was basically due to strong privacy statements made early in the voter registration process regarding the ways that registration data particularly e-mail addresses would be used by ICANN. The Board and staff generally felt that providing candidates with access to voter rolls would have violated its privacy policy, diminishing voters trust in the election process.

As an alternative, ICANN presented a web site, *members.icann.org*, as the online home of the At-Large Membership during the 2000 election.[18] The site served a functional purpose as a central locus for voter registration and member-nomination, but

[18] Some ICANN participants, particularly those from developing parts of the world, have expressed additional concerns that ICANN s Web-only approach may have disenfranchised low-bandwidth users whose Internet access is limited to e-mail and other text-based media.

ICANN also encouraged candidates to post their positions and answer questions posed by members. The site included election-related material in eight languages[19], though candidate question-and-answer forums were mostly in English ICANN s working language. As is discussed below, candidate use of the question-and-answer forums was uneven, and several candidates expressed dissatisfaction with their inability to contact At-Large members directly.

Voter Education and Outreach

Membership Implementation Task Force: The At-Large election s expansive scope ultimately including voters from over 190 countries indicated a need for voter education and outreach on a global scale. The Board attempted to address this need through the Membership Implementation Task Force, but the effort s lack of success stemmed from problems in both definition and execution.

The Board called for the convention of a Membership Implementation Task Force in November 1999. The initial resolution indicated a broad set of tasks regarding election implementation, outreach, and fraud protection,[20] but the Board later indicated that most of the real policy discussion would occur at the Board level. This had the effect of limiting the MITF to a mission of near-pure outreach, frustrating both MITF members, who felt that their expertise in policy matters was not being appreciated, and outreach experts, who may have had more of an interest in the MITF had they known its specific purpose in advance. Further complicating the issue was the MITF s tremendous size and resultant unwieldiness.[21] Members activity in the task force flagged. and consequently both discussion and action by the MITF were hamstrung, leaving ICANN in the lurch for an effective outreach program.

This lack meant that ICANN missed an opportunity to take a leadership role in positioning the 2000 election. As the regional reports below show, the election was cast in different, sometimes wildly different, ways by the media organizations, companies, and interest groups that played a part in promoting it to voters. This contributed to inconsistencies and problems later on.

Third-party outreach and education: As is discussed in our look at the election on a region-by-region basis, substantial responsibility for outreach moved outside ICANN to (in varying degrees) media outlets, corporations, non-profit organizations, and even

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[19] English, Chinese, French, German, Japanese, Korean, Portuguese, and Spanish.

[20] *Resolutions Approved by the Board*, 99.144. [The task force will] generate and implement strategies for outreach and recruitment of a broad and numerous membership that is global representative of the Internet user community; design effective membership authentication and online election procedures; and undertake other membership implementation responsibilities. For many, this seemed to establish the MITF as the successor to the Membership Advisory Committee (MAC), on whose suggestions for election administration ICANN had relied heavily. This the MITF proved not to be.

[21] The MITF had nearly eighty members, divided into eleven task groups.

governments. While the tenor and effect of third-party outreach varied considerably by region and by nation, the lack of a strong, centralized outreach effort meant that third-party efforts could exert significant influence over the number and character of registrants.

ICANN did not offer overt support to these outreach efforts. A number of them complain that ICANN declined even to link to their online resources from *members.icann.org*. Given the electorate s large size and decentralized character, placement on a high-visibility page such as the official members site could have energized some of the self-organizing efforts of groups worldwide, particularly regarding voters new to the ICANN process. Concerns about favoritism could likely have been defused by offering equal space to all outreach efforts.

2.1.5. Decisions Regarding Technical Provisions

As mentioned above, technical provisions for both voter registration and the general election had significant shortcomings. During voter registration, over 170,000 registrants crowded ICANN s servers, overloading them and precluding an uncounted number of individuals from joining the At-Large Membership. The servers inability to keep up with demand traces back to decisions made early in the planning stages of the election.

Early in its thinking about the election, the Board severely underestimated the Internet community s interest in its election. In late 1999, ICANN President and CEO Mike Roberts referred to the election s minimum goal of 5000 members, [22] and ICANN staff seem to have designed the registration servers with an extremely limited electorate in mind. Servers began accepting registrations as early as February 2000, but, as is discussed above, the election plan went through significant changes between then and the end of registration on July 31. At the Yokohama meeting, Roberts stated that the servers had been designed with the February-March specifications in mind; they could handle approximately 100 registrations/day, with peaks of up to 500/day. Already by the Yokohama meeting, the servers had seen demand of about 1,000 applications/day, with peaks as high as 2,000/day. As a result, the servers were stumbling, and frequent service outages were the result. However, Roberts maintained that, while a few limited changes could be made, the system was basically resistant to upgrade, and reminded the Board that their design was consistent with original goals.

Server capacity was eventually increased, however, and ultimately permitted as many as 24,000 registrations per day. Such an increase in capacity indicates that the system was less resistant to scaling than had been thought; ICANN has not commented on the types of upgrades that were made.

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[22] Minutes from the Special Meeting of the Board, 9 December 1999.

The activation process, in which voters confirmed their registration by entering information mailed to them by ICANN, ran more smoothly. Problems in server capacity seemed to be resolved. But anecdotal evidence still suggests that many would-be voters had difficulty activating their membership. Lost (and ultimately irreplaceable) documentation, problems in the postal return system, and an unfamiliar activation system all contributed to creating a group of unsatisfied would-be members, able to register but not to activate their membership. However, since the size of this group cannot be objectively measured, it s impossible to determine whether their participation (or lack thereof) might have influenced the election s outcome.

By contracting actual election administration to the U.S.-based *election.com*, ICANN attempted to bring professional-grade resources and experience to bear on the task of providing robust, fraud-free election service. While generally successful, *election.com* s service failed at two critical moments, making voting service inaccessible for a substantial amount of time about an hour early in the election cycle, then for approximately forty minutes at the very end. While it may be neither possible nor productive to debate the cause of these outages, they raise obvious concern about voters access to the tools of voting, and about ICANN s responsibility to find and provide truly robust voting systems.

While the Election Committee had a lot of collective expertise and experience to offer, it is not clear that ICANN made best use of that expertise in soliciting bids for the election. Inflexible time restrictions, a lack of clarity in its specifications and, as discussed above, a certain vagueness in its intentions may have prevented ICANN from finding the provider best suited to the job. And while *election.com* s lack of disclosure to date about its election systems prevents an objective analysis of its service, service outages are clearly unacceptable in any serious election, online or otherwise.

2.1.6. Conclusions

Within the rules that the ICANN community established for the 2000 At-Large Election, it was a qualified success. The Membership selected five competent Directors to the Board, all of whom bring new perspectives and expertise that will benefit the corporation and the community over time. But in drafting future models for public participation, we must keep the shortcomings of the 2000 election in mind:

Inherent limitations of online voting systems. Technologies for online voting, particularly for voting on a global scale, are still nascent. As yet, the cost of carrying out even basic tasks like voter verification cheap and easy in the offline world is high, and the technology is problematic. While in the future the world may develop infrastructure that would help solve this problem, it does not yet exist. Therefore, for the foreseeable future, though online elections will enjoy many benefits from the Internet s unique nature, they will also suffer some substantial costs.

Lack of shared goals. The absence of community consensus on precisely what the 2000 election was supposed to achieve, and how it would achieve it, complicated even basic tasks of implementation. The lack was largely the result of strong, divergent pressures on

the Board that separately raised a broad range of tough questions yet collectively emphasized the overarching importance of quick action. Yet when attempts to push consensus forward failed in Cairo and Yokohama, the Board was forced to made quick, sharp changes in the direction of the election fairly late in the game. The Election and Nominating Committees operated with vague and overbroad missions, and outreach was generally unsuccessful.

Unaccountability and opacity of Board Committees. While they may have a role to play in putative future elections, the processes used by both the Nominating Committee and the Election Committee in 2000 raised questions about the loci of control for the election. While the Election Committee s rules were ultimately positive ones, the Nominating Committee s conduct raised questions not only about the utility of the Board-nominated ballot, but of the control wielded by the Committee over the member-nominated ballot. Again, better-defined goals and rules for both committees might have assisted in this.

Well-designed, but limited, election rules. Early drafts of the Election Committee s election rules were criticized for their treatment of the member-nomination process. And while, as mentioned above, even the final rules fell short of providing the community with a unified concept of the 2000 election s priorities, they were much improved and worked well within their limitations. Every ballot included at least one member-nominated candidate, and member-nominated candidates were elected in two regions. Moreover, no candidates that demonstrated the threshold two percent regional support were denied access to the ballot. The five-region system, despite concerns about its resolution, performed well and resulted in a manageable election. And while the preferential voting system was complicated and unfamiliar to many, it maintains a capacity for basic fairness and was a generally positive part of the 2000 election.

Lack of an organized central outreach effort. ICANN s main outreach effort, the MITF, was not as effective as had been anticipated, opening the door to a major role for third parties in voter outreach and education. While the effects of this varied regionally, ICANN ceded a significant amount of authority to set the timbre of the 2000 election to outside groups.

Inaccurate technical assumptions and inflexibility of voting/registration systems. The ICANN Board severely underestimated community interest in the 2000 election, but more troubling was its installation of voting/registration systems that could not be easily scaled up to handle unexpected demand. Although registration servers first went online in February 2000, and were designed to handle relatively limited loads, the fact that they were not designed with flexibility for future upgrades was a major oversight, and an obvious lesson for the future.

Unavailability/inconclusiveness of key data. Critical questions about the election in several key areas could not be answered, either because of the inaccessibility of key information or because that information had not been collected in the first place. For example, it has not been possible to estimate the level of fraud that might have occurred in this election, nor to determine whether voters were adequately authenticated by

ICANN s registration and election systems, nor whether At-Large Directors might have been captured by determined interest groups. Other important data, such as voter turnout, was available only in aggregate form, and could not be meaningfully deconstructed along national, demographic, or ethnic lines. Whether the data scarcity can be properly attributed to reticence on ICANN s part or to technical shortcomings of the election system is unclear. But considering the experimental nature of the 2000 election, ICANN s failure to make advance provision for thorough analysis of the election data is disappointing.

2.2. Regional Reports

2.2.1. Africa[23]

The Africa study was conducted using an e-mail survey and a comprehensive questionnaire, using e-mail as well as direct interviews (see Appendix 4).

The e-mail survey received a response from 99.87% of these respondents were South Africans, which roughly correlates to the numbers of Internet users on the continent. We feel that, since there were 130 African voters in the election, of which 26 were respondents to the survey, the results of the survey are significant. Measuring the response rate to the questionnaire in quantitative terms, one can conclude that it was not all that encouraging. However, all of those who responded appropriately addressed all the questions, and from this point of view, the information gathered is of high quality and has been taken to be representative of the target audience of the exercise. We summarize below our key observations.

The e-mail survey form was circulated to the At-Large Membership (ATM) candidates, key influencers, and e-mail lists for IOZ (Internet Organizations of South Africa) and Afrik-IT (African IT professionals working across the continent). The results are tabulated in Appendix 4, together with a further quantitative analysis.

It should be recognized that, due to the method of dissemination, the survey was inevitably biased towards people with some professional involvement in the information and communications technology industry. Such individuals are more likely to have an interest and knowledge of how the Internet works than would common users, and are more likely to be members of e-mail discussion lists and have regular access to the Internet and, by extension, such surveys.

2.2.1.1. Participation and Contextual Variables

Internet use

Internet access in Africa is uneven, both geographically and across various socioeconomic groups. South Africa has disproportionately high penetration of Internet

[23] Incorporating initial Africa Regional Report Prepared by Professor Clement Dzidonu, International Institute for Information Technology (INIIT), Accra, Ghana. Finalized by Alan Levin and Mark Neville, Future Perfect Corporation, Cape Town, South Africa, May 2001

Interviews and references were obtained from:Geoff Hainebach — Chairman Cape IT Initiative, Peter Frampton — CEO Cape IT Initiative, Calvin Browne — Self-nominated ALM candidate and various other survey respondents.

connectivity in Africa, accounting for 67% of the dial-up Internet connections on the continent. Today, all African countries (including South Africa) have relatively low Internet penetration in comparison with the developed world. At the time of the ICANN At-Large elections last fall, only 0.3% of the African population had dial-up Internet access. One reason for this is the retarded development of telecommunications infrastructure in Africa. Most telecom services are delivered by state monopolies, resulting in poor service and high user costs.

Electoral systems and traditions

The history of truly democratic elections in Africa is relatively recent and shallow, in comparison with the United States and Europe. Throughout much of Africa, traditional tribal structures and loyalty to traditional authority still form a deep cultural inclination. However, most people involved with Internet functionality are likely to be among the better educated, which consequently leads to a better appreciation of democratic process. This was evident in the way that the ALM participated in the election process in Africa. In many respects, such factors overwhelm the nuances of the ALM election process within the African context.

2.2.1.2. At-Large Membership and Election

In this section we review the ALM recruitment drive and outreach program in the African region, and the subsequent election of the ALM Directors. We also examine some of the problems encountered by the African regional Group of the Membership Implementation Task Force (MITF) as well as some of the lessons learnt from the process.

The Pre-Election Phase

The ALM recruitment drive and outreach program was coordinated by the African Group of the MITF. The Group carried out a number of tasks, including:

- An outreach program to educate the public about the concept of ICANN, its process, functions and activities
- An ALM recruitment drive
- A public awareness campaign to inform and educate the public about the voting process and procedures
- An outreach program to encourage registered ALMs to activate their membership and cast their vote.

A number of methods were used to facilitate the recruitment drive and the outreach program, including:

- Messages to numerous lists of African interest
- Targeted e-mails to members of the African Internet community

- Radio interviews and talk shows devoted to promotion of ICANN and the ALM concept
- Press releases
- Notices at conferences, universities and other public meetings targeting the Africa Internet community
- Letters to noted public figures and politicians urging them to promote the ICANN concept and to encourage people to register.

A number of ISPs were also contacted (via messages posted on their web sites) and encouraged to join the recruitment drive. Some of these ISPs went so far as to directly contact their subscribers by e-mails, encouraging them to join the ALM and promote the ICANN concept.

A turning point in the pre-election phase was when Pierre Dandjinou, a member of the MITF-Africa (and now a member of the ICANN At-Large study group), made the first announcement of the ALM elections at the AfriNIC and Afnog meetings in Cape Town in mid-May 2000. It was through this announcement, to a very small group, that the elections became more widely known across the region. A look at the number of registrants for the election demonstrates that more could have been done in a timelier manner to obtain better representation from large Internet user populations other than Ghana and Benin. Interview respondents did cite this as an example of why the ALM is needed to increase the transparency and legitimacy of ICANN.

Various channels were used to make the event more widely known. Media exposure in two widely distributed South African national publications (*Financial Mail* and *Weekly Mail and Guardian*) helped somewhat to increase the number of registrants. In addition, once the registrations were closed and the nominees announced, various Internet Network providers made efforts to enable higher visibility of ICANN and its functions. The only South African network to refuse endorsement was the South African government-controlled telecommunications company, Telkom, which stated that this was for political reasons. Unlike the Japanese and the Brazilian governments, the South African government did not support its candidates for the election for undisclosed reasons.

Problems Encountered

The African ALM recruitment and outreach program encountered a number of problems. These included organizational difficulties, especially in the area of establishing reliable and effective channels for information dissemination and communication. Also problematic was the lack of resources to facilitate the implementation of the recruitment drive and outreach program. The MITF was made up of volunteers using their own resources, with no funding from ICANN to support their activities. Another problem area was the time constraint. Insufficient time was given to effectively carry out the recruitment drive and outreach program as well as the voter education and dialog process. The language barrier also made communication more difficult.

The MITF-Africa also faced a general problem of apathy and lack of interest on all matters relating to ICANN. Very few people knew what ICANN is all about, and of those who knew about the organization, not many were anxious to get involved in its processes. This made the task of undertaking the ALM recruitment drive and outreach program all the more difficult.

Outcome of the Recruitment Drive and Outreach Programme

The At-Large recruitment drive prior to the election managed to recruit 792 individuals. Of these, 315 activated their membership, and only 120 actually voted. Although these numbers correlate roughly with the percentages in North American region, it may be deduced that the importance and standing of ICANN in Africa is unrealized or considered to be irrelevant.

Global registrations	158,593
African registrations	787
Africa % of global	0.50%

Though the membership recruitment drive was declared an overwhelming success when judged on the basis of the worldwide results, a different picture emerged when viewed within the context of the African region. The recruitment drive in the region did not yield high numeric results.

However, if one compares the number of ALM from Africa with the number of hosts carrying African ccTLDs, there is some correlation. This is the most objective means of measuring Internet usage on the continent, but it does have its weaknesses, as we can expect that there are many hosts in Africa carrying gTLDs.

Internet hosts (Global vs. Africa)		
°	**Jan-00**	**Jan-01**
Global hosts	72,398,092	109,574,429
SA % of global	0.23%	0.17%
Africa % of global	0.26%	0.20%

This shows some correlation between Internet usage in Africa and the numbers of the ALM.

It could be argued that: the recruitment exercise was more successful in some countries than others. For example, of the 787 applications for membership, South Africa registered 201 applicants, followed by Ghana with 112, then Benin (48), Senegal (41), Egypt (34), Madagascar (31), Morocco (27) and Niger (27), Kenya (21), Mauritania (20).

These 10 countries accounted for close to 80% of the total number of applicants. With an additional 8 African countries recording between 10 and 20 applicants, the vast majority of countries recorded a single digit number of applicants, with some of them registering only one applicant. Finally, eight of the fifty-four countries in Africa did not have a single ALM registration.

The relatively high number of applicants from South Africa can be explained by the fact that the country has the highest number of Internet subscribers on the continent. No South Africans participated in the MITF.

One can to some extent attribute the unusually high number of applicants from Ghana and Benin (where there were more ALM registrations than there are hosts using those ccTLDs) to the fact that these countries have MITF-Africa members whose personal initiative to recruit locally had some impact. In the case of Ghana, a local ISP played an active role in the public education and mobilization exercise.

The Activated Membership (The Eligible Voters)

Of the 787 applicants from the African region, only 315 (40%) activated their membership. The gender composition of the activated members was 34 female (11%), 261 male (83%) and 20 did not specify.

Global activations	76,183
African activations	315
Africa % of global	0.41%

If one compares this figure with the ratio of hosts using African ccTLDs, Africa s activation percentage was in line with the rest of the world.

The table below, reproduced from ICANN s Election Data Site, indicates that the majority of the 315 African ALM members who activated their membership learned about the ICANN ALM and the election process by way of *electronic mail.* These could be people reached directly by the MITF-Africa and others by way of targeted e-mails, or by way of announcements on specific African-interest lists.

Media	**Number**

At Work	53
Banner Advertisement	1
E-mail	94
Friend/Acquaintance	65
Newspaper/Magazine	15
Other	13
Print Media	1
Search Engine	1
Website	45
No response	27

The above data also indicates that a reasonable number of people found out about the process from *friends and acquaintances*. In fact, combining the number for those who learned about the process *at work* (which in itself, is also another type of personal contact) with those who were informed by friends and acquaintances, it is obvious that person-to-person contacts ranks as the highest means by which people in the African region were informed about the ALM election process. It is possible that some of these contacts were made by e-mail.

It is interesting to note that the Web as a medium for the recruitment drive and outreach program ranks third, with about 45 out of the 315 activated voters learning about the process via web sites. This means that only about 15% of the eligible voters learned about the ICANN ALM and the election process via the Web. This figure is an interesting one, considering that one needed to have an access to the Web to be able to vote in the ALM election.

Also, although MITF-Africa made an effort to use the newspapers and the print media as a means for reaching a greater portion of the African public, the evidence shows that not many of those who might have read about the process in the papers went ahead and registered. This may be because the vast majority of people with access to print media don t also have access to the Internet. Even some of those with general Internet access may not have *Web* access, or they cannot afford the cost of staying on the Web and carrying out the registration process.

It is clear that the Web-based online registration and voting was not the most appropriate for regions like Africa, where poor Internet connectivity and high out of pocket cost for Web access is the norm. In Africa, the majority of people with access to an Internet connection (who are not necessarily subscribers, e.g. those using Internet cafes for

access) use only e-mail. Most Internet users do not own a computer; they either rely on Internet cafes, their employer s system or — as in the case of college students — the computer system of their institution. Because they do not own the access equipment, they do not have prolonged access to enable them to browse the Web or carry out a Web-based transaction like ALM registration or voting. The majority of these people — many of whom may have free e-mail addresses — therefore most often use the Internet mainly for e-mail.

Another lesson learned from the ALM recruitment drive and outreach program is the lack of knowledge within the African Internet community and the public on matters relating to ICANN. Most people, including long-time users of the Internet, have not heard of ICANN; the few who had come across the name remain in the dark about how it works, and for what purpose or role. ICANN should therefore have done more to educate the Internet community about its role, structure and process long before it embarked on the ALM process. Although the ALM process did play some educational role, more should have been done in advance of the election.

At least within the context of Africa and other low-Internet-usage regions, there is a need in the future for ICANN to increase its public education and awareness initiatives. ICANN should not rely on the fact that close to 160,000 people accessed its web site to complete ALM forms, as an indication of a worldwide knowledge of its existence and process. Clearly this knowledge was not evenly distributed across all regions.

Comments on the Candidate Nomination Process

Most of the respondents felt that the self-nomination process was fair and transparent. There was, however, some disagreement on the degree of fairness and the transparency of the procedure used by the Nominating Committee of ICANN to nominate the two candidates for the African region. Some people were not aware of the criteria and the procedure used by the Nominating Committee, and they therefore could not regard the candidate nomination process as transparent. In the words of one respondent: the two-way candidate nomination did not appear transparent to people, as there was suspicion as to ICANN staff s willingness to coach a few candidates .

Technical matters

The technical problems associated with late registrations were publicly debated, and ICANN s credibility (as well as the election s legitimacy) was tainted. Specifically in South Africa, discussions were extensive in both the national and local communities.

The late posting (and, in some cases, complete non-delivery) of PIN numbers was disastrous. This problem was especially acute in Africa; it may have been less so in regions where there was earlier and more robust ICANN participation. It was also noted by many respondents that the guidelines regarding the date for final activation of one s membership were hidden or not obvious, and that this additional voting requirement compounded the postal problems. A number of comments were made that this step unnecessarily complicated the process.

The majority of respondents felt that the Web-based membership application procedure excluded those without Web-access from the process. In the words of one respondent:

- it certainly DID exclude those with e-mail only access to the net... additional ways have to be found in order to bring this group into the online democratic fold. Many expressed the same opinions about the membership activation procedure. A sample of these views, which are indicative of the general consensus on this issue, follow:

- it definitely did It was a long procedure that required people to be on their guards, [the combination of] snail-mail and e-mail, I think, was too much for a lot of impatient people, but also for those who showed interest at first and then got discouraged by the duration of the process.

- ... it excluded a lot of people due to its complexity, the overload on the server itself that made it impossible for people to vote, etc...

- ... the activation procedure [added] more complexity to the process. most people got lost and ended up not activating when they should have done it... and thus could not vote....

The Election Campaign

Overall, the campaign was generally successful. The minimum threshold for self-nominated candidacy was appropriate and the candidates participated in the ICANN forums.

While a number of respondents felt there was enough time to get acquainted with the candidates, some felt there was an element of time constraint, and that some of the candidates did not show enough commitment in responding to the questions posed by the ALMs during the campaign. In the words of one of the respondents: the process was interesting Not sure it was a problem of ICANN but I found that at first there was not much info about the candidates. They were a little slow at providing information, especially about why they should be elected

On the whole, it was felt that not many people participated in the online forum for one reason or another. This lack of interest in the online candidate dialogue session does not help the awareness situation, given that some of the candidates were not known outside their countries. It could be that this was part of the reason that less than 50% of the eligible voters actually casting their vote. This low final turnout could also have been due to the lengthy and complicated process, which drained the voters of energy required to complete the entire process.

On whether the online dialog phase — designed to facilitate interaction with the candidates during the campaign process — was informative, some felt that the it was, while others said that the dialog session was short and not as useful as they would have liked. Some were of the view that ICANN should, in the future, find ways of making the

dialog phase more instantaneous, through chat sessions or other ways in addition to e-mail and web-based methods.

The Voter Education Exercise

Respondents were asked to comment on the adequacy and informative character of the voter education exercise prior to the actual election. A number were of the view that the process had some inherent problems: for example, there was too much information to absorb and act on in a short period of time. In the view of one of these respondents: I struggled a bit. Too much information on things I didn't really need to know, and not nearly enough simplicity on the things I did want to know

Some, however, were of the opposite view. They thought that the voter education exercise was fine but limited in scope, as there were no appropriate channels for relaying the information in Africa.

A number of recommendations were made to improve the process in the future. For example, one suggestion was that local media and other channels should be used to facilitate the voter education exercise.

The Election

Of the 315 members who activated their membership, only 130 cast their vote. This figure represents less than 41% of the eligible voters and less than 16.5% of the original number of 787 applicants.

Global votes	34,035
African Votes	130
Africa % of global	0.38%

130 votes represents 0.0054% of the dial-up user population (similar to that of the North American region). We can therefore deduce that, although the number of ALM in Africa is numerically low, they are not disproportionately low in comparison with other regions.

Comments on the Election process

The vast majority of the respondents felt that not many people understood the rules and the procedures governing the membership registration and election process. Some attributed this to the newness of ICANN itself, but also to the confusing nature of those rules and procedures.

Some comments:

- I think that the whole process was problematic. Well designed in theory, but badly implemented. I couldn't even vote because the process would give back errors. E-mails in this regard were never answered.

- the rules and the procedures are not straightforward, I even got confused sometimes... I think it should be more simplified and coordinated.

- ...while the principle was very good [but] needs to be improved, there needs to be more awareness raising about these new methods of online democracy.

- ...the rules and procedures were not that simple to understand, as it was all Web-based.....

Some respondents were more specific: in their view, people were required to learn about ICANN, its process, functions and the whole business of the concept behind the ALM and the election of the Directors in a short period of time. The language problem was also singled out as one of the possible problem areas. A number of people were of the view that the rules and the procedures were not translated into other languages in a timely manner. This situation put the non-English speaking ALMs in Africa at a disadvantage. For example, in Africa there are four main language zones: English, French, Arabic and Portuguese. While the rules and the procedure were eventually translated into French and Arabic, they were never translated into Portuguese.

Overall, and with the exception of the technical problems, the election system was found to be appropriate. However, the use of Web-based voting does reduce or even eliminate the ability for individuals in a number of African countries to vote. It is commonly thought that an e-mail option is needed, although there are no answers to how this can be done with secure authentication, such as is offered through the Web.

Post-Election Phase

Comments on the Web-based Voting Process

Due to the fact that less than 50% of eligible, registered voters cast their vote, respondents were asked to comment on whether the Web-based voting process excluded some eligible voters without Web-access from participation in the voting process.

The majority of respondents were of the view that the Web-based voting process did in fact exclude people without Web-access. In the words of one respondent: ... the web-based voting was not at all suited for Africa. So, it is quite certain that some eligible voters had been excluded...

A number of respondents also cited a lack of clarity about the ultimate purpose of the ALM elections. In the view of one of these respondents: the purpose of the election of the Directors was not clear at the time of voting and is still not clear. Nor is the role of the ALM in the management of ICANN.

2.2.1.3. Conclusion and Assessment

Overall, the ICANN At-Large elections proved to be a success. African At-Large members and the Internet community do want to vote in direct elections for ICANN Board representatives.

However, several problems need to be looked at:

- **The lack of awareness of ICANN**

  There is a general lack of awareness of ICANN, and much more is therefore needed in the areas of outreach and education. The ALM recruitment drive and outreach program did have a positive impact, but did not change the general situation appreciably. The MITF-Africa on the whole faced a general problem of apathy and lack of interest within the Africa region on all matters relating to ICANN. Very few people knew what ICANN is all about. Most people, including long-time users of the Internet had not heard of ICANN; many of the ones who had heard of it remain in the dark about its role, structure and process.

  ICANN should do more to educate the Internet community about these aspects of its mission and operation. ICANN should not use the fact that close to 160,000 people completed the ALM forms on its web site as an indication of adequate awareness on a global level. A broader global communication strategy needs to be developed. People need to know more about ICANN, and efforts have to be made to make information available in all major official languages of African countries. Relevant material with regional specificity must be developed.

- **Representation problems**

  The perceived under-representation of the African region will have a negative impact on Africa s involvement in the ICANN process, structure and governance in the future, if steps are not taken to get more Africans involved and interested in ICANN.

  Africa does have special requirements, and as such it needs representation in all of the various ICANN bodies. Most people regard the self-nomination process as fair and transparent. But there was some disagreement on the degree of fairness and the transparency of the procedure used by ICANN s Nominating Committee to nominate the two candidates for the African region. Another option is to only have self-nominations. This will also reduce the complexity of the process. In addition to At-Large Directors, an *At-Large Advisory Committee* is regarded as one of the most appropriate representational model to ensure public representation and participation within the ICANN structure.

- **Technical matters**

  If the authentication process continues to utilize snail mail, more time must be allowed for letters to arrive at their African destinations. The Web-based online

registration and voting procedure is not appropriate for regions like Africa, with poor Internet connectivity and high out-of-pocket cost for the average subscriber linking to the Web.

It was also felt that not many people participated in the online candidate forum for one reason or another, and that this lack of interest does not help awareness, given that some candidates were not known outside their countries. ICANN should assist in various ways to make the online dialog phase — which facilitates interaction with the candidates during the campaign process — more instantaneous, through chat sessions or other ways, as well as the use of e-mail and Web-based methods.

The vast majority of respondents felt that not many people understood the rules and procedures governing the election process, including membership application, membership activation to qualify for voting, and the voting process itself. The step for activations was particularly troubling and deemed unnecessary. The consensus was that the election process must be simplified.

A number of respondents suggested the need for more outreach programs in the African region to encourage and facilitate active participation in the ICANN process. People need to know more about ICANN, and efforts have to be made to make information available in all major official languages of African countries.

Others also recommended more voter education about the specific role of the ALM and the Directors elected by the ALM. Another suggestion was to facilitate decentralization, to ensure that regional specificities are addressed before reaching any consensus on a global level.

Regarding the specification problem of membership activation, one respondent suggested: It may be a better idea to try and allow people to receive an e-mail with an activation code. Could help with the slow snail mail problem. This does not necessarily have to be a totally automated process. It could be done where the information is verified by computer and then put in a waiting queue for human verification and then the code could be allocated. The other [possibility] may be to have an e-mail ballot system as well. Yet, we recognize that this needs close examination for potential fraud and authentication problems.

2.2.2. Asia and Pacific Region[24]

2.2.2.1. Participation and contextual variables

Internet use

While the Asia and Pacific region accounts for 60 % of the world s population, it currently has only about a quarter of the world s Internet users. This relatively low degree of Internet penetration, however, is changing very rapidly as the Internet grows quickly in such large populated countries as China, India and Indonesia (see Appendix 1).

Internet penetration in the Asia and Pacific region varies widely across national boundaries. Over the last three years, South Korea, as one example, has become the world's leading nation for broadband services, with over 5 million users and a penetration of DSL and cable modem service of more than 30% of households[25]. Australia, too, has been a leading Internet nation since the early 1990s. For its part, Japan has a well-developed wired Internet market, but is also known for mobile Internet usage, with 36.9 million mobile Internet subscribers as of April 2001[26].

At the other end of the Internet development scale, countries such as Laos and Vietnam have scarcely any Internet connectivity to speak of. According to the most recent Internet Software Consortium/Network Wizards Internet Domain Survey[27] Vietnam had just 179 hosts connected to the Internet. Japan, by comparison, had 4,640,863.

Electoral systems and traditions

Broadly speaking, both democracy and open, representative elections have had a relatively short history in the Asia and Pacific region. The actual implementation and interpretation of the concepts of good democracy and fair elections differ according to the historic, societal and political culture and conventions in each region. Societal conventions of making decisions at community level, such as in village group or business organizations or political parties, are deeply rooted to the cultural traditions of many

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[24] This report reviews the ICANN At-Large Election from an Asian and Pacific perspective. It combines the report by Professor MyungKoo Kang from Korea and the report by Izumi Aizu, Asia Network Research, Tokyo, Japan, Kuala Lumpur, Malaysia and Adam Peake, Center for Global Communications, Tokyo, Japan.

[25] Ministry of Information, Korea, *http:/www.mic.go.kr/*

[26] Mobile Media Japan (MMJ), April 30, 2001 *http://www.mobilemediajapan.com/*.

[27] Internet Domain Survey, January 2001, Internet Software Consortium (Produced by Network Wizards) *http://www.isc.org/ds/*.

Asian nations. In general, Asians value notions of groups and consensus more than the concepts of the individual and majority voting system.

In countries such as Australia, on the other hand, democracy is firmly established and well understood. There, suffrage is universal and compulsory for those over the age of 18 years. India, too, boasts a proud parliamentary tradition.

Yet other countries have different views of governance from the ones generally accepted in the West. The Lao People's Democratic Republic and Democratic People's Republic of Korea (North Korea) are Communist states. China is also a communist state, although it has established universal suffrage in elections for the legislative arm of its government.

South Korea operates a system combining party-list proportional representation with single-member districts. After more than thirty years of military rule, South Koreans since 1987 have begun to enjoy democratic political processes.

Taiwan has gradually democratized since 1949, and is now a multi-party democratic regime headed by a popularly-elected President[28]. It has a complex electoral system that includes a majority of seats elected by direct popular vote, a smaller number of seats allocated to political parties on the basis of nationwide vote totals, and the remainder elected by overseas Chinese and the aboriginal population.

Other Asian governments run the gamut of openness and democracy. In Indonesia, approximately 8% of the legislative branch is appointed by the military. The legislative branch of the Philippines government is a bicameral Senate and House of Representatives. Thailand is a constitutional monarchy with a bicameral Senate and House of Representatives. Until the 2000 elections, the King appointed all representatives to the Senate.

In Japan, democratic principles have become well rooted in the country s political representation and decision-making traditions. Universal suffrage was first introduced in Japan in 1925, but the transition to full representative democracy was marked by the adoption of a new constitution after World War II. The Japanese government operates through a combination of proportional representation and direct election.

Until very recently in Japan, it was both common and reasonably well accepted that companies and trade unions would be heavily involved at all levels of the electoral process. Until the mid-1980s, employers and trade unions regularly instructed their employees and members on how to vote. Such behavior was *not* regarded as unfair, nor as any form of electoral capture unless some violation of specific rules or laws has occurred.

These examples of various representative systems and different ideas about representation and democracy lead to an important conclusion: **any region-wide election**

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[28] The World Factbook, CIA, *http://www.cia.gov/cia/publications/factbook/index.html*

in the Asia/Australia/Pacific region must have explicit and common rules for how the election is to be conducted.

2.2.2.2. At-Large Membership and Election

The Pre-Election Phase

ICANN s Membership Implementation Task Force (MITF) was basically ineffective in the Asia and Pacific region. However, an independent program of outreach and education was undertaken during 1999 and 2000 through joint efforts by various stakeholders in the Asian Internet community. As part of the program, seminars were held for discussion of ICANN issues, including the At-Large, in Seoul, Bangkok, Taipei, Beijing, Kuala Lumpur, Jakarta, and other cities. Most National Network Information centers and country code TLD registries currently operate some kind of ICANN education program, and APNIC[29] conducts regular training programs which include an ICANN introduction session. However, these educational activities tend to be directed at people with a strong technical and/or business interest in the Internet, rather at average Internet users in the region.

By the September 8 deadline, 38,242 Asia and Pacific users had activated their At-Large Memberships. In comparison with the other regions, the Asia and Pacific region had the highest number of activated At-Large members, as well as the highest number of actual voters (well ahead of the next-highest regional turnout, Europe s, with 23,442 members). Of the nations that fall into ICANN's Asia and Pacific category, Japan (38,931) had the most At-Large members, followed by China (33,670), Taiwan (9,193), and Korea (6,439) (see Appendix 2).

The Japan ICANN Forum and chain reaction

On of Japan s earliest At-Large registration campaigns was initiated in February 2000 by the Internet Governance Study Group (IGSG), a group originally established to promote popular understanding of ICANN as a whole. The campaign was not initially intended to focus on the At-Large election, but rather to create awareness among the Japanese Internet community over a wide range of ICANN-related issues (the At-Large election being only one). IGSG organized meetings on a bimonthly basis, giving lectures on ICANN-related issues to audiences of around 30 to 50 people, mostly in Tokyo. Later, IGSG organized a number of meetings, three in Tokyo and one in Osaka, to specifically address the At-Large Election.

The second and more significant organizing activity around the At-Large election was the Japan ICANN Forum (JIF). This *ad hoc* body became the core organizer of the At-Large election campaign in Japan.

[29] The Asia-Pacific Network Information Center.

At the time of the election, there was a strong fear (and confusion) in some quarters that Japan was in danger of losing the only Board seat then held by a Japanese director Professor Jun Murai had served on the Board since ICANN s creation. This was perhaps the single biggest reason why the Japanese Internet community, along with the Japanese government and industry, teamed up so vigorously to promote voter participation: the perceived need to place another Japanese on the Board.

Another component of the At-Large Campaign in Japan was JCA-NET[30], together with the Civil Society Internet Forum. JCA-NET organized their own campaign effort and selected a candidate for member nomination, Ms. Yukika Matsumoto.

In May 2000, ICANN released the first batch data collected from the At-Large registration process, data that included a country-by-country breakdown of recent registrations. These numbers showed Japanese registrations to be quite low, sending an alarming signal to some of those concerned about Japan s future positioning vis- -vis the Board. This further encouraged the activities surrounding the JIF. Japanese registration numbers were generally comparable to those of the United States and Europe, but there were as many Koreans registered as Japanese. Campaign organizers reacted quickly. The JIF was officially launched on May 18, and it created a Web site to explain what the ICANN At-Large election was, how to register, and how to vote entirely in Japanese, and with detailed instructions on the registration process. Many of the JIF s member companies, along with participating industry associations, e-mailed their employees to encourage them to register as At-Large members, and (later) instructed them how to vote and for whom.

JIF also attempted to focus Japanese interests by ensuring there would only be a single Japanese candidate on the ballot. Early in the process, there was discussion about more than two Japanese candidates appearing on the ballot; JIF expressed concerns this might dilute the Japanese vote. However this matter was resolved without JIF intervention when the Nomination Committee selected just one Japanese candidate, Masanobu Katoh.

JIF made a special effort to recruit more At-Large members in Japan. However, the most effective channel came from outside the group. Though it is very difficult to analyze exactly where and how the large number of Japanese members came to register, there is sufficient evidence that a banner link on the Yahoo! Japan Web site was a major catalyst for public registration. The banner encouraged people to join the ICANN At-Large Membership, and linked to the JIF Web site. The registration campaign s language choices also proved very effective at appealing to the nationalistic sentiment, claiming that *if you do not participate there will be no Japanese representative on the ICANN board and our national interest could be endangered* (paraphrased). The Yahoo! banner was extremely successful, perhaps overly so; within a few weeks (even before the deadline for member registration), this direct link banner on Yahoo! Japan s top page was removed.

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[30] *http://www.jca.apc.org/index-en.html*

By early July 2000, it had become clear that Japan was dominating member registration by a massive number. This, in turn, encouraged renewed registration efforts in other countries within Asia, particularly in the People s Republic of China. It is believed that CNNIC started to organize an ICANN At-Large campaign, using their own Web site and some other popular portal sites, including a lucky draw where registered ICANN At-Large members could enter a contest to win a free PC. It was clear that the Japanese triggered an over-reaction from China, in an attempt to counter Japan s huge lead. Similar reactions were seen in Taiwan and, to a lesser degree, in Korea.

These massive registration attempts severely overloaded the ICANN membership web servers, almost to the point of breakdown, for much of July. This meant that many people worldwide were unable to register, unfortunately leading to rumors that ICANN had deliberately throttled the servers capacity and were refusing connections from IP addresses from the Asia and Pacific region.

Under the rules created by the Election Committee, member-nominated candidates had to be endorsed by at least twenty of their region s activated members, or 2% of the eligible active members in their region, whichever was higher. Because the thresholds were calculated by region, the large number of registrants from Japan effectively prevented candidates from smaller countries getting on to the ballot through petition. Only one member-nominated candidate, Hongji Li from China, obtained more than the 2% threshold. Professor Kou-Wei Wu from Taiwan thus could not run since the 765 endorsements he received was short by just 3 votes from the target of 768 (out of 38,246 total activated members)[31].

Nominating members — nationalistic competition

Although China had a large number of registered At-Large members, the activation rate of Chinese registrants was very low. There are two possible explanations for this. One is that China s postal system is not accurate or does not deliver within an acceptable amount of time for registrants to activate their membership by the September 8 deadline. The other explanation is that, since the members had registered collectively at certain organizations or groups, the addresses of member records proved to be the same, leading to a reduction in the number of effective members from China.

At the ICANN meeting in Yokohama, Japanese grass-roots movements officially objected to what they regarded as the nationalistic, top-down mobilization led by large corporations and by the Japanese Ministry of Post and Telecommunication. One civil activist group, JCA-Net, a group that had been active in the Internet and telecommunications field, officially presented the argument that this mobilization of At-Large members was in clear violation of the principles of democracy and of Japan s civil society.

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[31] The simple 2% of 38,246 is 764.92, thus making 765 endorsements seemed to be passing this mark. It is not clear why the minimum was set as 768, not 765 and thus Prof Kuo-Wei Wu was not accepted as member-nominated candidate.

As a result of this criticism, during the meeting of the Civil Society for Internet Democracy at Yokohama, a Civil Society Internet Forum (CSIF) was established to watch over the issue of Internet governance. Ever since, CSIF has provided forums for dialogue between At-Large directors and At-Large members, including three meetings. During a CSIF meeting, initiated by Japan s JCA-Net, Korea Internet Forum and Electronic Frontier Australia (among others), it was concluded that the Forum s members would rally support for Ms. Yukika Matsumoto who is one of the leaders of Japan s women s movements and a board member at JCA-Net; as the Asian region s civil society candidate. Ms. Yukika s candidacy was seen by many as a counterbalance to that of Masanobu Katoh, the candidate supported by the Japanese government and by several large corporations.

However, despite grass-roots activism in Japan, Korea, Australia, and others to support Ms. Yukika s candidacy, she failed to reach the minimum 2% of supporters in the Asia-Pacific region.

In China and Taiwan, candidate Johannes Chiang, nominated by the ICANN Nomination Committee, and candidate Lulin Gao, the only member-nominated candidate to surpass the 2% threshold in the Asia-Pacific region, competed for votes. Both earned significant support and obtained second (Gao) and third (Chiang) place in the final election, but both fell significantly short of the level of support displayed for Mr. Katoh.

As nationalistic competition became more acute in the Asia-Pacific region, the global Internet community expressed many concerns, but did not know how to respond. Although several grass-roots movement groups from the Asian region presented the concept of the pan-Asian civil society, and criticized the nationalistic sentiment of nominating civic society candidates, their efforts proved insufficient to counter the nationalistic trend.

After the election, experts from the Asian region predicted that the trends seen in the 2000 election would continue in any future elections. In particular, they predicted that if China were better prepared for a future election, nationalistic competition in the region could get even fiercer, and a situation will evolve in which a few countries make oaths or deals and cluster together.

Despite Low Awareness of ICANN

Awareness of ICANN among the Internet population in the region in general appears to be relatively low. During 2000, major Japanese newspapers ran fewer than 90 stories about ICANN. However, as is to be expected in a technically sophisticated country, the Japanese computer press has covered ICANN quite extensively. It can be noted that a certain sense of remoteness may also contribute to the low level of awareness on issues regarding the Internet (and other techno-business domains) because of a perception by many Asian consumers that such discussions are done in the West.

The Asia and Pacific region community is lightly represented on ICANN's managing structures; this, too, may contribute to a lower awareness of the organization. 3 of 19 ICANN Directors are from the Asia and Pacific region.

The predominant characteristic of the Asia and Pacific At-Large activated members were that they were between 20-39 years of age. The proportion of domain owners to the total membership in the Asia and Pacific region is the lowest among the five regions. The Asia and Pacific At-Large activated members were professionally active in the computer software, the Internet business, and other general business.

Sources Where Asia/Australia/Pacific Region At-Large Members Learned About the Election

	Number	**% of Total**
At Work	5526	14.4%
Banner Advertisement	114	0.3%
E-mail	4105	10.7%
Friend/Acquaintance	2761	7.2%
Newspaper/Magazine	1348	3.5%
Other	887	2.3%
Print Media	162	0.4%
Search Engine	291	0.8%
Website	4682	12.2%
No Response	18370	48.0%

The Asia-Pacific region was the only one where "at work" was the most commonly cited place where members had heard of ICANN's At-Large membership. The second most common answer from the region was from a Web site, which was the most popular answer in only one other region (North America).

The Election Phase and Voters

Masanobu Katoh was elected by an overwhelming majority of 78.4%. Lulin Gao of China earned 9.9% of the vote, and Johannes Chiang earned 5.3%. Compared to the North American region, where the election moved through five automatic runoffs because of intense competition, the election in the Asia and Pacific region was a landslide. What does this mean that the region with the least public discussion determined its representative with the least trouble? The Asia and Pacific region had the

most membership registrations; it appears, because of the member mobilization competition discussed above.

The tables below show that, at all stages of the At-Large election process, the portion of individuals participating from the Asia and Pacific region was the highest of all regions. Table 2 shows the history of verified members from the selected countries in the region and from Canada, Germany, the United Kingdom and the United States. These four countries had the highest number of members when the first registration figures were released, and they are thus a useful data point against which to view membership growth in our selected Asia and Pacific countries.

Table 1:

Total Valid Votes	34,035
Asia and Pacific	17,745
AP Percentage of Total	52%

Table 2. Total Verified At-Large Membership, Asia and Pacific Region

	22-May-00	**19-Jul-00**	**26-Jul-00**	**31-Jul-00**
Australia	310	519	1,096	1,161
China	41	71	28,732	33,670
Hong Kong	38	56	112	122
India	200	328	1,709	2,025
Japan	338	20,261	33,227	38,931
Korea, South	331	1,146	6,247	6,439
New Zealand	101	154	222	229
Singapore	37	99	212	226
Taiwan	18	71	10,780	9,193
Thailand	69	423	736	819
Germany	4,107	8,674	17,409	2,094
United States	6,915	12,115	18,012	20,475
Canada	715	1,348	1,975	2,150

United Kingdom	669	1,633	2,080	19,501

Table 3: Votes Cast in the Asia and Pacific Region

Candidate (Country)	**Votes**
Masanobu Katoh (Japan)	13,913
Lurin Gao (China)	1,750
Johannes Chang (Taiwan)	935
Hongee Li (China)	749
Sreswan Ramadan (Malaysia)	398
Total	17,745

2.2.2.3. Interim Conclusions and Suggestions

Many interviewees agreed that the At-Large Election has significant benefits. Clearly, it provided ICANN with an important opportunity to recognize the importance and interests of general Internet users, while facilitating awareness of ICANN among those users.

Regional Representation

Some respondents expressed concerns with regard to regional representation. The Asian and Pacific region is composed of numerous countries with very heterogeneous linguistic and cultural backgrounds. One respondent objected to the current structure of the five regions. It may be desirable to modify the division of regions, which seems disproportionately favorable to the United States and Canada, in the next election. That division should be based on forward-looking perspectives that take into account the growth rate of Internet users and the potential size of user populations (see Appendix 1). To reduce the transaction and coordination cost of communicating between countries with different linguistic and cultural characteristics, the division of the regions should be based on cultural proximity as well as the forward-looking method.

The election process and problems encountered

Respondents also cited problems with the registration process. Unfamiliarity with the At-Large election procedure, complicated ballots, pre-registration systems, and the need for membership activation, compounded by technical problems, all seemed to result in relatively low participation. Some respondents stated that the registration process should be more concise and succinct, in order to allow all potential At-Large members to join the At-Large Election.

Some respondents also suggested that the combination of member-nominated candidates and those chosen by the Nominating Committee was not an efficient method of attracting the interest of the general public. It only increased the level of confusion in the public, and inequality in the election. Several respondents argued that there was not adequate representation throughout the nomination process.

Some interviewees additionally suggested that the threshold level of support required for member-nominated candidates to gain access to the ballot should be reduced to something below the current 2% threshold. Others argued that all ICANN directors should be elected, and that election schedules should be transparent and regular.

Linguistic Barriers

Internet users in Asia and Pacific region are constantly confronted with documents that are written only in English. This is one of the two primary barriers hindering users full participation; the other is confusion with the mechanisms and processes of the election system. English documents can be intimidating to those not yet familiar with the relevant issues, and are doubly so to non-native English speakers irrespective of their baseline understanding. Even if some users do speak some English, the time required to go through the necessary material is so extensive that, by the time a user might feel ready to post something in the candidate forum, the opportunity has passed.

This report suggests ways that linguistic barriers to regional outreach can be lowered.

Should local At-Large Member forums be established in non-English speaking regions of the world, the forum administration committee s responsibilities should include the provision of translation services. This is especially important in the Asia-Pacific region, where citizens of some countries interact with citizens of others only rarely because of language difficulties. In non-English speaking regions, Question & Answer forums should be established in each of the primary local languages. ICANN should assume responsibility for translating the Web sites of At-Large candidates into appropriate major languages.

Many respondents agreed that an outreach program, offered in a mother tongue language, is important because it can lower linguistic barriers to regional outreach. Some respondents suggested the following:

- Utilizing DNSO constituencies and commercial ISPs in outreach and awareness programs;
- Translating ICAAN announcements in mother tongue languages;
- Assigning a responsibility of the translation on a ccTLD-related organization;
- Linking the At-Large Membership programs to ccTLD organizations such as KRNIC and JPNIC.

At-Large Membership and Outreach

ICANN is a difficult subject to understand for most Asian Internet users (a fact not restricted to Asians). For example, there are at least 50 abbreviations — including ccTLD, UDRP, GAC and so on — that are frequently used by members of the ICANN community. In a country such as Korea, organizations like KRNIC and the Korea Internet Forum published "ICANN primer" booklets, but these one- or two-page descriptions of ICANN's issues and process often seemed to cause more confusion than they resolved in the general public. In some ways, matters were made worse when the public was told that several ICANN Directors would be elected by the At-Large Membership. Many Members in the Asia-Pacific region were faced with the prospect of being required to participate in a process they did not fully understand.

There are a variety of ways that this situation could be improved. First of all, it is necessary to establish a means for disseminating information about ICANN and about domain name administration in a variety of forms, and to establish a Web site that outlines important issues for discussion on various mailing lists. It may also be necessary to establish a special fund for outreach and education.

Most respondents agreed that future iterations of the At-Large Membership should focus mainly on playing a "watchdog" role. That is, the At-Large Members should stay vigilant against the possibility that Internet governance could be taken over by special interest groups, such as purely commercial interests or the interests of a few nation-states. The At-Large Members also should make sure that the provision of Internet domain resources continues to serve the public interest at the global level.

There is a strong current of feeling in Asia behind providing the At-Large members with a more significant, persistent role in the ICANN process. Some interviewees suggested that concrete devices are necessary to reflect At-Large Members' opinions on the ICANN decision-making process. For instance, the ICANN decision-making process could include a requirement that Board decisions be approved by At-Large members.

Almost all respondents agreed that Internet users' awareness of the At-Large Membership and the issues before it is very low. One of the possible reasons for this lack of awareness is that mainstream media have not shown interests in issues like Internet governance, ICANN, or the At-Large membership.

Several respondents argued that an institutionalization of the At-Large Membership and of future At-Large Elections is needed. Some suggested that it may be necessary to establish a debating infrastructure to encourage participation in the At-Large communities. There is general consensus with reference to establishing credible organizations, which should initiate outreach and awareness programs. However, there have not been any specific measures with regard to building local Internet communities. It is suggested that utilization of media, workshop and events is necessary to promote At-Large Membership and expand At-Large communities.

2.2.3 Europe[32]

This report reviews the European regional election for an At-Large Directorship on the ICANN Board. What follows is an analysis of the process and procedures that led up to that election and defined the election itself.

Under the rules drafted by the Election Committee, all regional ballots were limited to seven candidates; in Europe s case, five of those seats were directly nominated by ICANN.

On the final ballot (member-nominated candidates included), three nominees (two of them member-nominated), were from Germany; the remaining four were from (respectively) France, Macedonia, Norway and Switzerland. Andy M ller-Maguhn, spokesperson for a German civil libertarian group, the Chaos Computer Club, won the election with almost 6,000 votes.

From data made available so far by ICANN, it is not possible to draw conclusions about the national distribution of European At-Large Members. Nor is it possible to reliably describe the ways in which national preferences influenced the overall voting behavior.

Our analysis of the At-Large Membership and the characteristics of the At-Large Election in Europe is based on the following research:

- *Personal interviews*. We interviewed via e-mail a wide cross-section of European participants in the ICANN process. These ranged from candidates in the election, to governmental representatives, to industry leaders, representatives of NGOs, journalists and ICANN-activists. A list of interviewees appears as Appendix 3.

- *Media coverage*. A group of students at the University of Hamburg collected television, radio, print, and online coverage that appeared in Europe before, during, and after the 2000 election. Stories were reviewed, summarized, and categorized to create a picture of the overall media presentation of ICANN.

- *Official sources*. We reviewed many of the European Commission s and European Parliament s official statements.

- *Personal experience.* The contributors to this report have been critical observers of the ICANN process and experienced researchers for some time.

[32] By Jeanette Hofmann, Wissenschaftszentrum Berlin/NEXUS, Germany; Christian Ahlert, Universit t Giessen, Germany; and Stefaan Verhulst, University of Oxford, UK.

2.2.3.1. Participation and contextual variables

The At-Large elections were an experiment. Both their cross-border character and the fact that they were held on-line were new to Europe. Therefore it is difficult to identify the parameters and variables that can clarify its particularities. Yet with regard to Europe, the following contextual observations can be made:

Internet use

An analysis of the use of the Internet across Europe indicates dramatic differences between Central European, Eastern European, Western European, and Mediterranean countries, with the West leading the way.[33] Obviously, this divide played an important role in the creation of an At-Large Membership within Europe.

For example, as of January 2001, only a quarter of Russians had ever used a computer and only a small percentage of those had ever used the Internet.[34] The size of the Russian At-Large membership (2,111), then, is more strongly tied to the extent of technological development and the proliferation of Internet usage than to the size of the country or its population (in Russia, 146,394,000 people).

However, the digital divide only partly explains variations in the distribution of European At-Large members. Germany s lead in At-Large registrations, for instance, may be an effect of Germany s role as a leading economic power in the region.

Nevertheless, comparison of registrations in the UK, France, Austria, Switzerland and Germany indicate a clear over-representation of German-speaking people. In European countries such as Denmark, Sweden and the Netherlands, where the rate of households using the Internet has reached 50 percent[35], the incidence of At-Large registration was significantly lower than in both Germany and France. For these countries, it seems that not only Internet usage rates but also public awareness of ICANN itself can affect the size of the At-Large membership.

The European Commission s latest survey of Internet use showed a 55% growth in Internet penetration in EU households, which rose from 18% in March 2000 to 28% in October 2000[36], at the time of the At-Large Election. As Internet penetration continues to grow, participation in ICANN At-Large Membership is likely to increase.

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[33] For a full and detailed overview see for instance the results of the European Survey of the Information Society available at *http://europa.eu.int/ISPO/esis/default.htm*

[34] *http://www.nua.ie/surveys/index.cgi?f=FS&cat_id=18*

[35] See *http://www.independent.co.uk/news/Digital/Update/2000-11/internet291100.shtml*

[36] See *http://www.adie-culture.com/en/news/1204.htm*

Electoral systems and traditions

In general, political traditions are considered important causal variables that explain electoral behavior. In most countries across Europe, voter turnout the percentage of eligible voters who actually vote is rather high (above fifty percent) during general elections.[37] Still, the sheer number of actions necessary for one to become an At-Large Member was expected by some to thin out less-interested participants, even to the extent of bringing about a high correlation between registration and actual voting. This does not seem to have been the case.

A number of factors may have contributed to the low turnout. Procedures used in the At-Large Elections, such as ballots, pre-registrations, member-nominations, are not widely used across Europe, where traditions of voter registration and of primary elections, used elsewhere, are unfamiliar. However, whether this had a major impact on electoral behavior within Europe remains unclear.

The single most important factor in decreasing participation might have been that the unfamiliarity of the PINs distributed via surface mail. It is likely that many who did not activate their PIN either were simply unaware of the need to do so, didn't receive their PIN, or missed the activation deadline. Other participants have cited confusion between the membership number, the password (which was received via email), and the PIN.

Finally, the unavailability of registration servers during daytime, when many potential voters accessed the site from their workplace, may have further depressed registration and activation rates.

A credible argument can be made that the combination of technical errors, delays, human errors and confusion reduced the number of registered, activated and eventually voting members. Still, such technical difficulties are ultimately a minor problem that can be overcome. They do not pose the same kind of problem as the more insidious causes of low registration discussed above.

Even though on-line elections are still in the experimental stage in Europe, they are becoming more common. For example, the Forschungsgruppe Internetwahlen based at the University of Osnabr ck conducted the 1999 Sozialwahlen . In this election, all German citizens were eligible to participate, though only 2% of Germans did so. Other European countries developing on-line voting systems have encountered similar obstacles. Nevertheless, future on-line elections for the European Parliament are being planned, and several research projects are under way.

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[37] The term "voter turnout" may not be entirely appropriate for the At-Large election variant election models, such as that of shareholder votes in publicly-traded companies, may provide a more productive analogue.

2.2.3.2.At-Large Membership and Election

The pre-election phase

Mobilization through Internet user communities

Issue-based user communities played a major role in mobilizing At-Large members in some European countries. The uneven presence of these groups across Europe partly explains the distribution of members in the region. Most of those we contacted were unsurprised that the victorious candidate in 2000 was the spokesperson of an established hacked community, the Chaos Computer Club. The German Internet community is generally regarded as the largest and the most active one in Europe (measured in terms of online communities, ftp sites, open source developers and the like). Some members of the German community even attempted to extend their local election campaigns to other European countries Most of these efforts met with failure, either because of a general lack of interest or because of assumed German predominance over them. The only successful effort at a Europe-wide forum integrating both At-Large members and candidates was the English-language mailing list *icann-europe*, founded by two members of FITUG,[38] a German online community. The role of German-language web cultures in the election may provide a potential model for the kind of education and constituency-building campaigns that could enhance future elections.

The national press in most European countries (see below) covered the election rather poorly, and as a result outreach efforts depended heavily on the efforts of local user communities. In some countries, such as Austria and Russia, such local-user networks proved to be quite effective. In Russia, for example, the community undertook to provide translation of information about the election to potential voters and to the general public.

Media coverage

The level of media attention contributed significantly to awareness about the At-Large election and consequently influenced the At-Large behavior strongly. Yet the coverage was mainly domestic, featuring chiefly local candidates.

The report of Alexander Svensson and others (University of Hamburg) on ICANN Coverage in European Print Media studied European media coverage of ICANN in the year 2000. A total of 310 articles appeared in high-circulation newspapers in the UK, Ireland, France, Belgium, the Netherlands, Germany, Austria, Switzerland, Denmark Norway, Sweden, Spain and Portugal. According to the report, in some countries (such as France, Germany and Italy) newspapers encouraged netizens to vote. Several newspapers in Switzerland, Italy and Germany covered local candidates.

By way of contrast, the media in the United Kingdom showed little interest in the elections. Another ICANN-related topic, the UDRP, did catch the interest of the British

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[38] F rderverein Informationstechnik und Gesellschaft. Information about the *icann-europe* list is available at *http://www.fitug.de/icann-europe/index.html*

press. Also, in Scandinavia the elections attracted almost no attention although there was a Norwegian nominee.

Press coverage was significantly more robust elsewhere. Media attention in Germany was particularly high. According to the respondents from Austria and Switzerland, the German media hype had a measurable impact on all German speaking countries. On campaign in particular, initiated by the German *Spiegel-Online*, and mirrored by other papers and news agencies , featured the elections, and paid particular attention to certain candidates. Despite attempts by *Spiegel-Online* to encourage similar efforts by other online media in the region, only the online edition of *Le Monde* (France) and *Der Standard* (Austria) participated. As a result most At-Large members and most member-nominated candidates were German.

Nonetheless, the campaign's direct effects on membership registration might be exaggerated. The ICANN articles run by Spiegel Online didn't attract as many readers as other articles. Moreover the number of articles was reduced towards the end of the registration period when most of the registrations took place. However, the Spiegel Online campaign helped to raise awareness in Germany about ICANN and the elections.

An analysis of the European media coverage indicates that almost all media coverage of candidates was organized along national lines. Overall, candidates enjoyed little recognition in the voting public, and such recognition as they had was mostly confined to their own country. One very notable exception was Andy M ller-Maguhn, who, not least because of his image as an ethical hacker , attracted considerable international attention. Such inherently nationalistic focus illustrates the difficulties of creating constituencies that lack well-set roots in local political traditions and language communities.

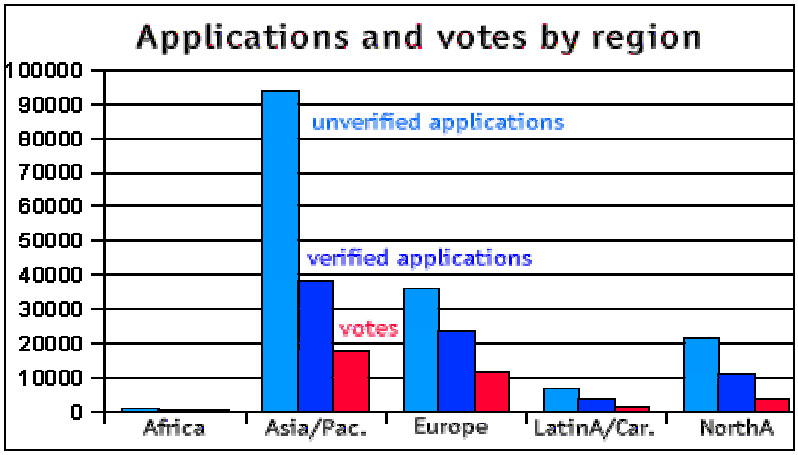
The At-Large Elections contributed strongly to the general awareness within Europe of Internet governance in general and of ICANN in particular. Prior to March-April 2000, Internet Governance and ICANN were an unknown issue in Europe and elsewhere. As a result of the elections, this has changed, though it has done so in an uneven fashion across national lines. As one respondent put it: The elections had a tremendous impact on ICANN awareness. ICANN is much better known than its predecessor IANA ever was. This is especially true in Germany, where ICANN is now a well-known organization. The elections have launched ICANN s decisions into the news and feature sections of newspapers and radio shows. The editors are now willing to provide more space for reports on ICANN. Also, it is not necessary anymore to explain over and over again what the ICANN process is about.

The election phase and voters

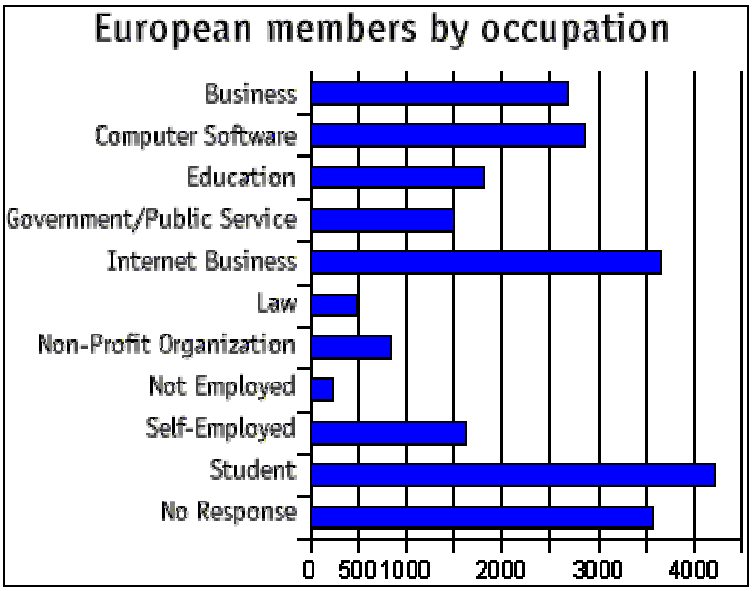
By the September 8 activation deadline, 23,442 Europeans had successfully activated their At-Large Memberships. Of these members, almost half actually voted (11,309)[39]

[39] See *http://members.icann.org/news.htm#results*

(see graphic below)[40]. In comparison with the other regions, Europe had the highest overall turnout of registered voters (48,08%), albeit still low.



The average European At-Large Activated Member[41] was between 20 and 39 years old, either a student or professionally active in the Internet or Computer Software industry and male (statistics comparable to those seen in other regions). They heard about the elections mainly through e-mail, friends or magazines (with the exception of Germany, where most were mobilized by the media) and almost half of them (43,7 %) were domain-name holders.



Further analysis of ICANN s European At-Large Membership (see Appendix 2) indicates a widespread participation, with members representing 44 countries. The distribution of

[40] See *http://icannchannel.de*

[41] See *http://members.icann.org/activestats.html*

members, however, varied considerably: 28 countries have fewer than 100 At-Large Members. These figures reflect a digital divide, with, for example, a very low number of At-Large members in the Eastern European countries of Romania (39), Hungary (32), Czech Republic (28) and Slovakia (fourteen). As candidates could only encourage turnout and support efficiently within their national constituency, not across borders, local networks played a crucial role in mobilizing Internet users, which were hence mirrored by the number of self-nominations and registrations. Correspondingly those networks proved to be crucial for raising attention of the traditional press (newspapers) and the building of an Internet-related campaign.

The Election-Process

The overwhelming majority of respondents expressed concerns with the way that ICANN handled technical problems, outreach, and the selection of candidates. A specific point of criticism was the handling of the deadlines and the changing of rules on the fly as ICANN moved towards the election. Nearly all of those contacted disapproved of the nominating committees decision to stuff the ballot with corporate candidates. Perhaps ironically, however, this may have resulted in an advantage for member-nominated candidates, who were seen as the more democratic candidates.

Nominations

While some respondents regarded the nomination process as basically fair, others portrayed the Nominating Committee s selection of five nominees for the European ballot as a violation of democratic principles. For only two seats to be open to member nomination in a region the size and diversity of Europe was seen as an unacceptable limitation of both regional and political diversity on the ballot. In the same vein, the Nominating Committee s selections were condemned as biased towards industry representatives. Many respondents felt that the candidates nominated by ICANN should have been subject to the same endorsement procedure as member-nominated candidates.

The lack of outreach campaigning

Many respondents expressed the need for better communication channels between candidates and voters on the one hand, and among At-Large members on the other. The lack of a Europe-wide outreach campaign and the absence of local public forums, some say, contributed considerably to the interest deficit in most European countries.

The Question & Answer forum provided by ICANN on *members.icann.org* as a means of communication for voters and candidates received mixed assessments. Some regarded it as a useful means for voter education. Others criticized the lack of opportunities for horizontal communication within the At-Large membership. In fact, unless voters created discussion forums themselves, there were no opportunities for internal debate.

Problems in voter verification

As is discussed above, nearly all respondents mentioned problems with PIN codes. In some countries, PINs arrived too late to be useful. In almost all countries, at least some

PINs were lost entirely. Additionally, ICANN s expectation that users would keep PIN codes for up to 6 months caused problems. Some suggested the use of digital signatures as a possible solution to this problem.

Many respondents also cited their concern over technical problems towards the end of the member registration period. Surprisingly though, many of the respondents cast such problems as relatively minor, capable of being solved easily.

Some respondents further claimed that the very fact that the election was held entirely on-line may have limited the participation of some (mainly low-bandwidth) users.

In addition, many respondents found the election procedure too complicated. Many potential voters lost interest during the several stages of membership registration, membership activation, endorsement period and the actual voting.

Finally, many voters do not seem to have been familiar with elections divided into multiple stages. The fact that the election took place during the summer and vacation period compounded this problem.

2.2.3.3. Interim Conclusions and Suggestions

Satisfaction and Criticism

Most Europeans seem generally satisfied with the At-Large Election, not least because it was the first election ever on a global scale, and because of its apparent success in electing competent Directors accepted by the community as a whole. Yet, as seen above, there was significant criticism about ICANN s handling of various components of the election. The elections are generally seen as an experiment that, in a sense, fell victim to its own success as the At-Large elections attracted much more participants than originally expected. In particular, interviewees felt that ICANN s insufficient handling of both technical problems and outreach campaigning constituted solvable start-up problems, and expressed a strong hope that they could be avoided in the future.

Outreach Deficit

The significant role of German voters throughout the At-Large Election was a result of the convergence of significant media coverage with the activism of a well-established user communities. Germany s success provides strong evidence for the importance of public outreach and debate.

Some of those interviewed blamed ICANN for the fact that communication with the electorate self-organized in an extremely *ad hoc* manner, viewing such organization as ultimately less effective than more structured approaches. In addition, the use of English as ICANN s working language, combined with the lack of adequate translation, was considered as a major barrier to enabling the kind of activated membership that many had hoped to see. Nevertheless, the At-Large Election clearly contributed to the general

awareness of Internet Governance in general and ICANN in particular throughout Europe.

Digital Divide

In addition, the telecommunications divide between Eastern and Western Europe and the Mediterranean nations was reflected in membership patterns across Europe. High Internet use and awareness frequently correlated with a higher rate of At-Large membership, suggesting that a renewed effort is needed to make some of Europe s less technology advanced countries active members of the ICANN community.

Cultural and Social Differences

Europe has a strong tradition of promoting diversity among its regions and cultures. ICANN s request that the region select a single voice for its collective interest was perceived by some as regressive and generally undesirable. Consequently, calls were made for a greater level of regional participation within the At-Large membership. There was a sense that if ICANN is ever to achieve global legitimacy, it must do better at taking the different interests and needs of Europe into account.

Future elections

Some respondents strongly emphasized the need for a new election to fill the four vacant board seats: The feeling of most At-Large members is that if this [the election of the missing four At-Large directors] is not going to happen, this would be a theft. Others, however, suggest that if an election is not held in the near future, the Board s vacant seats should be filled by representatives of the Government Advisory Committee (GAC), as ultimately accountable representatives of national interest.

Overall there seems to be some uncertainty in the European community surrounding the possibility of alternative methods of selecting At-Large Directors. Some observers have claimed that a single Director cannot reasonably or equitably represent a region of the size of Europe. Critics with this perspective are uncomfortable with the five-region geographic model, calling instead for some intermediate structure that would better reflect the specific interests of each country.

Others suggested that At-Large directors could be elected by national representatives, through a model including some form of At-Large council, either on a regional or a global level. For example, a global council could fill the remaining At-Large Directorships from a list of nominations put forth by its members. Other suggestions included some kind of regional thresholds for elections, so that results coming from countries with many At-Large-Members would be balanced somehow with the votes of smaller Internet communities.

Many interviewees agree that a comprehensive review of ICANN s overall representation structure is sorely needed. These participants felt that, in light of the significant impact that ICANN s decisions have on areas of direct concern to all users, individual users should have the opportunity to participate in ICANN s decision-making processes.

Arguments were presented for strengthening the At-Large membership and/or the GAC, relative to the Supporting Organizations. The occasional forums for debate seen so far seem to be only an insufficient means of participation, since there does not yet appear to be any strong connection between such forums and the board s decision process.

Many respondents strongly advocated for an extensive review of the operating procedures of both the ICANN Board, staff, and Supporting Organization structure. There was strong feeling that both would benefit from a reassertion of their commitment to transparent and accountable bottom-up processes. The working structure of the DNSO and the composition of the Names Council are of specific concern. Moreover, a stronger international composition of the staff and a greater respect and support for languages other than English were high priorities.

2.2.4 Latin America[42]

The objectives of this regional report are to:

- Analyze the last election of At-Large Directors in the context of the Latin American region.
- Promote discussion about the continuing role of the At-Large membership.
- Extract suggestions and proposals for future elections, taking the analysis of the previous experience as a baseline.

The research team s methodology had five components:

1. Distribution and analysis of an initial questionnaire, sent by e-mail to prominent Internet experts in the Latin American/Caribbean region.
2. Face-to-face and telephone interviews with Latin American participants in the 2000 election. These interviews lasted between 45 minutes and 1 hour.
3. Participation in and analysis of the traffic from an e-mail list created to discuss issues of the At-Large Membership in Latin America, *discusion@icann-lac.org*.
4. Distribution of a second questionnaire to a small group, for discussion of some of the more controversial aspects of the 2000 election.
5. Presentation of interim conclusions at a workshop with participation from more than 40 people, mainly from NGOs and the academic sector.

2.2.4.1. Participation and contextual variables

Internet use

In November 2000, there were 16.45 million Internet users in Latin America, corresponding to 4.04% of the worldwide total. (Source: Nua Internet Surveys).

About 3.9% of the people in Latin America and the Caribbean have regular access to the Internet. That situation varies, however, from country to country, from about 0.09% penetration in Haiti to 9.4 % in Uruguay. (Source: Nua Internet Surveys — see Appendix I).

[42] By Ra l Echeberr a — Latin American Network Forum, Uruguay, Carlos Afonso — RITS, Brasil.

Awareness of Internet-related issues

The number of people in Latin America concerned with ICANN-related issues is very low. Those few who are involved come mainly from several well-defined groups:

- Country-code top-level domains (ccTLDs).
- NGO and academic networks, which have been involved with the emergence of the Internet in the region, as well as its subsequent promotion and development.
- Governments. Not many governments have actively participated in ICANN s activities to date: Mexico, Brazil, Argentina, Chile, Peru, and Panama are the exceptions. Brazil is the only one to have had constant representation in the GAC. The representatives of other countries have changed regularly and in some cases participation has stopped altogether.
- ISPs, representative organizations, and telecommunications firms.

At present, Latin America is moving forward with the creation of a Regional Internet Registry (RIR). When finished, we expect the RIR to be a new locus for discussion of and work on ICANN-related matters.

Electoral systems and traditions

Many countries from Latin America have experienced totalitarian governments during their history, but recently democracy has consolidated in the region. There are some important differences among their electoral systems. Some are based on geographical models of representation, while others have direct nationwide elections to elect the President. In the last few years some countries have experimented with the inclusion of a second, runoff round of elections in Presidential elections.

In many countries voting is compulsory, and as a result the percentage of citizens who vote is very high. The Preferential Voting System used by ICANN in the 2000 election is absolutely unknown in Latin America, and is not used in any public election, most of which are carried out through direct votes. In some cases, as mentioned above, there is a second round between the two candidates with the highest number of votes. This occurs only if no one obtains more than 50% of the votes in the first round.

2.2.4.2. At-Large Membership and Election

Pre-election phase

People felt that it would have been extremely useful to have had more detailed information on the process being used in the 2000 election, and more time to consider one s options. For example, details of activated membership on a country-by-country basis were not published.

Voter registration

As of July 31, 2000, 6,486 people from the Latin American region registered as At-Large members, representing 4.09% of the total.

The table below compares the number of Internet users with the number of hosts in some of the more Internet-adapted countries, and with the number of At-Large members. If we compare the percentage of users in each country to the total of the region, and At-Large membership percentages from each country to the total of the region, we can see that only three countries (Brazil, Chile and Ecuador) have a higher percentage of At-Large members than Internet users. In the case of Ecuador this can probably be justified by the role played by some NGOs in promoting membership.

Brazil has the highest number of At-Large Members, with 80.13% of the At-Large members in the entire region. In Brazil, there was a large campaign promoting membership in the last few days before the July 31 deadline. In Uruguay, the other country providing candidates to the At-Large election, the percentages of users and At-Large members were quite similar to one another.

Country	**No. Internet Users**	**% LAC Internet Users**	**Internet Penetration Rate**	**No. At-Large Members**	**% LAC At-Large Members**	**No. Internet Hosts**	**No. At-Large Members /No. Users**
Brazil	9,840,000	59.82%	5.70%	5197	80.13%	662,910	0.0528%
Mexico	2,500,000	15.20%	2.49%	270	4.16%	495,747	0.0108%
Argentina	900,000	5.47%	2.44%	295	4.55%	177,216	0.0328%
Chile	625,000	3.80%	4.12%	258	3.98%	64,081	0.0413%
Colombia	600,000	3.65%	1.51%	60	0.93%	53,683	0.0100%
Peru	400,000	2.43%	1.50%	63	0.97%	11,724	0.0158%
Venezuela	400,000	2.43%	1.70%	32	0.49%	16,694	0.0080%
Uruguay	300,000	1.82%	9.40%	111	1.71%	42,927	0.0370%
Costa Rica	150,000	0.91%	4.04%	26	0.40%	10,963	0.0173%
Guatemala	65,000	0.40%	0.51%	5	0.08%		0.0077%
Cuba	60,000	0.36%	0.54%	4	0.06%		0.0067%
Jamaica	60,000	0.36%	2.26%	3	0.05%		0.0050%

Panama	45,000	0.27%	1.60%	21	0.32%		0.0467%
El Salvador	40,000	0.24%	0.65%	4	0.06%		0.0100%
Bolivia	35,000	0.21%	0.43%	6	0.09%		0.0171%
Trinidad y Tobago.	30,000	0.18%	2.55%	6	0.09%		0.0200%
Dominican Rep.	25,000	0.15%	----	15	0.23%	8,882	0.0600%
Ecuador	20,000	0.12%	0.15%	30	0.46%		0.1500%
Honduras	20,000	0.12%	0.33%	10	0.15%		0.0500%
Nicaragua	20,000	0.12%	0.42%	8	0.12%		0.0400%
Paraguay	20,000	0.12%	0.36%	5	0.08%		0.0250%
Bahamas	15,000	0.09%	5.09%	4	0.06%		0.0267%
Belize	12,000	0.07%	4.82%	1	0.02%		0.0083%
Antigua y B	8,000	0.05%	5.50%	4	0.06%		0.0500%
Barbados	6,000	0.04%	2.19%	4	0.06%		0.2000%
Haiti	6,000	0.04%	0.09%	5	0.08%		0.0833%
Other	71,500	0.43%	2.08%	39	0.60%		0.0545%

Sources:

Number of users and penetration — Nua Internet Surveys

Number of hosts in Latin American countries — NICM xico (www.nic.mx) August 2000.

It is worth noting the big difference in the number of men registered members compared with women.

Gender of members.

Female	294
Male	3158
No response	96

Age

16-19	154
20-29	1211
30-39	1069
40-49	653
50-59	253
+60	45
No response	163

Role/Occupation

Business	473
Computer Software	601
Education	329
Government / Public Service	273
Internet Business	1065
Law	139
Non-Profit Organization	86
Not Employed	9
Self-Employed	222
Student	203
No response	148

Source Learned About the Election

At Work	370
Banner Advertisement	6
E-mail	2129

Friend/Acquaintance	421
Newspaper/Magazine	118
Other	126
Print Media	21
Search Engine	11
Website	183
No response	163

The registration phase

The majority of those interviewed agreed that the technical problems of the 2000 election constituted a major shortcoming that may have distorted the election process. All agreed that the process was badly conceived, but that the procedures, once established, were generally well supervised. The majority of those interviewed mentioned that the main reason that Latin American users registered was in order to vote for someone specific.

The activation phase

The number of activated members in Latin America was 3,548, representing 54.7% of the total number of registered members (6,486). Low activation membership percentages were similar to those seen in the rest of the world.

	LAC	**TOTAL**	**LAC %**
Registration	6,486	158,593	4.09%
Activation	3,548	76,183	4.66%
Votes	1,402	34,035	4.12%

Some of the reasons why the number of activations was significantly lower than the number of registrations included:

- A low level of commitment on the part of those registering. The majority of people who registered did so more from the recommendation of others, than from any particular personal motivation or commitment to ICANN. Additionally, the process of registration was complex would-be voters were required to wait to receive an e-mail, then a PIN by postal mail, then had to go to the ICANN s website to activate their membership. This proved excessively complex for people who did not have a major commitment to the process.

- Some of those interviewed emphasized problems with the postal mail service and referred to letters that never arrived.

- Interviewees also mentioned the technical problems in the activation phase as one of the reasons for this low number.

Nominations and self-nominations

The people interviewed agreed that the persons who were nominated by the nomination committee turned out to be generally the right ones. Some would have preferred to have had more candidates from the region, and/or female candidates. There was some confusion regarding the self-nomination process, however. Many people interpreted that phase of the election as voting, not just a show of support for a potential candidate.

In several Latin American e-mail lists there were requests for clarifications, and some of the candidates nominated by the official committee were asked why they had not appeared on the member-nomination ballot.

The election campaign

For the majority of interviewees, the election campaign had little effect because so many voters had made their decision in advance. Many also criticized the lack of information in different languages, the lack of debates organized by ICANN (either through in-person meetings or through electronic means such as public chats). People believed that there were not adequate opportunities for exchanging ideas and positions between candidates and the At-Large Members. There were no public debates, and the electronic Q&A forum organized at *members.icann.org* saw very little activity.

The Election Phase and Voters

The Nomination Committee named three candidates to the Latin American Ballot: (Patricio Poblete from Chile, Ra l Echeberr a from Uruguay and Ivan Moura Campos from Brazil). Both Patricio and Ra l had served previously as Names Council Members, and both are well known in the ICANN community. Ivan Moura Campos is Coordinator of the Brazilian Internet Steering Committee, which has been very involved in all ICANN matters; he, as well, is well known in Latin America as an expert in ICANN-related topics.

In the self-nomination process, two additional candidates joined the ballot: Claudio Silva Menezes and Aluisio S. Nunes. Both are from Brazil, and neither are well known within the Internet Latin American Community as regards domain names, Internet addresses or public policies. Claudio got a significant level of support.

The result of the election was:

Ivan Moura Campos	946

Claudio Silva Menezes	157
Ra l Echeberr a	141
Aluisio S. Nunes	79
Patricio Poblete	79

Due to the high number of registered Brazilians, the result of the election seems to have been rather predictable. Most of those interviewed felt that the problems encountered in the registration and activation phases were enough to distort the final result of the election. However, most of them also believed that the election of Ivan Moura Campos was a positive outcome, and that he is doing a good job as an ICANN Director so far. Many interviewees also commented on the nationalist influence on the campaign and on the election itself, although most believed that such influence was generally unavoidable.

2.2.4.3. Interim Conclusions and suggestions

The electoral process in Latin America had many problems and obstacles.

Technical Problems

ICANN could not guarantee equal opportunities to all its potential voters. The sending of PINs by surface mail was a problem, and it could become an even bigger problem in future elections. In Latin America, few would have faith in any election system where the right to vote depends on postal services or the capabilities of failure-prone servers.

For many people, such obstacles were clues to a larger, more difficult problem: can we find meaningfully representative systems when we are working with electoral universes of undefined character and scope?

However, none of those interviewed felt that the technical problems were due to any bad intentions or any conspiracy. The electoral process, in the view of all those interviewed, was well conducted under the procedures that were established.

Motivations of At-Large Members

Most of those interviewed agreed that the main reason behind people becoming At-Large members was their desire to vote for a specific candidate. This also was the main reason mentioned by several interviewees who are important stakeholders in the region.

Low Rates of Activation and Voting

Those interviewed were asked about possible explanations for the low rates of activations and votes. In Latin America, only 54.7 % of people activated their membership, and only 21.6 % of the registered people actually voted.

The main reasons cited for this discrepancy were:

- A low level of commitment by those who registered. Most people registered at the urging of others, and through any motivation of their own.

- The processes for registration and membership activation were excessively complex.

- Many people did not receive their PINs through regular post.

- Technical problems.

At-Large Membership

Most of those interviewed agreed that an At-Large membership is necessary and important for ICANN s future. Their opinions divided, however, when they were asked about the role of such a membership. Everyone agreed that At-Large membership would be an important way to keep the community informed, and to educate people about ICANN s structure. Some felt that the membership could enable members to propose and discuss their interests, and to vote to express their positions.

Others felt that At-Large members should have the right to participate and vote about some things, but only those matters under consideration by the Board.

Election process

About half of the people interviewed proposed to continue having direct elections, as they believed that this is the most democratic way to ensure a strong public voice in ICANN. But the other half proposed some kind of indirect election mechanisms.

Those who proposed indirect elections argued that:

- It is impossible to guarantee that all potential members will be of the same basic situation.

- It is too difficult to ensure that Directors will be truly representative when the potential universe of voters is unknown.

- Indirect elections are not necessarily any less democratic than direct ones.

- Democracy requires good information systems. ICANN, on the other hand, remains an unknown organization for a lot of people.

- Indirect mechanisms would provide better communication between the At-Large community and At-Large Directors. These Directors could and should be made accountable through certain councils.

Geographic diversity

Nearly all of the people interviewed agreed that any future elections should include some kind of sub-regional component.

Several proposals were suggested:

- Elect two directors for each geographic region. Ten At-Large Directors in total.
- Elect two directors for each region, with the region receiving the least amount of total votes electing only one. Nine At-Large Directors in total.
- The same number of At-Large seats on the board, but with better-defined geographic regions.
- Only five At-Large Directors, with more seats given to representatives from the Supporting Organizations. The reason for this proposal was a feeling that the S.O. representatives would have a stronger commitment to the Domain Name System than At-Large representatives.
- Complete elimination of At-Large Directors, as the only way to have At-Large directors at this moment is through indirect and regional elections.

Those who proposed indirect elections offered different implementation suggestions, but all of them agreed that some kind of At-Large Council should elect the At-Large Directors. Some felt that it would be a more effective way to represent not only the current regions, but also certain sub-regions with similar cultural, geographic and political situations. Every sub-region would have representatives in one of those councils, and they would participate formally in ICANN s structure.

2.2.5 North America[43]

This report reviews the North American regional election for one of five contested At-Large seats on the ICANN Board of Directors. What follows is an analysis of the campaign leading up to that election, the election itself and its aftermath, and the implications for the broader prospect of public representation within the structure of ICANN.

Common Cause and the Center for Democracy and Technology (CDT) collaborated in an extensive process that sought perspectives on the election from a broad range of sources. Among them:

- *Personal interviews*. Staff interviewed, either in person or by telephone, a cross-section of North American participants in the ICANN process. These ranged from candidates in the election to members of ICANN s initial Board of Directors, to academic experts and systems engineers. A list of interviews appears as Appendix 3.

- *Media coverage*. Staff collected television, radio, print, and online coverage that appeared in North America before, during and after the 2000 election. Stories were reviewed, summarized, and categorized to create a picture of the overall media presentation of ICANN.

- *Primary sources*. Staff reviewed many of ICANN s official documents, especially regarding the election. These included the ICANN Bylaws (in their previous and current forms), Articles of Incorporation, committee reports, budgets, resolutions, minutes, and public correspondence. It also included unofficial records of ICANN meetings, such as the real-time scribe notes.

- *U.S. government documents*. ICANN s genesis is laid out in U.S. Commerce Department documents like the Green and White Papers and the MOU. Since then, ICANN has had regular interaction with the American government. Staff reviewed correspondence with government officials and congressional testimony, as well as the contractual negotiations.

- *Election-related data.* To date, ICANN has made certain data regarding the election available to the At-Large Study Committee. The A.L.S.C., in turn, has made a significant amount of data public. Staff reviewed and reproduced, where appropriate, that data in this report.

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[43] Prepared by Alan Davidson and Rob Courtney of the Center for Democracy & Technology (USA) and Don Simon, Andy Draheim, and Scott Albert Johnson of Common Cause (USA).

- *Public discussion forums.* Much of the online discussion that has surrounded ICANN since its incorporation has been made electronically available on public websites. Public comment forums and mailing lists, both official and unofficial, have provided significant input for this report.

- *Personal and institutional experience.* CDT and Common Cause, like their colleagues in the NAIS team, have been active participants in the ICANN process for some time; this analysis is inevitably colored by our experiences.

2.2.5.1. Participation and Contextual Variables

Internet use

Of the ICANN-defined geographic regions, North America has the largest number of Internet users. North America s user population dates back to the early days of the Internet s development and it has grown over time. Of an estimated 407.1 million Internet users worldwide in November 2000, 167.12 million of them (41.1%) were in the United States and Canada (see Appendix 1).[44]

Per-capita Internet penetration is high throughout North America. By January 2001, over 60 percent of the United States population had access to the Internet from either home or work, according to Nielsen/Netratings. Canada, while having far fewer total users than the U.S. (along with a much smaller population), still maintains a high penetration rate at approximately 42 percent (as of 1999; source: Statistics Canada).

Although Internet users awareness of Internet issues (such as Internet governance, domain name dispute resolution, etc.) in both the United States and Canada continues to increase, it has not necessarily kept pace with the rapid explosion in Internet usage. While the North American community of Internet users has grown at a near-exponential rate over the past several years, many new users are still becoming attuned to issues of Internet administration such as those before ICANN.

Even so, North America has a significant population of technically savvy Internet users with experience and interest in ICANN s activities. This population has its roots in the programming and engineering communities, as well as an emerging broader community of interested companies, policymakers, and consumers.

For those outside this intrinsically interested community, there have been only limited efforts to foster an interest in ICANN.

Electoral systems and traditions

Both the United States and Canada enjoy well-established democratic traditions. The United States follows a federal form of government, with three branches (executive,

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[44] Source: Nua Internet Surveys, *http://www.nua.ie/surveys/how_many_online/index.html*.

legislative, and judicial) that are designed to check and balance each other. The legislative branch has a bicameral structure, with one branch (the House of Representatives) representing the general population on a proportional basis, and the other branch (the Senate) representing the several States on a two-vote-per-state basis.

Canada s system of government combines elements of the American federal structure with the British unitary Westminster model. Like the U.S., the Canadian system has an executive, legislative, and judiciary branch; however, some elements of the executive and legislative are combined, in that the majority party in the legislature also controls the executive.

Both the U.S. and Canadian systems rely heavily on direct election to fill most public offices.[45] Also, the United States electorate is characterized by a fundamental distrust of government, especially as they become removed from the people from whom they ultimately derive their authority. This may be relevant to an understanding of why many in this region pushed for a direct election of At-Large board members; direct elections are generally thought to provide a more tangible and direct form of accountability from the elected to the electorate.

Perception of ICANN s Mission and the Need for Public Representation

There is a wide divergence of opinion about the true mission of ICANN. In the region, this divergence is often articulated in terms of ICANN's activities. Most will superficially define the organization similarly: as an international body tasked with the technical coordination of certain crucial central functions of the Internet's domain name, numbering and protocol systems.

The problem lies in the different perceptions about just what technical coordination" truly entails and implies. A technocrat view holds that ICANN has a very narrow technical mission, and that this narrowness invalidates diminishes the need for public representation within the organization. To this group, ICANN is seen as a body that is best administered by technical experts, with little or no broad public input.

At the other end of this spectrum are those who argue that ICANN may be a technical management organization, but that the decisions that ICANN makes have policy implications that extend well beyond mere technical considerations. According to this argument, many of ICANN s most conspicuous decisions to date have been nominally technical in nature, but have had enormous policy implications. Recent examples include the decisions to approve new generic top-level domains (gTLDs), as well as the amended agreements between VeriSign, ICANN, and the U.S. Department of Commerce. Both of

[45] While the U.S. presidential election utilizes the Electoral College in a form of indirect voting technically-speaking, the college serves a mostly vestigial role. In most American states, members of the electoral college are no longer allowed to apply their own judgment in casting their votes in a presidential election. Their votes are instead dictated by state law and, in those states where no law exists, by a long-standing tradition of casting electoral votes only for the candidate victorious in a state s public election. As a result, the electoral college has not diluted Americans reverence for direct democracy.

these decisions, according to this view, had impacts that went beyond the scope of ICANN s mission, as established by its founding documents and bylaws.

Because there is no consensus about the true and proper nature of ICANN s mission — and, in fact, there are further variations of opinion that fall between these diametrically opposed views — questions have emerged about ICANN s legitimacy that are difficult to answer. Indeed, even among those who share similar views of ICANN s mission, there are differences of opinion about the role of public representation within that framework. Some people interviewed believed that, by opening up ICANN to the sort of public voice that is typical of government organizations, there is a danger of ICANN mission creep — that ICANN s actions would begin to spread beyond its original mandate. Others argue that public representation would actually help constrain ICANN from usurping authority in an inappropriate manner.

So, there is far from a broad consensus about ICANN s proper role, and there is even greater variation of opinion about the best way that public representation can keep ICANN on the right course (or whether there is any role for public representation at all). In fact, many respondents said it is this very lack of clarity that has plagued ICANN and its processes from the start.

2.2.5.2. At-Large Membership and Election

Pre-election phase

Voter registration

A total of 21,596 individuals registered as At-Large Members in North America by the July 31 deadline. Of these, 2,094 were living in Canada and 19,051 in the United States giving Canada a slightly higher per-capita voter registration rate relative to both population and Internet user base. About half of those who registered ultimately activated their membership, shrinking the electorate to about 10,000 voters.

Throughout the registration and activation phases of the election, North Americans encountered many of the same obstacles as their counterparts in other regions. These included persistent technical problems, confusion over the unfamiliar preferential voting system, and the unreliability of the postal return system. All contributed to an overall low turnout for the election, and to the significant drop-off in numbers moving from the registration to activation to voting phases.

ICANN s Membership Implementation Task Force had, at best, a limited role in encouraging North American Internet users to register as At-Large members in the spring and summer of 2000. The largest efforts to register users appear to be those of non-profit and academic organizations with roots in North America that ran voter registration campaigns. These were aimed at making users aware of ICANN s important role on the Internet and of the public s role in the 2000 election. These efforts offered voters background information on the DNS, on ICANN, and on the Internet policy world in general, as well as links to ICANN s member registration pages. Still, the 21,596

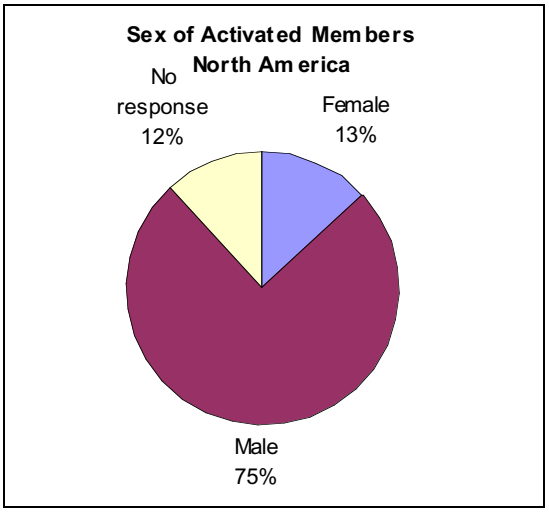
individuals registered for the election in North America constitute a tiny fraction of the region s pool of eligible voters. Many of those interviewed noted this low turnout and expressed skepticism about whether it could be substantially increased without a far more concerted and widespread public education campaign.

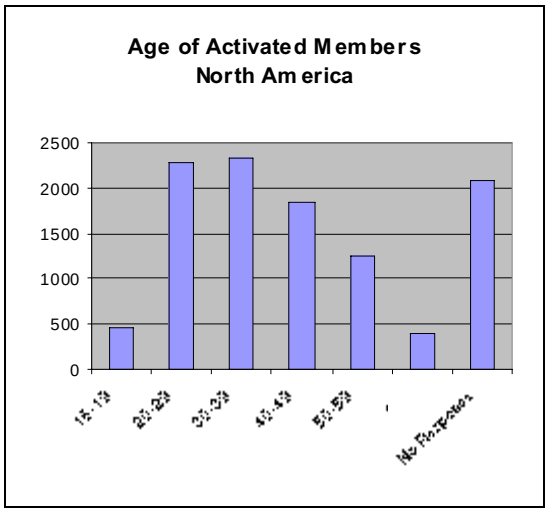
Data collected by ICANN indicates that the largest fraction of the 10,000 actively registered votes in the electorate almost half heard about the election either through online media (web sites) or communications (e-mail), pointing to the effectiveness of third-party organizing efforts. This compares to less than 15% who claimed print media such as newspapers and magazines as their drivers to register.

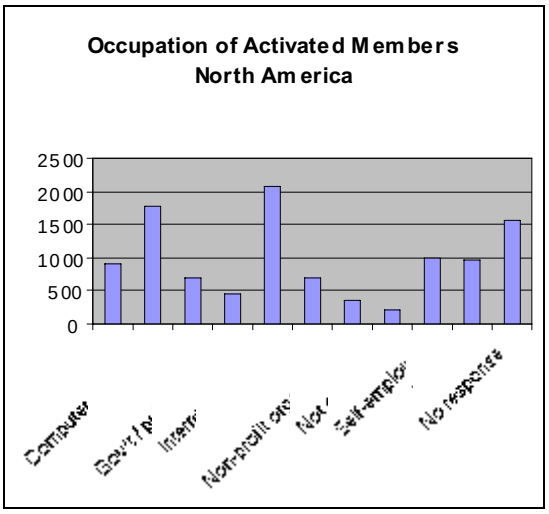
Also, about a third of eligible voters came from technical fields, while students (9.0%) and government employees (4.1%) made up smaller percentages of the electorate than in other regions. Finally, though the proportion of women registered to vote in North America was the highest of any geographic region, about 13%, it was troublingly low.

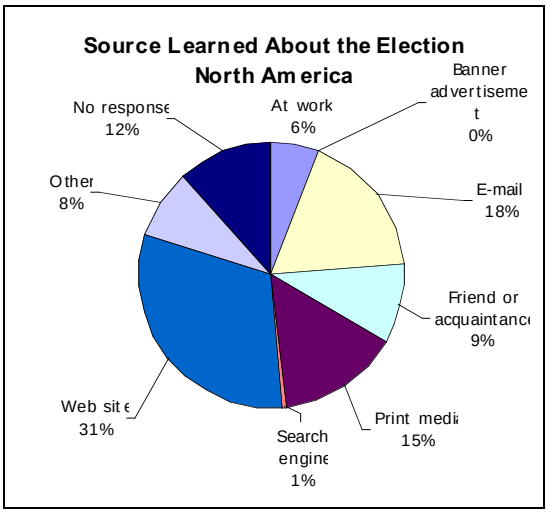
ICANN Activated Member Registrations

Source: http://members.icann.org/activestats.html









The North American ballot

*Nom*inations from the membership were based on a 2% threshold of active members; that is, each candidate had to be approved by at least 2% of the people within each region who had registered and had activated their membership. For the North American region, that translated to 214 approvals (2% of the 10,632 active members).

Many of those interviewed suggested that the presence of these member-nominated candidates was evidence of the validity the election rules and tap a voter demand for alternatives to the candidates chosen by the Nominating Committee. Others viewed the victory of a member-nominated candidate as evidence of the importance of alternate paths to the ballot.

Election campaign

After conclusion of the member-nomination process, some non-governmental organizations and academic institutions with roots in North America began to transition their voter registration programs into more ambitious education efforts. These efforts were largely Internet-based. (One notable exception was the Berkman Center for Internet and Society s Meet the Candidates night.) As a whole, voter education in North America was at the very least available to those voters who actively sought it out.

ICANN itself prepared a number of online resources for voters to learn about the candidates, including biographical web pages, documentation of the process by which the election rules were devised, and a question and answer forum. This Q&A forum allowed members to ask the candidates specific questions. Candidate response varied between candidates and also waxed and waned as time went by.[46]

ICANN made little attempt, however, at proactive outreach in North America. ICANN declined to make the registration rolls (i.e. e-mail lists) available to the candidates, citing privacy concerns. Many of those interviewed, while not necessarily wholly critical of the logic behind ICANN s reticence, expressed frustration at their inability to directly contact the voters, a notable difference between the ICANN election and most public elections.

On-line resources

Several on-line organizations undertook to solicit and compare candidates platforms , which included significant North American representation. A number of the voter

[46] Most of these materials are still online as of May 2001, at *http://members.icann.org/*.

education groups assembled resources that were highly accessible to, and reasonably well-publicized among North American voters.[47]

Other organizations, although not purely oriented towards broad voter education, included the well-known news and discussion site Slashdot, ICANNWatch (where commentary and discussions on ICANN policies are hosted on a continuing basis), ICANNVote (a site managed by member-nominated candidate Emerson Tiller with general election discussion and content), or ICANNot (a site protesting ICANN s election outreach) provided discussion space where those with strong opinions were encouraged to share their feelings on candidates statements positions, and viability.

It is difficult to draw conclusions about the impact that these resources (individually or cumulatively) might have had on the election, except to say that those North American voters inclined to seek candidate information on the Internet had numerous options. In all, North American voters can be considered roughly as well informed as their counterparts in other regions.[48]

Voter Organization

Several organizations attempted to promote self-organization of North American At-Large members along ideological lines, although without much success. A lack of resources and an inability to reach the entire At-Large membership may have contributed to these efforts difficulties.

Several e-mail lists were set up to serve the North American At-Large community, often in the model of other successful lists such as ICANN-Europe (see below) or the Boston Working Group. Populations remained low, however, and what discussion did occur on these lists cannot be reliably correlated with activism in the final election.

In-Person Debate

Discussion of and among the North American candidates was aided by an in-person meeting in October 2000 of six of the seven candidates[49] at a forum hosted in Cambridge, Massachusetts and simulcast over the Internet. The meeting s host, Harvard University s Berkman Center for Internet & Society,[50] also set up an archive page[51] where voters and

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[47] These groups included: The Center for Democracy & Technology and Common Cause (members of the NAIS project) along with the Bertelsmann Foundation, the American Library Association, the Internet Democracy, the Civil Society Internet Forum, and the Association for Progressive Communications.

[48] Some of those interviewed expressed skepticism about whether it was possible for the entire eligible electorate to be truly well-informed.

[49] Auerbach, Chapin, Lessig, Miller, Simons, and Tiller.

[50] The Berkman Center has played a major role in ICANN s development and modern history. Berkman staff typically provides the lion s share of ICANN s substantial technical requirements at its in-person meetings, as well as organizational assistance between meetings.

other interested individuals could review the meeting s proceedings days or weeks afterwards. Besides providing candidates with an opportunity to engage each other in face-to-face discussion, the event also lent the ICANN election a touch of the gloss traditionally reserved (in North America, at least) for public elections.

Again, firm conclusions about the impact that the Berkman forum might have had on the electorate are difficult. The in-person meeting certainly would have helped voters elucidate the differences and similarities in the candidates before them. At the same time, it may have impressed upon voters a new sense of the *importance* that those policy distinctions could have on the future of the Internet. In that sense, the in-person meeting may have ultimately assisted those candidates (Auerbach, Simons, Lessig) who voiced their positions forcefully.

Press coverage

Mainstream media have not established a sustained role in promoting public consciousness. Most of the press coverage of the ICANN election was intermittent, or appeared in niche publications geared towards the technical community and not towards generating awareness of the importance of public representation within ICANN.

Major newspapers and television networks did not give large play to the story of the ICANN election, although many did run some stories about it (commonly in the business or lifestyle section). Where major media did cover the election, they generally focused on criticism of ICANN in general, and on ICANN s difficulties in bringing off the election. Very little of the coverage actually focused on the candidates and their platforms; the hook for most stories was how election difficulties were a reflection of general problems that ICANN faces on an ongoing basis.

Thoughtful, comprehensive coverage was generally limited to technical and computer-oriented print and web publications; even there, criticism of ICANN s technical management of the election process (and of other ICANN actions) dominated over substantive coverage of candidate positions.

The Election phase

The North American portion of the ICANN At-Large board election was contested between seven candidates and was decided by means of a preferential balloting process. It took six ballots to make Karl Auerbach, an engineer at Cisco Systems who was widely perceived as a reformer candidate, the winner over Barbara Simons (also viewed as a reformer). Auerbach had been one of the ICANN board s harshest critics and, as part of his platform, actively called for the resignation of ICANN president Mike Roberts and general counsel Louis Touton.

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[51] Available at *http://cyber.law.harvard.edu/icann/candidateforum/*.

Auerbach and Simons were the last candidates standing from an original field of seven. Of these candidates, four —Lyman Chapin, Donald Langenberg, Lawrence Lessig, and Harris Miller — were nominated by the Board s Nominating Committee. The other three — Auerbach, Simons, and Emerson Tiller — were nominated by the North American At-Large Membership itself.

The North American race proved to be the At-Large election s most hotly contested race. Karl Auerbach emerged as the victor after five automatic runoffs. The election s most popular candidates Auerbach, Lessig, Tiller, and Simons were all self-described user advocates.

Turnout, however, was extremely low, even when compared to the already-reduced pool of eligible registered voters. North America s board representative was ultimately chosen by just 3,449 voters. North America is the most wired of any of the five regions represented in the ICANN election, yet the pool of actual voters in North America was far lower than either the European (11,309) or Asia-Australia-Pacific regions (17,745).

2.2.5.3. Interim Conclusions and Observations

In North America, as in the other four regions that held elections for At-Large board seats, obstacles to a smooth election process arose. Some of these were common to each region (due to the centralized nature of the election process) and are dealt with above.

The North American board election seems to have been free from inappropriate interference. Prior to the vote for ICANN s At-Large board members, there was widespread concern that vested corporate interests would attempt to use their substantial influence and large employee bases to seize control of one or more At-Large Directors. However, the feared corporate capture of the North American board seat does not appear to have occurred. Karl Auerbach assumed his seat on the ICANN Board in November without any public suggestions that his victory was somehow illegitimate.

Indeed, despite early fears by many that the At-Large election would be vulnerable to manipulation, in North America there was no evidence of any concerted attempt on the part of any corporate or governmental interests, entrenched or otherwise, to mobilize voters in ways inconsistent with the election s basic aims. Three of the top four candidates emerged from the membership-nomination process, and their success seems to have been the product of well-organized campaigns in the democratic tradition, rather than of any inappropriately organized attempt to manipulate the election.

Low voter turnout was a defining characteristic of the North American election. While many election observers were dismayed to see such low voter turnout — just over three thousand voting in a potential electorate numbering well over a hundred million — some of those interviewed expressed little hope that future elections could bring turnouts high enough to confer traditional political legitimacy on the ICANN process. The technical (and to a certain extent, arcane) nature of ICANN s mission, combined with a relatively low level of sophistication among North American Internet users regarding

ICANN s policy issues, seem to make substantially larger electorates unlikely without dramatically greater public education, and perhaps an altered vision of ICANN itself.

Although ICANN offered some outreach, non-profit organizations and academic institutions played significant roles throughout the election process. ICANN engaged in only very limited proactive outreach, mostly because of its concerns about privacy and a lack of resources. Third-party organizations like NGOs and academic institutions played a significant role in the registration, education, and voting phases of the election. North America s well-established NGO community led to a proliferation of voter education and advocacy resources online, highly accessible to interested members of the North American electorate.

Opinions about the election tended to divide along ideological lines. We found two main points of view regarding the merits of the fall election in particular (and, by extension, the current representation scheme in general). One view claimed that there were structural flaws in the election process. The system may be vulnerable to capture by special interests; a public election could result in unqualified board members; a worldwide online election is prohibitively impractical; what need is there for directly elected board members of a technical management body, anyway? These were the most common objections from those that generally opposed the concept of the At-Large election from the beginning or did not support the eventual winner.

Another view held that the ICANN election was a qualified success, as (they argued) it resulted in real public representation on a board that had previously been lacking in legitimacy. The technical and procedural objections about the election were seen as overblown and, for the most part, easily remedied. For the most part, those who held these views were supportive of one of the "reform" candidates and, more significantly, their user-advocate agenda.

This dichotomy is troubling because it points to the **lack of consensus about the *purpose* of the At-Large Membership --** an important observation about this election as a whole, and a common refrain heard from participants on every side of this debate.

Still, for the most part, even those with different opinions about the election process *in general* seemed to accept its legitimacy *in this instance*. While many disagreed about the ultimate merits of the philosophical and practical grounding of the current At-Large structure, most parties seemed surprisingly accepting of the results of this specific election, given the rules of the game as they currently exist. Even critics of the At-Large concept (and of the winning candidate) accepted the result and felt that ICANN was still functioning well despite their misgivings.

Similarly, many of the groups most vocally concerned about the election process (and other aspects of ICANN s operation) took comfort in the ultimate election of an outsider, reformer candidate. This diplomatic tone may have been in part a result of efforts by interviewees to couch comments in objective terms for our benefit, and there may have also been political reasons for not raising major public objections to the election process. Still, taking the general tone of comments at face value, we find room for optimism about

the future evolution of the processes that make ICANN run, and for a robust public voice within those processes.

2.3. Concluding Comparative Themes

The At-Large Election was an unprecedented experiment conducted via the Internet at a global level. The reports above describe several (cross-) regional concerns but they also indicate a skeptical satisfaction with the At-Large Election across the regions. The 2000 Election was˚generally˚seen as a first˚positive step towards public participation within ICANN. The distinct regional experiences described in the reports offer important clues about the nature of the 2000 election, and provide insights for future efforts at public representation. Among the main interim themes:

- ***Legitimate outcome despite challenging electoral process.*** Concerns about and challenges with the electoral process (whether the electorate had the capacity and interest in ICANN; about the election s vulnerability to capture, or the possibility of widespread fraud) do not seem to have affected views on the election s final outcome. While concerns have been raised about future elections, there has been no visible challenge to the seating of these five election winners. The electorate generally considers the five elected directors to legitimate representatives on the ICANN Board.

- ***Diverse electoral traditions and cultural values determined electoral behavior.*** Sharp distinctions in Internet users past experiences with local election systems and cultural values led to important differences in the way the election proceeded in different regions. In the Asia/Australia/Pacific region, for example, a different election tradition led to voter registration campaigns that struck some (particularly Western) observers as inappropriate. In the Latin America/Caribbean region as well, one nation dominated the election to such extent that some called for a new concept beside the preferential voting system.

- ***Limited voter resources created electoral deficit.*** While ICANN s centralized voter support through *members.icann.org* was fairly useful to voters in certain regions, voters elsewhere, particularly in developing parts of the world or from language areas using non-Roman alphabets, were frustrated by bandwidth, connectivity, and speed assumptions that were unrealistic in their circumstances. At the same time, elements of the election such as the postal return system seem to have disproportionately affected users in developing parts of the world. And the Web-only character of the election proved a significant obstacle to participation by would-be voters in developing parts of the world.

- ***Outreach deficit led to over- or under-representation of nations***. Across and within regions, outreach and voter education were spread disproportionately, which led to subsequent over- or under- representation of countries in the elections. The media and user-group campaign in Germany is credited with generating the extraordinarily high level of registration that enabled Germany to exceed the total registrations of all the other countries in the region combined. Active recruitment and outreach by JIF in Japan was similarly successful on a national level. Both examples raised concerns at a regional level. In contrast, areas with little outreach or no voter education had

significantly lower registration and were consequently under-represented in the election. A broader and more inclusive communication strategy is needed to help equalize participation.

- ***Concern about suitability of regional and electoral boundaries.*** While some geographic boundaries for the 2000 election were basically homogenous and, as a result, uncontroversial, users in more heterogeneous regions sometimes felt underrepresented by the five-region model. Some propose increasing the number of regions used by ICANN; others advocate a two-layer election system to resolve the problem. In addition, the appropriateness of locality as the primary segmentation criterion for representation—as opposed to interest- or issue-based criteria—has been questioned. Hence, a mapping of the electoral boundaries based upon other criteria was proposed to increase inclusiveness and representation.

- ***Persistence of nationalistic and geo-political tendencies.*** Even given ICANN s global mission, voting in many regions seems to have divided along nationalistic lines. And while this may be an unavoidable result of the democratic process, several aspects of the 2000 election most particularly the regional voting system and ICANN s decentralized outreach strategy depended heavily on the emergence of transnational voting patterns. While such patterns may emerge in time, they may not do so unaided.

  Similarly, global elections such as the 2000 At-Large elections unavoidably reflect global geo-political and societal tensions. The digital and economic divide between developing and developed regions; nationalistic competition among states in Asia, Latin America and elsewhere; the absence of Africa in the international governance debate; the complexity of ethnic, political and ideological diversity between states in one region; the unequal transition to a rule of law and democratic regime worldwide; growing political apathy among the electorate; all were contextual variables during the At-Large election that influenced the process and outcome substantially. An increased sensitivity and awareness of global geo-political impediments such as language, technological development, and regional competition will be necessary to improve the process.

3. Options for At-Large Governance

This section attempts to catalog major option areas, as expressed to us, to be considered as ICANN moves forward. Options for the ICANN's At-Large Directors and Membership, and public participation in ICANN more generally, range from relatively minor process points to wholesale revision of some of the organization s basic operating principles.

The NAIS final report in September will include a detailed analysis and further discussion of the benefits and costs of these options, as well as recommendations for the ICANN community and Board. We recognize that many of these possibilities are controversial; they are presented here not necessarily as an endorsement, but in the spirit of continuing informed debate within ICANN.

Our discussion of options is organized into two basic categories:

STRATEGIES FOR PUBLIC PARTICIPATION IN ICANN

- *Options Based on the At-Large Directors Model* — Many options retaining At-Large Director seats distinct from those of the Supporting Organizations. Within this strategy, there are multiple dimensions of questions for resolution, including:
    - Number of At-Large Directors
    - Selection Mechanism
    - Membership Criteria
    - Membership Role
    - Regional v. Global Structure

- *Options External to At-Large Board Directors* - In addition or in conjunction with At-Large Directors, issues of public participation might be addressable through other mechanisms:
    - Limiting the ICANN Mission/Slate of Activities
    - Reforming the Supporting Organizations
    - Establishing new Bodies as a Check on Board Authority

Within each of these strategies, there are persistent questions about implementation and process; as a result, a number of viable options for public participation have emerged, ranging from peripheral changes to the 2000 election process to wholesale rethinking of the organization and its mission. And while a number of such options are discussed below, no single option alone will act as a panacea for the problems in ICANN. The best solutions for an effective public voice will probably come through a considered recombination of the elements listed here.

I. Selecting At-Large Directors to the Board. Discussion in the ICANN community has frequently emphasized the importance of At-Large Directors as a means of public participation in Board activities. Many of those interviewed believed that an efficient, reliable, fair process for selecting At-Large Directors would provide the most likely path to successful reform of ICANN.

Within the approach of selecting Directors, there are a number of critical issues that need resolution. The 2000 election, in particular, displayed evidence of many problems that must be solved if we are to build a lasting, effective system for public participation. With that in mind, we offer here a list of options areas for consideration.

IMPLEMENTATION QUESTIONS

Number of At-Large Directors

- Continue *status quo* (No. At-Large Directors = No. of S.O. Directors)
- Reduce number of At-Large Directors
- Increase number of At-Large Directors

Selection Mechanism

- Direct election
- Indirect election
- Hybrid election
- Delegate to existing membership organizations

Membership Criteria

- Open membership
- Nominal membership fee
- Digital certificates
- Webs of trust
- Knowledge/experience-based criteria

Membership Role

- Electorate
- Policy-making
- Oversight/review
- Advisory

Regional Structure

- Five-region model
- Global model
- Expanded regional model
- Hybrid model

- *NUMBER OF DIRECTORS.* In the current model of the ICANN Board, At-Large Directors constitute a portion of the Board **equal to the total number of Supporting Organization Directors**: Nine At-Large Directors = Three ASO

Directors + Three DNSO Directors + Three PSO Directors plus a nineteenth seat reserved to the President/CEO. The *status quo* is seen as providing the Board with a certain balance. Other options expressed frequently in our consultations included:

- **Reducing the At-Large Directors,** for example to five (tracking to the five-region model of geographic representation), or to three (matching the representation of a single Supporting Organization). Implementing either of these could include commensurate reductions in the number of Directors selected by the Supporting Organizations.

- **Increasing the number of At-Large Directors** to ten (two from each of the five geographic regions), or more. And though it might be more accurately considered an external option, it would be possible to have the entire Board selected by some public membership such a change would obviously entail the elimination of Board-level representation for all three Supporting Organizations.

- *SELECTION MECHANISM.* In 2000, as is discussed above, five At-Large Directors were selected by **direct election** in each of five geographic regions. The strengths and problems of that election have already been discussed, and continuation of the 2000 model remains a viable option for future public participation. Other possibilities for a selection mechanism include:

  - **Indirect election**. While indirect elections can raise questions of both accountability and transparency, they may provide a means not only to select qualified Directors, but also to facilitate a persistent role for the At-Large Membership itself.

  - **Hybrid election**. If some kind of council that acts as intermediary between the user community and the Board proves desirable, it might be possible to establish such a council without sacrificing the legitimacy that comes with direct election of Board members. Some kind of combination election could be held, either with separate elections for Directors and council seats, or a proportional voting system could be used.

  - **Existing membership organization(s)**. Some of the difficulties that were encountered in voter verification, fraud protection, and outreach might be avoided by capitalizing on the membership structures of existing organizations, mapping their memberships onto ICANN s At-Large Membership. Clearly, fair identification of such organizations could be difficult.

- *MEMBERSHIP CRITERIA.* Again, as discussed above, the 2000 election used extremely **open criteria for membership**, requiring only that voters 1.) be age sixteen or over, 2.) have a verifiable postal address, 3.) have an e-mail address. No fee was required. However, problems with the postal return system and other

difficulties in voter verification may have complicated certain aspects of the election. Revision of the membership criteria might help.

- **Nominal membership fee.** This could not only help the At-Large membership become self-supporting, but could discourage frivolous registration and/or certain types of voting fraud. However, membership fees run the risk of placing membership out of reach for would-be members in developing nations.

- **Digital certificates.** These could assist with certain aspects of election administration, but in the absence of a robust, worldwide public-key infrastructure, they seem unlikely to assist with voter verification in its most intransigent forms.

- **Webs of trust.** Webs of trust [52] have been used effectively to authenticate limited groups of users for purposes of public key exchange and in other instances of identity verification, but they are basically untested. Questions of scalability and robustness remain. Also, webs of trust may trend towards basically closed memberships.

- **Knowledge/experience-based criteria.** In the interest of promoting an educated (and therefore presumably responsible) electorate, some have proposed that potential members be required to demonstrate their knowledge of/interest in issues of addressing and naming. One particular proposal in this category would be to restrict At-Large membership to those users that own domain names. Again, this clearly tends towards a closed membership.

- *MEMBERSHIP ROLE.* The role of those Internet users who registered as At-Large Members in 2000 has been a matter of significant controversy since the election s conclusion. While some have claimed that the, the election being over, those users no longer have a specialized role in ICANN, others believe that the At-Large Membership is a lasting community that should have a persistent role in ICANN. Clearly, a user-oriented membership could easily play several of the roles listed below.

    - **Electorate.** The membership would play an obvious role in selecting Directors to the Board. This is the role that the 2000 At-Large Membership most obviously played.

[52] In a web of trust, an individual in a community has his or her identity verified by other members of the community who vouch that the user is a real person, and is, in fact, who he or she claims to be. The degree to which an individual s online persona is trusted depends entirely on the number of other people willing to vouch for him or her.

- **Policy-making.** As the Supporting Organizations serve to propose and review ICANN policies, so could a public membership. Some have raised concerns that a policy-making or policy-review role for the user community would be needlessly duplicative of the S.O. process, while others maintain that the S.O. s do not in and of themselves adequately include a distinct user perspective.

- **Oversight/review.** The membership could play some role in validating Board decisions prior to their implementation. It could also/alternatively serve as an independent reconsideration authority, to resolve Board actions contested by parties in the ICANN process.

- **Advisory.** Finally, the membership could play a purely advisory role not only to the At-Large Directors but to the Board as a whole, or to the Supporting Organizations.

- *REGIONAL STRUCTURE*. The 2000 election elected **five directors, one from each of five geographic regions**. As is discussed above, the model probably enhanced the election s overall efficiency and resistance to capture, but may not have provided certain Internet communities with ideal representation.

    - **Global At-Large Directors.** Future Directors could be chosen without reference to any kind of regional model. This model provides simplicity and some baseline fairness, but might result only in capture of Directors by populous or well-organized nations.

    - **Expanded regional structure.** ICANN has no especial commitment to the five-region model. More regions, or a sub-division of regions, could be established, and Directors adjusted accordingly.

    - **Hybrid structure.** Questions of geographic representation are not either-or models. It would certainly be possible to select some Directors on a regional level, and others globally.

II. Other Strategies

While the selection of At-Large Directors to the Board remains an important and compelling strategy for promoting the public interest, it is not the only one. Other approaches to bringing ICANN s activities closer to public interest ideals could defuse certain problems in the selection of At-Large Directors, or even reshape ICANN in ways that would permit us to thoroughly rethink our approach to DNS administration. Below, we attempt to list a broad range of possible answers to the questions before ICANN.

Limiting the ICANN mission/slate of activities. If the public s interest in ICANN s activities stems from the policy implications of ICANN s decisions, then one solution might be to redefine ICANN s mission so that it is more closely confined to pure technical management.

- *CHANGES TO THE ARTICLES OF INCORPORATION.* While the ICANN Articles of Incorporation charge ICANN with administrative responsibility in four specific areas,[53] they do not establish meaningful limits on ICANN s activity within those areas. Many of those contacted for this report were concerned that ICANN may be entering areas of policy-making beyond what it was designed for. Changes to the Articles that limit ICANN to technical coordination might stave off the broad effects that inappropriate policy-making could have.

- *DISBAND ICANN AND ESTABLISH A NEW ORGANIZATION.* If ICANN in its current form is so resistant to reform that meaningful public participation can t be implemented without compromising ICANN s basic mission to efficiently administer the systems in its charge, then it might be advisable to scrap ICANN and establish a new starting point. With the flexibility that comes from a fresh slate, it might be possible to build an entirely new organization, learning from the successes and mistakes of the ICANN experience.

Reforming the Supporting Organizations. Some of those interviewed felt that changes to the Supporting Organization substructure might address the need for public representation. However, the Supporting Organizations are sometimes thought of as providing representation to those affected directly by ICANN policy a group that includes some, but not all users, since many users are affected mostly by secondary effects.

- *CHANGES TO S.O. CONSTITUENCY STRUCTURES.* Any of the Supporting organizations, but most notably the DNSO, might benefit from review of their internal organization. The DNSO s lack of an Individual Domain Name Owners constituency, in particular, has been the subject of criticism from many sources, but addition of an IDNO alone is unlikely to provide a long-term solution. A new constituency structure that more accurately groups like interests together could greatly increase the efficiency and effectiveness of the S.O. process.

- *ADDITION OF NEW SUPPORTING ORGANIZATIONS/RADICAL S.O. REFORM.* New supporting organizations such as a ccTLD or User S.O. might increase participation in the Supporting Organizations and provide a new policy role for the user community. Some have expressed concern that the S.O. structure as it currently exists fails to make allowances for important divergences of opinion on

[53] Coordinating technical parameters to ensure universality, coordinating the IP address space, coordinating the DNS, and overseeing the operation of the root server system.

key ICANN issues, or that it underrepresents certain groups. By adding new S.O. s or recalibrating the existing ones, it might be possible to bring the ICANN process more in line with the public interest. Clearly, this option would include a significant review of the Board s own internal structure.

- *DIVEST ICANN OF THE ADDRESSING AND PROTOCOL SUPPORTING ORGANIZATIONS.* Presently, controversy about public participation has been heaviest in and around the Domain Name Supporting Organization, since the area of domain name policy includes issues of obvious public concern. Addressing and protocol issues, on the other hand, have to date been less controversial and in any case seem to demand a specialized approach in fostering the public interest perspective. Addressing, protocol, and domain name policy work all demand different expertise, working styles, and priorities. In light of that fact, one may question the wisdom of placing all three under the authority of a single ICANN.

Establishing new bodies to counter Board authority. The current ICANN model has sometimes been treated as a top-down one, with significant authority centralized in the nineteen-member Board. One possible reform would be to temper that authority either by dividing it with another, as-yet-envisioned ICANN body (likely including a strong public interest perspective) or by establishing a meaningful oversight body capable of reviewing Board decisions and, in special circumstances, reversing or altering them.

- *SEPARATION OF AUTHORITY.* The authority of the ICANN Board could be at least partially decentralized, and a new deliberative body established to share that authority through a series of checks and balances. That body might be selected by a radically different method from the Board itself.

- *OVERSIGHT BODY.* Some kind of ICANN judiciary could be established, capable of reviewing decisions of the Board and comparing them both to the corporation s appropriate mission and to demonstrated consensus in the community. However, this option, like tie one before it, would constitute a major change in ICANN s operating procedure, and could even run the risk of conferring inappropriate, pseudo-governmental legitimacy on the organization.

4. Conclusions

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

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

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

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

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

Finally, we emphasize the need for a speedy resolution of this issue. In its absence, ICANN's At-Large board seats continue to be filled in part by appointed members who have long since exceeded their initial term of office. The elected Directors themselves will need replacement in 2002. ICANN's own Bylaws call for a study to be completed in June 2001, and a Board decision by November so that work can begin on whatever mechanism is put in place. While the June deadline will not be met, the November

deadline is essential. Every day that passes without resolving this issue decreases the legitimacy of decisions that ICANN is making. We urge the ICANN Board to commit to a thoughtful but rapid deliberation, and to avoid action - whether through timing of decisions or allocation of funds - that would preclude it from considering the full range of options that may be placed before it.

The NAIS Project welcomes comment and feedback on this document. For more information, please visit our web site at http://www.naisproject.org/. Comments or questions can be addressed to comments@naisproject.org.