# ATRT 2 Recommendations

Effectiveness of the GNSO PDP WG Model

## Hypothesis of problem

Although ICANN continues to conduct its Policy Development Processes (PDP) via Working Groups (WGs) composed of ICANN community volunteers that self-select Chairs presumably capable of bridging opinion differences and arriving at generally acceptable policy recommendations, this model often appears to be lacking – especially when dealing with complex issues compounded by widely disparate points of view and/or strongly held financial interests in particular outcomes.

**Background research undertaken**

**Summary of ICANN input**

ICANN stakeholders have recognized the structural shortcomings of the existing PDP WG model for some time. Alternative models have been discussed. For example, the use of professional facilitators was raised at the Beijing meeting, and more thoroughly discussed at the Durban meeting.[[1]](#footnote-1) In fact, ICANN brought in professional facilitators to help with a number of activities at the Durban meeting. ICANN staff subsequently drafted a paper, “GNSO Policy Development Process: Opportunities for Streamlining & Improvements,” that discusses a variety of potential improvements, including greater use of face-to-face (F2F) meetings and professional moderation/facilitation.[[2]](#footnote-2)

ICANN meetings themselves are a sign that the community highly values F2F interactions. The three international meetings per year draw significant – and growing – numbers of attendees, and remain an important opportunity for stakeholders to meet, debate, and decide issues. Likewise, regional meetings of contracted parties and other community members are well-received and attended. ICANN’s Board also holds workshop/retreats several times per year. Even the Review Teams established by the Affirmation of Commitments actively use F2F meetings to augment other methodologies.

**Summary of community input**

A wide-ranging e-mail discussion between several former PDP WG Chairs and others with much experience in GNSO PDPs raised a number of issues that contributed to the recommendations. Among them were the need for face-to-face meetings, professional or trained facilitation/moderation and the involvement of the Board in the process, including the benefits and dangers of deadlines and “threats”.[[3]](#footnote-4)

A number of Public Comments discussed PDP issues:

* + The involvement of the GAC in the PDP process.[[4]](#footnote-5)
	+ The need for wider participation and cross-community interactions.[[5]](#footnote-6)
	+ The need for participation by groups without a business-related incentives for participation.[[6]](#footnote-7)
	+ The need for community buy-in into the process and the belief that the decisions of a PDP will not be over-ridden.[[7]](#footnote-8)
	+ The need for facilitation or other ways of getting closure on contentious issues.[[8]](#footnote-9)
	+ The need to include non-English speakers in the process.[[9]](#footnote-10)

**Summary of other relevant research**

An expert study on the PDP has been commissioned by the ATRT2. The full InterConnect Communications (ICC) report can be found in Appendix [X]. Some of ICC’s key observations and conclusions include:

* PDPs are largely developed by North Americans and Europeans with little meaningful input from other regions. Reasons include language, time-zone constraints, inadequate communications infrastructure, and cultural issues.
* Even from the participating regions, most active participants have economic and other support for their ongoing involvement, dominating attendance records.
* The researchers also identified a widespread belief that participation may not be worth the effort since parties dissatisfied with the policy outcomes will find ways to ensure that they are not implemented as prescribed.
* The significant time and effort required for PDP WG participation is too great for too many potential volunteers, exacerbating reliance on a small pool of active participants. Furthermore, many of those polled by ICC reported that much of the PDP WG time is not used effectively.

ICC also addresses concerns about operational practice (time difference, resource availability, support for diverse languages, etc.) as well as the current PDP collaboration and discourse model – which often fails to take into account other cultural approaches to developing and building consensus policies.

## Relevant ICANN Bylaws, policies and procedures

The GNSO PDP is governed by Bylaws Annex A[[10]](#footnote-11). This includes the GNSO Operating Procedures[[11]](#footnote-12) and its rules for Working Groups. These annexes also allow work methodologies other than WGs if defined by the GNSO. Furthermore, these procedures do not dictate exact operational aspects of WG meetings.

## ATRT2 analysis & rationale

There appears to be a growing sense that professional facilitation of PDPs would contribute to the proper addressing of complicated policy issues. Although such support will incur costs, many stakeholders have expressed doubts that the more difficult and contentious problems will be satisfactorily addressed without such support. That would result in either poor policy, or a situation where the ICANN Board must intervene and set policy itself. Even that, however, would be inadequate in cases where formal Consensus Policy -- which can only be developed by the GNSO PDP -- is required.

The current PDP WG model also presumes that virtually all of the work can be done via e-mail and conference calls. Experience within ICANN indicates that face-to-face meetings are extremely beneficial. Of course, this too will require increased budget support.

~~It is not clear how one provides the incentive to negotiate in good faith and make concessions. In the ICANN context, this has often involved a threat of indeterminate Board action if agreement cannot be reached. This has been effective in achieving an outcome at times, but it is less clear that it has achieved a good outcome. In some instances, the Board has given instructions regarding time-frames in which a PDP should provide guidance, and then altered that position before the deadline has past, significantly perturbing the PDP process. Such lack of certainty must be avoided at all costs.~~It is unclear how one provides the incentive to negotiate in good faith and make concessions when stakes are high. In the ICANN context, this has at times involved a Board-imposed deadline with the potential for indeterminate Board action if agreement cannot be reached. This has been effective in achieving an outcome at times, but it is less clear the outcomes achieved have been good ones. In some instances, the Board has given instructions regarding time-frames in which a PDP should provide guidance, and then altered that position before the deadline has past, significantly perturbing the PDP process. Such lack of certainty must be avoided.

The potential for Board action nullifying outcomes of a PDP is one of the issues that impact the viability of the PDP. If such intervention is viewed as possible or even likely, it impacts the need for good-faith negotiations and for participation in general.

As noted by many observers, the time and effort necessary to effectively participate in a PDP often is too great for many potential volunteers. As a result, many PDPs end up relying on the same handful of active participants. Even then, many of these workers believe that their time is not being well spent due to lack of organization, good methodologies, and effective leadership. While some report that this situation is improving due to the development of new processes that will be available to successive PDPs, it seems clear that more needs to be done.

~~The ATRT2 has a concern that many of the current ills associated with the GNSO PDP are not generic problems but are issues related to the New gTLD PDP and its extremely long and complex implementation (the implementations is still ongoing and with significant problem areas, and has lasted 2-3 times policy development process itself (need to check exact multiplier)). It is unlikely that such a process will occur again, and ICANN needs to be careful not to go overboard in fixing problems that are directly associated with that one PDP. Moreover, some of the problems that are now apparent would not likely have ever been discovered by additional policy development time – they only showed themselves based on actual implementation outcomes[[12]](#footnote-13).~~

~~The ATRT2 does note that the analysis conducted by the external expert was based on nine PDPs (of which four were aspect of Inter-Registrar Transfer Policy – IRTP), but excluded the DPD on Vertical Integration, the PDP that was arguably the most difficult and divisive, and in the belief of some, the least successful, in the GNSO and ICANN history.~~

## Draft recommendations

The specific issues and statistics discussed in InterConnect Communications’ “ATRT2 GNSO PDP Evaluation Study” should be further explored in subsequent ICANN staff implantation efforts. ICC’s findings also should be used as one basis for discussion in approaching the following enhancements.

**Improve the effectiveness of cross community deliberations**

[ATRT2 wiki issue #29]

1. To enhance GNSO PDP processes and methodologies to better meet community needs and be more suitable for addressing complex problems, ICANN should:

* Develop funded options for professional facilitators to assist GNSO PDP WGs, and also draft explicit guidelines for when such options may be invoked.
* Provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO PDPs. The GNSO must develop guidelines for when such meetings are required and justified.
* Work with the GNSO and the wider ICANN community to develop methodologies and tools to make the GNSO PDP process more time-effective, resulting in quicker policy development as well as increasing the ability to attract busy community participants into the process.
* ~~The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to PDP WGs and that the GAC has effective opportunities to provide input and guidance on draft PDP outcomes. (INCL EXISTING OPPORTUINITIES)~~
* ~~ICANN, in addressing the need to ensure global participation in ICANN processes, must have a deliberate focus on ensuring that the GNSO PGP, as well as other GNSO processes, allow for and ensure equitable participation from under-represented geographical, linguistic, cultural and economic groups.~~

2. The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to PDP WGs and that the GAC has effective opportunities to provide input and guidance on draft PDP outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment.

3. The Board and the GNSO should charter a strategic initiative addressing the need of ensuring global participation in GNSO PGP, as well as other GNSO processes. The focus should be on the viability and methodology of having equitable participation from:

- under-represented geographical regions;

- non-English speaking linguistic groups;

- those with non-Western cultural traditions; and

- those with an vital interest in GTLD policy issues but who lack the financial support of industry players.

**Amend the PDP procedures**

[ATRT2 wiki issue #28]

To improve the transparency and predictability of the PDP process:

* The Board should clearly state the process for setting gTLD policies in the event that the GNSO cannot come to closure on a specific issue in a specified time-frame. This resolution also should note under what conditions the Board believes it may alter PDP Recommendations after formal Board acceptance.
* ICANN should add a step in the PDP Comment Process where those who commented or replied during the Comment Period can request changes to the synthesis reports in cases where they believe the Staff improperly summarized their comment.

## Public Comment on Draft Recommendations (to be completed later)

## Final recommendation (to be completed later)

1. <http://durban47.icann.org/meetings/durban2013/presentation-gnso-pdp-13jul13-en.pdf> [↑](#footnote-ref-1)
2. See gnso.icann.org/en/drafts/pdp-im**pro**vements-22aug13-en.pdf‎ [↑](#footnote-ref-2)
3. See ATRT2 [mailing list archives](http://mm.icann.org/pipermail/atrt2/2013/), in particular the exchange titled “Discussion with ATRT2” that was conducted between 07-10 August 2013 - http://mm.icann.org/pipermail/atrt2/2013/000682.html through http://mm.icann.org/pipermail/atrt2/2013/000705.html. [↑](#footnote-ref-4)
4. US Council for International Business [↑](#footnote-ref-5)
5. Maureen Hilyard, Nominet, Gordon Chillcot, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-6)
6. Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-7)
7. US Council for International Business, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-8)
8. US Council for International Business, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-9)
9. Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-10)
10. See http://www.icann.org/en/about/governance/bylaws#AnnexA. [↑](#footnote-ref-11)
11. See http://gnso.icann.org/en/node/38709. [↑](#footnote-ref-12)
12. Examples are the discussions over specific geographic-related names and TLDs related to regulated industries. Both of these were exhaustively discussed during the PDP process, and in fact names such as .bank or .accountant were often used as examples of envisioned TLDs. Only on viewing the specific applications have new concerns been raised. [↑](#footnote-ref-13)