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| Accountability and Transparency Review Team 2 |
| Report of Draft Recommendations for Public Comment |
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| The following Executive Summary is an excerpt from the Accountability and Transparency Review Team 2 – Report Draft Recommendations for Public Comment.Translation of the full report will be available by 5 November. |
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|  11 October 2013  |

# THIS IS A DRAFT REPORT. THESE ASSESSEMENTS AND RECOMMENDATIONS ARE PRELIMINARY AND SUBJECT TO CHANGE DEPENDING ON PUBLIC COMMENT AND FURTHER ANALYSIS BY ATRT2. THE FINAL REPORT AND RECOMMENDATIONS OF ATRT2 WILL BE SUBMITTED TO THE ICANN BOARD AND PUBLISHED BY DECEMBER 31, 2013.

# EXECUTIVE SUMMARY

The Affirmation of Commitments (AoC)[[1]](#footnote-1) requires ICANN to conduct recurring reviews of ICANN’s deliberations and operations “to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.” To date, reviews have been conducted and Recommendations presented to the ICANN Board by the first Accountability and Transparency Review Team (ATRT1),[[2]](#footnote-2) the WHOIS Review Team (WHOIS-RT)[[3]](#footnote-3) and the Security Stability and Resiliency Review Team (SSR-RT).[[4]](#footnote-4)

As mandated by the AoC, a second Accountability and Transparency Review Team (ATRT2) was convened, and hereby presents its report of Draft Recommendations for Public Comment. ATRT2’s three fundamental tasks under the AoC include:

* assess ICANN’s implementation of Recommendations of the three prior AoC Review Teams;
* offer new Recommendations to the ICANN Board to further improve ICANN’s accountability and transparency;[[5]](#footnote-5) and
* offer Recommendations concerning improvements to the Review process itself.

In conducting its review, ATRT2 engaged an Independent Expert, InterConnect Communications (ICC), to provide analysis and recommendations concerning the GNSO Policy Development Process (PDP). ICC’s draft report (attached as Appendix A) helped inform the ATRT2’s understanding of this important aspect of bottom up, multi-stakeholder governance. For clarity, the ICANN Board is only required to act on Recommendations offered by ATRT2.

**I. ATRT2 OBSERVATIONS**

The following questions helped drive ATRT2 assessment of ICANN’s accountability and transparency:

**A. What is the objective of this Review?**

The importance of successfully implementing AoC Review Team Recommendations is ultimately for ICANN to create a “culture of accountability and transparency” throughout the organization. ATRT2 strove to identify the degree to which ICANN employees and Directors have a clear understanding of how their respective roles, responsibilities and daily activities relate directly to accountability and transparency. ATRT2 also examined the effect that implementation has had on the perspective of ICANN’s Board and Staff, and on the work of the Community.

**B. What is the current environment?**

ICANN is an organization in the process of significant growth in terms of resources, global engagement and geographic presence. Such significant growth provides fundamental challenges for any organization. ICANN is also in the process of coordinating the launch of over 1,000 new generic TLDs (gTLDs), and the ICANN Community has been deeply engrossed in related policy and implementation processes.

For ICANN, which is somewhat unique as a bottom-up, multi-stakeholder organization that coordinates a global resource and whose decisions must take into account the public interest, a deepening of accountability and transparency at this time is essential not only to its successful growth but also to its long term viability.

**C. Where does ICANN need to go from here?**

In an increasingly challenging global Internet governance environment, ICANN should strive to establish *itself* as the benchmark of accountability and transparency. The AoC Review Teams themselves are an example of stakeholders working together on equal footing and, as such, they provide ICANN with an opportunity to set a global standard of multi-stakeholder governance.

Going forward, ATRT2 believes that ICANN needs to achieve the following:

* establish clear metrics and benchmarks against which improvements in accountability and transparency can be measured;
* communicate clearly and consistently about its accountability and transparency mechanisms and performance; and
* improve and prioritize its AoC Review processes.

**II. ATRT2 RECOMMENDATIONS**

Based on its work to date, ATRT2 offers the following draft Recommendations for Public Comment. These Recommendations fall into two categories: 1) “New” Recommendations on issues addressed by ATRT1; and 2) “New” Recommendations arising from issues not addressed by ATRT1 Recommendations. With respect to WHOIS-RT and SSR-RT Recommendations, ATRT2 provides an assessment of ICANN’s implementation of those Recommendations only (see Appendix B and Appendix C, respectively). Any “new” Recommendations on the substance of those reviews will be offered by the forthcoming WHOIS-RT2 and SSR-RT2.

All of the following Recommendations focus on issues that should be addressed by the ICANN Board, but are not necessarily presented in a hierarchical order:

**New ATRT2 Recommendations arising from issues addressed by ATRT1**

**1. Develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyze those findings over time.**

(Re: Board improvements (ATRT1-1(a-d), ATRT1-2); Report Section 2.7, p.10)

**2. Develop metrics to measure the effectiveness of the Board’s functioning, and publish the materials used for training to gauge levels of improvement.**

(Re: enhancing Board performance and work practices (ATRT1-4); Report Section 4.7, p.14)

**3. Conduct qualitative/quantitative studies to determine if the qualifications of Board candidate pools improved once compensation was available, and regularly assess Director’s compensation levels.**

(Re: Board compensation (ATRT1-5); Report Section 5.7, p. 16)

**4. Develop complementary mechanisms for SO/AC consultation on administrative and executive issues to be addressed at the Board level.**

(Re: policy vs. implementation vs. executive function distinction (ATRT1-6); Report Section 6.7, p.18)

**5. Determine how the proper scope of redaction could be reasonably confirmed.**

(Re: publication of Board input materials and clearer redaction standards (ATRT1-7.1);

Report Section 7.6, p.20)

**6. Undertake initiatives to enhance understanding and transparency of GAC deliberations, including publication of GAC meeting agendas, transcripts, rationales for decisions, and a formal process for notifying and requesting GAC advice; expanding pubic observation/participation in GAC conference calls, and restructuring meetings to better engage the community; and exploring ways to facilitate GAC early on ICANN’s policy development processes.**

(Re: Board-GAC interactions (ATRT1-9-14); Report Section ??, p. 32-34)

**7. Explore mechanisms to improve public comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.**

(Re: improving public notice and comment processes (ATRT1-16); Report Section 12.7, p.35)

**8. Encourage public participation, improve translation quality and timeliness via benchmarking of procedures used by international organizations.**

(Re: encouraging multi-lingualism (ATRT1-18-19, 22); Report Section 13,7, p. 39-40)

**9. Amend ICANN Bylaws to formalize Board response to AC advice. Consider restructuring the Independent Review and Reconsideration processes, and review the scope of the Ombudsman. Develop and report annual transparency metrics, including open vs. closed decision making; prevalence of redaction of ICANN Board materials; and statistics on a new whistleblower program.**

(Re: consideration decision making inputs and appeals processes (ART1-20, 23, 25-26);

Report Section 14.7, pp. 49-50)

**10. Develop funded options for professional facilitators as well as face-to-face meetings for working groups. Improve PDP time effectiveness via collaboration tools and methodologies. Ensure more equitable global participation in PDPs. Clarify the process the ICANN Board will use to set gTLD policy when the GNSO cannot come to closure on an issue in a timely manner. Include a formal step allowing commenters to change the characterization of their inputs in Staff synthesis reports.**

(Re: improving effectiveness of PDP model (ATRT2-28&29); Report Section 17.6, p.54)

**NEW RECOMMENDATIONS ARISING FROM ISSUES NOT ADDRESSED BY ATRT1 RECOMMENDATIONS**

**11. Improve the effectiveness of cross community deliberations**

**11.1**. 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.

**11.2**. 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.

**11.3**. 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.[[6]](#footnote-6) 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.

**12. Amend the PDP procedures**

**12.1**. 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.

**13. Institutionalization of the Review Process**

ICANN should ensure that the ongoing work of the AoC reviews, including implementation, is fed into the work of other ICANN strategic activities wherever appropriate.

**14. Coordination of Reviews**

ICANN should ensure strict coordination of the various review processes so as to have all reviews complete before next ATRT review begins, and with the proper linkage of issues as framed by the AoC.

**15. Appointment of Review Teams**

AoC Review Teams should be appointed in a timely fashion allowing them to complete their work over a minimum one (1) year period that the review is supposed to take place, regardless of the time when the team is established. It is important for ICANN staff to appreciate the cycle of AoC reviews, and that the Review Team selection process should begin at the earliest point in time possible given its mandate.

**16. Complete implementation reports**

ICANN should prepare a complete implementation report to be ready by review kick-off. This report should be submitted for public consultation, and relevant benchmarks and metrics must be incorporated in the report.

**17. Budget transparency and accountability**

The ICANN Board should ensure in its budget that sufficient resources are allocated for Review Teams to fulfil their mandates. This should include, but is not limited to, accommodation of Review Team requests to appoint independent experts/consultants if deemed necessary by the teams. Before a review is commenced, ICANN should publish the budget for the review, together with a rationale for the amount allocated that is based on the experiences of the previous teams, including ensuring a continuous assessment and adjustment of the budget according to the needs of the different reviews.

**18. Board action on Recommendations**

The Board must address all AoC Review Team recommendations in a clear and unambiguous manner, indicating to what extent they are accepting each recommendation.

**19**. **Implementation Timeframes**

In responding to Review Team recommendations, the Board must provide an expected time frame for implementation, and if that time frame is different from one given by the Review Team, the rationale should address the difference.

**20.**  **Financial Accountability and Transparency**

In light of the significant growth in the organization, ICANN should undertake a special scrutiny of its financial governance structure regarding the overall principles, the methods applied and the decision-making procedure including engaging stakeholders. Suggested principles are found in the ATRT2 Report.

In the Final Report, ATRT2 will consider “prioritizing” certain Recommendations based on their respective importance. ATRT2 considers Recommendations relating to the Board, GAC, Metrics and Multilingualism to be priority Recommendations. ATRT2 welcomes feedback on prioritization of proposed Recommendations from the Community.

1. <http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm> [↑](#footnote-ref-1)
2. <http://www.icann.org/en/about/aoc-review/atrt/1>, December 2010. [↑](#footnote-ref-2)
3. <http://www.icann.org/en/about/aoc-review/whois>, May 2012. [↑](#footnote-ref-3)
4. <http://www.icann.org/en/about/aoc-review/ssr>, June 2012. [↑](#footnote-ref-4)
5. Specifically, the AoC states that “each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews.” [↑](#footnote-ref-5)
6. The ATRT2 is also considering a recommendation for establishing a sustainable model for relying on volunteers across all Supporting Organizations and Advisory Committees to continue performing functions normally done by paid professionals.  This is an extension of the concerns listed in the PDP expert's report from the GNSO PDP to the breadth of ICANN's bottom-up activities. [↑](#footnote-ref-6)