**ATRT1 implementation concerns**

ICANN deserves credit for its implementation of certain ATRT1 recommendations, including:

* Board compensation (Rec #5);
* promptly posting materials used in Board decision making (Rec #7.1, 7.2, 8 & 19); and
* continuing to improve interaction with the GAC (Rec #9, 10 & 11)

Nevertheless, it appears that significant implementation work still needs to be done in some cases. Three examples appear below for discussion with Staff. Recently, the Non-Commercial Stakeholders Group’s experience trying to get the ICANN Board’s New gTLD Program Committee (NGPC) to reconsider its decision to expand the scope of the Trademark Clearinghouse (TMCH +50) underscores the critical ATRT1 recommendations that remain largely unaddressed:

1. **Clarify the distinction between “policy” vs. “implementation”** (Rec #6)

Although ICANN justified the NGCP’s action as mere “implementation” work, debate continues over the appropriate limits of rights protection measures and new gTLDs. In fact, the NGCP chose not to heed deliberate [GNSO Council notice](http://gnso.icann.org/bitcache/d8eaf7ce8d121b69d340d1d14223520fd7d478b3?vid=46277&disposition=attachment&op+download) that most stakeholders considered this an appropriate subject for policy work.

This controversy may have been avoided had ICANN more diligently engaged the community on the “policy” versus “implementation” debate. Community deliberations were kicked off at the Toronto meeting in October 2012 – almost 20 months after the ATRT1 made its recommendations – and it appears that this process has not effectively clarified the issue since the [public comment period](http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm) closed in March 2013.

1. **Certify that policy-making process inputs are considered by the Board** (Rec #20)

Although Board meeting documents are being published promptly, the community often doesn’t know until after a meeting how Staff informed the Board. Furthermore, significant redactions of those input materials remain commonplace. The (in)completeness of public comment summaries only adds to the community’s frustrations.

In the TMCH +50 case, the community only learned after the fact that a decision had been made. Compounding the concerns, the Board also had just approved a Bylaws change that significantly limits the ability to request a reconsideration of a decision (see below).

1. **Consider restructuring review mechanisms** (Rec #23 & 25)

Here again, ICANN only started addressing the ARTR1 recommendations in the final months of 2012. In fact, the vendor had just a few weeks to solicit input from selected stakeholders and submit its report. It contained recommendations that would dramatically reduce the community’s ability to petition for reconsideration of a Board decision, however, and were strongly criticized by the Registry Stakeholders Group during the public comment period. Staff did not convey any of this when it proposed a Bylaws change at the Beijing meeting, and the measure was simply approved on the Board’s consent agenda.

This questionable level of transparency will have lasting implications. The community’s ability to petition for reconsideration of a Board decision was already limited; now it will be extremely difficult to pursue such a review. Questions surrounding the vendor’s selection, mandate, and proposals, as well as the apparent ignoring of clear and specific community concerns about the proposed change, underscores ongoing doubts about ICANN’s commitment to accountable and transparent operations in the best interests of the community which it is chartered to serve.