The ICANN GNSO "Business Constituency"

Comment on Accountability and Transparency Review Team 3 (ATRT3) Final Report

Status: FINAL

Version: 2

31-Jul-2020

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business

2. is competitive in the supply of registry and registrar and related services

3. is technically stable, secure and reliable.

Introduction

Thank you for the opportunity to comment on the third Accountability and Transparency Review Team's (ATRT3) final report[1].   This is an important review.

While the BC is very grateful to the review team's (RT) hard work, we are very concerned regarding some of the recommendations which, ironically, apparently endeavor to <u>remove</u> many of the only remaining mechanisms that hold ICANN accountable to its stakeholders (as noted in the BC's participation in a [final report minority statement](), and again in this comment).   The BC details its rationale below but offers the overarching thought that now is the time for <u>additional</u> transparency and accountability for ICANN, not less.   For an organization that purports to laud these attributes, it is critical that ICANN Org lives up to its duties of accountability to the community.

Accountability is critical to the good functioning of the ICANN model -- this extends of course to constituencies, support organizations (SO), advisory committees (AC), and other active participants. Accordingly, the BC reiterates

Procedural concerns

In addition to the specific matters outlined below, the BC, over time, became concerned with procedural irregularities within the RT.   Specifically:

- The working methods of the group did not fully support transparency and inclusive discussion.   For example, it became clear that some inter-team communications were conducted on Skype or in similar channels, without participation by the broader group.

- There has not been sufficient documentation of the group's work and level of consensus achieved.   To the BC's participants, the final report reads more like justification of outcomes vs. explanation.

- There was insufficient time to draft an impactful minority statement (which the CSG – BC, IPC, and ISPCP eventually filed as part of the report).

While these irregularities obviously can't be repaired retroactively, the BC hopes not to see them repeated in other community work.

---

[1] public comment page at https://www.icann.org/public-comments/atrt3-final-report-2020-06-16-en

Substantive concerns

The BC also has concerns with the substance of the RT's recommendations.   Namely:

- There are significant differences between the initial and final reports, and no real accounting provided for how, or if, public comment on the initial report was taken in.

- Public comments don't align with the output of the final report, particularly regarding the suspension or elimination of certain ICANN reviews.   This is in conflict with the advice of the community.

- Proposing a holistic review is a significant change to the review process.   While the idea may be a good one, the BC suggests it should be done as a complement to the review process instead of a sweeping replacement of existing processes.

The BC fully realizes there are inefficiencies in the current review system and applauds creative thinking about how to remediate them.   However, it is critical that accountability and transparency be maintained -- if not enhanced -- as part of any systemic overhaul.   The RT's recommendations fall short of that need.

BC Comment on Individual ATRT3 Recommendations

For the sake of efficiency, the BC comments here only on recommendations with which it disagrees or seeks clarification.   Note that the BC will not be lodging comments regarding the RT's various suggestions, as we understand they specifically are not recommendations and would not be implemented without further community review.

Section	ATRT3 WG Recommendation	BC Comment
3	Each Public Comment proceeding shall clearly identify who the intended audience is.	This recommendation and its associated rationale are unclear. One can assume the "audience" for a public comment is ICANN Org and/or the working group soliciting the comment.
3	Each Public Comment proceeding shall clearly identify who the intended audience is (general community, technical community, legal experts, etc.). This will allow potential respondents to quickly understand if they wish to invest the time to produce comments. This is not meant to prevent anyone from commenting but is rather meant as clarifying who is best suited to comment.	Anyone in the ICANN community may -- and should be permitted to -- comment on any matter of concern, including those who have not contributed to policymaking. The BC is concerned that specifying the audience of a comment could discourage comment submissions or otherwise deter participation via comments. The specificity goal may be laudable, but the BC cautions against unintentional dissuading of participation in ICANN processes.
3	With regards to other types of public input ICANN org shall: - Develop and publish guidelines to assist in determining when a Public Comment process is required vs. alternate mechanisms for gathering input. - Develop and publish guidelines for how alternative mechanisms for gathering	The BC is skeptical of this recommendation. Public comments are a trusted, longstanding and valuable mechanism for the community to provide its views. It's unclear, first, how it would be decided whether or not a public comment process is warranted or not and, second, what "alternate mechanisms for gathering input" may be.

Section	ATRT3 WG Recommendation	BC Comment
	input should operate including producing final reports. - Develop a system similar to and integrated with the Public Comment tracking system for all uses alternate mechanisms to gather input. - Publish the complete "Public Comment Guidelines for the ICANN Organization." - Resolve the issue of blog posts collecting feedback information when the "Public Comment Guidelines for the ICANN Organization" state that they "will not be used as mechanisms for collecting feedback."	The BC fears this could be a "slippery slope" whereby discourse on an issue, no matter the forum or source, could be collected and presented as formal input -- opening the process to gaming and lack of accountability. Would, for example, comments or feedback on a blog post or voiced during a presentation be accepted as formal input? How would sources be verified? The BC is not interested in limiting the community's ability to interact and provide feedback; however, it's important that we take care regarding how such input is collected and characterized. Without further context, the BC finds this recommendation worrisome.
8	- Suspend any further RDS and SSR Reviews until the next ATRT.	The BC finds this proposal unacceptable. This would delay important reviews for far too long. Alternatively, the community may want to consider *combining* RDS and SSR reviews, since RDS is a core component of SSR. Further, to the subject of scope, the BC disagrees with the RT's idea that the scope of SSR Reviews needs to be considered by the next ATRT once SSR2 is completed. The BC believes the scope of an RT should adhere to the bylaws and be decided by the RT members. One RT within ICANN should not control the scopes of other RTs.
8	- Continue with ATRT Reviews with a modified schedule and scope	The BC observes that if there is a *reduction* in specific and organizational reviews -- which we do not agree with -- it does not seem appropriate that the ATRT Review would be the only surviving review. Regardless, the ICANN bylaws currently mandate ATRT reviews on an every five year schedule. The BC does not object to continuation of that schedule.
8	- Evolve the content of the Organizational Reviews into continuous improvement programs in each SO/AC and Nominating Committee (NC).	While continuous improvement programs may be productive and useful, the BC is concerned such programs would not be as rigorous as formal organizational reviews and therefore would lack the thoroughness and community perspective required for constructive progress. The BC reiterates its belief in the necessity of formal reviews. Further, the BC refers the community to the final report from CCWG on Accountability Workstream 2, which underlines the necessity of accountability within the community -- the relevant section reads:

Section	ATRT3 WG Recommendation	BC Comment
		"In Track 1 we recommend 29 Good Practices that each SO/AC/Group should implement, to the extent these practices are applicable and an improvement over present practices. We do not recommend that implementation of these practices be required. Nor do we recommend any changes to the ICANN bylaws. We do recommend that Operational Standards for periodic Organizational Reviews conducted by ICANN could include an assessment of Good Practices implementation in the AC/SO subject to the review."
8	- Add a Holistic Review, as a special Specific Review, which will look at all SO/AC/NC and their relations.	The BC believes any additional review should complement, not replace, existing reviews. There is too much risk of non-transparency and confusion if one holistic review, conducted every seven years, replaces organizational and specific reviews.

The BC does believe now is a good time to examine the structure of the GNSO, however, with an eye toward making the structure fairer and less subject to capture and veto. |
8	- Implement a new system for the timing and cadence of the reviews.	The BC agrees with the need for a new system for timing and cadence. However, this should not be handled solely by the GNSO or other single SO or AC. This should be a community-wide discussion.
9	For the 2021-2025 Strategic Plan and 2021 Operating Plan, ICANN org shall produce a document listing the required rationales and specific criteria defining success (as defined in this recommendation) for each goal (strategic or not), outcome (targeted or not), operating initiatives etc., found in both of these documents and post it for public consultation prior to finalizing. Once finalized, ICANN org will append these to the 2021-2025 Strategic Plan and 2021 Operating Plan and use the criteria defining success in reporting on the progress of any relevant goal, outcome, operating initiative, etc.	The BC is mostly in agreement with this recommendation. To assess if a goal is successful according to the guidelines, specific criteria must be collected and tracked, as is recommended here. Definitions of success and/or failure should be data driven assessments.
9	ICANN org shall publish an overarching report at the conclusion of a strategic plan starting with the FY2016-2020 Strategic Plan.	The BC recommends org doing so, with the report being subject to public comment.
9	ATRT3 recommends the following guidance for ICANN org in the creation of a community-led entity tasked with operating a prioritization process for	The BC seeks clarification from the RT on this recommendation, as it's not entirely clear how such a mechanism would work alongside the prioritization recommendations RT members already make.

Section	ATRT3 WG Recommendation	BC Comment
	recommendations made by review teams, cross-community groups, or any other community-related budgetary elements the Board or ICANN org feels appropriate: The Board and ICANN org shall use the following guidance for the creation of a community-led entity tasked with operating a prioritization process. All SO/ACs shall have the option of participating or not in this process. Those SO/ACs wishing to participate in the prioritization process shall have one member per SO/AC. Additionally, the Board and the org shall also each have a member. The Board and ICANN org shall also take into account the following high-level guidance for the prioritization process: • Shall operate by consensus of the individual SO/ACs, Board, and org members that are participating in the prioritization process. • Shall consider WS2 Recommendations, which are required to complete the IANA transition and are subject to prioritization but must not be retired unless this is decided by the Board. • Must be conducted in an open, accountable, and transparent fashion and decisions justified and documented. • Shall integrate into the standard operating and financial plan processes. • Can prioritize multiyear implementations but these will be subject to annual re-evaluation to ensure they still meet their implementation objectives and the needs of the community.	Would this group be able to override RT members' input on prioritization? If implementation shepherds are helpful and provide valuable input, why should they be replaced by this mechanism? Allowing a small group to review and make a decision on RT recommendations does not adhere to the multistakeholder process. The creation of such a group could lead to decisions being overridden that involved months of fact finding, discussion and compromise. Recreating the voting structure of the GNSO in this small group would dilute the ability of the CSG and its three constituencies -- ISPC, IPC and BC -- to provide input and a voice to issues that are of great concern to their members. This is a duplicative process and allows a small group to influence the Board and ICANN org with a voice that would not represent the whole ICANN community. Should such a process proceed, it's extremely important to the BC that such an entity be carefully and fairly constructed so as to avoid capture or to provide veto power. The BC does not believe ICANN org should be a decisional participant in such a structure. The BC notes that, prior to publication of a final report, RT members review all recommendations with ICANN org representatives -- further, a Board member reviews recommendations with other Board members and provides feedback on feasibility or difficulty to implement. The BC suggests more interaction with the Board and RT members to ensure Board members understand recommendations and priorities.

This comment was authored by Mason Cole and Susan Kawaguchi.
It was approved in accord with our charter.