**Findings of ATRT1:** ATRT1 found significant concern across the Community about the way in which issues were identified for Board consideration, how and why particular decisions were taken, and how these outcomes were conveyed to stakeholders. ATRT1 also found that the Board’s deliberations were infrequently based on codified procedures or requirements, but rather were driven by organizational conventions based merely on precedent. This lack of clarity about the distinction between policy and executive function (or “implementation,” or “organizational administrative function”) fed confusion in the Community about whether the Board and Staff were acting in their proper capacity.

**Recommendations**:

*Recommendation 6:* The Board should clarify, as soon as possible but no later than June 2011 the distinction between issues that are properly subject to ICANN’s policy development processes and those matters that are properly within the executive functions performed by the ICANN staff and Board and, as soon as practicable, develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level.

**Summary of ICANN’s assessment of implementation**

ICANN Staff recommended that the Board adopt Recommendation 6 but with an implementation date later than June 2011, as put forward by ATRT1. Staff maintained that it was important to establish a baseline of understanding about this topic with the Community before implementation could be completed. (ATRT Recommendations, Proposed Implementation Plans, October, 2011 – Updated). Staff noted that it would immediately undertake a “categorization exercise,” using the Resolution wiki. Staff set out to categorize Board action into policy/executive/administrative and other categories, and then review whether public comment was received on those items.

Staff’s report to ATRT2 states, “ICANN addressed all portions of this recommendation in implementation. Please see 2012 ATRT Implementation Summary (www.icann.org/en/news/in-focus/accountability/atrt-project-list-workplans-29jan13-en.pdf) and the 2012 Annual Report on ATRT Implementation (<http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf>). Completion of this implementation project inspired further discussion about the distinction between policy and implementation issues that is still ongoing within the community, most recently in a public session in Beijing.”

“Because of the work undertaken for Recommendation 6, ICANN also published a paper on the Community Input and Advice Function (http://www.icann.org/en/news/in-focus/accountability/input-advice-function-24sep12-en.pdf), which has led to an ongoing dialogue in the community. There were sessions in both Toronto and Beijing on this topic, and ICANN staff has since produced a paper for public comment on Policy v. Implementation (http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm) to help frame and move the discussion forward.”

Staff notes that the “Community now has a defined set of terms to use when discussing and categorizing Board actions. The follow-on work has reinitiated a challenging debate within the community regarding policy vs. implementation roles and how the community provides advice to the Board.” Staff also notes that “[e]very substantive action taken by the Board is now accompanied by an identification of the type of action and the consultation expected or conducted prior to Board decision.”

**Summary of community input on implementation, including effectiveness**

The comments received and the discussions at the public sessions reflect certain common sentiments from the Community:

* this continues to be an important issue;
* outside of policy issues addressed in the well-defined GNSO, ccNSO and ASO policy processes, there is uncertainty about how advice can be provided from the Community to the Board;
* cross community working groups should be explored as one mechanism for providing advice to the Board;
* current mechanisms or approaches to provide the Board with advice from the Community on non-“P” policy issues are inadequate; and
* ad hoc groups, experts and fast track processes that have been used in the new gTLD process have not proven to be satisfactory approaches to address this issue.

**Summary of other relevant information**

|  |
| --- |
|  |

**ATRT2 analysis of recommendation implementation**

Implementation is incomplete and work on the issue is ongoing. ATRT2 views this Recommendation as still important to providing clarity for the Community that is particularly important in the multi-stakeholder environment. Although ICANN posted a Community Input and Advice Function paper on September 24, 2012 (more than a year after the date when the Board was to take action on Recommendation 6 under the AoC) and public sessions were held during the ICANN meetings in Toronto (October 2012) and Beijing (April 2013), the fact remains that this issue was barely addressed during the two-year timeframe envisioned by ATRT1. In fact, Staff only developed its “framework” paper and posted it for Public Comment on January 21, 2013.

A continuing lack of clarity about “policy v. executive function” or “policy v. implementation” or “policy v. organizational administrative function” causes uncertainty at best and distrust at worst about whether ICANN Board or Staff is acting within its proper scope or whether ICANN is acting in a “top down” as opposed to “bottom up” manner. As in any organization or community, a clear understanding of respective roles, responsibilities and process is foundational to cohesion and successful interaction.

Some maintain that distinguishing between policy and implementation is either too difficult a task or so esoteric that clear lines – and hence clarity for the Community and ICANN – are not achievable. While perfect clarity may not be achievable, failure to develop a workable framework that lends clarity to roles, responsibilities and processes in matters of implementation and policy will only continue to foster questions and unnecessary concerns about the accountability of ICANN’s decision making as well as its genuine commitment to the bottom up, multi-stakeholder process.

**ATRT2 assessment of recommendation effectiveness**

The implementation of this Recommendation has not been effective. While efforts have begun to engage the Community in a dialogue concerning the issue, the Community and ICANN appear no closer to clarity on this matter. It may be that additional effort needs to be applied to “develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level.”