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| Accountability and Transparency Review Team 2 |
| Report of Recommendations  |
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| 31 December 2013  |

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# EXECUTIVE SUMMARY

The Affirmation of Commitments (AoC)[[1]](#footnote-2) requires ICANN to conduct recurring reviews of its 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-3) the WHOIS Review Team (WHOIS-RT)[[3]](#footnote-4) and the Security Stability and Resiliency Review Team (SSR-RT).[[4]](#footnote-5)

As the AoC mandates, a second Accountability and Transparency Review Team (ATRT2) was convened in 2013 and hereby presents its report of Draft Recommendations for Public Comment. ATRT2 performed three fundamental tasks under the AoC:

1. assessed ICANN’s implementation of Recommendations of the three prior AoC Review Teams;
2. offered new Recommendations to the ICANN Board to further improve ICANN’s accountability and transparency;[[5]](#footnote-6) and
3. offered 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 final 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 required to act only on Recommendations offered by ATRT2.

**ATRT2 OBSERVATIONS**

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

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

The ultimate purpose of successfully implementing AoC Review Team Recommendations is the creation of a “culture of accountability and transparency” throughout ICANN. ATRT2 endeavored to identify how clearly ICANN employees and Directors understand the ways 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 experiencing significant growth in resources, global engagement and geographic presence. Such growth creates fundamental challenges for any organization. ICANN is also in the process of launching over 1,000 new generic TLDs (gTLDs), and the Community is 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 are an example of stakeholders working together on equal footing. As such, they provide ICANN with an opportunity to set a global standard of multi-stakeholder governance.

Going forward, ATRT2 believes that ICANN must:

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

**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 arising from 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). A full assessment of the effectiveness of those Recommendations and 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 they 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.~~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 1)~~

Category: Board Performance and Work Practices; see Report Section 1

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

Category: Board Performance and Work Practices; see Report Section 3

3. Continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and policy implementation~~, and administrative matters~~. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the Board on matters, including, but not limited to policy, implementation and administrative matters, on which the Board makes decisions.

Category: Policy/ Implementation/ Executive Function Distinction; see Report Section 5

~~4~~. Review redaction standards for Board documents, Document Information Disclosure Policy (DIDP) and any other ICANN documents to create a single published redaction policy.. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.

Category: Decision Making Transparency and Appeals Processes; see Report Section 6

5. Increased transparency of GAC related activities

5.1. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard. Examples of activities that GAC could consider to improve transparency and understanding include:

1. Convening “GAC 101” or information sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;
2. Publishing agendas for GAC meetings, conference calls, etc., on the GAC website seven days in advance of the meetings and publishing meeting minutes on the GAC website within seven days after each meeting or conference call.
3. Updating and improving the GAC website to more accurately describe GAC activities, including intersessional activities, as well as publishing all relevant GAC transcripts, positions and correspondence;
4. Considering whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of liaisons from other AC’s and SO’s to the GAC, once that mechanism has been agreed upon and implemented;
5. Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself;
6. Establishing as a routine practice agenda setting calls for the next meeting at the conclusion of the previous meeting;
7. Providing clarity regarding the role of the leadership of the GAC; and,
8. When deliberating on matters relating to particular entities, give those entities the opportunity to present to the GAC as a whole, prior to deliberations, and to answer questions.

5.2. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC formally adopting a policy of open meetings to increase transparency into GAC deliberations and to establish and publish clear criteria for closed sessions.

5.3. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided. Such rationales should be recorded in the GAC register. The register should also include a record of how the ICANN Board responded to each item of advice.

5.4. The Board, working through the BGRI working group, should develop and document a formal process for notifying and requesting GAC advice (see ATRT1 Recommendation 10).

5.5. The Board should propose and vote on appropriate Bylaw changes to formally implement the documented process for Board-GAC Bylaws consultation as developed by the BGRI working group as soon as practicable (see ATRT1 Recommendation 11).

*Increase support and resource commitments of government to the GAC (see ATRT 1 Recommendation 14)*

5.6. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to identify and implement initiatives that can remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. The BGRI should consider how the GAC can improve its procedures to ensure more efficient, transparent and inclusive decision-making. The BGRI should develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local DNS stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

5.7. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to regularize senior officials’ meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock-taking after each High Level meeting should occur.

5.8. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to work with ICANN’s Global Stakeholder Engagement group (GSE) team to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

5.9. The Board should instruct the GSE to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

1. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;
2. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the transparency on how ICANN reacts to GAC advice (e.g. by using information in the GAC advice register).
3. Making ICANN’s work relevant for stakeholders in those parts of the world with limited participation; and,
4. Develop and execute for each region of the world a plan to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN’s services including new gTLD’s.

*Increase GAC early involvement in the various ICANN policy processes (tied to ATRT 1 Recommendation 12)*

Recommendation was merged and concepts included in the recommendations related to cross-community development processes.

Category: GAC Operations and Interactions; see Report Section 8

1. 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.

ICANN also should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the Staff incorrectly summarized their comment(s).

Category: Decision Making Transparency and Appeals Process; see Report Section 9

7.1 To support public participation, ICANN should review capacity of the language services department versus the Community need for the service using Key Performance Indicators (KPIs) and make relevant adjustments such as improving translation quality and timeliness. ICANN should implement continuous improvement of translation and interpretation services including benchmarking of procedures used by international organizations such as the United Nations.

Category: Multilingualism; see Report Section 10

8. Consideration of decision-making inputs and appeals processes

8.1 Mandate Board Response to Advisory Committee Formal Advice.

ICANN Bylaws Article XI should be amended to include:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.

8.2 Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN’s structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.

8.3 Review Ombudsman Role

The Ombudsman role as defined in the Bylaws shall be reviewed to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

1. A role in the continued process of review and reporting on Board and Staff transparency.
2. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and executive functions related to policy and operational matters.
3. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

8.4 Develop Transparency Metrics and Reporting

As part of its yearly report, ICANN should include, but not be limited to:

1. A report on the broad range of Transparency issues with supporting metrics.
2. A discussion of the degree to which ICANN, Staff and Community, are adhering to a standard of transparency by default in all policy, implementation and administrative actions and in discussions with redactions or other practices used to keep information hidden from the ICANN community, documented in a transparent manner.
3. Statistical reporting should include at least the following elements:
4. requests of the Documentary Information Disclosure Policy (DIDP) process and the disposition of Board Book these requests.
5. percentage of redacted-to-unredacted Board briefing materials released to the general public.
6. number and nature of issues that the Board determined should be treated confidentially.
7. other ICANN usage of redaction and other methods for keeping information hidden from the community, and statistics on reasons given for usage of such methods.
8. A section on employee “Anonymous Hotline” and/or other whistleblowing activity, to include metrics on:
9. Reports submitted.
10. Reports verified as containing issues requiring action.
11. Reports that resulted in change to ICANN practices.
12. An analysis of the continued relevance and usefulness of existing transparency metrics, including
13. considerations on whether activities are being geared toward the metrics (aka, teaching to the test) without contributing toward the goal of genuine transparency.
14. Recommendations for new metrics.

8.5 Arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

The professional external audit should be based on the One World Trust recommendations to establish a viable whistleblower program, including protections for employees who use such a program, and any recent developments in areas of support and protection for the whistleblower. The professional audit should be done on a recurring basis, with the period (annual or bi-annual, for example) determined upon recommendation by the professional audit.

The processes for ICANN employee transparency and whistleblowing should be made public. Regularly (annually or bi-annually) cause an independent third party to evaluate the ICANN “Anonymous Hotline” policy to ensure it meets best practices for Whistleblower Policies; publicly report on the findings and any improvement recommendations. Further, make public the processes used to support the Anonymous Hotline policy.

Category: Decision Making Transparency and Appeals Processes; See Report Section 11

**New Recommendations Arising From Issues Not Addressed by ATRT1 Recommendations**

9. Improve the effectiveness of cross-community deliberations (Report Section 13).

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

1. In line with ongoing discussions within the GNSO, develop funded options for professional services to assist GNSO PDP Working Groups and also draft explicit guidelines for when such options may be invoked. Such services could include training to enhance work group leaders’ and participants’ ability to address difficult problems and situations, professional facilitation, mediation and negotiation. The GNSO should develop guidelines for when such options may be invoked.
2. Provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO PDPs. Such face-to-face meeting must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hub offices and engagement centers) to support intersessional meeting. Moreover, the possibility of meetings added on to the start or end of ICANN meetings could also be considered. The GNSO must develop guidelines for when such meetings are required and justified and for who should participate in such meetings.
3. Work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy-development processes to utilize volunteers’ time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

9.2 The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the Affirmation of Commitments.

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

1. all ICANN communities with an interest in gTLD policy and in particular those represented within the GNSO;
2. under-represented geographical regions;
3. non-English speaking linguistic groups;
4. those with non-Western cultural traditions; and
5. those with a vital interest in GTLD policy issues but who lack the financial support of industry players.

9.4 To improve the transparency and predictability of the PDP process, the Board should clearly state to what degree it believes that it may establish gTLD policy[[6]](#footnote-7) in the event that the GNSO cannot come to closure on a specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO policy recommendations, either before or after formal Board acceptance.Category: Cross-Community Deliberations; see Report Section 13

10. Effectiveness of the Review Process

10.1. 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.

10.2. 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.

10.3. Appointment of Review Teams

AoC Review Teams should be appointed in a timely fashion, allowing them to complete their work in the 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.

10.4. 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.

10.5. 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.

10.6. 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.

10.7. 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.

Category: AoC Review Process Effectiveness; see Report Section 14

11. Financial Accountability and Transparency

ATRT2 recommends that, in light of the significant growth in the organization, ICANN undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

11.1 The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN Community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.

11.2 As a non-profit organization operating and delivering services in a non-competitive environment, ICANN should explicitly consider the cost-effectiveness of its operations when preparing its budget for the coming year. This should include how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.

11.3 As a non-profit organization, every three years ICANN should conduct a benchmark study on relevant parameters, e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc. If the result of the benchmark is that ICANN as an organization is not in line with the standards for the comparing organizations the ICANN Board should consider aligning the deviation. In cases where the board choose not to align this has to be reasoned in the board decision and published to the internet community.

11.4 In order to improve accountability and transparency ICANN’s Board should base the yearly budgets on a multi-annual strategic plan and corresponding financial framework [covering e.g. a three-year period] This – rolling - plan and framework should reflect the planned activities and the corresponding expenses in that multi-annual period. This should include specified budgets for the ACs and SOs. The following year, a report should be drafted describing the actual implementation of the framework, including activities and the related expenses with a particular focus on the implementation of the yearly budget in question. (Board may choose to request follow-up reports on a quarterly basis.) The report shall be submitted for consultation.

11.5 In order to ensure that the budget reflects the views of the ICANN community, the ICANN Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and enough time is allocated for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting between the ICANN Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

Category: Financial Accountability and Transparency; see Report Section 15

# ATRT2’s ASSESSMENT OF RECOMMENDATION IMPLEMENTATION

ATRT2 provides the following preliminary assessment of ICANN’s implementation of the Recommendations of ATRT1. ATRT2’s preliminary assessments regarding WHOIS-RT and SSR-RT are found in Appendix B and Appendix C, respectively. In assessing ICANN’s implementation of Recommendations, ATRT2 examined a variety of inputs, including replies to requests for public comment and direct interaction with the ICANN community. Taking into account ATRT1 Recommendation 27 that called on the Board to regularly evaluate progress against these recommendations and the accountability and transparency commitments in the AoC, ATRT2 also referred to reports from the ICANN Staff, ICANN Board resolutions and interviews with members of the Staff and Board.

# Report Section 1. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #1 (Assessment of ATRT1 Recommendations 1 & 2)

## Findings of ATRT1

In the course of its deliberations, the ATRT1 found that the Nominating Committee (NomCom) had failed to implement previous recommendations, did not have effective operating methods or Board Member selection criteria, and was not serving to increase transparency of the Board member selection process. To address this, ATRT1 offered recommendations for continually assessing and improving ICANN Board governance, including ongoing evaluation of Board performance, the Board selection process, and the extent to which the Board’s composition meets ICANN’s present and future needs. These can be considered as a group and called Recommendation 1. Furthermore, ATRT1 Recommendation 2 called for a continual assessment of existing Board member skills, the programs for improving those skill sets, and ways to identify necessary skills during the selection of new Board members. The ICANN Board adopted all of these Recommendations in June 2011.

## ATRT1 Recommendation 1[[7]](#footnote-8)

*Recognizing the work of the Board Governance committee on Board training and skills building, pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, the Board should establish (in time to enable the integration of these recommendations into the Nominating Committee process commencing in late 2011) formal mechanisms for identifying the collective skill-set required by the ICANN Board including such skills as public policy, finance, strategic planning, corporate governance, negotiation, and dispute resolution. Emphasis should be placed upon ensuring the Board has the skills and experience to effectively provide oversight of ICANN operations consistent with the global public interest and deliver best practice in corporate governance. This should build upon the initial work undertaken in the independent reviews and involve:*

1. Benchmarking Board skill-sets against similar corporate and other governance structures;
2. Tailoring the required skills to suit ICANN’s unique structure and mission, through an open consultation process, including direct consultation with the leadership of the SOs and ACs;
3. Reviewing these requirements annually, delivering a formalized starting point for the NomCom each year; and
4. From the Nominating Committee process commencing in late 2011, publishing the outcomes and requirements as part of the Nominating Committee’s call-for-nominations.

##

## ATRT1 Recommendation 2 [[8]](#footnote-9)

*The Board should reinforce and review on a regular basis (but no less than every 3 years) the training and skills building programs established pursuant to Recommendation #1.*

## Summary of ICANN’s Assessment of Implementation

To implement the core of Recommendation 1, ICANN undertook several actions in cooperation and collaboration with the NomCom. It was generally understood by ICANN staff that these recommendations were meant to not only ensure selection of individuals with the appropriate skills, but also to address “concerns of undue secrecy in the NomCom process and requests for more expansive explanations of NomCom selections.”[[9]](#footnote-10)

To improve the process for selecting ICANN Directors and to address Recommendations on Board composition, the NomCom examined its operating procedures to establish clear and transparent skill sets, qualifications and criteria for Board Member selection; improve transparency; and establish and publish the selection procedures and processes the NomCom employs.[[10]](#footnote-11) The new NomCom guidelines, including internal NomCom procedures and a Code of Conduct, were approved by the Board and put into action.[[11]](#footnote-12) The NomCom now annually consults with the ICANN community and public on skill set requirements to consider when making appointments to leadership positions. The Board also embedded in its standard operating procedures a process to inform the NomCom annually by providing information on the existing Board’s skill sets.[[12]](#footnote-13) Finally, the Board now engages in interim training and orientations. To assess the Board’s performance in the areas addressed by NomCom’s implementation efforts, progress is tracked against skill-set benchmarks, and training and work program results.[[13]](#footnote-14)

## Summary of Community Input on Implementation

There was limited community input on the implementation of Recommendation 28. In general, the community indicates awareness of the methods and processes for nominating and electing Board members and general satisfaction with their terms. Some commenters did note, however, that a potential conflict of interest with the community remains.[[14]](#footnote-15)

Some noted that it's important to draw Board members from existing community groups to ensure the knowledge and understanding of ICANN and technical expertise to serve effectively. One comment suggested that Board service could be used as a mechanism to grow the community by creating initiatives to recruit from a wider community of participants to expand the range of expertise available. This commenter also underscored the importance of clearly demonstrating or articulating the traditionally high professional standard to which the Board works.[[15]](#footnote-16)

In contrast to comments in support of the existing Board selection processes, one commenter asked, “Is it reasonable that the Board should provide to the Nominating Committee the 'profile' of the Board Members it claims it requires in the next turnover?”[[16]](#footnote-17)

Additional public input posed some questions for future work that were not addressed by the ATRT1 recommendation in this area. Specifically, commenters asked about the importance of having an appropriately international Board, as well as one that represents the ICANN community and groups. These comments also delve further into how the Board itself selects Committee Chairs and Board Governance Committee members as important to transparency into Board selection and operations as those committees are the ones that recommend and approve Bylaw changes.[[17]](#footnote-18)

## ATRT2 Analysis of Recommendation Implementation

|  |  |
| --- | --- |
| **Recommendation (s)** | **Assessment** |
| 1a Document the methodology used to identify and choose “similar corporate and other governance structures'” | Done |
| 1b Document benchmarks used | Incomplete |
| 1c Improve NomCom outreach/PR | Done |
| 1d Expand the skills survey and benchmarking to include NomCom selections in GNSO, ccNSO, and ALAC | Done |
| 2(a) Metrics should be defined by which effectiveness of board training programs can be measured. | Incomplete |
| 2(b) Board training materials should be made public. | Incomplete |

## ATRT2 Assessment of Recommendation Effectiveness

While most of the issues in Recommendation 1 and Recommendation 2 have been addressed, several key concerns remain outstanding:

1. To what degree can the changes be said to have improved the quality of Board members?
2. To date, there are no objective measures for determining the quality of the ICANN Board membership. ICANN Community evaluations have neither been discussed nor implemented, yet they may be among the few statistical measures that could be developed.
3. A report on the benchmarks used by the NomCom needs to be documented, and the issue needs to be reviewed after there are more years’ experience with the Board under the current NomCom conditions.
4. Metrics are still needed for evaluating the success of Board improvement efforts.

**ATRT2 Draft New Recommendation #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.

**Public Comment on Draft Recommendation**

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

**Final Recommendation #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.

# Report Section 2. Assessment of ATRT1 Recommendation 3 – No ATRT2 Recommendation

## Findings of ATRT1

This issue of Board composition and selection had been the subject of two independent reviews that predated ATRT1. ATRT1 found that the greatest relevance to its review process was the recommendation for ICANN to recruit and select based upon clear skill-set requirements. This included the establishment of a formal procedure by which the Nominating Committee (NomCom) would discover and understand the requirements of each body to which it makes appointments. ATRT1 found that, “[a]s such, codifying the processes for identifying, defining and reviewing these skills requirements, as well as the mechanisms by which stakeholders are consulted, could assist in improving the Board’s overall performance.”

## ATRT1 Recommendation 3

*The Board and Nominating Committee should, subject to the caveat that all deliberations and decisions about candidates must remain confidential, as soon as possible but no later than the Nominating Committee process commencing in late 2011, increase the transparency of the Nominating Committee’s deliberations and decision-making process by doing such things as clearly articulating the timeline and skill-set criteria at the earliest stage possible before the process starts and, once the process is complete, explain the choices made.*

## Summary of ICANN’s Assessment of Implementation

ICANN Staff reported to ATRT2 on implementation efforts undertaken by both the Board and NomCom. It has become standard operating procedure for the Board and NomCom to have consultations and information-sharing sessions with respect to the Board skill-set requirements. The Board also implemented transparency guidelines for all NomComs, and compliance with the transparency guidelines is standard operating procedure. The NomCom provides a post selection report where it justifies its selections as standard operating procedure. These implementation measures and background documentation can be found at http://nomcom.icann.org.

## Summary of Community Input on Implementation

ATRT2 did not receive significant comment on implementation of this Recommendation. Nominet stated that it supported the mechanism for nominating and electing ICANN Board members, and it believes that it is a good example of a bottom-up mechanism for community input. Some commenters indicated they were not aware of the mechanisms for nominating and electing Board members, while others indicated their awareness as well as their opinion that the term length for Directors was satisfactory.

## Summary of Other Relevant Information

Implementation of this Recommendation involved not only ICANN Board and Staff but also the NomCom itself. Two former NomCom Chairs, Vanda Scartezini (2012 term) and Adam Peake (2011 term), responded to ATRT2’s questionnaire and provided a substantial overview of the efforts undertaken by the NomCom in implementation. Both Chairs recognized the intent of the ATRT1 to bring greater transparency and accountability to the Director nomination process while at the same time respecting fundamental aspects of the process (e.g. confidentiality of candidates). They also recognized that it was important for the NomCom to maintain an independent role in the selection process.

Adam Peake reported that the ATRT1 Recommendations suggested a general feeling that the NomCom needn't be so obsessed by secrecy and that this was positive. He also noted that some core ATRT recommendations were already NomCom practice, but the ATRT gave impetus to take improvements seriously. In 2011, NomCom held workshops with the Community that he judged to be quite successful, and he said that there was an attempt to improve communication throughout the process with the community (e.g. more email to lists, a blog) and with candidates (e.g. more information about the process, some communication conveying the stage of the process). Peake notes, however, that in 2011 these communications efforts were mostly not realized (i.e. ideas that were not put into practice). In general, though, he found that the implementation efforts were worthwhile, as shown by improvements in 2013.

Vanda Scartezini noted a number of specific implementation activities that took place during the 2012 term. Among them:

1. Published and updated the timeline for NomCom activities during the whole cycle of a NomCom to provide transparency to the Community and to candidates;
2. Held formal consultations with all ACs and SOs and their constituencies during the 2011 Annual General Meeting to identify all the profiles needed for the Board and their own leadership positions, and published all of the presentations used;
3. Held public meetings about ATRT1 recommendations and other relevant aspects of the NomCom process during ICANN’s Annual General Meeting in 2012;
4. Had a formal meeting with ICANN’s Board chair, the CEO and the Board Governance Committee to collect their opinions about Board member skill-sets needed for the next selection;
5. Met with ICANN’s General Counsel to ensure that all members inside the NomCom understand the requirements regarding privacy of candidate’s information;
6. Published the identified profile characteristics for all leadership positions as a guideline for candidate application information;[[18]](#footnote-19)
7. Held a session during the first ICANN international meeting of 2012 in San Jose, Costa Rica to recheck with the ACs and SOs and constituencies and to orient the NomCom’s members on the selection process;
8. After the selection process, published a final report[[19]](#footnote-20) for the October 2012 Annual General Meeting in Toronto, Canada that included all statistics related to NomCom 2012 (e.g. number of the candidates, gender, and geographic distribution, etc.) as well as a “matching matrix” with the Community’s and Board’s requested candidate skill-sets and selectee profiles; and
9. At the October 2012 meeting in Toronto, conducted additional meetings with the ACs, SOs and their constituencies to provide feedback about the NomCom’s activities and how their requirements for the Board and their own organizations’ positions were addressed.

Both former Chairs believe that there is continued improvement possible, like monthly report cards and having a standard matrix to use during and after the process. Scartezini maintains that within the ICANN Community there is now a clearer vision about the NomCom process, as well as a clearer view of the selection process and requirements for someone interested in becoming a Board member. She also notes a sense of improvement regarding transparency in ICANN’s relationship with the community and the external world. Peake also believes that candidates have a better understanding of what's required, and that there is a better knowledge of what the Board needs in terms of candidate skills and the "gaps" in the Board's collective skill-set. He noted that an indirect benefit of these implementation efforts has been that the improved information about desired candidate profiles has helped a professional recruitment company assist the NomCom in identifying potential candidates.

## ATRT2 Analysis of Recommendation Implementation

Implementation of Recommendation 3 appears largely successful. There is improvement in the transparency of the NomCom’s processes and in the adoption of standard operating procedures designed to enhance transparency. Importantly, implementation of Recommendation 3 fostered dialogue across the Community and had the NomCom interacting with the Board, the Staff and ACs and SOs as it went about the business of implementation. In fact, implementation of this Recommendation was not uniquely the responsibility of the ICANN Board or Staff. Rather, it required the interaction of the NomCom and the Board, as well as members of the Community, to successfully execute all of these tasks. It appears that both bodies undertook individual tasks and interacted successfully to implement Recommendation 3 as a whole.

## ATRT2 Assessment of Recommendation Effectiveness

Recommendation 3 has been effective in creating a regular and open exchange of information between the Board and the NomCom for identifying necessary skill-sets for Directors and for incorporating these desired attributes into the nominating process. Implementation of the Recommendation has also had the effect of creating more transparent NomCom standard operating procedures. For example, the NomCom now regularly holds open sessions at ICANN meetings. Additionally, post- selection reporting by the NomCom that provides a rationale for selection is consistent with spirit of the AoC.

## Public Comment on Draft Recommendation

## Final Recommendation

# Report Section 3. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #2 (Assessment of ATRT1 Recommendation 4)

## Findings of ATRT1

ATRT1 found that, based on its review and two prior independent reviews, there was a clear need to improve both the individual and collective skill of the Board of Directors. While ATRT1 Recommendation 3 focused on the identification of required skill-sets and incorporation of those skill-sets as part of the Nominating Committee process, Recommendation 4 called on the Board to enhance its performance and work practices.

## ATRT1 Recommendation 4

*“Building on the work of the Board Governance Committee, the Board should continue to enhance Board performance and work practices.”*

## Summary of ICANN’s Assessment of Implementation

The Board has undertaken a number of activities to enhance its performance and work practices. Those activities include developing work plans that incorporate Recommendation 4 objectives; conducting two “effectiveness” training sessions in 2012; establishing Director performance evaluations that are provided to the Board “appointing” bodies; synchronizing Directors’ terms for working efficiency; and creation of a Board Procedure Manual (http://www.icann.org/en/groups/board/documents/draft-procedure-manual-09oct12-en).

## Summary of Community Input on Implementation

Public comments focused on aspects of Board work practices. Nominet noted work done to improve Board governance (e.g. Conflict of Interest and Ethics Review) and pointed out that the Board had established codes of behavior.[[20]](#footnote-21) The U.K. government called for metrics for Board performance to be implemented, reviewed and monitored independently.[[21]](#footnote-22) Darlene Thompson of At Large noted that more information needs to be available to the public as to what methods are being used by the Board to assess its governance.[[22]](#footnote-23) There was general support for the term for Directors.

## Summary of Other Relevant Information

ICANN Board Chair Steve Crocker noted that the ICANN is in the process of adding Secretariat support to the Board. This new resource will be charged, in part, with addressing improvements to Board work plans and processes. Crocker noted that this is an area of distinct interest to him and that ongoing improvements must be achieved.

## ATRT2 Analysis of Recommendation Implementation

The Board has clearly taken a number of steps to implement Recommendation 4. While some related tasks have been completed, the nature of that implementation is “ongoing.” While there is clear evidence of work undertaken on this front, effectiveness of the work is still difficult to measure.

## ATRT2 Assessment of Recommendation Effectiveness

Based on reporting from the ICANN Board and Staff, there has been progress on a number of areas in terms of the Board’s functioning. However, one challenge to a full assessment of the Recommendation’s effectiveness is the lack of benchmarks/metrics against which the ATRT2 might be able to measure the effectiveness on implementation. While some of the improvements may be difficult to measure, metrics would assist in drawing qualitative and quantitative conclusions going forward. It is the view of ATRT2 that these activities generally should be visible to the Community (unless dealing with Human Resources or other confidential issues). With respect to Board training in particular, ATRT2 has asked whether training materials could be made publicly available as a matter of transparency. As a matter of course, the Board Secretariat should be briefed on ATRT1 Recommendations and ATRT2 assessment and integrate that input into its support.

**ATRT2 Draft New Recommendation #2**

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

**Public Comment on Draft Recommendation**

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

**Final Recommendation #2**

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

# Report Section 4. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #3 (Assessment of ATRT1 Recommendation 5)

## Findings of ATRT1

ATRT1 found that compensation of directors was an issue closely associated with the theme of developing the ICANN Boards’ experience and collective skill-set. Furthermore, this issue had been the subject of independent review, Board Governance Committee discussion, and ongoing Board consideration. At the time of the ATRT1 review, only compensation for the Board Chair has been decided.

## ATRT1 Recommendation 5

*Recommendation 5: “The Board should expeditiously implement the compensation scheme for voting Directors as recommended by the Boston Consulting Group, adjusted as necessary to address international payment issues, if any.”*

## Summary of ICANN’s Assessment of Implementation

Upon the advice of the ICANN General Counsel, the Board delayed implementation of Recommendation 5 to allow for independent study and review. Beginning in June 2011, a compensation plan was developed and the Board engaged an Independent Valuation Expert. The Expert’s report[[23]](#footnote-24) concluded that compensating the Board was reasonable. Since initiating compensation for Directors would require revision to the Board Conflict of Interest policy as well as to the Bylaws, a Public Comment period on these issues was held in September 2011. Commenters generally supported the Recommendation to compensate Directors and also offered input on other aspects of ICANN’s Conflicts of Interest policy. On December 8, 2011, the Board voted in favor of implementing compensation to voting Directors. ATRT2 notes that payments were not offered to some Directors until August 2012, a significant delay from the date of approval to implementation, but that there were extenuating circumstances in these cases. Today, voting Board members have the opportunity to elect compensation and the Director’s election to accept or decline compensation is posted on the ICANN website.[[24]](#footnote-25)

## Summary of Community Input on Implementation

ATRT2 did not receive community feedback concerning implementation of Recommendation.

## ATRT2 Analysis of Recommendation Implementation

Implementation of Recommendation 5 is complete.

## ATRT2 Assessment of Recommendation Effectiveness

Gauging the “success” or effectiveness of Recommendation 5 is challenging but not impossible. One aspect of the Recommendation’s rationale was the assumption that compensation could influence the interest of qualified candidates given the responsibilities and workload of an ICANN Director. ATRT2 is unaware of any qualitative or quantitative studies of the Board candidate pools over time or of any feedback that speaks to the effect of implementing the Recommendation. Perhaps that analysis could become input for future Review Teams. ATRT2 envisions regular assessment of compensation levels in the normal course of time.

## ATRT2 Draft New Recommendation #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.

## Public Comment on Draft Recommendation

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

## Final Recommendation

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# Report Section 5. POLICY / IMPLEMENTATION / EXECUTIVE FUNCTION DISTINCTION: ATRT2 Recommendation #~~4~~ (Assessment of ATRT1 Recommendation 6)

## 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 the 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.

## ATRT1 Recommendation 6

*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 the June 2011 target 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.[[25]](#footnote-26) Staff noted that it would immediately undertake a “categorization exercise” using the Resolution wiki. Staff then set out to categorize Board action into policy/executive/administrative and other categories, and then review whether public comment was received on those items.

In its response to the ATRT2, Staff’s reported that,

“ICANN addressed all portions of this recommendation in implementation. Please see 2012 ATRT Implementation Summary[[26]](#footnote-27) and the 2012 Annual Report on ATRT Implementation.[[27]](#footnote-28) 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,[[28]](#footnote-29) 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[[29]](#footnote-30) to help frame and move the discussion forward.

Staff further notes that the “Community now has a defined set of terms to use when discussing and categorizing Board actions. The follow-up 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

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

1. this continues to be an important issue;
2. 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;
3. cross-community working groups should be explored as one mechanism for providing advice to the Board;
4. current mechanisms or approaches to provide the Board with advice from the community on non-“P” policy issues are inadequate; and
5. 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.

## 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 and 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 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 Recommendation 6 has not been effective in achieving the Recommendation’s stated objective. 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. Implementation has had the effect of spurring focused dialogue that informs community members’ understanding of the difference between policy and implementation. 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.

## ATRT2 Draft New Recommendation #4

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

## Public Comment on Draft Recommendation

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

## Final Recommendation #3

Continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and policy implementation. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the Board on matters, including but not limited to, policy, implementation and administrative matters, on which the Board makes decisions.

# Report Section 6. DECISION MAKING TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #~~5~~ 4 (Assessment of ATRT1 Recommendations 7.1 and 8)

## Findings of ATRT1

The ATRT1 found that ICANN’s Bylaws emphasize the need for transparency in the Board’s processes, stipulating the informed participation of stakeholders, neutrality, objectivity, responsiveness and evidence-based decision making. Likewise, the need for transparency and openness in the way the ICANN Board takes decisions is re-stated prominently in the Affirmation of Commitments. ATRT1 found a need for clear, published guidelines concerning ICANN’s decision-making processes.

## ATRT1 Recommendations 7.1 and 8

Due to the close relationship between the subject matter of ATRT1 Recommendations 7.1 and 8, ATRT2 has combined its assessment of implementation here.

*Recommendation 7.1: “Commencing immediately, the Board should promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing materials provided by staff and others, detailed Minutes, and where submitted, individual Directors’ statements relating to significant decisions. The redaction of materials should be kept to a minimum, limited to discussion of existing or threatened litigation and staff issues such as appointments.”*

*Recommendation 8: As soon as possible, but no later than the start of the March 2011 ICANN meeting, the Board should have a document produced and published that clearly defines the limited set of circumstances where materials may be redacted and that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board, General Counsel and staff when assessing whether material should be redacted and cited when such a decision is taken.*

## Summary of ICANN’s Assessment of Implementation

ICANN Staff reported to ATRT2 that, as a result of implementation, it is now standard operating procedure to post all Board materials, including rationales for resolutions. These and other reference materials are archived at <http://www.icann.org/en/groups/board/meetings>. In response to ATRT1’s recommendation, ICANN developed an implementation plan that noted, in part, the following:

“[a]s of the 25 January 2011 meeting, staff began including proposed rationale statements in Board submissions, addressing the items set forth in the Affirmation of Commitments. If the Board does not propose significant modification to the draft rationale statements, those draft statements will be posted with the Approved Resolutions for each meeting. This practice was instituted on 27 January 2011, with the posting of the 25 January 2011 Approved Resolutions. The rationale statements will be considered final when posted with the Minutes as approved for each meeting. The rationale statements are to address the sources of data and information, as well as to address community input accepted and rejected.”

With respect to redactions of Board materials, the implementation plan noted that,

“[w]hile these DIDP (Document Information Disclosure Policy[[30]](#footnote-31)) conditions will remain the baseline for redactions, there is great value in producing a document to guide staff and inform the community on the specific issue of redaction of Board materials. As evidenced through the very publication of the Board briefing materials, ICANN has narrowed the previously-applied scope of its application of the conditions for non-disclosure in favor of increased transparency and accountability. The document was posted in March 2011. Of note, beginning with the 12 December 2010 Board meeting materials, the basis for each redaction was set forth on every page where a redaction occurred. A review of how to best cite to the circumstances requiring a redaction will continue.”

In addition to the implementation plan cited above, ICANN Staff created a searchable Board resolution wiki “to provide the public with easy-to-access information on every substantive resolution approved by the Board of Directors.” The wiki can be found at [https://community.icann.org/display/tap/ICANN+Board+Resolutions](https://community.icann.org/display/tap/ICANN%2BBoard%2BResolutions)

## Summary of Community Input on Implementation

Contributors to the Public Comment recognized improvement in the availability of Board materials. For example, Nominet stated,

“[we] note the improvement in the availability of Board-related materials such as Board briefing documents and the rationale behind board decisions. We welcome this improved communication, but this could be further improved to show that the Board has considered the wider implications of its decisions. In particular, the Board needs to be particularly attentive to concerns from those not normally involved in ICANN activities and ensure that they do give a reasoned response to input.”

Likewise, the Non-Commercial Stakeholder Group noted, “that some improvements have been made…Specifically, there have been timely publications of Board decisions and the rationale and explanations that have accompanied these. We commend ICANN for these efforts.” An individual commenter/former ICANN staffer also called for publication of Staff advice to the Board.

## ATRT2 Analysis of Recommendation Implementation

Overall, ATRT2 finds that ICANN’s implementation of Recommendation 7.1 appears largely successful. Having adopted the recommended practices as standard operating procedure, the Board took a concrete step toward implementation. The Board Briefing Materials, agendas, minutes, resolutions, rationales and other relevant documents are visible and accessible on the ICANN website.

An important aspect of implementation is also the actual practice of making all relevant materials available in a timely fashion. While ATRT2 has heard of instances where materials have not been published in a timely fashion, it appears to a large degree that the standard operating procedure is being respected. A question has been raised about the scope of redactions and whether that practice respects the “minimal” approach of Recommendation 7.1. This question is difficult to explore given the nature of redactions. ATRT2 has put this question to ICANN Staff for feedback as to how proper scope of redaction could be reasonably confirmed and is awaiting Staff’s reply.

## ATRT2 Assessment of Recommendation Effectiveness

A measure of effectiveness is feedback from the community that looks to the publishing of Board materials to understand the Board decision-making process. ATRT1 identified a “black box” problem in the community with respect to Board decisions. Otherwise said, the community saw the “inputs” to the Board decision-making process but had little or no visibility into the ICANN Board’s deliberations and rationale for the decisions that were “outputs” of the process. Comments to the ATRT2 note improvement in this area and reflect a greater sense of transparency. Likewise, there was lesser comment to the contrary than encountered by ATRT1.

## ATRT2 Draft New Recommendation #5

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

## Public Comment on Draft Recommendation

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

## Final Recommendation #4

Review redaction standards for Board documents, Document Information Disclosure Policy (DIDT) and any other ICANN documents to create a single published redaction policy. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.

# Report Section 7. Assessment of ATRT1 Recommendation 7.2 – No ATRT2 Recommendation

## Findings of ATRT1

ATRT1 found that the ultimate responsibility for ensuring the highest possible levels of transparency and accountability necessarily reside with the Board. ATRT1 also observed that the vast majority of the Board’s deliberations were based on organizational conventions. Significant policy issues were identified and determined based on practices established over time, not according to codified procedures or requirements. ATRT1 also noted that the absence of clear, codified guidelines, procedures or processes relating to Board decisions only serves to escalate stakeholders’ concerns and could lead to disenfranchisement and disengagement.

## ATRT1 Recommendation 7.2

*Commencing immediately, the Board should publish “a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.” ICANN should also articulate that rationale for accepting or rejecting input received from public comments and the ICANN community, including Supporting Organizations and Advisory Committees.*

## Summary of ICANN’s Assessment of Implementation

ICANN Staff reports that it has implemented fully Recommendation 7.2.

ICANN also notes that the development of rationales has, at times, increased the time needed for Board consideration of items. For major Board decisions, there have been significant costs incurred in both money and resources to develop the rationales.

With respect to effectiveness, ICANN notes that people have more information as to the bases for Board decisions. Sometimes the complexity of the resolutions has decreased because background information can now be provided through the rationale.

## Summary of Community Input on Implementation

ATRT2 received little comment on the Board’s explanation of decisions and stated rationale. The Registries Stakeholder Group did comment, however, that the Board still ignores comments in its decision-making.

## Summary of Other Relevant Information

ATRT2 assessed Board resolutions during the period of 2011-2013 with three questions in mind:

1. Does the Board provide a clear explanation of decisions? Are there substantive actions to be taken to further improve the ICANN process?
2. Does the Board provide a clear and reasonable rationale for its decisions?
3. Does the Board provide an explanation of how it considers public comments (if any)?

ATRT2 concluded that there’s clear evidence that to a large degree, Board decisions do satisfy the three questions posed.

## ATRT2 Analysis of Recommendation Implementation

Implementation of Recommendation 7.2 appears largely successful. A review of all Board Resolutions from 2011 through 2013 reflects that detailed rationale is provided for those decisions. ATRT2’s assessment reflects an improving trend over the three-year period and while there remain examples that demonstrate room for improvement, implementation of Recommendation 7.2 indicates significant qualitative progress since 2011.

## ATRT2 Assessment of Recommendation Effectiveness

The baseline for this Recommendation is that prior to January 2011, the Board had not regularly adopted formal rationale statements for its decisions. Both the analysis and public comment reflect significant improvement in this area.

## Public Comment on Draft Recommendation

**Final Recommendation**

# Report Section 8. GAC OPERATIONS AND INTERACTIONS: ATRT2 Recommendation #6 (Assessment of ATRT1 Recommendations 9-14)

## Findings of ATRT1

The ATRT1 recognized that the existing GAC-Board relationship was dysfunctional and provided six recommendations aimed at improving GAC-Board interactions.

## ATRT1 Recommendation 9

*The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy “advice” under the Bylaws.*

## ATRT1 Recommendation 10

*Having established what constitutes “advice,” the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or database in which each request to the GAC and advice received from the GAC is documented along with the Board’s consideration of and response to each advice.*

## ATRT1 Recommendation 11

*The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.*

## ATRT1 Recommendation 12

*The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.*

## ATRT1 Recommendation 13

*The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.*

## ATRT1 Recommendation 14

*The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.*

## Summary of ICANN’s Assessment of Implementation

After adopting the Recommendations,ICANN created the joint Board-GAC Recommendation Implementation Working Group (BGRI working group) to focus on implementation. For certain issues within the competence of the GAC, it undertook its own work efforts to respond to the Recommendations.

As called for by Recommendation 9, the GAC developed a definition of GAC Public Policy “Advice” that was accepted by the BGRI working group and Board, and ultimately was added by the GAC to its Operating Principles. This definition served as a key input for developing GAC procedures for the new gTLD program, most notably in the processes for GAC Early Warning and Advice (Objections).[[31]](#footnote-32)

To address Recommendation 10, the BGRI working group developed and implemented a GAC Register of Advice. The GAC Register of Advice is posted publicly on the GAC website. [[32]](#footnote-33) Evaluation of the effectiveness of the Register as a tool for the Board, GAC and Community is ongoing, pending longer-term use of the Register by the GAC and the Board, particularly in terms of “follow-up action” and mutual agreement that advice has been fully implemented.

To implement Recommendation 11, the BGRI working group has worked to codify the methods for the GAC-Board Consultations process as called for in the Bylaws. The GAC has submitted edits to the document and the revised text remains to be reviewed/approved by the Board. The Board then will need to develop Bylaws amendments that would impose a time limit and require a super majority of the Board in order to reject GAC advice.

As the BGRI working group tackled Recommendation 12, several complicating factors emerged, including the complexity and length of the Generic Names Supporting Organization’s (GNSO) policy development process. Additionally, despite the fact that the policy development processes of various SOs and ACs are open to community participation, there are different levels of explicit participation avenues for the GAC. For example, the ccNSO process affirmatively includes input from the GAC in particular, while the GNSO process is “open” to all interested stakeholders and has no specific path to participation by the GAC. However, the GAC is structured under the Bylaws to provide public policy advice directly to the ICANN Board. Some see this as an impediment to early engagement. In addition, considerable differences exist within the ICANN community as to the scope of the terms “policy” and “public policy.” The GNSO does not appear to assign any particular or specific weight to “public policy” advice from the GAC in its deliberations. For its part, the GAC is aware that it does not have membership status in the GNSO and cannot influence or determine the outcome of GNSO processes. There is no clear record, for example, of acceptance by the GNSO of GAC input prior to the completion of any specific GNSO policy recommendation; in fact, the reverse is the case (e.g. public order and morality). Recommendation 12 was discussed by the BGRI working group at ICANN Prague, Toronto and Beijing, with focus specifically on the different work methods in the GAC as compared to the other SOs and ACs. The GAC has agreed to develop proposals for new tools/mechanisms for engagement with the GNSO policy development process, and discussions are ongoing.

In relation to Recommendation 13, at the request of the BGRI working group ICANN staff has proposed a monthly policy update for the GAC to assist its members in monitoring/tracking pending policy development initiatives. This effort has been welcomed by the GAC and is considered one of several elements that will support meeting the goal of the Recommendation. There may be additional tools identified by the BGRI working group that could facilitate a broader understanding among GAC members of the variety of pending policy initiatives and deliberations in other ICANN stakeholders groups. The GAC has also proposed, via the BGRI working group, the idea of "reverse" liaisons from ACs and SOs, as well as a Board liaison to the GAC, which remains under consideration in terms of specific implementation measures.

Many efforts were taken to implement Recommendation 14. The Canadian Government hosted the first meeting of senior government officials during the 45th ICANN Meeting in Toronto, which was well attended and highlighted considerable support for the role of the GAC within ICANN. At the request of the GAC Chair, ICANN has made strides to increase funding for GAC member travel to be commensurate with other SOs and ACs and provides interpretation for GAC meetings. This has clearly facilitated broader participation by non-English speaking GAC members in GAC deliberations. In fact, in the last three years the number of GAC members has increased from 100 to 129, and there has been a 77% increase in the level of in-person participation at ICANN meetings since 2010. Finally, the GAC issued an RFP in 2012 to solicit a provider, funded by Brazil, Norway and the Netherlands, to supply additional secretariat support. In the interim, ICANN funded the travel costs of an Australian Continuous Improvements Group (ACIG) staff member to the Durban meeting to provide support to the GAC under the guidance of the GAC Chair and Vice Chairs. In February 2013, a new ICANN staff member was hired under a temporary contract to provide additional support to the Chair and Vice Chairs of the GAC, and that individual is on track to become a permanent employee.

## Summary of Community Input on Implementation

Comments received in response to the ATRT2 call for input generally conclude that the Board, working with the GAC, has made a substantial, good-faith effort to implement this series of Recommendations. Nevertheless, highlighted outstanding issues include the need to develop metrics or measurable criteria with which to monitor implementation; fully implement remaining Recommendations; more clearly target future recommendations to aid in implementation; and improve communication to those outside of the immediate ICANN community.

In addition, several commenters note that implementation has taken longer than anticipated by ATRT1, and in some cases there was a gap between the wording of the Recommendation and how it was carried out.[[33]](#footnote-34) Some also claimed that the” role of the Board and the relationship between the Board and the GAC is unclear.”[[34]](#footnote-35) In addition, while comments characterize ICANN as making best efforts, the implementation of GAC improvements remains insufficient and commenters request that “a further smooth channel be provided for GAC to engage into policy-making procedure.”[[35]](#footnote-36) Further commenters maintain that ICANN still needs to improve accountability and transparency in decision-making and execution and “strengthen working mechanisms between GAC, Board and SOs/ACs and define roles.”[[36]](#footnote-37) Some commenters feel that implementation remains unsatisfactory as some key GAC-related Recommendations have not yet been fully implemented.

## ATRT2 Analysis of Recommendation Implementation

Overall, the ATRT2 finds that ICANN has made a good-faith effort to implement ATRT1 Recommendations 9-14. While there seem to have been some challenges associated with responsibility for implementation (i.e., the shared nature of both the ICANN Board and GAC) as well as the practicality of priority timing proposed by ATRT1, most of the Recommendations have been addressed. However, there are outstanding implementation details that require further attention (e.g. the functioning of the Register of GAC Advice, whether and how often to hold additional High Level Meetings, etc.). For Recommendation 10, the Board needs to do further work to develop a more formal, documented process for notifying the GAC on matters that affect public policy concerns. Recommendation 12, related to facilitating the early engagement of the GAC in ICANN’s policy development process, remains an ongoing work priority for the BGRI working group, which has most recently involved direct consultations with the GNSO. And while there has been some progress on the level of support and commitment of governments to the GAC process, further work is need related to Recommendation 14.

|  |  |
| --- | --- |
| **Recommendation (s)** | **Assessment** |
| 9 | Complete, issue satisfactorily addressed. |
| 10 | Incomplete; significant steps have been taken with the GAC Register and the Board responding to GAC input, but further work is needed on the Board seeking GAC input at the outset.  |
| 11 | Substance complete, but took longer than ATRT1 suggested deadline. Issue of proposing and adopting related Bylaws changes remains open. |
| 12  | Discussion and implementation of recommendations remain ongoing. Completion involves considerable further work and engagement with other SOs and ACs. [To be reassessed after receiving the expert report] |
| 13 | Complete; issue satisfactorily addressed. |
| 14 | Actions taken, but further work is needed given broader geo-politics and the concerns of some governments. |

## ATRT2 Draft New GAC-Related Recommendations

## Hypothesis of Problem

Notwithstanding the substantial progress made by ICANN and the GAC in implementing the ATRT1 recommendations, there are a number of issues with respect to the GAC that still need evaluation. There is a perceived lack of transparency of GAC work methods as well as concern about the inherent barriers for participation in ICANN due to the complexity of the ICANN model and the immense level of information. As discussed in the ATRT1 report, there continues to be a lack of GAC early involvement in the various ICANN policy processes. Overall, there is concern about whether ICANN is doing everything it can to bolster its legitimacy in the eyes of countries that do not participate in the GAC, especially countries in the developing world.

## Background Research Undertaken

## Summary of Relevant Public Comment Responses

Responses from the community highlighted the feeling that while the GAC’s input to policy discussions is important, the process and discussion involved in developing GAC views are often opaque. There were specific calls for community visibility into GAC work methods and processes. Comments show that this lack of insight into GAC discussion and work methods can result in confusion for the stakeholders upon the receipt of GAC Advice. As confirmed by comments from one government official, the “GAC’s role is critical in ensuring the wider public interest is taken into account” in ICANN decision-making, so it is important for its role and performance to be regularly subject to scrutiny by the wider ICANN community.”[[37]](#footnote-38) Another commenter suggested that the GAC employ metrics to measure the GAC’s accountability, including “third party assessment of the advice, through interviews with the Board, constituency leadership, and community members.”[[38]](#footnote-39)

The GAC has achieved notable progress in defining and providing greater visibility into the GAC consensus process, resulting in an amendment to Principle 47 of the GAC’s Operating Principles at the October 2011 ICANN meeting in Dakar. Principle 47 states that “consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”[[39]](#footnote-40)

Comments show that large portions of the ICANN community do not share a common understanding of the different roles of the Board, the GAC and the GNSO, and that this lack of understanding of the different roles “can result in a lack of respect for the input of the various stakeholders.”[[40]](#footnote-41) Others pointed to the limited visibility into the work methods and deliberations of the GAC, sometimes due to closed-door discussion, that results in confusion in the community as to the process of developing GAC Advice, noting that “it often appears to catch the community by surprise.”[[41]](#footnote-42) Comments also suggested greater communication from the GAC during its deliberations and discussions could offer the community better insight into work methods and processes, and GAC Advice relieving the feeling that “messages from the GAC are often misunderstood or seen as aggressive, and vice versa.” [[42]](#footnote-43) Understanding that various constituencies within the community are interested in different issues and have different operational styles, “communication processes should be meaningful and relevant to ICANN users.”[[43]](#footnote-44) Currently, “GAC external dialogue seems to be mainly Board-­‐focused and the opportunity to interact with the wider ICANN community seems constrained.” [[44]](#footnote-45)

In addition, comments from the community focus on the need to increase the level and quality of government participation in the GAC. Specific issues raised were increasing the outreach to developing countries, the need for GAC representatives to be supported individually to encourage consistent participation and to manage how the GAC addresses its work load to ensure it can be addressed in a consistent fashion by GAC representatives. Comments referenced the perceived barriers to participation overall, noting “it is difficult to navigate in the ICANN model.”[[45]](#footnote-46) Continuing in that vein, some commenters questioned whether the GAC is currently “effectively taking account of all situations across the globe in differing economies and communities [and] are GAC representatives sufficiently resourced on an individual basis to undertake more work on early policy development?”[[46]](#footnote-47) Comments also suggested that ICANN should provide simple, focused and high quality information rather than information on an ad hoc basis, as well as measures to provide further support to newcomers.

Several commenters also focused on the need to increase engagement and outreach to developing countries as a means to increase membership and gain more varied regional representation of views, noting that the “GAC needs to improve the consistency of levels of engagement across its membership, both at meetings and intersessionally when the level of involvement from developing and least-developed countries are typically extremely low (notably in GAC teleconferences). This is a potentially serious problem given that the committee’s level of activity intersessionally needs to increase significantly.”[[47]](#footnote-48) Additionally, commenters feel “it will be important to monitor progress in promoting wider engagement.” It is important that ICANN work with its existing global stakeholders to reach out in their local communities where they are already well established and networked.[[48]](#footnote-49) Commenters note that the ATRT2 should explore “aspects that may contribute to raise the level of participation and strengthening the legitimacy of the multi-stakeholder model.”[[49]](#footnote-50) Finally, several comments offer solutions and identify current efforts that could contribute to increased government involvement in, and support of, the GAC, including the development of a GAC code of conduct.[[50]](#footnote-51) One comment notes that “the deployment of innovative consultation tools may help restore the balance in order to achieve meaningful response levels.”[[51]](#footnote-52) In addition, several commenters note that “ICANN’s opening of new offices may provide new global awareness, but will not fix problems.”[[52]](#footnote-53)

Lastly, comments highlighted the need to incorporate the GAC into policy discussions early in the process. Noting that “early engagement of the GAC is also important to ensuring predictability; improving understanding of the rationale behind decisions will help the wider community understand the advice and recognize how it fits in with the underlying principles.”[[53]](#footnote-54) Comments cited the GNSO PDP as an example of where there is weak GAC engagement, stating that the “timeliness often depends on leadership strength and member commitment as well as consistent refusal of groups to participate at all or not until late in process.”[[54]](#footnote-55) The Non-Commercial Stakeholder Group submits that they are “concerned about tendencies that threaten multi-­‐stakeholder, bottom-­‐up, consensus-­‐building policy” and offer the drafting and discussion of the GAC Communique in Beijing as an example.[[55]](#footnote-56) In addition, comments highlighted that while all input is valuable, there are often barriers to exchanging information.[[56]](#footnote-57) Comments noted that while GAC-Board interactions and processes have improved, more could be done to include the ATRT2 specifically examining “…a more dynamic and interactive exchange in open GAC/ Board meetings.”[[57]](#footnote-58)

## Input from Face-to-Face Sessions

Several comments from ATRT2 discussions with the various SOs and ACs, while noting the need to incorporate the GAC early on, also focused on the need for better cross-community communication in general. The ALAC noted that, in general, groups like the ALAC and GAC are not coming into the process early enough. The participants noted several barriers to joining various other processes, such as 1) silos, associated with issues and SOs and ACs, create information-sharing and process issues across the community, 2) instances when issues have been “taken” by a particular SO or AC when that issue was cross-cutting and should have been addressed by the entire community, or 3) issues with participating in some other SO or AC processes, due to the tendency for SOs and ACs to be resistant to outside input. Finally, the ALAC participants noted that travel, facilities, and the compressed schedule all affect the ability of ALAC to do its work and proposed that better/alternate ways to connect should be explored (e.g. Adobe Connect).[[58]](#footnote-59)

During discussion with the GNSO, some ATRT2 participants noted (in their own observational capacity, not speaking on behalf of the GNSO) that while the GAC does acknowledge a need and desire to participate in the process, it has not been able to identify how to enable participation effectively while taking into account the different processes of the GAC and GNSO. The GNSO cited ongoing work and discussions regarding how to incorporate the GAC into their PDP, noting that the ongoing discussion on this issue highlights an important aspect of the multi-stakeholder process. The GNSO also noted that because discussions were already underway, it is important not to duplicate work by approaching the issue from too many angles at the same time. Several GNSO participants suggested the need to examine whether policy processes as a whole were effective. Additional questions were raised regarding the ability of the GNSO policy process to allow for the development of consensus policies in a timely manner.[[59]](#footnote-60)

Community discussions on cross-community deliberation continued with the Registry Stakeholder Group (RySG). The RySG shared several opportunities to participate in existing processes for GAC and other SOs and ACs. For example, when a PDP is initiated and a Working Group is formed, a request/notice is sent to SOs and ACs, inviting participants. Some SOs and ACs are able to provide good and consistent participation in various Working Groups. They also noted other attempts to coordinate that did not prove to work well (e.g. liaison with the GAC) and processes that are still being tried (e.g. IGO WG engagement with the GAC). Some participants noted that the reason liaisons with some communities succeed and others fail rests on the participant SO’s or AC’s ability to engage and provide consistent feedback.

## ICANN Staff Input

In addition to issuing a questionnaire for public comment, the ATRT2 also asked ICANN Board and Staff a series of questions to gain insight into their understanding of the goals of ATRT1 recommendations and to review the process used to review, implement and oversee implementation. The Board and staff responded to several questions from the ATRT2 as part of a Staff Input Document into the ATRT2,[[60]](#footnote-61) including “whether there were additional opportunities for improvement by virtue of the implementation of these recommendations?” (Question I).

In response to that question in the context of ATRT1 Recommendations 12, ICANN identified several possible additional measures for consideration in the future, including “GAC Chair designates small GAC WG, Reviews Monthly Reports for possible public policy interest**,** Post any comments on website, Submit comments to relevant SO, Specially-tailored Webinar prior to Public Meetings, Specifically designed for the GAC to focus on emerging or significant policy issues under development for discussion at public meetings that may raise public policy issues or concerns, Utilize Monthly Report to engage Supporting Organizations, Identify issues that may have public policy interest, Engage with relevant SOs prior to and during ICANN Public Meeting.”

With respect to ATRT1 Recommendation 13, ICANN suggested “Assisting the GAC to organize/formalize regular consultation at ICANN meetings with the GNSO, ccNSO, ASO, and Advisory Committees on policy issues and matters of concern to the GAC.”[[61]](#footnote-62)

ForATRT1 Recommendation 14, ICANN noted that“more could be done to provide new GAC members with sufficient informational resources. MyICANN was, in part, intended to contribute to this objective and the planned Online Education Platform (working title) also is expected to help address GAC members’ information needs.”[[62]](#footnote-63)

In response to early ATRT2 analysis, staff further elaborated that the Global Stakeholder Engagement (GSE) team produces a monthly report for the Chair of the GAC. This document includes a “look back” reporting on the previous month’s activity and projection looking forward at the next month’s planned activity involving GSE staff and government interactions. This report was proposed by staff for circulation to the GAC chair. GSE staff has also developed a global government engagement strategy document that will be presented to the Board Global Relations Committee (BRGC) for informational purposes at the September 2013 committee meeting in Los Angeles. As a best practice, ICANN’s Regional Vice Presidents seek to inform the GAC members in their regions of the related community regional engagement strategy working groups’ activities and outcomes.

Staff also informed ATRT2 that one of the staff projects underway is the creation of a Customer Relationship Management (CRM) system. As part of that process, current GAC membership information will be integrated into the electronic database along with the other information being developed through community engagement strategies. A challenge with these types of projects is the need for continuous updating. Previous initiatives involving government outreach will need to be validated and integrated into the CRM as well.

Staff also informed ATRT2 that GSE is currently working on regional approaches to the internationalization of ICANN. This means that community member committees staffed by the regional GSE staff are developing, implementing or exploring developing regional strategies, depending on the needs and priorities of the regions. Strategic Plans for Africa, Latin America and the Middle East were announced and launched during the Toronto and Beijing meetings and were updated in Durban. Written updates on the status of the strategies will be provided to the BRGC committee at its September 2013 meeting. Interactive sessions are also held at each ICANN Meeting to provide updates on activity and the process for identifying the initiative.

**Relevant ICANN bylaws**: Article 11, Section 2.1 (issue 1), Article XI, Section 2.1 (issue 2), Article XI, Section 2.1 (issue 3)

**Relevant ICANN published policies**: None

**Relevant ICANN published procedures**: None

**Relevant GAC Operating Principles:** Principle 47, footnote 1, as amended October 2011.

## Findings of ATRT2

The ATRT2 has identified three major issues that affect the GAC’s ability to effectively interact with the Board and community at large and that have an impact on the accountability, transparency and perceived global legitimacy of ICANN. The first issue is a lack of clarity into, or understanding of, the GAC work methods, agenda and activities by the broad ICANN community, staff and Board. Complicating that relationship is that the relationship is not well understood between advice provided by the GAC to the ICANN Board and the policy recommendations provided to the ICANN Board through the policy development processes within ICANN’s Supporting Organizations (particularly the GNSO). The advice provided by the GAC is not well understood outside of government circles and the specifics of it are often a surprise to non-GAC members, particularly on those occasions when the GAC deliberations are closed to other interested ICANN stakeholders. A lack of understanding of methods and activities of the GAC can contribute to diminished credibility and trust in the GAC and its outputs, impede interaction with the ICANN community and its constituencies, and lead to process and policy development inefficiencies.

Second, challenges continue with barriers for participation both within the GAC and in ICANN more generally. More effective procedures in the GAC, easier access to information from ICANN, as well as a better explanation of the ICANN model, would uphold a continuous and effective level of participation in the GAC.

Finally, GAC participation in the various ICANN policy development processes is limited to non-existent. Without early engagement, the GAC is often put in the position of making interventions later into the policy development process, often extending the timeline for those issues. Earlier engagement in policy development by all stakeholders would also produce more comprehensive polices that reflect the views and needs of the community.

## ATRT2 Draft New Recommendations

*Increased transparency of GAC related activities*

5.1. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard. Examples of activities that GAC could consider to achieve to improve transparency and understanding include:

1. Convening “GAC 101” or information sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;
2. Publishing agendas for GAC meetings, conference calls, etc. on the GAC website seven days in advance of the meetings and publishing meeting minutes on the GAC website with seven days after each meeting or conference call.
3. Updating and improving the GAC website to more accurately describe GAC activities, including intersessional activities, as well as publishing all relevant GAC transcripts, positions and correspondence;
4. Considering whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of liaisons from other AC’s and SO’s to the GAC, once that mechanism has been agreed and implemented;
5. Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself;
6. Establishing as a routine practice agenda setting calls for the next meeting at the conclusion of the previous meeting;
7. Providing clarity regarding the role of the leadership of the GAC; and,
8. When deliberating on matters relating to particular entity give those entities the opportunity to present to the GAC as a whole, prior to deliberations, and to answer questions.

5.2. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC formally adopting a policy of open meetings to increase transparency into GAC deliberations and establish and publish clear criteria for closed sessions.

5.3. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided. Such rationales should be recorded in the GAC register. The register should also include a record of how the ICANN Board responded to, each item of advice

5.4. The Board working through the BGRI working group, should develop and document a formal process for notifying and requesting GAC advice. (See ATRT1 Recommendation 10)

5.5. The Board should propose and vote on appropriate Bylaw changes to formally implement the documented process for Board-GAC Bylaws consultation as developed by the BGRI working group as soon as practicable. (See ATRT1 Recommendation 11)

*Increase support and resource commitments of government to the GAC (see ATRT 1 Recommendation 14)*

5.6. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to identify and implement initiatives that can remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. The BGRI should consider how the GAC can improve its procedures to ensure more efficient, transparent and inclusive decision-making. The BGRI should develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local DNS stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

5.7. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to regularize senior officials’ meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock taking after each High Level meeting should occur.

5.8. The ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to work with ICANN’s Global Stakeholder Engagement group (GSE) team to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

5.9. The Board should instruct the GSE to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

1. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;
2. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the transparency on how ICANN reacts to GAC advice (e.g. by using information in the GAC advice register).
3. Making ICANN’s work relevant for stakeholders in those parts of the world with limited participation; and,
4. Develop and execute for each region of the world a plan to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN’s services including new gTLD’s.

*Increase GAC early involvement in the various ICANN policy processes (tied to ATRT 1 Recommendation 12)*

10. [Tentative recommendation to be re-examined after receiving the report of the independent expert.] The Board, through the BGRI working group, should facilitate early engagement of governments, via the GAC, in ICANN’s policy development processes. Issues to consider include, but are not limited to: whether or not the current siloed structure of SO/AC’s is supportive of early GAC engagement; whether there is a systematic way to regularly engage with other stakeholders that facilitates information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally; and whether the Bylaws need to be amended to ensure that GAC advice is considered prior to policy recommendations being sent to the Board.

Recommendation was merged and concepts included in the recommendations related to cross-community development processes.

Public Comment on Draft Recommendation(s)

Responses from the community on the suite of GAC related recommendations were generally positive. Egypt commented that “the GAC-related recommendations are of utmost importance and include very constructive ideas.” Support was voiced for efforts to make the GAC more open, with one commenter suggesting that the ATRT2 going even further and offered additional recommendations. USCIB specifically commented that “the processes which through the GAC members serve on the GAC is entirely opaque and the community would benefit greatly from a better understanding of how things work.” However one commenter suggested that “some of the ATRT2 requests may be too demanding (publishing all relevant GAC transcripts, positions and correspondence, publishing meeting minutes on the GAC website within seven days after each meeting…) as may expose GAC members to an undesired publicity and shy them away from open talks. That could lead to negotiations and deals being struck on corridors or far from the limelight with few countries taking part in them. Others noted the strong degree of overlap between some of the ATRT2 recommendations and an internal GAC working methods reform effort.

The Danish Business Authority highlighted the importance of the recommendations related to stakeholder engagement while other commenters stressed the importance of an implementation plan. The importance of early engagement of the GAC in ICANN’s various policy development process was raised as a priority by several commenters, but the challenge of this was also highlighted given “the pace of work in GNSO with that of Governments, which are always slower especially when internal consultations have to be carried through.” The GNSO Council pointed out that a recent joint GNSO-GAC initiative has already begun.

There was, however, concern raised about the call for a code of conduct, with some commenters observing that governments are already under their individual government’s code of conduct, which may vary and would override any other general agreement.” Others suggested that the ATRT2 may have gone beyond its remit stating that “countries are sovereign to decide their Internet policies in the manner they see fit and don´t have to reveal how they make up their national positions.” This was in contrast with other comments that pointed out that “while individual members of the GAC represent their countries, we note the GAC itself is not a government entity, but instead is part of the ICANN structure and is subject to the ICANN bylaws and articles of incorporation. Thus, all GAC processes and procedures should follow the limitations set forth in the bylaws, such as openness and transparency, as does the ALAC and GNSO.” Lastly, concerns were expressed regarding the ambiguity of the wording of the recommendations and suggestion was made to identify a specific responsible body.

# Report Section 9. DECISION-MAKING, TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #7~~7~~6 (Assessment of ATRT1 Recommendations 15, 16 and 17)

## Findings of ATRT1

ATRT1 found that the timeliness and effectiveness of policy-making was a serious concern among participants in the ICANN process. Key drivers were the sheer volume of open proceedings and the lack of prioritization. ATRT1 found it would be important to improve the nature and structure of the public input and policy-making processes. ATRT1 took into account the fact that the volume of open proceedings is affected by the actions of constituent bodies within ICANN and is not uniquely influenced by ICANN Staff or the Board.

## ATRT1 Recommendation 15

*The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.*

## ATRT1 Recommendation 16

*Public notice and comment processes should provide for both a distinct ‘Comment’ cycle and a ‘Reply Comment’ cycle that allows community respondents to address and rebut arguments raised in opposing parties’ comments.*

## ATRT1 Recommendation 17

As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

## Summary of ICANN’s Assessment of Implementation

ICANN Staff reports that it has fully implemented Recommendation 16. Staff demonstrated that an implementation plan was developed and put out for Public Comment and that a Comment and Reply Comment cycle were implemented.[[63]](#footnote-64) Staff also notes that, at the same time, review of the public wiki was undertaken to consider improvements to the public interface aspect of submitting Comments. Staff also noted that stratification categories and prioritization methods were developed and put to the Community for discussion. Based on Community feedback, Staff did not implement a stratification and prioritization of Public Comments.

## Summary of Community Input on Implementation

Community input reflected a range of views. While there was little comment on the Comment and Reply Comment mechanisms themselves, there was recognition that ICANN spends a great deal of time and resources offering the opportunity to provide comments in ICANN processes.[[64]](#footnote-65) With respect to how “easy” it is to provide comments, views ranged markedly from “very easy” to “not easy.” Some commenters recognized the improvements and offered high marks for staff efforts. A number of others pointed to the length of the request for comment and the time period allotted for comments as creating challenges to effective participation. Others noted insufficient planning and the high number of consultations creating barriers to participation.[[65]](#footnote-66)

## Summary of Other Relevant Information

Staff also noted that the community had not always utilized the “Reply Comment” cycle as ATRT1 intended it. Some community members apparently have used the Reply Comment cycle to offer comments (either for the first time or in addition to earlier filed Comments). Staff indicated that education regarding the proper use of the Reply Comment cycle had been offered, but that commenters did not follow the recommended use. Staff also noted that it is considering lengthening the time periods for Comments, having heard complaints from the community that the current time period allowed was too short for some to draft and approve Comments for submission. Staff also noted that it was developing new tools to allow for Comment through different means (e.g. social media tools) and would consult with the community before deploying such tools.

## ATRT2 Analysis of Recommendation Implementation

Implementation of Recommendation 16 appears complete but with qualified success. Given the Community’s use of the Reply Comment cycle, it does not appear that those mechanisms are offering the intended benefit. Additionally, ATRT2 notes that implementation of stratification and prioritization of Comments was abandoned based on Community feedback, and the challenges with respect to the Comment process continue to be in the area of time allotment for Comments, frequency of consultations, and complexity (for some) of the requests for comments. Staff should develop new tools and techniques for addressing these persistent issues.

## ATRT2 Assessment of Recommendation Effectiveness

The effectiveness of implementation is qualified. But where it is unsuccessful is not entirely due to implementation efforts of staff. Interestingly, the Board has improved in reflecting Public Comment in its resolutions. That is a key element of accountability and transparency. ATRT2’s assessment is that fulsome, broader and more frequent public comment can be facilitated through adjustments to time allotted, forward-planning regarding the number of consultations, and new tools that facilitate easier participation in the Comment process.

## ATRT2 Draft New Recommendation #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.

## Public Comment on Draft Recommendation

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

ICANN also should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the Staff incorrectly summarized their comment(s).

# Report Section 10. MULTILINGUALISM: ATRT2 Recommendation #87 (Assessment of ATRT1 Recommendations 18, 19, and 22)

## Findings of ATRT1

The ATRT1 report focused on language as a potential barrier to the community in the sense that if all documents are in English only, there is a risk that many of the non-native English speakers might have difficulties with comprehending important issues and are missing out on important information. Furthermore, it was recommended that the senior staff be multilingual in order to deliver optimal levels of transparency and accountability to the community.

In 2012 ICANN introduced translation services to enable better service to the larger diverse community. Though the language services are welcome, the quality of the translation in terms of accuracy to the working language of the various communities is important. In addition, the timeliness of the translation in relation to community interaction and participation is necessary. This will ensure effective and clear communication with the community.

## ATRT1 Recommendation 18

*The Board should ensure that access to and documentation within the policy development processes and the public input processes are, to the maximum extent feasible, provided in multilingual manner.*

## ATRT1 Recommendation 19

*Within 21 days of taking a decision, the ICANN Board should publish its translations (including the required rationale as outlined in other ATRT recommendations) in the languages called for in the ICANN Translation Policy.*

## ATRT1 Recommendation 22

*The Board should ensure that ICANN’s senior staffing arrangements are appropriately multilingual, delivering optimal levels of transparency and accountability to the community.*

## Summary of ICANN’s Assessment of Implementation

One of the first accomplishments was the creation and approval by the Board of the Language Services Policy and Procedures document.**[[66]](#footnote-67)** The resolution adopting this initiative was approved on 18 October 2012.**[[67]](#footnote-68)** Significantly, the ATRT1 recommendation to “Enhance Multilingual Strategy” also included improvements such as more interpretation support, transcription support, and teleconference interpretation.

During calls[[68]](#footnote-69) with the ATRT2, Staff explained how the translations services work and the challenges they continue to face. These include, but are not limited to, the need to update and improve glossaries of already used terminologies in the six ICANN languages; budgetary constraints (despite increases from US$2.1M in 2012 to US$3.6M in 2014); and management of the sheer volume of work via staffing levels and how that impacts the timeliness of output.

Staff also shared the process involved as follows:

1. Receive the document for translation.
2. Quick estimate of words per page multiplied by days it takes to translate; 1 day = 1800-2000 words.
3. Document goes through polishing.

Delays in getting the materials out at the same time often is a result of the size of the material to be translated and a lean department of two staff members.

Regarding Recommendation 22, ICANN’s Director of Human Resources reported that ICANN had 38 individuals in Senior and Executive Management roles in December 2010. Of those, 28 were multilingual (73.4%). As of August 2013, there are 51 individuals in Senior and Executive Management roles, of which 39 are multilingual (76.5%). Staff reported that overall, ICANN staff members speak approximately 45 languages.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Level | On staff as of Dec 2010 | Multi-Lingual | On staff as of Aug 2013 | Multi-Lingual |
| Executive | 8 | 7 | 9 | 8 |
| Senior Mgmt | 30 | 21 | 42 | 31 |

No information was provided on any ongoing training of ICANN staff at any level in enhancing multilingual skills.

Staff further noted[[69]](#footnote-70) that:

While ICANN does not have a written policy for hiring senior staff with multilingual skills, there are a number of well-established practices and standard operating procedures to address this topic. As ATRT2 noted, ICANN has been successful in ensuring that senior staff possess multilingual skills by following these practices, and we anticipate that the level of multilingual knowledge will deepen as ICANN continues to implement its global strategy. ICANN will consider other appropriate documentation of the importance of multilingual skills for senior staff on a go-forward basis.

Practices and standard operating procedures include:

1. All position descriptions (and job postings) where multilingual skills are appropriate have been written to include multilingual skills as desired, preferred, or required, as applicable.
2. Where appropriate, internal interview survey forms ask each interviewer to comment on the multilingual skills of each interviewed candidate – this is a standard operating procedure.
3. The geographic expansion in the locations of ICANN offices is resulting in expansion of multilingual skills, by design.

ICANN provides several resources to employees for expanding their language skills. These resources include access to world-class language training tools, such as Rosetta Stone and busuu.com online language training. Additionally, ICANN provides tuition for local instruction classes as needed; such instruction has been provided for Spanish, Dutch and French, among other languages, for staff in hub office cities.

## Summary of Community Input on Implementation

Criticism of the accuracy of ICANN’s translations is not uncommon. Below is an example of how the translation changes the actual meaning. (The table reflects Russian translations.) It is of great importance that the level of translation accuracy be improved.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Document | Section (Part) | Wording | Actual translation (in Russian) | What it can mean | Correct translation (in Russian) |
| *A Next Generation Registration Directory Service* (2013) | Status of this **document** | **This is an initial report from the Expert Working Group on gTLD Directory Services (EWG) providing draft recommendations for a next generation gTLD Registration Directory Service (the “RDS”) to replace the current WHOIS system** | Настоящий документ ***представляет собой*** отчёт экспертной рабочей группы (ЭРГ) с рекомендациями по замене существующей системы WHOIS на ***службу каталогов регистрации рДВУ («СКР») следующего поколения*** | This is a [*initial* -missing] report of the Expert Working Group on [*draft* - missing] recommendations to replace the existing WHOIS system with *the office (service) of the catalogues of registration* of the *generic* Domains of the Top Level (abbreviation never used in Russian) of the *following* generation  | **Настоящий документ является предварительным отчётом Экспертной рабочей группы (ЭРГ) с рекомендациями по замене системы WHOIS справочным сервисом нового поколения («ССНП») по регистрационным данным доменов общего пользования** |
| *WHOIS Policy Review Team Final Report* (2012) | Title | **WHOIS Policy Review Team // Final Report** | Группа ***проверки*** политики WHOIS // Итоговый отчёт | The Team on *Checking* WHOIS Policy // Final Report | **Группа по обзору политики WHOIS // Итоговый отчёт** |
| (*multiple documents*) |  | **Registry** | ***Реестр*** | register (list) | **регистратура** |
| (*multiple documents*) |  | **Registrant** | ***владелец регистрации*** | owner of registration | **администратор домена** |
| (*multiple documents*) |  | **generic domain names** | ***родовые*** домены | ancestral, tribal domains  | **домены общего пользования** |

## ATRT2 Analysis of Recommendation Implementation

The implementation of the language policy is deemed unsuccessful because:

1. The often poor quality of translations undermines public willingness to participate.
2. The ability to encourage broader public participation is constrained by the limited availability of a full translation function.
3. Community members cannot fully participate in the Public Comments process in their preferred language – including languages for which ICANN claims to have established translation services – because they must comment back in English due to the lack of full translations of all comments received.
4. Many ICANN language communities are negatively impacted by the timeliness, i.e. common delays, of the current translations policy’s unequal response times.

On the other hand, it appears ICANN has successfully implemented Recommendation 22, given that more than 75% is reported as being multilingual. While it is not clear if ICANN has any policies regarding the use of languages other than English in email or one-to-one person communication, this has not been raised as a problem by the community. Nevertheless, should some members of the community have problems communicating with the senior staff in English, it seems likely that their multilingual skills will allow them to deliver a high level of transparency and accountability in their interactions.

## ATRT2 Assessment of Recommendation Effectiveness

ICANN should review the capacity of the language service department versus the community’s need for the service and make relevant adjustments. The language service is important to what ICANN does and its plans for the future are based on the outreach program already in place. While it is recognized that there has been a significant improvement in the Language Services Department, the Translation Services component should evolve to be able to sustain an expected significant increase in activity. This shift from a craft-based ad-hoc supply/demand service to a continuous industrial pipeline of documents involves the ability to:

1. accurately predict the time to translate a document at any time of the year, based on the knowledge of historical periodic activity (past ICANN meeting cycles, peak periods, holidays, etc.);
2. predict peaks of activity proactively and dynamically modulate capacity to supplement permanent staff using a pool of additional freelance translators on demand to smooth out peak delays;
3. enable clients (SOs, ACs, etc.) to automatically track the status of their translation request via use of a CRM system;
4. automatically compile metrics on document translation timeliness;
5. implement a feedback path from the community to improve Language Services with native speaker input;
6. implement best practice documentation management to harmonize translation quality and accuracy between experienced permanent and new or freelance translators; and
7. benchmark related procedures with similar international organizations, the most significant being the United Nations Language and Interpretation Services.

Given that the level of multilingual staff is commendable, the ATRT2 has no further input on Recommendation 22 at this issue.

## ATRT2 Draft New Recommendation #8

To support public participation, ICANN should review capacity of the language services department versus the community need for the service and make relevant adjustments such as improving translation quality and timeliness and implementing continuous improvement via benchmarking of procedures used by international organizations. While it is recognized that there has been a significant improvement in the Language Services Department, the Translation Services component should evolve to be able to sustain an expected significant increase in activity. This shift from a craft-based ad-hoc supply/demand service to a continuous industrial pipeline of documents involves the ability to:

8.1 Accurately predict the time to translate a document at any time of the year, based on the knowledge of historical periodic activity (past ICANN meeting cycles, peak periods, holidays, etc.);

8.2 Predict peaks of activity proactively, and dynamically modulating capacity to supplement permanent staff using a pool of additional freelance translators on demand to smooth out peak delays;

8.3 Enable clients (SOs, ACs, etc.) to automatically track the status of their translation request via use of a CRM system;

8.4 Automatically compile metrics on document translation timeliness;

8.5 Implement a feedback path from the community to improve Language Services with native speaker input;

8.6 Implement best practice documentation management to harmonize translation quality and accuracy between experienced permanent and new or freelance translators; and

8.7 Benchmark related procedures with similar international organizations, the most significant being the United Nations Language and Interpretation Services.

## Public Comment on Draft Recommendation

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

## Final Recommendation #

1. To support public participation, ICANN should review capacity of the language services department versus the Community need for the service using Key Performance Indicators (KPIs), and make relevant adjustments such as improving translation quality and timeliness. ICANN should implement continuous improvement of translation and interpretation services including benchmarking of procedures used by international organizations such as the United Nations.

# Report Section 11. DECISION-MAKING, TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #9~~8~~ (Assessment of ATRT1 Recommendations 20, 23, 25, 26)

## Findings of ATRT1

ATRT1 reviewed ICANN’s policy development and implementation processes and made many recommendations about the inputs and standards used for making and appealing decisions.[[70]](#footnote-71) Both to ease assessment of implementation and to shed light on the interrelationships between ATRT2’s mandate[[71]](#footnote-72) and the ICANN Board’s decisions on policy and its implementation, a number of these issues have been grouped in this analysis. Importantly, the assessments and recommendations made in this document presume the default condition of transparency as a basis for all ICANN activities. In those instances where the Chatham House Rule[[72]](#footnote-73) is invoked and discussions are closed and/or reports get redacted, the decision to overrule the transparency imperative still should be publicly documented.

## ATRT1 Recommendation 20

*The Board should ensure that all necessary inputs that have been received in policy-making processes are accounted for and included for consideration by the Board. To assist in this, the Board should as soon as possible adopt and make available to the community a mechanism such as a checklist or template to accompany documentation for Board decisions that certifies what inputs have been received and are included for consideration by the Board.*

## ATRT1 Recommendation 23

*As soon as possible, but no later than June 2011, the ICANN Board should implement Recommendation 2.7 of the 2009 Draft Implementation Plan for Improving Institutional Confidence which calls on ICANN to seek input from a committee of independent experts on the restructuring of the three review mechanisms - the Independent Review Panel (IRP), the Reconsideration Process and the Office of the Ombudsman. This should be a broad, comprehensive assessment of the accountability and transparency of the three existing mechanisms and of their inter-relation, if any (i.e., whether the three processes provide for a graduated review process), determining whether reducing costs, issuing timelier decisions, and covering a wider spectrum of issues would improve Board accountability. The committee of independent experts should also look at the mechanisms in Recommendation 2.8 and Recommendation 2.9 of the Draft Implementation Plan. Upon receipt of the final report of the independent experts, the Board should take actions on the recommendations as soon as practicable.*

## ATRT1 Recommendation 25

*As soon as possible, but no later than October 2011, the standard for Reconsideration requests should be clarified with respect to how it is applied and whether the standard covers all appropriate grounds for using the Reconsideration mechanism.*

## ATRT1 Recommendation 26

*As soon as possible, but no later than October 2011, the ICANN Board, to improve transparency, should adopt a standard timeline and format for Reconsideration Requests and Board reconsideration outcomes that clearly identifies the status of deliberations and then, once decisions are made, articulates the rationale used to form those decisions.*

ATRT2, under the terms of its mandate, also determined that the following issues[[73]](#footnote-74) should be addressed in this analysis of accountability and transparency in policy development and implementation processes:

1. Publication of yearly statistical reports on transparency.
2. Enhancement of the employee Hotline that allows relevant information to become transparent (Whistleblower Policy).

## Summary of ICANN’s Assessment of Implementation

With regard to Board consideration of inputs in policy decision-making, staff undertook an analysis[[74]](#footnote-75) to determine what can be learned based upon actual community usage and participation patterns. The study period was from 1 January 2010 through 31 December 2012 and involved harvesting information from each of 212 archived Public Comments Forums. Ultimately, a checklist was created that is now used with GNSO PDP recommendations to ascertain that all inputs were received. This checklist, now embedded in Standard Operating Procedure, has been used only once to date.

With regard to restructuring review mechanisms, an Accountability Structures Expert Panel (ASEP) was commissioned in September 2012. It included three international experts on issues of corporate governance, accountability and international dispute resolution. The ASEP reported on October 2012 and the Board acted upon its recommendations on 20 December 2012, approving amendments to Bylaws Article IV, Section 2[[75]](#footnote-76) (Reconsideration), Section 3[[76]](#footnote-77) (Independent Review), and the corresponding Cooperative Engagement Process for Independent Review.[[77]](#footnote-78)

With regard to the Ombudsman: the Ombudsman undertook a review of his office and function in accordance with ATRT1 Recommendation #23. The Ombudsman recommended to the Board Governance Committee (BGC) that a regular meeting schedule be established, possibly through a committee of the ICANN Board. In turn, the ICANN Board decided (1) that regular meetings would be held by the Executive Committee, and (2) Ombudsman reports that require the full ICANN Board's attention shall be provided to the ICANN Board as a whole, as needed and determined in consultation with the Executive Committee and the Ombudsman.

## Summary of Community Input on Implementation

ATRT2 conducted face-to-face sessions with stakeholders in Beijing and Durban, as well as a community-wide survey, to gather their views on ICANN’s progress towards institutionalizing more accountable and transparent policy development and implementation processes. Those relatively few responses to the survey were generally negative (see all of them in the ATRT2 archive at https://community.icann.org/display/ATRT2/Questions+to+the+Community). For example, this graphic summarizes some of the survey responses:

Specific ratings (1-10) to the questions 1-3 on the implementation of ATRT1



Some members of the ICANN community raised explicit Reconsideration process concerns. For example, the Registries Stakeholder Group (RySG) challenged Staff’s implementation of ATRT1 recommendations #23 and #25, claiming that they were fundamentally flawed and in fact ran counter to the concept of accountability.[[78]](#footnote-79) The RySG went on to assert that the Board ignored the public comments. Likewise, the Non-Commercial Stakeholders Group (NCSG), responding to ICANN’s rejection of its Reconsideration #13-3 (regarding the TMCH+50 case), publicly stated its “belief that the Board’s response, or rather, the manner in which it was couched and the rationale which the Board (through its representative sub-committee on the matter) chose to employ, was such as to land yet another blow to the vaunted [Multi-Stakeholder Model].”[[79]](#footnote-80) Other commenters noted that the ATRT2 should address the questions left unresolved by ATRT1, such as: should ICANN provide an independent and binding appeal from Board decisions and, if so, what body should have that authority?

There was limited input on the Ombudsman in the open comments or in the face-to-face discussions with the ICANN community. One report did question the independence of the Ombudsman, noting that the office “appears so restrained and contained.”

## Summary of Other Relevant Information

With regard to Board reconsideration, since December 2010 eight new Reconsideration Request processes were initiated and six of those “resolved.” In the course of its work, ATRT2 found that the general perception throughout the ICANN community is that Reconsideration Requests “all end up in a negative decision.” An analysis of the results bears this out:

Request 13-5: Booking.com B.V. (Staff action/inaction on non-exact match “hoteis”). BCG recommendation pending.

Request 13-4: DotConnectAfrica Trust (Board action/inaction on the GACs Beijing communique impact on dotafrica application). **Denied** as per BCG recommendation; Board resolution not finalized.

Request 13-3: Non-Commercial Stakeholders Group (against staff action on TMCH+50). Initially **Denied** by BCG**,** but eventually recommends to adopt **“revised”** recommendation, to be brought to the ongoing community discussion on policy versus implementation within ICANN.[[80]](#footnote-81)

Request 13-2: Nameshop (Board/ Staff inaction *on Applicants Support*). **Denied**.[[81]](#footnote-82)

Request 13-1: Ummah Digital, Ltd. (against staff action on Applicants Support). **Denied**.

Request 12-2: GNSO Intellectual Property Constituency (against Board decision on .cat). **Denied.**

Request 12-1: International Olympic Committee (board decision). **Denied** (“*at this time*”)[[82]](#footnote-83)

Request 11-1: Michael Gende (staff inaction). **Denied**.

With Regard to the Ombudsman under the ICANN bylaws[[83]](#footnote-84):

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

The Ombudsman maintains its own page on the icann.org [website](http://www.icann.org/en/help/ombudsman).[[84]](#footnote-85) Annual reports have been included under this page from 2005 – 2010.[[85]](#footnote-86)

The Ombudsman now reports to the Board on a quarterly basis in addition to publishing an annual report. Furthermore, the Ombudsman has a Facebook page and writes a regular [blog](http://omblog.icann.org) on various topics.

In discussions with the ATRT2[[86]](#footnote-87), the Ombudsman mentioned additional functions that were not included in the explicit Bylaws charter, including:

“To ensure that there is transparency of the flow of information.”

“A mandate to assist with keeping peace and harmony within the ICANN community.”

Involvement in some issues with new gTLD program and Dispute Resolution providers that may have not been anticipated as part of the Ombudsman function by program implementers.

On questions of whether the Ombudsman should have a role in the Whistleblower process at ICANN, the current Ombudsman mentioned to the ATRT2 that he, as well as his predecessor, had spoken to ICANN legal staff about this issue and that he was basically told “no.”[[87]](#footnote-88) He also mentioned that the role had been defined 10 years ago and perhaps that was an issue to be explored.[[88]](#footnote-89)

## ATRT2 Analysis of Recommendation Implementation

With regard to Board consideration of input in policy decision-making (ATRT1 Recommendation #20), ATRT2 found this implementation to be **incomplete**. Although the ICANN Board and the GAC have developed a modality that allows the latter’s advice to be received, reviewed, considered, and discussed with decisions explained, and the Supporting Organizations have rich Bylaws text defining processes for consideration of policy advice, the remaining Advisory Committees may offer advice but there is no defined response mechanism. In fact, there isn't even a Bylaws obligation on the ICANN Board to respond.

With Regard to restructuring review mechanisms (ATRT1 Recommendation #23), ATR2 also found this to be **incomplete**. Review mechanism is only the last stage of the PDP process, but one where the objectives of AoC 9.1(d) are at risk. Review mechanism should be a “final” guarantee that there is wide support for decisions. It should not be seen as a way to solve process logjams at this stage alone.

With regard to Board Reconsideration issues, ATRT2 found that Recommendations #25 remains **incomplete**. While steps were taken to clarify the process, the issues described above indicate that it still requires clarification.

Regarding Recommendation #26, though, this item is **complete**. A timeline and suggested format for generating a Reconsideration Request can be found at <http://www.icann.org/en/groups/board/governance/reconsideration>.

With Regard to the Ombudsman (ATRT1 Recommendation #24), this item also is **complete**.ATRT2 believes, however, that ICANN needs to reconsider the Ombudsman’s charter and the Office’s role as a symbol of good governance to be further incorporated in transparency processes.

## ATRT2 Draft New Policy Input-Related Recommendations

## Hypothesis of Problem

Full transparency requires that employees have an ability to report irregularities in a safe and reliable manner. While ICANN has a hotline that is meant to serve the whistleblowing activities, evidence does not indicate that this program has been used effectively.

## Background Research Undertaken

While ATRT1 did not make any specific recommendations on the manner in which continual assessment could be done, previous ICANN-contracted reports did include relevant suggestions:

In 2007, **One World Trust** concluded[[89]](#footnote-90) that

ICANN should consider implementing processes that act as deterrents to abuses of power and misconduct which would protect staff who might want to raise such instances. Specifically, ICANN should consider developing a whistleblower policy that enables staff to raise concerns in a confidential manner and without fear of retaliation; and developing appropriate systems to foster compliance.[[90]](#footnote-91)

In 2010, the **Berkman Center for Internet & Society** reiterated[[91]](#footnote-92) One World Trust’s recommendation that ICANN carry out a yearly transparency audit that would be published as part of an annual Transparency Audit.[[92]](#footnote-93)

## Findings of ATRT2

ICANN already issues an annual report on implementation and progress on ATRT1 recommendations. Additionally, while the staff does not anticipate any issues with being able to report how the Anonymous Hotline is being used, ICANN’s ability to report publicly on results from Anonymous Hotline may be limited in certain cases due to legal implications. ICANN may be limited to providing a generic disposition due to such legal limitations.

## ATRT2 Draft New Recommendation #9

## Mandate Board Response to Advisory Committee Formal Advice

9.1. ICANN Bylaws Article XI should be amended to include:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees explaining what action it took and the rationale for doing so.

## Explore Options for Restructuring Current Review Mechanisms

9.2. The ICANN Board should convene a Special Community Committee to discuss options for improving Board accountability with regard to restructuring of the Independent Review Panel (IRP) and the Reconsideration Process. The group will use the report of the Experts Group Report (ESEP) on Restructuring as one basis for its discussions.

## Review Ombudsman Role

9.3. The Ombudsman role as defined in the Bylaws shall be reviewed to determine whether it is still appropriate as defined or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

1. A role in the continued process review and reporting on Board and Staff transparency.
2. A role in helping employees deal with issues related to the public policy functions of ICANN
3. A role in proper treatment of whistleblowers and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

## Develop Transparency Metrics and Reporting

9.4. As part of its yearly report, ICANN should include:

1. A report on the broad range of Transparency issues with supporting metrics.
2. A discussion of the degree to which ICANN staff and community are adhering to a standard of default transparency or where decisions to either use Chatham House Rule or redaction are made on a case-by-case basis and are documented in a transparent manner.

Statistical reporting on ICANN Board information and report disclosure, to include:

1. Usage of the Documentary Information disclosure Policy (DIDP).
2. Percentage of Board Book and other information that is released to the general public.
3. Number and nature of issues that the Board determined should be treated at either:
4. Under Chatham House Rule
5. Completely confidential

A section on employee whistleblowing activity, to include metrics on:

1. Reports submitted.
2. Reports verified as containing issues requiring action.
3. Reports that resulted in change to ICANN practices.

An analysis of the continued relevance and usefulness of existing metrics, including

1. considerations on whether activities are being geared toward the metrics (aka, teaching to the test) without contributing toward the goal of genuine transparency
2. Recommendations for new metrics
3. and other information that is released to the general public.
4. Number and nature of issues that the Board determined should be treated at either.

## An analysis of the continued relevance and usefulness of existing metrics, including:

1. Consideration of whether activities are being geared toward the metrics (aka, teaching to the test) without contributing toward the goal of genuine transparency.

## Establish a Viable Whistleblower Program

9.5. Adopt the One World Trust and/or Berkman Center recommendations to establish a viable whistleblower program. The processes for ICANN employee transparency and whistleblowing should be made public. ICANN also should arrange for an annual professional audit of its whistleblower policy to insure that the program meets the global best practices.

**Public Comment on Draft Recommendation**

There were no specific public comments on this issue, and/or any comments received were in agreement with the Report's findings.

**Final Recommendation #8**8.1

Mandate Board Response to Advisory Committee Formal Advice

ICANN Bylaws Article XI should be amended to include:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees explaining what action it took and the rationale for doing so.

8.2 Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN’s structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.

8.3 Review Ombudsman Role

The Ombudsman role as defined in the Bylaws shall be reviewed to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

1. A role in the continued process of review and reporting on Board and Staff transparency.
2. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and executive functions related to policy and operational matters.
3. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

8.4 Develop Transparency Metrics and Reporting

As part of its yearly report, ICANN should include, but not be limited to:

1. A report on the broad range on Transparency issues with supporting metrics.
2. A discussion of the degree to which ICANN staff and community, are adhering to a standard of transparency by default in all policy, implementation and administrative actions and discussions with redactions or other practices used to keep information hidden from the ICANN community, documented in a transparent manner.
3. Statistical reporting should include at least the following elements:
4. requests of the Documentary Information Disclosure Policy (DIDP) process and the disposition of these requests.
5. percentage of redacted-to-unredacted Board briefing materials released to the general public.
6. number and nature of issues that the Board determined should be treated confidentially.
7. other ICANN usage of redaction and other methods for keeping information hidden from the community and statistics on reasons given for usage of such methods.
8. A section on employee “Anonymous Hotline” and/or other whistleblowing activity, to include metrics on:
9. Reports submitted.
10. Reports verified as containing issues requiring action.
11. Reports that resulted in change to ICANN practices.
12. An analysis of the continued relevance and usefulness of existing transparency metrics, including
13. considerations on whether activities are being geared toward the metrics (aka, teaching to the test) without contributing toward the goal of genuine transparency
14. Recommendations for new metrics

8.5 Arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

The professional external audit should be based on the One World Trust recommendations to establish a viable whistleblower program, including protections for employees who use such a program, and any recent developments in areas of support and protection for the whistleblower. The professional audit should be done on a recurring basis, with the period (annual or bi-annual, for example) determined upon recommendation by the professional audit.

The processes for ICANN employee transparency and whistleblowing should be made public. Regularly (annually or bi-annually) cause an independent third party to evaluate the ICANN “Anonymous Hotline” policy to ensure it meets best practices for Whistleblower Policies; publicly report on the findings and any improvement recommendations. Further, make public the processes used to support the Anonymous Hotline policy.

# Report Section 12.Assessment of ATRT2 Recommendation 21 – No ATRT2 Recommendation

## Findings of ATRT1

ATRT1 found that the timeliness of policy-making was a serious concern among participants in the ICANN processes. The numerous changes in projected completion dates for new TLD round preparatory work were a source of concern that led to a specific proposal (i.e. Expression of Interest) from some members in the community. An often-cited concern was the sheer volume of open public comment. The ATRT took into account the fact that the volume of open proceedings is affected by the actions of constituent bodies within ICANN and is not uniquely influenced by ICANN Staff or the Board.

## Recommendation 21

*The Board should request ICANN staff to work on a process for developing an annual work plan that forecasts matters that will require public input so as to facilitate timely and effective public input.*

## Summary of ICANN’s Assessment of Implementation

Staff reported that all parts of Recommendation 21 were implemented as originally proposed.[[93]](#footnote-94) ATRT2 notes, however, that the annual update process was not completed by the December 2012 deadline. Staff is currently simplifying the process and templates and expects to launch another formal refresh cycle shortly.

## Summary of Community Input on Implementation

One commenter notes that there’s “insufficient forward-planning for the schedule of consultations and their priority. Number of consultations is very high; bearing in mind the bottom-up nature of ICANN, it can also be a barrier to engagement.”

## ATRT2 Analysis of Recommendation Implementation

Although the forecast was implemented late, a new forecast is now made every trimester so Recommendation 21 is considered **complete**. A resource guide is now published at <http://www.icann.org/en/news/public-comment/upcoming>.

Although there are no formal metrics to gauge the effect or outcome of publishing Upcoming Public Comments topics, anecdotal evidence indicates that some community members perceive value in consulting the Upcoming topics list. Therefore, a formal study should be undertaken approximately six months after the information has been refreshed.

## ATRT2 Assessment of Recommendation Effectiveness

The recommendation seems to have had some effect based on anecdotal evidence, but ICANN should solicit feedback from the community to determine the effectiveness of forecasting and whether other tools should be used to assist the Community.

**Public Comment on Draft Recommendation**

**Final Recommendation**

# Report Section 13. CROSS-COMMUNITY DELIBERATIONS: ATRT2 Recommendation #10 (Proposed New Recommendations on 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.[[94]](#footnote-95) 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.[[95]](#footnote-96)

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 among 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.”[[96]](#footnote-97)

A number of Public Comments also discussed PDP issues, including:

The involvement of the GAC in the PDP process.[[97]](#footnote-98)

The need for wider participation and cross-community interactions.[[98]](#footnote-99)

The need for participation by groups without business-related incentives for participation.[[99]](#footnote-100)

The need for community buy-in into the process and the belief that the decisions of a PDP will not be over-ridden.[[100]](#footnote-101)

The need for facilitation or other ways of getting closure on contentious issues.[[101]](#footnote-102)

The need to include non-English speakers in the process.[[102]](#footnote-103)

## 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 A. 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, Other Published Policies and Procedures

The GNSO PDP is governed by Bylaws Annex A.[[103]](#footnote-104) This includes the GNSO Operating Procedures[[104]](#footnote-105) 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.

## Findings of ATRT2

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 doubt 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 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 timeframes for 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. Similarly, 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.

## ATRT2 Draft New Recommendation #10

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

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

1. Develop funded options for professional facilitators to assist GNSO PDP WGs and also draft explicit guidelines for when such options may be invoked.
2. 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.
3. 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.

10.2. 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.

10.3. 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:

1. under-represented geographical regions;
2. non-English speaking linguistic groups;
3. those with non-Western cultural traditions; and
4. those with a vital interest in GTLD policy issues but who lack the financial support of industry players.

10.4. To improve the transparency and predictability of the PDP process:

1. 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.
2. 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.

NOTE: The ATRT2 is also considering generalizing the fourth bulleted item of 13.3 to facilitate having such volunteers in all areas and not just the GNSO PDP, ensuring that the public interest is properly supported in all ACs and SOs. Comments on such a recommendation would be appreciated. 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.

## Public Comment on Draft Recommendations

There was some concern with the term “facilitators” and poor experiences with facilitators in other venues.

There was support in At-Large, NCSG and SSAC for generalizing the fourth bullet of 10.3 (d). The rationale is that many segments of the ICANN community have business activities in the ICANN-related ecosystem, and it is thus to their business and financial advantage to have employees and associates participate in ICANN activities. Those with a strong interest in ICANN, but who lack business-related funding opportunities, are at a distinct disadvantage, and this has the potential to negatively impact the ICANN multi-equal stakeholder model. ICANN currently funds travel costs for many (but not all) AC and SO members, for selected At-Large RALO leaders, and more recently, for GNSO Constituency and Stakeholder Group leaders. [Perhaps also include a reference to those within the ICANN ecosystem, but who work for employers who see no merit in ICANN participation.]

Poor participation in PDPs is not just the lack of participation noted by the independent expert report, but a lack of participation from within the communities that are well represented within ICANN and the GNSO. PDPs rely far too much on a very small and possibly shrinking group of volunteers

Final Recommendations

9. Improve the effectiveness of cross-community deliberations (Report Section 13)

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

1. In line with ongoing discussions within the GNSO, develop funded options for professional services to assist GNSO PDP Working Groups and also draft explicit guidelines for when such options may be invoked. Such services could include training to enhance work group leaders’ and participants’ ability to address difficult problems and situations, professional facilitation, mediation and negotiation. The GNSO should develop guidelines for when such options may be invoked.
2. Provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO PDPs. Such face-to-face meetings must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hub offices and engagement centers) to support intersessional meeting. Moreover, the possibility of meetings added onto the start or end of ICANN meetings could also be considered. The GNSO must develop guidelines for when such meetings are required and justified and for who should participate in such meetings.
3. Work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy development processes to utilize volunteers’ time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

9.2 The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the Affirmation of Commitments.

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

1. all ICANN communities with an interest in gTLD policy and in particular those represented within the GNSO;
2. under-represented geographical regions;
3. non-English speaking linguistic groups;
4. those with non-Western cultural traditions; and
5. those with a vital interest in GTLD policy issues but who lack the financial support of industry players.

9.4 To improve the transparency and predictability of the PDP process, the Board should clearly state to what degree it believes that it may establish gTLD policy[[105]](#footnote-106) in the event that the GNSO cannot come to closure on a specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO policy recommendations, either before or after formal Board acceptance.

# Report Section 14. AoC REVIEW PROCESS EFFECTIVENESS: ATRT2 Recommendation 11 (Proposed New Recommendations on Effectiveness of the Review Process)

## Hypothesis of Problem

The working assumption is that the AoC review processes provide sufficient review and adequate recommendations that facilitate improvement in ICANN’s accountability and transparency. There is concern about the level to which the periodic institutional reviews, as required in the ICANN bylaws, create an aspect of “review fatigue” that undermines stakeholder or organizational effectiveness. Therefore, the availability of alternative approaches to review that should be considered by ICANN.

Furthermore, with three other AoC-related reviews to be carried out in a three-year cycle, there is an implied requirement for each of the review processes to be completed within the year it begins. This should enable all the required reviews to be carried out, recommendations shared, and ICANN staff given time to either implement or consider for implementation some of the Recommendations of the review teams before the next ATRT review. However, if the three reviews are not completed and considered within the prescribed cycle, then the subsequent ATRT risks having a deadline for its review when the other reviews have not yet been completed and/or their recommendations not yet fully considered by ICANN Board and staff.

## Background Research Undertaken

Prior Review Team reports (ATRT1, WHOIS and SSR) provide some insight into the qualitative aspects of each review process. ATRT1’s Final Report provided both an Overview of the Accountability and Transparency Review Process (Appendix A) and Observations of the Review Process (Appendix B), but the WHOIS Review Team and the SSR Review Team did not provide discreet observations of the review process in their respective reports.

ATRT2 also asked for input from former members of those review teams concerning the review process and whether they believe improvements could be made.

Furthermore, ATRT2’s review process has provided some insights regarding the effectiveness and efficiency of the review process.

In sum, ATRT2 found that issues that require further discussion include, but are not limited to:

1. Time allotted for the review process.
2. The mechanics of initiating data flow from ICANN staff to the review team.
3. The mechanics of obtaining community input at an early stage.
4. Understanding of budget allocations for the Review Team activities.
5. Dynamics of work stream organization.
6. Volunteer aspects of the review team process.

##

## Summary of ICANN Input

Staff reported that:

1. The AoC does not require the reviews to be completed within one year.  While timely completion of the reviews impacts the effectiveness of the three-year cycle, staff recommended that ATRT2 address the three-year cycle mandated by the AoC.
2. Staff prepares regular and frequent implementation reports to the Board and community.  In the case of ATRT2, an Annual Report[[106]](#footnote-107) was provided to the Board and community.  Additionally, staff has provided several updates[[107]](#footnote-108) to the ATRT2 during the course of its Review, in varied forms.  Given the wide array of opinions within the Review Team regarding format and substance of staff reports on implementation, staff would find guidance from the Review Team very useful.
3. ICANN has engaged One World Trust (OWT) to assist with the development of Accountability and Transparency Benchmarks and Metrics.  The final report is expected by 31 December 2013.  Staff will facilitate ATRT2 input and feedback to OWT.  Periodic updates on progress of work will also be shared. The ongoing implementation of Accountability and Transparency Benchmarks and Metrics into ICANN operations will include the incorporation of appropriate benchmarks and metrics into the reporting of implementation progress.
4. ICANN's AoC commitments are incorporated into its strategic[[108]](#footnote-109) and operating[[109]](#footnote-110) plans, and improvements related to AoC reviews are integrated into ICANN's standard operating procedures and programs.[[110]](#footnote-111) As the Board, staff and other organizations implement the recommendations of the review teams, ICANN follows a continuous improvement model, integrating the spirit of the recommendations into ICANN’s operations and strategic initiatives, as appropriate.
5. ICANN uses various methods to ensure review coordination and already has staff whose mandate is to coordinate reviews. AoC review teams are independent and make their own timelines, and AoC language specifies the frequency of the reviews. The Board and staff do not have control over the timing of the reviews such that they are completed with ample implementation time prior to the next Accountability and Transparency Review. In order to address this concern, the AoC mandate would need to be changed.

## Summary of Community Input

Some notable comments include:

1. Former ICANN CEO and President Mike Roberts questioned whether insider dynamics captured prior review teams.
2. Alejandro Pisanty – A large part of the recommendations is superfluous and engenders greater bureaucracy. ATRT2 should to try to find a way to make recommendations less burdensome and more substantive.
3. Nominet – One should have a full picture of the extent to which the recommendation is embedded into ICANN process and what the full effects of the implementation are. Implementation progress should feature as part of the Board update at every ICANN meeting. They should be given the highest visibility and priority.

##

## Summary of Other Relevant Research

ATRT2 members representing various SO/ACs provided the following input on the process:

1. There was limited time to get the actual work done, and future teams should consider the possibility of limiting certain meetings. Whereas the face-to-face meetings were very productive, the conference calls were not as productive.
2. A report is provided to the team on things done, but no report is provided on lessons learned. There is no bench line identified for developing recommendations. This creates a dilemma in relation to interaction with the secretariat.
3. There is a clear need for adequate financial resources to support the work of the Review Ream, independent experts/consultants (as need is determined by the Review Team), and the secretariat. There was no discussion on the budget for an independent expert and whether or not to engage one, thus limiting the group.
4. Measures (e.g. appointees, budget, operational reporting, etc.) for the next Review Team should be in place before the official start in January 2016. This will reduce the pressure to meet the year-end deadline.
5. Right from the beginning, Day 1, staff should share reports without compromising ATRT work.
6. Some ATRT2 members felt that they were operating under the shadow of ATRT1. What did or did not work from the previous Review could be assessed by an external expert. At the least, provide judgment criteria and indicators to look for when going back for the review process.
7. While the Review Team’s interaction with different stakeholders has been very good, with the Durban process very helpful in data collection, visibility with the rest of ICANN community needs to be improved due to inherent limitations of the reviews’ historic versus futuristic approach.
8. Regularity of Reviews has to be strictly coordinated by having all reviews done before next ATRT reviews, i.e. proper linkage. Future teams may need to consider the possibility of an independent secretariat or technical facilitator. These resources would reduce the focus being driven by input from staff and facilitate balanced input from external communities. This would enable the review team members to carry out evaluation on implementation appropriately.
9. A reliance on volunteers for doing functions that should be carried out by professionals is not a good model for a review group carrying out such an important task. For example, reviewing the other Review Teams’ output is a lot of work for a cadre of volunteers.
10. With each ATRT team expected to have to look at all of the previous Review Teams’ output, community engagement is likely to be difficult for ATRT3.
11. Volunteer involvement with competing priorities for the various communities within ICANN requires that ATRT team members go to our own communities to help gather input for the various processes.
12. There seems to be tension between being independent and objective and working with staff. The ATRT team should drive the work and the staff should give responses.

## Relevant ICANN Bylaws, Other Published Policies and Procedures

Organizational reviews are overseen by the Board’s Structural Improvements Committee. The methodology of organizational reviews and background materials can be found at <http://www.icann.org/en/groups/reviews>.

## ATRT2 Draft New Recommendation #11

## 11.1. 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.

* 1. 11.2. 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.

* 1. 11.3. 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.

## 11.4. 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.

## 11.5. 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.

## 11.6. 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.

## 11.7. 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.

## Public Comment on Draft Recommendations

## Final Recommendation

# Report Section 15. FINANCIAL ACCOUNTABIILITY AND TRANSPARENCY: ATRT2 Recommendation #12(Proposed New Recommendation on Finance Accountability and Transparency)

## Hypothesis of Problem

ICANN is a non-profit, privately organized institution. The services delivered by ICANN are delivered without any other institutions or bodies competing with ICANN. The political decisions of the ICANN Board and, in the broader context, the multi-stakeholder mechanism, will - in the absence of direct competition - be the only factors that determine how ICANN should prioritize its resources, its revenue, and its spending.

The combination of a more complex organization (as shown in the ICANN organization chart[[111]](#footnote-112)), increased income and expenses, and the increased complexity of a business going from approximately 20 gTLDs to more than 1,000 gTLDs over the next few years, highlights the importance of increased accountability and transparency in ICANN’s financial governance, including decisions related to activities, prices, expenses and investments.

## Background Research Undertaken

## Summary of ICANN Input

ATRT2 members conferred with ICANN CFO Xavier Calvez in late August 2013.[[112]](#footnote-113) The conversation was very informative, and it is evident that ICANN has improved its level of financial reporting during the last couple of years. Calvez reported that ICANN is considering a benchmark study to compare ICANN to other non-profit organizations, but this has not been definitely decided. Responding to a question about separating the expense and budgets for each AC and SO, he noted that would be difficult to do and is not planned or projected yet. When asked for the plans or principles for using any surplus from the New gTLD Program to lower the fees collected by ICANN, Calvez replied that a five-year strategy could enable the suggested principles.

At the ATRT2 meeting in Los Angeles in August 2013, ICANN Board Chair Steve Crocker highlighted the appropriateness of improving accountability and transparency of ICANN’s planned activities, implemented activities, and corresponding expenses.[[113]](#footnote-114)

## Summary of Community Input

## GAC Comments

On numerous occasions, including the ICANN meetings in Toronto[[114]](#footnote-115), Beijing[[115]](#footnote-116) and Durban[[116]](#footnote-117), the GAC has recommended that the issue of accountability and transparency regarding ICANN’s finances be further looked into. In fact, the need to analyze improvements to ICANN’s financial accountability mechanisms was specifically emphasized by the participants at the High Level GAC meeting at ICANN Toronto in October 2012.[[117]](#footnote-118)

##

## Public Comments

Community input[[118]](#footnote-119) on the FY14 Draft Operating Plan and Budget reveal numerous concerns about ICANN financial issues, including calls for more clarified reporting and/or a different approach to the organization’s budget-setting processes. Based on the staff summary of the public comments, the key issues included:

1. expenses and budgets for AC/SOs (see references # 4, 7,8,26, 75, 78, 79);
2. ICANN income and expenses (see references # 2, 6, 73, 76, 77, 105, 106, 107); and
3. inadequate time to comment and for ICANN to incorporate those comments (see references # 23, 24)

##

## Summary of Other Relevant Research

Being a public-benefit corporation, ICANN needs to strike a reasonable balance between its revenues and expenses. In a situation with increasing revenue, one option is to increase activities corresponding to this additional income. Another option is to lower the prices paid by ICANN’s consumers and in turn benefit domain name end-users. Of course, the two options can be combined.

In recent years ICANN’s activities and corresponding revenues and expenses have grown significantly. Revenues increased from $18 million in 2005 to $72 million in 2012. Accordingly, expenses increased from $14 million in 2005 to $70 million in 2012[[119]](#footnote-120). During the same period, staff increased from 36 in 2005[[120]](#footnote-121) to 149 in 2012 and up to 220 in 2013, with a planned increase to approximately 284 in 2014.

In the recently approved Fiscal Year 2014 (FY14) budget,[[121]](#footnote-122) ICANN forecast 2013 revenue of more than US$80 million and an expectation of ending 2013 with net income of nearly US$32 million. If the 2013 balance from the New gTLD Program is added in, the net result jumps to US$92 million. In fact, the New gTLD Program is expected to generate at least US$315 million in revenue. While the FY14 budget forecasts that the Program will generate US$197 million in operating expenses, it still leaves a net balance of US$118 million.

The following graphic captures these trends:

**FY14 Draft Operating Plan & Budget Headcount Growth**[[122]](#footnote-123)



## Relevant ICANN Bylaws, Other Published Policies and Procedures

Within the procedure of the board approval of the budget,[[123]](#footnote-124) the ICANN Board Finance Committee is responsible for:

1. Providing oversight on the annual budget process of the Corporation;
2. Reviewing and making recommendations on the annual budget submitted by the President (the CEO of ICANN);
3. Developing and recommending short- and long-range strategic financial objectives for the corporation; and
4. Providing strategic oversight on financial matters for the Corporation.

## Findings of ATRT2

Given that ICANN’s present and future financial situation forecasts substantial surpluses, the community needs to establish a firmer basis for discussing how to continue developing ICANN and prioritize its work to the benefit of participants within the multi-stakeholder model. Such a discussion will entail three key elements:

1. The revenue side. How should the revenue in general develop, and what should the future ICANN fee structure look like? One pressing question is whether ICANN can continue the present fee structure, and annual surpluses of over 1/3 of yearly revenues, given its non-profit status? Should ICANN in general reduce the annual fees in order to balance revenue and spending?
2. The expenditure side. ICANN has expanded its activities dramatically. For example, ICANN staff will nearly double over a two-year period. Is this a trend that should be continued? When has ICANN reached its mature size and organizational setup?
3. The prioritization of the work of ICANN. ICANN is in the very fortunate situation that its financial prospects are very positive and promising. This should not, however, lead to an insufficient or unclear prioritization of its strategic outlook and the work it undertakes. In all organizations, resources are scarce, either because of competition or because of constrains from the granting authority. While this might have negative effects, it should help keep the organization agile and focused on its desired outcomes. Importantly, there must be effective matches between the resources spent and the effects achieved. ICANN should develop new transparent and accountable mechanisms that combine more effective resource allocation and use with the involvement of all the parties within the multi-stakeholder model.

## ATRT2 Draft New Recommendations

In any organization, careful consideration of strategic financial priorities is crucial for the efficiency of the organization. In a non-profit organization such as ICANN, it is imperative that the financial governance constituted between the CEO, CFO, and the Board make effective use of the checks and balances represented in the multi-stakeholder model to ensure that the financial priorities truly benefit the global Internet community.

To this end, the ATRT2 recommends that, in light of the significant growth in the organization, ICANN undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

1. The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN Community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.

2. As a non-profit organization operating and delivering services in a non-competitive environment, ICANN should explicitly consider the cost-effectiveness of its operations when preparing its budget for the coming year. This should include how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.

3. As a non-profit organization, every three years ICANN should conduct a benchmark study on relevant parameters, e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc.

4. In order to improve accountability and transparency and facilitate the work of the Review Teams, ICANN’s Board should base the yearly budgets on a multi-annual financial framework (covering e.g. a two- or three-year period) reflecting the planned activities and the corresponding expenses. The following year, a report should be drafted describing the actual implementation of the framework, including activities and the related expenses. This should include specified budgets for the ACs and SOs.

5. In order to ensure that the budget reflects the views of the ICANN community, the ICANN Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and enough time for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting between the ICANN Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

##

**Public Comment on Draft Recommendation** Responses from the community on the recommendations regarding finances were generally positive.

The Danish Government together with the Egyptian Government comment on the importance of reviewing and improving ICANN’s financial governance and financial accountability and transparency.

The Spanish Government comments “Likewise, we would be more than pleased to participate in the budget consultation process envisaged in section 15. It is as important to have safe sources of income as allocating enough resources to fulfilling strategic objectives of the organization.”

IPC comments “The impression is given that ICANN gives top priority to opening new offices around the world and diving headlong into new policy areas such as Internet governance, without directing sufficient resources to “operational excellence” in the organization’s core business of administering the systems for IP addresses and domain names. The only effective way to dispel this impression is through the types of reforms spelled out in these recommendations, including (as sketched out in the preceding section of these comments) by “ensuring that sufficient time is given to the community to provide their views on the proposed budget and enough time for the Board to take into account all input before approving the budget”.

This comment is well in line with the comments from RySG, Becky Burr, Paul Diaz and Chuck Gomez regarding **recommendation 12.1** financial planning and comment periods:

“We strongly support this recommendation but note that it is very difficult for community members to effectively participate if they don’t receive sufficient detail until after it is too late to make changes. It is easy to claim this goal is met by showing how community members were able to participate at a high level in the process and that is what has been happening for years, but that is not sufficient. The ARTR2 needs to be much more specific in terms of what is expected.” RySG, Becky Burr, Paul Diaz and Chuck Gomez state regarding **recommendation 12.3** Benchmark-studies:

“More detail is needed on this recommendation. What would be the purpose of the study? How would the study be used? Would comparisons with comparable organizations be included in the study? If so, how would comparable organizations be selected? Etc.”

RySG, Becky Burr, Paul Diaz and Chuck Gomez have the following remark to **recommendation 12.4:**“We fully support the second part of this recommendation. It is not clear though whether the first part is realistic; we would be very pleased if it could be done.

Community members who have tried to actively contribute to the process of developing an operating plan and budget for just one year have been repeatedly told that it is not possible to provide detailed budget information until it is too late to make significant changes. In many cases it is not possible to make meaningful contributions without having budget information at the task and sub-task level earlier in the process, so what happens is this: detailed budget information is provided late in the fiscal year, we make comments, but it is too late for any significant changes to made because the Board has to approve the budget before its next fiscal year.”

IPC has the following comment to **recommendation 12.5** “IPC has frequently expressed its concerns about the lack of transparency and accountability in the ICANN budget process and its financial reporting to the community”

IPC continues “Unlike many organizations, both for-profit and not-for-profit, which must face tough decisions about spending priorities in the face of flat or diminishing revenues, ICANN has enjoyed years of increasing revenues. But this makes even more critical the need for a transparent process for setting spending priorities, and an accountability mechanism to ensure that the results of that prioritization process are fulfilled. IPC urges that Recommendation 12 be given a high priority in ATRT-2’s final report, and that achievement of a much higher level of financial accountability and transparency be enshrined as a strategic objective for ICANN over the next few years.

IPC appreciates the recent statements of ICANN board leaders and senior staff supporting

this ATRT-2 recommendation. See ttp://audio.icann.org/meetings/buenosaires2013/board-csg-19nov13-en.mp3 (audio file of ICANN board meeting with Commercial Stakeholder Group in Buenos Aires, November 19, 2013). (An unofficial transcript includes: Cherine Chalaby – “You make an excellent point. You have not seen the strategic plan in its entirety. There will be a five year financial plan inside the strategic plan as well…. We one hundred percent agree with your point and want to raise it even higher to a completely different level.” Fadi Chehadé – “We are hugely upgrading that whole area. We have a new Chief Operating Officer who is focused on that. As Cherine Chalaby said, it is the first time we moving away from expense management to financial planning within ICANN, not just budgeting, and now leaning to true financial reports—the kind you would expect from any organization our size.”)”

**Final Recommendation**

In any organization careful considerations about the strategic financial priorities are crucial for the efficiency of the organization. In a non-profit organization as ICANN it is imperative that the financial governance constituted between the CEO, CFO, and the Board make effective use of the checks and balances represented in the multi-stakeholder model to ensure that the financial priorities truly benefit the global Internet community.

To this end, the ATRT2 recommends that, in light of the significant growth in the organization, ICANN undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

1. The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN Community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.

2. As a non-profit organisation operating and delivering services in a non-competitive environment, ICANN should explicitly consider the cost-effectiveness of its operations when preparing its budget for the coming year. This should including how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.

3. As a non-profit organisation, every three years ICANN should conduct a benchmark study on relevant parameters e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc. If the result of the benchmark is that ICANN as an organization is not in line with the standards for the comparing organizations the ICANN Board should consider aligning the deviation. In cases where the board choose not to align this has to be reasoned in the board decision and published to the internet community.

4 In order to improve accountability and transparency ICANN’s Board should base the yearly budgets on a multi-annual strategic plan and corresponding financial framework [covering e.g. a three-year period] This – rolling - plan and framework should reflect the planned activities and the corresponding expenses in that multi-annual period. This should include specified budgets for the ACs and SOs. The following year, a report should be drafted describing the actual implementation of the framework, including activities and the related expenses with a particular focus on the implementation of the yearly budget in question. (Board may choose to request follow-up reports on a quarterly basis.) The report shall be submitted for consultation.

5. In order to ensure that the budget reflects the views of the ICANN community, the ICANN Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and enough time for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting between the ICANN Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

# Report Section 16. Summary of ATRT2 Assessment of the Implementation of WHOIS Review Team Recommendations

## Board Adoption of RT Recommendations

Although a detailed review of the wording of the Board action indicates that it did indeed approve implementation of the bulk of the WHOIS RT recommendations, it is understandable why that was not the impression left on many community members. The wording of the Board motion specifically identified three areas to be addressed (communications, outreach and compliance) but did not explicitly approve the recommendations that fell outside of those areas, and the details of the proposed implementation were embedded in a staff briefing paper. Moreover, the creation of the EWG based on the recommendation of the SSAC, which used terminology such as *do the [EWG] work before anything else* (and doing this as the first action of the Board before addressing the RT report), reinforced this prioritization.

## ATRT Review Timing

The ATRT2 notes that the review of the WHOIS implementation recommendations is taking place between 6 and 12 months after Board action on the WHOIS report, so it is not unexpected that the work is ongoing and in a few cases just starting.

## Implementability

To a large extent, the RT recommendations have proven to be implementable. In several cases, the initial staff position was that they either could not readily be implemented, or the problem would need to be addressed using different methodology. However, as work is progressing, it appears that most of the recommendations are being followed reasonably closely, indicating that they were for the most part implementable.

## Progress

As few aspects of the implementation have been completed, it is not possible to judge the final outcome. It is clear that the time-frame for implementation has far exceeded that proposed by the RT. This can be attributed to a number of different reasons (not in order of relevance):

1. The time-frame proposed by the RT was not reasonable given the complexity of the issue and the requirement to put plans and in some cases community working groups in place.
2. The timing of the Board action coinciding with the culmination of the Registrar Accreditation Agreement negotiation and implementation put heavy pressures on the small group overseeing both closely related activities.
3. Some of the activities were focused on areas of ICANN which were experiencing heavy staff turnover, and it took time for the new staff to be able to address the issues.
4. Not all parts of the implementation were completely under the control of ICANN staff and in particular have required GNSO action, which itself has experienced heavy workload in 2013.

Allowing for these delays, there is progress being made. Much of it has not been visible to the community, but in a number of critical cases, work has now progressed to the stage where this progress will soon be visible to the community.

There are three areas which are worthy of particular note.

1. The overall plan for approaching the WHOIS recommendations (Recommendation 15) has not been presented in a clear and understandable way so that the community could track implementation. That is not to say that there is not much information available, but it was not sufficiently well organized and clear as to be useful. In fact, for this reason, the ATRT2 had great difficulty in carrying out this assessment.
2. Although a wider problem than just WHOIS, there is still a lack of faith in the community that Contractual Compliance is being sufficiently well addressed as to meet ICANN’s needs. With regard to WHOIS accuracy, partly because the tools to address it are still in the process of being developed, there is a particular lack of information. The new provisions in the RAA do create some hope.
3. Progress on the handling of WHOIS information for internationalized domain name registrations (that is, for those registration where the information collected is in non-ASCII representations) is problematic. Work has been slow to start and is not expected to complete for close to two years. That leaves registrars and registries with the requirement to populate WHOIS records, which exist purely in 7-bit ASCII, with no guidelines or rules as to how to do this.

##

## Conclusion

Implementation of the WHOIS RT Recommendations is progressing and the expectation is that ultimately most will be reasonably carried out. The Recommendations call for annual reports on implementation, and the deadline for the first such report coincides with the publication of this ATRT2 draft report. Hopefully when this annual report is available, the overall implementation plan and its status will be clearly presented so that the community in general can directly assess the progress.

***Further assessment of ICANN’s implementation of WHOIS RT Recommendations can be found in Appendix B.***

# Report Section 17.Summary of ATRT2 Assessment of the Implementation of Security Stability and Resiliency (SSR) Review Team Recommendations

## Actions Taken

A majority of the 28 recommendations (and their subtasks) is as yet incomplete; however implementation has at least begun on all recommendations. The 28 recommendations translated to 41 subtasks and of the 41 subtasks, 27 subtasks are as yet incomplete, representing 66%.

## Implementability

In nearly all cases, recommendations appear to be implementable. There are cases where implementation is complete. In the vast majority of recommendations, staff has indicated they did not anticipate or experience any issues when implementing the recommendations.

It should be kept in mind, however, that the implementation of a large number of recommendations has not been completed and, in some cases, has not even started. It may be that implementation difficulties will be encountered at some future point.

One notable exception to this general implementability is related to recommendation 23, in which it is recommended that ICANN “must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure.” While objectivity in reaching decisions is a worthwhile goal, it is difficult to imagine a decision that is “free from external or internal pressure.”

## Effectiveness

For those recommendations that have been implemented, the overall impression has been that they have been reasonably effective in addressing at least the letter of the recommendation. Unfortunately, many of the recommendations used subjective qualifiers and few specified concrete metrics by which effectiveness could be measured. As such, objective measurement of the recommendations’ effectiveness is challenging.

## Summary of Community Input on Implementation

A total of three public comments were received on the final report of the SSR Review team. A summary of those comments can be found at:

[http://www.icann.org/en/news/public-comment/summary-comments-ssr-rt-final- report-30aug12-en.pdf](http://www.icann.org/en/news/public-comment/summary-comments-ssr-rt-final-%20report-30aug12-en.pdf)

***Further assessment of ICANN’s implementation of SSR Review Team Recommendations can be found in Appendix C.***

1. <http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm> [↑](#footnote-ref-2)
2. <http://www.icann.org/en/about/aoc-review/atrt/1>, December 2010. [↑](#footnote-ref-3)
3. <http://www.icann.org/en/about/aoc-review/whois>, May 2012. [↑](#footnote-ref-4)
4. <http://www.icann.org/en/about/aoc-review/ssr>, June 2012. [↑](#footnote-ref-5)
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-6)
6. This is not referring to Temporary Policies established on an emergency basis to address security or stability issues, a right that the Board has under ICANN agreements with contracted parties. [↑](#footnote-ref-7)
7. ATRT Final Report, <http://www.icann.org/en/news/public-comment/atrt-final-31dec10-en.htm>, December 2011. [↑](#footnote-ref-8)
8. ATRT1 Final Report. [↑](#footnote-ref-9)
9. Staff Input Document to the ATRT2, Comments of Amy Stathos; Samantha Eisner; Diane Schroeder,[https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx](https://community.icann.org/download/attachments/41880363/Consolidated%2BResponses%2Bto%2BATRT2%2BQuestions-ATRT%2B1%2BRecommendations%2BImplementation%2B%2830Apr%29%2BFinal.xlsx) [↑](#footnote-ref-10)
10. NomCom Transparency Guidelines, <http://nomcom.icann.org/nomcom-transparency-08oct12-en.pdf> [↑](#footnote-ref-11)
11. NomCom Code of Conduct, <http://nomcom.icann.org/conduct-2013.htm> [↑](#footnote-ref-12)
12. ATRT Implementation Summary Report, <http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf>, January 2013. [↑](#footnote-ref-13)
13. ATRT Implementation Summary Report, <http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf>, January 2013. [↑](#footnote-ref-14)
14. Comments submitted in response to ATRT2 Questions to the Community, Vasily Dolmatov, Alejandro Pisanty, Maria Farell (NCUC), Christopher Wilkinson, Nominet, <http://forum.icann.org/lists/comments-atrt2-02apr13/> [↑](#footnote-ref-15)
15. Comments submitted in response to ATRT2 Questions to the Community, Nominet, <http://forum.icann.org/lists/comments-atrt2-02apr13/> [↑](#footnote-ref-16)
16. Comments submitted in response to ATRT2 Questions to the Community, Jean-Jacques Subrenat (ALAC), <http://forum.icann.org/lists/comments-atrt2-02apr13/> [↑](#footnote-ref-17)
17. Comments submitted in response to ATRT2 Questions to the Community, Jean-Jacques Subrenat (ALAC), <http://forum.icann.org/lists/comments-atrt2-02apr13/> [↑](#footnote-ref-18)
18. <http://nomcom.icann.org/index-2012.htm#archives> [↑](#footnote-ref-19)
19. <http://nomcom.icann.org/nomcom-final-report-08oct12-en.pdf> [↑](#footnote-ref-20)
20. Comments submitted by Nominet: http://forum.icann.org/lists/comments-atrt2-02apr13/msg00010.html [↑](#footnote-ref-21)
21. Comments submitted by Mark Carvell, U.K. government: http://forum.icann.org/lists/comments-atrt2-02apr13/msg00014.html [↑](#footnote-ref-22)
22. Comments submitted by Darlene Thompson: http://forum.icann.org/lists/comments-atrt2-02apr13/pdf9UP7si771p.pdf [↑](#footnote-ref-23)
23. <http://www.icann.org/en/general/report-board-directors-compensation-considerations-13oct11-en.pdf> [↑](#footnote-ref-24)
24. http://www.icann.org/en/groups/board/documents/ce [↑](#footnote-ref-25)
25. <http://www.icann.org/en/news/in-focus/accountability/atrt-recommendations-implementation-plans-22oct11-en> [↑](#footnote-ref-26)
26. <http://www.icann.org/en/news/in-focus/accountability/atrt-project-list-workplans-29jan13-en.pdf> [↑](#footnote-ref-27)
27. <http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf> [↑](#footnote-ref-28)
28. <http://www.icann.org/en/news/in-focus/accountability/input-advice-function-24sep12-en.pdf> [↑](#footnote-ref-29)
29. <http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm> [↑](#footnote-ref-30)
30. <http://www.icann.org/en/groups/board/documents/briefing-materials-guidelines-21mar11-en.htm> [↑](#footnote-ref-31)
31. [https://gacweb.icann.org/display/GACADV/GAC+Advice](https://gacweb.icann.org/display/GACADV/GAC%2BAdvice). See also ICANN Bylaws, Article XI Section 2.1 at <http://www.icann.org/en/about/governance/bylaws>, and GAC Operating Principles, **Article XII – Provision of Advice to the ICANN Board at** [https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles](https://gacweb.icann.org/display/gacweb/GAC%2BOperating%2BPrinciples) [↑](#footnote-ref-32)
32. [https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice](https://gacweb.icann.org/display/GACADV/GAC%2BRegister%2Bof%2BAdvice) [↑](#footnote-ref-33)
33. Shawn Gunnarson, Individual Commenter (see footnote 7) [↑](#footnote-ref-34)
34. Maureen Hilyard, ALAC, (see footnote 7) [↑](#footnote-ref-35)
35. 曹华平, Internet Society of China, (see footnote 7) [↑](#footnote-ref-36)
36. Liu Yue, Chinese Academy of Telecommunications Research, (see footnote 7) [↑](#footnote-ref-37)
37. United Kingdom Government, Mark Carvell [↑](#footnote-ref-38)
38. Alejandro Pisanty [↑](#footnote-ref-39)
39. [https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles](https://gacweb.icann.org/display/gacweb/GAC%2BOperating%2BPrinciples) [↑](#footnote-ref-40)
40. Danish Business Authority, Julia Wolman [↑](#footnote-ref-41)
41. Nominet, Laura Hutchison [↑](#footnote-ref-42)
42. Nominet, Laura Hutchison [↑](#footnote-ref-43)
43. Maureen Hilyard, Affiliation, ALAC [↑](#footnote-ref-44)
44. United Kingdom Government, Mark Carvell [↑](#footnote-ref-45)
45. Danish Business Authority, Julia Wolman [↑](#footnote-ref-46)
46. United Kingdom Government, Mark Carvell [↑](#footnote-ref-47)
47. United Kingdom Government, Mark Carvell [↑](#footnote-ref-48)
48. Nominet, Laura Hutchison [↑](#footnote-ref-49)
49. Danish Business Authority, Julia Wolman [↑](#footnote-ref-50)
50. Nominet, Laura Hutchison [↑](#footnote-ref-51)
51. United Kingdom Government, Mark Carvell [↑](#footnote-ref-52)
52. Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly Raiche, Carlton Samuels, Jean-Jaques Subrenat, Affiliation ALAC [↑](#footnote-ref-53)
53. Nominet, Laura Hutchison [↑](#footnote-ref-54)
54. Registries Stakeholder Group, Paul Diaz [↑](#footnote-ref-55)
55. Non Commercial Stakeholders Group, Mary Wong [↑](#footnote-ref-56)
56. Nominet, Laura Hutchison [↑](#footnote-ref-57)
57. Nominet, Laura Hutchison [↑](#footnote-ref-58)
58. Characterization of notes (B. Cute) from ALAC session [↑](#footnote-ref-59)
59. Characterization of notes (B. Cute, E. Bacon) from GNSO session [↑](#footnote-ref-60)
60. [https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx](https://community.icann.org/download/attachments/41880363/Consolidated%2BResponses%2Bto%2BATRT2%2BQuestions-ATRT%2B1%2BRecommendations%2BImplementation%2B%2830Apr%29%2BFinal.xlsx) [↑](#footnote-ref-61)
61. [https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx](https://community.icann.org/download/attachments/41880363/Consolidated%2BResponses%2Bto%2BATRT2%2BQuestions-ATRT%2B1%2BRecommendations%2BImplementation%2B%2830Apr%29%2BFinal.xlsx) [↑](#footnote-ref-62)
62. [https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx](https://community.icann.org/download/attachments/41880363/Consolidated%2BResponses%2Bto%2BATRT2%2BQuestions-ATRT%2B1%2BRecommendations%2BImplementation%2B%2830Apr%29%2BFinal.xlsx) – [↑](#footnote-ref-63)
63. <http://www.icann.org/en/resources/policy/update/update-dec11-en.htm#1> [↑](#footnote-ref-64)
64. http://forum.icann.org/lists/comments-atrt2-02apr13/msg00003.html [↑](#footnote-ref-65)
65. <http://forum.icann.org/lists/comments-atrt2-02apr13/msg00010.html> (response to Q. 9). [↑](#footnote-ref-66)
66. <http://www.icann.org/en/about/participate/language-services/policies-procedures-18may12-en.pdf> [↑](#footnote-ref-67)
67. <http://www.icann.org/en/groups/board/documents/resolutions-18oct12-en.htm#1.b> [↑](#footnote-ref-68)
68. See <http://audio.icann.org/atrt2-20130620-en.mp3>; <https://community.icann.org/download/attachments/41890059/20130620_ATRT2_ID795926.pdf?version=1&modificationDate=1372186140000>; <http://icann.adobeconnect.com/p17n8q2y2qq/> and <http://icann.adobeconnect.com/p5fcx7t8u9i/> and [https://community.icann.org/download/attachments/41884187/chat+transcript+-+day+2.pdf?version=1&modificationDate=1376620716000](https://community.icann.org/download/attachments/41884187/chat%2Btranscript%2B-%2Bday%2B2.pdf?version=1&modificationDate=1376620716000); and <https://community.icann.org/download/attachments/41884187/DAY2.pdf?version=1&modificationDate=1377345148000> [↑](#footnote-ref-69)
69. <http://mm.icann.org/pipermail/atrt2/2013/000958.html> [↑](#footnote-ref-70)
70. See ATRT1 Final Report. [↑](#footnote-ref-71)
71. See <https://community.icann.org/display/ATRT2/Mandate>, in particular 9.1 (Ensuring accountability, transparency and the interests of global Internet users) subsections (c), (d) and (e). [↑](#footnote-ref-72)
72. See <http://www.chathamhouse.org/about-us/chathamhouserule> “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” [↑](#footnote-ref-73)
73. It should be noted that while not discussed to an extent in the ATRT1 report, the last two issues were documented in both the [2010 Berkman Center for Internet & Society report](http://www.icann.org/en/about/.../review-berkman-final-report-20oct10-en.pdf_) and the [2007 One Work Trust report](http://www.icann.org/en/about/transparency/owt-report-final-2007-en.pdf_) on “ICANN Accountability and Transparency – Structures and Practices.” [↑](#footnote-ref-74)
74. See <https://community.icann.org/pages/viewpage.action?pageId=41885192> [↑](#footnote-ref-75)
75. <http://www.icann.org/en/about/governance/bylaws/proposed-bylaw-revision-reconsideration-26oct12-en.pdf> [↑](#footnote-ref-76)
76. Ibid. [↑](#footnote-ref-77)
77. <http://www.icann.org/en/news/irp/proposed-cep-26oct12-en.pdf> [↑](#footnote-ref-78)
78. <http://forum.icann.org/lists/comments-atrt2-02apr13/msg00025.html> [↑](#footnote-ref-79)
79. <http://forum.icann.org/lists/comments-atrt2-02apr13/msg00029.html> [↑](#footnote-ref-80)
80. The BCG wrote, “*The Request, however, does demonstrate the import of the ongoing work within the ICANN community regarding issues of policy and implementation, and the need to have clear definitions of processes and terms used when seeking community guidance and input. As such, we believe it is advisable for the Board to pay close attention to the policy/implementation debate, and to make sure that the issues raised within this Request be part of that community work. Further, we believe that it is advisable to ask the community to address the issue of how the Board should consider and respond to advice provided by the Supporting Organizations (outside of the PDP) and what types of consultation mechanisms, if any, are appropriate in the event the Board elects not to follow that advice. As ICANN evolves, this is an important question for consideration in upholding the multistakeholder model.”* [↑](#footnote-ref-81)
81. Some interesting case law interpretations appear in the BCG recommendation: “*Reconsideration is not, and has never been, a tool for requestors to come to the Board to seek the reevaluation of staff decisions. This is an essential time to recognize and advise the ICANN community that the Board is not a mechanism for direct, de novo appeal of staff (or panel) decisions with which the requester disagrees. Seeking such relief from the Board is, in fact, in contravention of established processes and policies within ICANN.”* [↑](#footnote-ref-82)
82. This issue still pending in a general policy development process between GAC and GNSO on IGO protection. [↑](#footnote-ref-83)
83. See [http://www.icann.org/en/about/governance/bylaws - V](http://www.icann.org/en/about/governance/bylaws#V) [↑](#footnote-ref-84)
84. See <http://www.icann.org/en/help/ombudsman> [↑](#footnote-ref-85)
85. See <http://www.icann.org/en/help/ombudsman/reports> [↑](#footnote-ref-86)
86. See <http://durban47.icann.org/meetings/durban2013/transcript-atrt2-13jul13-en.pdf> [↑](#footnote-ref-87)
87. The current Ombudsman, Chris LaHatte, noted “the answer really was, well, we have a perfectly good law which deals with that so you don’t need to go there. I can’t comment from a legal perspective on whether that’s a good answer as opposed to the correct answer.” He also indicated that the Ombudsman needs “freedom of information powers, and indeed I have those, because it’s in my Bylaw that if I want to see any documents from within ICANN or in the ICANN community, then they must be provided.” He went on to note, however, “That’s not quite the same, of course, as whistleblowing, but it is perhaps the first step towards that sort of function. If someone were to come to me and say, ‘I want to make this confidential complaint about something that’s happened,’ and it is effectively a whistleblowing complaint, then I have the ability to investigate.” [↑](#footnote-ref-88)
88. LaHatte noted “And the Bylaw, it seems to also be restrictive in its approach in that it says the role is between ICANN staff and the community, but in other areas of the Bylaw it’s not quite as explicit, and it talks about supporting structures. And it’s perhaps understandable in the context of something which was written in 2003, 2004 when it was a lot smaller, much less complicated, and when the supporting organizations hadn’t reached the degree of sophistication which they have some seven or eight years later.” [↑](#footnote-ref-89)
89. See <http://www.icann.org/en/about/transparency/owt-report-final-2007-en.pdf> [↑](#footnote-ref-90)
90. In fact, One World Trust made many recommendations, including:

To ensure compliance with any organizational policy, it is important that there is high level oversight and leadership. Without this, implementation will only ever be piecemeal. To ensure implementation of the information disclosure within ICANN therefore, responsibility for overseeing the policy should be assigned to a senior manager.

Supporting this, a set of indicators should be developed to monitor the implementation of the policy, and an annual review should be undertaken which identifies how ICANN is complying with the policy, where there are problems, and the steps that are to going be taken to address these (see recommendation 5.1 in section 8).

While ICANN has three mechanisms for investigating complaints from members of the ICANN community, the organization does not have a policy or system in place that provides staff with channels through which they can raise complaints in confidentiality and without fear of retaliation. Having such a policy (often referred to as a whistleblower policy) is good practice among global organizations. A whistleblower policy that provides such protections serves as an important means of ensuring accountability to staff as well as preventing fraudulent behavior, misconduct and corruption within an organization.

While the Ombudsman, Reconsideration Committee and the Independent Review Panel provide complaints-based approaches to compliance, to generate greater trust among stakeholders, ICANN needs to take a more proactive approach.

To address this issue, ICANN should consider a regular independent audit of their compliance with accountability and transparency commitments. Alternatively, it could develop a permanent compliance function to emphasize prevention by identifying shortcomings as they emerge and before they become systemic problems. In either case, a regular report on compliance should be produced and publicly disseminated. [↑](#footnote-ref-91)
91. See <http://www.icann.org/en/about/aoc-review/atrt/review-berkman-final-report-20oct10-en.pdf> [↑](#footnote-ref-92)
92. Specifically, 2.4 Transparency Audit

(a) Issues

The lack of a comprehensive audit of ICANN’s information activities makes it difficult to assess its practices across active, passive, and participatory transparency.

(b) Observations

The 2007 One World Trust review describes an ICANN initiative “to conduct an annual audit of standards of accountability and transparency, including an audit of the commitments made in these Management Operating Principles . . . by an external party” with the results of the audit “published in the Annual Report.”xxxv The last annual report does not contain such an audit.

(c) Discussion

ICANN currently lacks an up-to-date, publicly available transparency audit. This makes it difficult to make substantive assessments of ICANN’s practices as they relate to active, passive, and participatory transparency. The lack of empirical material (e.g., on the time delays in the publication of documents) currently forces reviewers to look for conceptual, structural, and procedural deficiencies in order to identify if, where, and how there are inconsistencies between guiding policies and practices. A comprehensive audit, in contrast, would allow for periodic, facts-based, internal and external reviewing and benchmarking; ICANN could greatly benefit from this when further improving its information policies.

Such a transparency audit needs to be governed by clear policies and processes which set forth the categories of information pertinent to such an audit, among other things. Following an earlier recommendation by the One World Trust review, the transparency audit should be published in the Annual Report. In addition, the Berkman team suggests that the underlying data be released as part of the Dashboard/ICANN Performance Metrics.xxxvi Accountability and Transparency at ICANN: An Independent Review {99}

(*d) Recommendation*

*Create and implement policies and processes for conducting and communicating regular transparency audits.*  [↑](#footnote-ref-93)
93. <http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf> [↑](#footnote-ref-94)
94. <http://durban47.icann.org/meetings/durban2013/presentation-gnso-pdp-13jul13-en.pdf> [↑](#footnote-ref-95)
95. See [gnso.icann.org/en/drafts/pdp-im**pro**vements-22aug13-en.pdf‎](file:///C%3A%5CUsers%5Ccharla.shambley%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CAZ0SRR3U%5Cgnso.icann.org%5Cen%5Cdrafts%5Cpdp-improvements-22aug13-en.pdf%25E2%2580%258E) [↑](#footnote-ref-96)
96. 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-97)
97. US Council for International Business [↑](#footnote-ref-98)
98. Maureen Hilyard, Nominet, Gordon Chillcot, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-99)
99. Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-100)
100. US Council for International Business, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-101)
101. US Council for International Business, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-102)
102. Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals [↑](#footnote-ref-103)
103. See http://www.icann.org/en/about/governance/bylaws#AnnexA. [↑](#footnote-ref-104)
104. See http://gnso.icann.org/en/node/38709. [↑](#footnote-ref-105)
105. This is not referring to Temporary Policies established on an emergency basis to address security or stability issues, a right that the Board has under ICANN agreements with contracted parties. [↑](#footnote-ref-106)
106. <http://www.icann.org/en/news/in-focus/accountability> [↑](#footnote-ref-107)
107. [https://community.icann.org/display/ATRT2/Information+provided+by+ICANN+Staff](https://community.icann.org/display/ATRT2/Information%2Bprovided%2Bby%2BICANN%2BStaff) [↑](#footnote-ref-108)
108. <http://www.icann.org/en/about/planning/strategic/strategic-plan-2012-2015-18may12-en.pdf> [↑](#footnote-ref-109)
109. <http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf> [↑](#footnote-ref-110)
110. <http://beijing46.icann.org/node/37035> [↑](#footnote-ref-111)
111. <https://www.icann.org/en/about/staff/management-org-09sep13-en> [↑](#footnote-ref-112)
112. <https://community.icann.org/download/attachments/40935097/Transcript%20-%20Call%2010.pdf?version=1&modificationDate=1378454662000&api=v2> [↑](#footnote-ref-113)
113. [https://community.icann.org/display/ATRT2/Los+Angeles+-+14-17+August+2013](https://community.icann.org/display/ATRT2/Los%2BAngeles%2B-%2B14-17%2BAugust%2B2013) [↑](#footnote-ref-114)
114. In particular, see page 3, last bullet at <https://gacweb.icann.org/download/attachments/27132072/Summary%20of%20the%20HLM%20Chair%20v%20final.pdf?version=1&modificationDate=1360614203000&api=v2> [↑](#footnote-ref-115)
115. See page 2, Section III.1 at <https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2> [↑](#footnote-ref-116)
116. See page 1, Section II.2 at <https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2> [↑](#footnote-ref-117)
117. See Toronto report cited at Footnote 120. [↑](#footnote-ref-118)
118. <http://www.icann.org/en/news/public-comment/summary-comments-op-budget-fy14-30aug13-en.pdf> [↑](#footnote-ref-119)
119. <http://www.icann.org/en/about/annual-report> [↑](#footnote-ref-120)
120. <http://www.icann.org/en/about/financials/fiscal-30jun05-en.htm> - discussion and analysis paper of significant variances between the reported financial statements for FY2004 and FY2005. [↑](#footnote-ref-121)
121. <http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf> [↑](#footnote-ref-122)
122. <https://www.icann.org/en/about/financials/proposed-opplan-budget-fy14-16may13-en.pdf> [↑](#footnote-ref-123)
123. <http://www.icann.org/en/groups/board/finance/charter> [↑](#footnote-ref-124)