

Statement by the NGO and Academic ICANN Study (NAIS)

Summary: A Defining Moment for the At-Large and ICANN

We have reached a defining moment for creating a meaningful At-Large and achieving a more legitimate ICANN. It may also prove to be the last chance for the Internet community and the public at large to secure the inclusion of its voice and interests in the decision-making processes of ICANN.

The NGO and Academic ICANN Study (NAIS) remains committed to our principles that ICANN's legitimacy can be best established through an open, inclusive membership; robust, sustainable public participation; strong representation of the public's interest in ICANN; and a clear, well-defined statement of the ICANN mission.

Our report of last September, "ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work," offered detailed policy recommendations along these lines. Yet members of the ICANN Board and the ICANN community have expressed concerns about some aspects of our recommendations, and are pursuing different approaches. Elements of this alternate track stem from the recommendations of the At-Large Study Committee (ALSC), which has called for a membership fee and a reduction in the number of At-Large seats from nine to six.

While we find serious deficiencies in these alternate proposals, we recognize that they attempt to address certain questions, including some questions of financial boundedness left open by our report of last September.

If the Board is to impose a membership fee, and/or decrease the number of At Large directors, there are better and worse ways to take such steps. Although we continue to disagree with movement in this direction, if the Board nonetheless adopts these positions it should do so by incorporating protections that will maximize ICANN's legitimacy, stability, and accountability to the global Internet community. We present some of these implementation ideas below.

The Membership Fee

We continue to believe in a broadly inclusive membership. We present here a structure of dues for the Board's consideration, but we emphasize that even if voting rights become contingent (in most parts of the world) on payment of dues, the ability to become a member and to otherwise participate should remain open to any interested user.

- *Scaled Fees:* Any fees or dues should be carefully scaled to avoid raising the bar for membership so high that large numbers of interested individuals in lower-income countries are excluded. While imperfect, we suggest that fees be based on the World Bank's tiers of low-, lower-middle-, upper-middle-, and upper- income countries. For discussion purposes, we suggest a fee ranging from US\$5 to US\$20.

- *Fee Exemption:* The Least-Developed Countries (as classified by the UN) should be exempt from any fees. If there are concerns about dues-exempt registrations creating a potential unbounded cost and disparities within a region, a high “cap” could be created to set an upper limit on the number of free registrations available in any one country.
- *Authentication & Expression of Interest:* Where members pay dues, those dues could be taken as adequate authentication of the members’ validity and interest. For those exempt from dues, a version of the online registration and postal-return system from the 2000 election could be used. New technologies offering alternative low-cost authentication should be welcomed.
- *Transaction Costs:* To avoid the potentially untenable cost of international money transfers, the transaction costs for dues payment should be borne by members. The ALM should minimize costs by accepting a wide variety of payment methods, including collection at the local or regional levels.

The ALM Participatory Structure

Providing the ALM with a participatory structure that promotes productive interactions among members is of equal importance to running a successful election in 2002. We offer several recommendations for a stable, effective participatory structure:

- *The At-Large Should Not Be a “Supporting Organization”:* We disagree with the characterization of the new ALM body as a “Supporting Organization.” We do not believe it will assume the direct policy-making role of the other SOs, nor is it conceptually or structurally the same. It should be referred to simply as the “At-Large Membership.”
- *Membership Council:* The ALM should be coordinated by a council that facilitates communication and cooperation in the Membership and further development of the ALM’s participatory structures.
- *Staff Support:* Initially we believe at least one full-time professional staff member will be needed to support the ALM and its participatory structures. This person could be based in any region deemed appropriate and feasible.
- *Outreach to the User Community:* The ALM should seek out partnerships with local, national, and regional associations that have established networks of participants.

Possible Reduction of At-Large Directorships

- We do not believe sufficiently compelling arguments have been presented to justify the reduction of the number of At-Large Directors from nine to six. Nevertheless if the number of At-Large Directors is reduced, the Board should change the bylaws to require a vote of more than two-thirds of the Board for structural bylaw changes (i.e., at least some At Large directors would have to support such changes). Such a change should also only take place in the context of a narrow mission for ICANN.

Financial Model

- How much will the ALM cost and how will it be paid for? We present cost and revenue projections for an ALM election and structure.

- *Expenses:* Based on the 2000 At-Large election, we estimated costs for an ALM election in 2002 and the creation of a membership organization. Significant elements will vary with the size of the ALM. We estimate initial costs of about US\$450,000.
- *Revenues:* Fee revenues are highly dependent on the number and geographic distribution of members. With the same distribution as 2000 and a fee reaching US\$20, our revenue estimates range from as high as US\$576,000 (with a membership of 34,000, the number of votes cast in 2000) to as little as US\$28,000 (a membership of 1,700, just five percent of the 2000 totals).
- *Initial Support from ICANN:* We conclude that, initially, it is unlikely that a fee will generate enough revenue to fully support the cost of the ALM. However, we believe the costs are not prohibitive; are unlikely to be substantially higher than predicted; will decrease over time; and are sufficiently bounded. We believe they should be paid from ICANN's budget (raised from those who benefit financially from a legitimate ICANN – and ultimately from consumers.).

Other Recommendations

- *Restatement of the ICANN Mission:* We share a growing concern in the ICANN community that ICANN's scope of activities, as described in its Articles of Incorporation and bylaws, lacks important clarity and creates a risk of "mission creep." The Board should amend these documents with a new mission statement, restating and explaining the limited, bounded mission of ICANN.
 - *Election Rules:* As the ICANN Board prepares for a new At-Large election, it should establish and publicize clear, concise election rules and codes for conduct. Our research has indicated that clear statements by ICANN about the propriety of certain registration and/or campaigning tactics could have a significant effect in preventing the problems seen in 2000.
 - *Domain Name Holder Requirement:* In its Final Report, the ALSC proposed that membership be limited to those people who own domain names. We strongly believe that such a restriction is not only unnecessary but also unworkable globally, particularly in regions where DNS registration practices vary widely.
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Full NAIS Statement – February 2002

Background

Since its creation a year and a half ago, the NGO and Academic ICANN Study (NAIS) consistently has urged ICANN to include the interests of the public in its decision-making to provide more institutional legitimacy. Culminating with its September 2001 report, “ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work”,¹ we set forth key principles and a concrete plan to guide ICANN toward legitimacy, stability, and accountability to the global Internet community.

Our plan differed on several significant issues with the At Large Study Committee’s report² (see appendix). The basic principles in the NAIS Final Report include:

- ICANN’s At-Large Membership should be both broad and open, with low barriers to entry and a tendency towards inclusiveness. We recommended that any individual with an e-mail address and an interest in participating be eligible for membership, and that no membership fee be required.
- The Membership should have a functional, robust structure capable of facilitating discussion and helping to articulate the Membership’s diverse views.
- The Membership should be adequately represented in ICANN’s central decision-making structure, the Board of Directors. We recommended that the At-Large have the same number of seats as are allocated to the Supporting Organizations in total.

NAIS remains committed to the above principles and policy proposals. But if the Board is to adopt those elements of the ALSC proposal that are at odds with the NAIS recommendations, we believe there are better and worse ways to carry out that implementation. We suggest to the Board that it do so in ways that best address and minimize the problems.

Below, we set forth our recommendations on how the Board could best implement the membership fee, carry out changes to the Board structure, and make other necessary provisions for the At-Large membership in a way that, we believe, would and maximize ICANN’s legitimacy, stability, and accountability to the global Internet community.

1. The Membership Fee

The NAIS report explained in detail why membership fees raise concerns about inclusiveness and equity in ICANN. We also noted that fees were unlikely to produce a financially self-sustaining ALM, at least in the short term.

However, if a fee requirement for At-Large voting rights is to be instituted, *we strongly believe* that these dues should be carefully scaled to avoid raising the bar for membership so high in developing countries that large numbers of interested individuals find themselves excluded. In addition, we emphasize that while voting rights may become contingent on fee

¹ Available at <http://www.naisproject.org/>

² Available at <http://www.atlargestudy.org/>.

payments, the ability to otherwise participate in the ALM should remain free and open to all interested Internet users.

Geographic diversity and international representation are touchstones of the structure and philosophy underpinning ICANN. It will be extremely difficult to remain true to these principles and also adopt a fee structure for the global membership that fairly reflects disparities in income among countries and the ability to pay. For people in developing economies, out-of-pocket expenses associated with transferring even a small US\$1 or US\$5 fee could easily be more than the total fee charged to those in wealthy nations. That said, we offer the following examples.

Sliding Scale: Dues could be scaled to make allowance for the differences in income that exist in different parts of the world. In light of the complexity involved in constructing such a schedule, we propose that the ALM rely on lists established by the World Bank (available at <http://www.worldbank.org/data/databytopic/class.htm>). For each income level, we suggest a dues amount that reflects residents’ ability to pay, as set forth below:³

Income Classification	Fee (US\$)
Low (62 economies)	5 (0 for LDCs; see below)
Lower-middle (53 economies)	10
Upper-middle (37 economies)	15
High and OECD Members (51 economies)	20

Table 1 – Proposed Dues Levels

Fee Waivers: As this chart indicates, there are parts of the world where, in our view, even a minimal membership fee in low-income countries would pose an insurmountable barrier. For that reason, the ALM could offer dues-exempt memberships to residents of Least-Developed Countries (LDCs), a subset of low-income countries identified by the United Nations (available at <http://www.unctad.org/en/pub/ldcprofiles2001.en.htm>).

The LDC list of forty-nine countries offers only a partial solution to the problem of making the ALM broadly accessible on a global basis. Some countries – Côte d’Ivoire, Ghana, North Korea, et al. – are not classified LDCs, yet their residents’ ability to pay for membership is extremely limited. The ALM, in consultation with experts in regional economics and development, should consider offering exemptions in such areas as well.⁴

Authentication and Interest: For dues-paying members, the act of payment would be taken as reasonable authentication of identity and expression of interest. We recommend that various mechanisms be employed to aid verification and prevent fraud. For credit card and bank transfers, the card number, name, address, etc. could be used to flag duplicates or potentially

³ This fee structure is provided for information and discussion. We strongly recommend that local, national, and regional communities and development experts, including such organizations as the UNDP or World Bank, advise the Board on appropriate fee structures.

⁴ We acknowledge that there are limitations in using any country index as the basis for exempting individuals from a membership fee. Economic conditions aggregated at a national level provide only a rough measure of the ability to pay at an individual level. Yet this approximation is necessary to temper the inequities presented by imposing a fee barrier to ICANN membership.

fraudulent registrations. Online registration via a secure web page should use IP mapping with the system designed so that duplicates are flagged and trigger further searches and may be queried by e-mail. The member rolls should be made available to the public with sufficient distinguishing information, but not so as to violate reasonable expectations of privacy, law, or to enable spam e-mail, etc.

Postal-return verification would be required of exempted users. While imperfect, the system remains an efficient, lowest-cost means of international communication that still performs a meaningful authentication function.

Upper Limits on Dues-Exemptions: Dues-exempt memberships could be capped in order to avoid two pitfalls of free registration. First, there is a risk that an LDC could take advantage of the dues-exemption to register large numbers of “free” members, thus skewing the regional election in that country’s favor. Second, there is the financial burden of authentication; the expenses associated with using a postal-PIN system for verifying an extremely large number of dues-exempt members could be unmanageable for ICANN.

We do not expect that the number of dues-exempt members to be high enough for such issues to become more than theoretical. Nevertheless, in order to assure that the dues exemptions are not unbounded and remain financially and politically feasible, the number of dues-exempt memberships could be capped at some high fixed number in each LDC. This cap should be high enough to encourage participation from Internet users in LDCs, while still protecting ICANN against the possibility of unbounded costs. (Such a cap could be set either as an absolute number per country, or as a percentage over the actual number that participated in the 2000 elections from that country).

Fee Collection: How will the ALM collect those dues from a global constituency? In cases where transaction fees apply, they are likely to be high. Our investigation places the cost of an international money transfer at between US\$10 and 20, amounts greater than the proposed ALM dues themselves in many parts of the world. Fees stemming from the conversion of local currencies into American dollars create additional obstacles.

To avoid excessive transaction fees (which for members in many countries may be up to three times the amount of their actual dues), collection should be aggregated at the national and regional level, where possible, before transfer to the ALM. Unfortunately, given the short time available, transaction fees and currency conversions costs are unavoidable cost elements. In light of this reality, we propose that all transaction costs be borne not by the ALM but by the members themselves.

In the long run, evolving authentication technologies may make fast, efficient systems of international payment a reality. In the meantime, the ALM should minimize members’ costs by accepting the widest possible variety of payment methods. These should include:

- **Credit cards.** Where credit cards are available, they are a near-ideal form of money transfer across borders. We note that the availability of credit cards is increasing rapidly in many parts of the world, though they are by no means uniformly accessible.

- ***Account transfers.*** A specialized membership bank account should be established to allow direct transfer of funds from foreign banks to the ALM.
- ***Western Union/wire transfers.*** For those members who do not have access to bank accounts or credit cards, Western Union and other such agencies offer international money collection instruments that would allow payment to an ALM account from any Western Union (or other such) office in the world. Transaction fees for this function are estimated at around US\$15.
- ***In-person collection.*** For those members able to attend one of ICANN's public meetings, there should be a system that permits payment of dues directly in person.
- ***Aggregation of fees.*** The ALM should develop relationships of trust with user and network groups worldwide. Members of these groups could cooperate to transmit their dues to the ALM in batches, drastically reducing the per-member transaction costs. We recognize that developing these trust relationships will take time, but we urge the ALM to make early progress.
- ***Other instruments.*** The ALM should monitor the development of other instruments, in particular digital cash systems that may avoid the costs associated with the international banking infrastructure. Unfortunately, many of these systems are still in early development.

Even together, these options don't fully solve the problems of online payment and authentication. But emerging technological developments have real promise. Technologies of the future like digital cash and the public key infrastructure could provide long-term solutions.

2. The ALM Participatory Structure

The At-Large should not be a Supporting Organization: The ALSC has several times referred to the new At-Large organization as a new Supporting Organization, a characterization that we find misguided. By its use of the term "Supporting Organization," the ALSC appears to be suggesting that the At-Large should have the same or similar powers (i.e. responsibilities identified in ICANN bylaws) to those of the ASO, PSO and DNSO, and with particular policy interest in "Internet user/consumer issues".

This is a significant departure from the current SO policy-making structure where each SO is responsible for well-defined, specialized policy areas. If the ALSO were to duplicate the policy-making activities of the other SOs, it would raise concerns about the stability of the ICANN policy development process.

The At-Large Membership does not stand as a companion Supporting Organization; rather, the ALM should support and serve the policy processes of the SOs.

In short, the ALSC seems to propose that the ALSO be created with strong policy making powers and the right to elect one third of the board. We believe it is more appropriate for the

ALM to have a less direct, but by no means less meaningful, advisory role and the right to elect at least one half of the Board

The ALM Structure: Equally important to the need for a successful election in 2002 is the responsibility to provide the ALM with a structure that promotes real, productive participation by members.⁵

In the NAIS Report, we argued that the ALM should have an internal design different from those of the three Supporting Organizations, in light of the ALM's different conception and purpose. We propose the following structure:

- *The Membership Council:* The ALM should be coordinated by an eighteen-member Membership Council. The process for identifying the members of the Council should ultimately be determined by the Initial Membership Council, which itself could be populated by the At-Large Directors *ex officio*, as well as the first runner-up in each regional election.⁶

The Membership Council should be responsible for monitoring the status of communication and cooperation within the membership, for conducting outreach to those groups that are underrepresented in the Membership, and for promoting the development and implementation of new structures to further the effectiveness of the ALM as a whole, and particularly of Participating At-Large Members within an evolving ICANN structure. It would also provide policy guidance to the ALM staff (see below) in activities supporting the Membership's activities.

- *Staff Support:* Professional staff support is necessary to support the ALM. As in 2000, staff will play a key role in providing for the 2002 election, but the ALM's staffing needs extend further. ICANN's operations to date have amply demonstrated the value of professional support in providing forums for interaction, focusing discussion, and exploring new avenues for participation.

The amount of staff support needed will vary with the size of the membership. We believe at least one full-time staff member will be necessary. Given the global nature of the At Large Membership, we note that it may not be necessary to have the staff based in the U.S.

Outreach to the User Community: In order to foster an atmosphere of robust participation in the ALM, the Membership Council and staff should utilize the lessons and energies of pre-existing user networks, both on- and offline. A number of local, national, and regional associations have smoothly functioning networks of communication and deliberation; the ALM should seek out partnerships that would allow these networks to be exploited for users' benefit.

⁵ For discussion purposes, we have included one such structure, in diagram form, as Appendix II to this statement.

⁶ We recognize that the total number of At-Large Directors is still a matter of question for some on the Board. If there will be fewer than nine At-Large Directors, an alternate model for populating the Initial Membership Council will be required.

In recent days, the ALSC has begun preliminary outreach to certain membership organizations and individuals in communities likely to have an interest in the At-Large. While we greatly appreciate this effort, the ALSC “Solicitation of Interest” carried with it an extremely short deadline for response. In our experience such interest is often only the product of substantial handholding, education, and guidance, and such a short deadline brooked little opportunity for any such activities. These shortcomings will lead to a predictably low response rate to the SOI. For that reason, we believe the SOI to be an unreliable tool for measuring the user community’s interest in ICANN or the At-Large Membership project.

3. Number of At-Large Directors

The NAIS Report recommended that ICANN maintain the status quo of nine At-Large Directors on the nineteen-member ICANN Board of Directors. The ALSC by contrast recommended reducing that number to six.⁷

Although we disagree with reducing the number of At Large seats on the board, if any such reduction is pursued the bylaws should be modified so that **any additional bylaws changes affecting the ALM or its representation on the Board will require greater than a two-thirds vote of the Board**. This will preclude the possibility that the six (or some other number) of ALM Directors could be outvoted *en masse* by representatives of other interests on bylaws changes that could include such critical issues as the very existence of the ALM.

4. Financial Model

Proposing a long-term financial model for the ALM is difficult due to the large number of variables affecting ALM revenues and expenses and the lack of past data that might permit reliable predictions. In this section we identify the elements that affecting the ALM financial model, and provide estimates of income and expense.

ALM Expenses: The bulk of ALM expenses will fall into one of two categories: expenses supporting the 2002 election and those supporting the ALM’s participatory structure. Each includes both fixed and variable costs:

⁷ We acknowledge that there have been various other proposals to reallocate seats on the board; however we strongly believe that the number of At Large directors should balance the number elected by the Supporting Organizations.

	Election Costs	Participatory Costs
Fixed Costs	<ul style="list-style-type: none"> • Server design/construction • Election web site design/construction • Contracting election provider (s) • Online support for Board candidates • Capacity for financial transactions • Translation 	<ul style="list-style-type: none"> • Staff support to Directors & Membership Council • Design/construction of online ALM resources • Technical design, implementation • Outreach to membership organizations • Translation
Variable Costs	<ul style="list-style-type: none"> • Membership processing • Database management • Server updating/maintenance • Postal return system for members from LDCs • Online support for ALM members 	<ul style="list-style-type: none"> • Staff support to ALM members • Relationship management with outside organizations • Maintenance of online resources

ICANN’s experience supporting the 2000 At-Large Election helps in estimating future election-related costs of the ALM. Former ICANN CEO Mike Roberts has stated that in 2000 ICANN spent US\$200,000 on fixed election costs and US\$150,000 on variable costs related to membership registration and the postal return system (see http://www.atlargestudy.org/roberts_paper.html).

With the less expensive means of authentication that relies on the payment of dues instead of the postal return system for all but a limited number of dues-exempt memberships, we expect the election’s variable costs to diminish substantially and to scale much more efficiently. However, there were serious shortcomings in certain technical features of the 2000 election system, and additional expenditures will likely be necessary to ensure a smoothly functioning system, possibly including the hiring of contract staff. Based on experience from the last election, we therefore estimate total election costs in 2002 to run from US\$200,000 to US\$350,000.⁸

Participatory costs for the membership are more difficult to estimate. Our preliminary estimate of costs is:

⁸ This estimate is extrapolated from the limited data available regarding ICANN’s spending in the 2000 election. Since this election system, unlike the 2000 system, does not include a postal return system, we take US\$350,000 as the high-end of our estimate. The low end, \$200,000, comes from a 66% reduction in variable costs (US\$150,000 to US\$50,000) and a 25% reduction in fixed costs (US\$200,000 to US\$150,000).

- **Staff.** The ALM will require at least one, perhaps two full-time staff members, to provide administrative support, secretarial functions, and member coordination, est. cost (for one year) US\$75,000 each.
- **Offices/equipment/connectivity.** Including both office space and equipment and servers to support ALM online activities, est. cost US\$50,000 to US\$100,000.
- **Travel/Meetings.** For staff to attend and coordinate ALM activities associated with ICANN public meetings. US\$10,000 per meeting, three meetings a year.
- **Communications.** Including phone and online forms, to support the ALM Directors and Membership Council, as well as ALM Working Groups and Regional Associations. US\$10,000 - US\$25,000

All of these costs have some fixed and some variable element, and could grow with an extremely large ALM membership. We put the membership's participatory costs at approximately US\$200,000.⁹

These estimates are based on building the entire ALM structure from scratch and yield a total estimated cost that ranges from US\$370,000 to US\$675,000. Our best estimate puts the cost at US\$450,000, with an understanding that while the actual cost could be higher, it is unlikely to be a great deal higher, due to the limiting effect the membership fee will have.

Over the long term, many of the expense items discussed above will diminish substantially or even disappear entirely. As a result, **we expect certain ALM expenses to drop substantially over the next few election cycles before leveling off at a much lower level.**

ALM Revenues: Over time, the primary revenue stream for the ALM will be dues payments from the members. That revenue will depend largely on two factors: the number of members, and the distribution of those members among the varying income-based tiers of dues.

It is not clear how many members there will be. It is, however, likely that the imposition of dues will mean that the number of members will be substantially less than the 158,000 individuals who registered to vote in the 2000 election and probably fewer than the 34,000 who actually voted in 2000 – perhaps numbering in the low thousands.

It is also difficult to predict the regional and income-level distribution of future At-Large Membership bodies. The statistics used here utilize the distribution seen in the 2000 At-Large election¹⁰, in which a large number of voters from high-income economies were seen. Based on such a distribution, the revenue collected through dues would average out to about US\$16 per member. We project 5 different scenarios – each calculated on a percentage of participation using the base of 34,000 actual voters in the 2000 elections. These scenarios range from 100 percent of the number of actual voters in 2000 down to five percent, and thus anticipate different degrees of participation because of the use of a fee structure.

⁹ This estimate includes US\$75,000 in staff expenses, US\$75,000 in office/equipment, \$30,000 in travel/meetings, and US\$20,000 in communications.

¹⁰ Available at <http://www.atlargestudy.org/stats/pubstats.shtml>.

Participation Level (2000 election = 1.00)	No. Members	Revenue (US)
0.05	1,702	\$28,817
0.10	3,404	\$57,635
0.25	8,509	\$144,087
0.50	17,018	\$288,174
1.00	34,035	\$576,349

Figure 2 - ALM Participation Projections

Observations on At-Large Finances: A key issue is whether the ALM must be entirely self-funding from the beginning of its existence. Any such expectation is probably unrealistic as a practical matter, and we believe incorrect as a matter of principle. To succeed the ALM will need and should have initial financial support from ICANN.

Initially, it appears unlikely that a fee will generate enough revenue to fully support the cost of the ALM. We expect member participation to drop sharply from 2000 given the membership fee and the short time frame to develop regional structures. With only a half or one quarter of the participation of last election, the ALM is likely to fall several hundred thousand dollars short of being able to sustain itself from fees.

However, we believe the costs are not prohibitive. Of a NAIS-projected ALM budget of US\$450,000 for 2002-2003, an appropriate level of support from ICANN could range from US\$350,000 to US\$400,000. This is less than 10% of ICANN's budget and on the order of magnitude of expenses for last year's ALSC effort. Moreover, as indicated in the expenses section, costs are unlikely to be substantially higher than predicted and will decrease over time. Costs are now also sufficiently bounded, reducing ICANN's financial exposure. Major increases in membership variable costs would be accompanied by increases in revenue. The exception – where membership is free – would be capped to bound financial exposure.

We do expect that over time, as the ALM matures, its ability to generate revenues through membership fees will increase. While membership dues may provide a path to long-term financial self-sustainability for the ALM, it appears unlikely that the “embryonic” ALM (the ALM in its first few years of existence) will be able to fully support all its activities with only revenue from member dues. Once the ALM reaches even 75 percent of the actual participation in 2000, the revenue projections from dues payments would make it self-supporting (assuming that our best estimate of US\$450,000 in expenses proves accurate).

We believe therefore that ICANN can and should supplement the budget of the ALM, as necessary, in order to ensure the early success of the ALM. ALM costs should be paid from ICANN's budget – raised from those who benefit financially from a legitimate ICANN, and ultimately from consumers. As we discuss in the NAIS report, those interests that contribute to the ICANN budget benefit from the existence, stability, and legitimacy of ICANN. It is a fully appropriate use of the ICANN budget to contribute to the costs of the ALM, as necessary, in order to ensure a functioning ALM that can participate in ICANN and elect Directors to the ICANN Board.

5. Other Issues

Restatement of the ICANN Mission: ICANN should adopt language in its bylaws and/or Articles of Incorporation that **restate and clearly indicate the limits on ICANN’s activities in concrete terms**. This will greatly assuage fears that ICANN could succumb to “mission creep,” leveraging its authority over key systems into action on policy questions it is incompetent to address. Particularly if the At-Large representation on the Board is to be reduced from its current level, that reduction must be accompanied by this important additional protection to ensure that ICANN does not entangle itself in improper issues of public policy.

One common fear expressed about ICANN is that it will gradually lessen its resistance to expanding 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 has begun to materialize as ICANN has begun, without a clear mandate, to extend its authority deep into the new gTLD contracts (many of which number in the hundreds of pages), into areas of consumer protection, and into new naming systems that may or may not layer on top of the DNS. *Restating the mission in a clear, concise manner will clarify that ICANN’s appropriate range of activity is narrow.* Concrete limits will insulate ICANN from pressure to act over-broadly, or in such a way as to threaten its legitimacy before the world.

Without a clearer statement of ICANN’s mission, the Internet-using public will remain insecure about ICANN’s authority and responsibilities. Over time, such insecurity would threaten not only ICANN’s institutional stability, but that of the network itself.

Election Rules: We also think it is essential for ICANN to develop a code of conduct for its elections. The membership, candidates, and ICANN community need clear proscriptions against fraud in voter registration or campaigning. A broader statement of clear rules and guidelines would in itself deter some of the activity that raised concern in the 2000 elections, such as mass registrations of voters. As in the 2000 election, an Elections Committee should be established to adopt and implement such rules.

The Domain Name Ownership Requirement: In its Final Report, the ALSC proposed that the At-Large Membership limit voting rights to only people who own domain names. We view that restriction as both unnecessary and unworkable on a global basis.

A domain name ownership requirement creates substantial imbalances between countries within regions; for example, in Europe some countries allow individual ccTLD registrations and others limit it to businesses and organizations, leaving major differences in the number of potential members and voters from each country. The requirement raises other fairness concerns as access to domain names in either gTLDs and ccTLDs is impractical for users in many parts of the world. Moreover, much of the namespace (both worldwide and on a national basis) is dominated by commercial registrations. The use of the DNS as an authentication mechanism is suspect; questions about the reliability of Whois data in the gTLDs and ccTLDs are well documented, and issues of how to ensure that those with many domain names only get one vote remain unanswered.

Finally, given that ICANN's activities include domain names management, addressing, and protocol development (each of which have a potentially broad area of impact), domain name ownership is a poor indicator of a user's interest. A requirement that all At-Large voters own domain names would undercut the ALM's basic purpose as a channel for input from the broad, global community of Internet users.

We believe that collections of dues and completion of a registration process constitute a sufficient "expression of interest" in ICANN – and in fact a very high hurdle to membership. We have also carefully considered other mechanisms to measure "interest," such as participation in ICANN mailing lists, but believe they would severely limit inclusiveness and are unworkable at this time for a global audience. (For example, it seems absurd to require non-English speakers to participate in an all-English ICANN forum or list as a condition of membership.)

6. Conclusion

ICANN's responsibility to include voices from the user community lies at the heart of its management mission. Questions of how the At-Large perspective would be incorporated into ICANN have lingered for too long, even while ICANN has begun to implement policies with potentially broad areas of impact.

It is essential that ICANN resolve the question of the public voice at its upcoming meeting in Accra. This can establish ICANN on a stable foundation of long-term legitimacy.

We believe that the solutions in the NAIS report offer a workable approach to ICANN's requirements for a public voice. While the ALSC's recommendations diverge from the NAIS report on some important details, we believe that with certain essential modifications they can be implemented in ways supportive of robust public participation.

Appendix I: Background on the NAIS Report and the ALSC

Culminating in Montevideo with the publication of the NAIS Final Report, “ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work” (available at <http://www.naisproject.org/>), NAIS set forth some key principles to guide ICANN toward legitimacy, stability, and accountability to the global Internet community:

- ICANN’s At-Large Membership should be both broad and open, with low barriers to entry and a tendency towards inclusiveness.
- The Membership should be provided with a functional, robust structure capable of facilitating self-organization, coordination, aggregation, and articulation of the Membership’s diverse views.
- The Membership should be adequately represented in ICANN’s central decision-making structure, the Board of Directors.

These principles extended from the recognition that ICANN’s activities have a substantial impact on Internet users, and the conclusion that ICANN’s structure should include mechanisms to permit some user influence over the exertion of ICANN’s management authority.

Five months after publishing the NAIS report, we remain strongly committed to the principles it described. ICANN can only succeed in its mission of global coordination if it is perceived as legitimate by the users it serves.

The report subsequently issued by the At-Large Study Committee (ALSC) in November 2001 shared many points of convergence with the NAIS report. Like the NAIS report, the ALSC report recommended that ICANN establish a participatory membership structure, that the members have representation on the ICANN Board, and that the At-Large Directors be chosen through direct elections.

However, the ALSC report differed from the NAIS report in some significant ways:

- **Limiting the electorate.** The ALSC sought to “bound” the At-Large Membership by limiting it to those users who owned domain names. The NAIS report advocated a broadly inclusive membership, without such registration requirements.
- **Changes to Board-level representation of the At-Large.** The ALSC report called for reducing the number of At-Large Directorships from the current nine seats to six. The NAIS report proposed that ICANN maintain the *status quo* of Board-level representation – i.e., the At-Large Membership should be represented on the Board by a number of Directors equal to the total number of Directors representing the Supporting Organizations.
- **Membership fee.** In addition to the domain name ownership requirement, the ALSC recommendation required that all At-Large members pay some undecided membership fee in exchange for voting rights. The NAIS report rejected such fees as posing excessively high barriers to entry for many users.

Appendix III: Estimated ALMO Revenues:

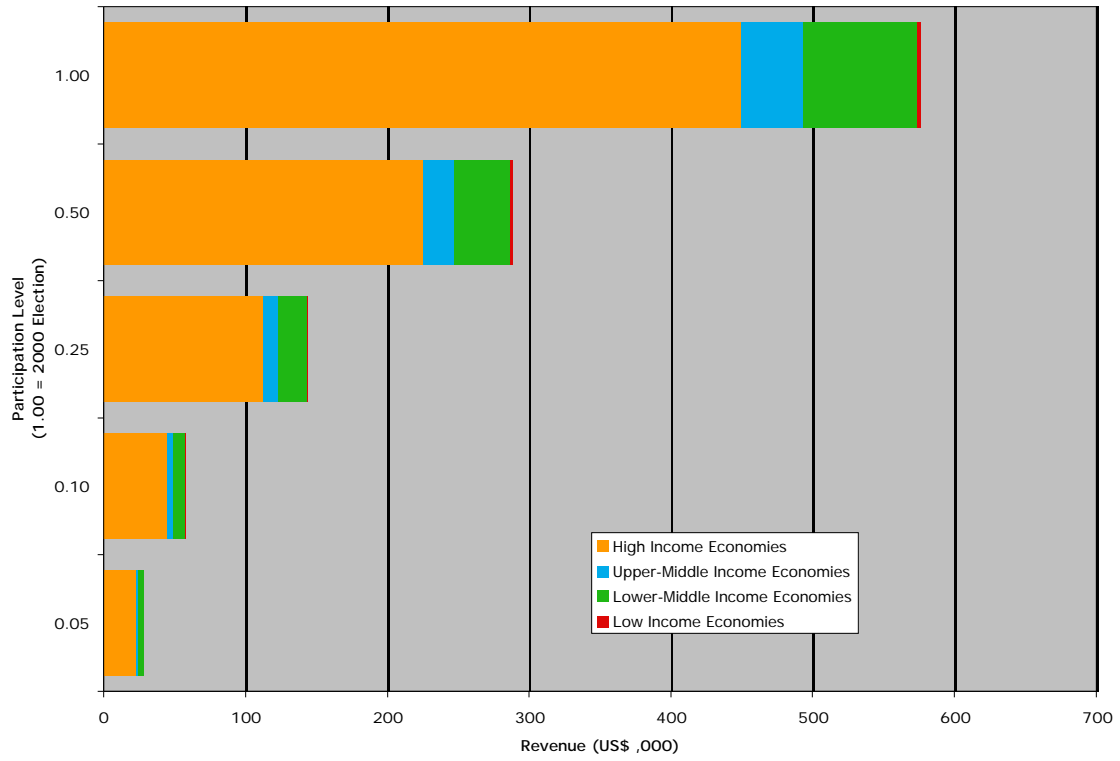


Figure 3 - ALM Revenue Projections