



31 January 2020

Subject: SSAC2020-05: SSAC Public Comment on Third Accountability and Transparency Review Team (ATRT3) Draft Report

To: Cheryl Langdon-Orr and Patrick Kane, ATRT3 Review Co-Chairs

On 16 December 2019, the Internet Corporation for Assigned Names and Numbers (ICANN) opened a public comment forum to obtain input on the Draft Report of the Third Accountability and Transparency Review Team (ATRT3).¹ The SSAC thanks the ATRT3 Team for its work to produce this draft and welcomes the opportunity to provide comment.

In particular, the SSAC wishes to emphasise that the primary focus of accountability within ICANN should be to meet the mission statement "to ensure the stable and secure operation of the Internet's unique identifier systems". This focus should be at the heart of finding the appropriate balance between the public interest goals and other interests in the ICANN community.

The scope of ATRT3 work was organized into 10 Issues:

Issue 1: Assessing and improving Board governance.

Issue 2: Assessing the role and effectiveness of the Governmental Advisory Committee (GAC).

Issue 3: Assessing and improving the processes by which ICANN receives public input.

Issue 4: Assessing the extent to which ICANN's decisions are supported and accepted by the Internet community.

Issue 5: Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

Issue 6: Assessing and improving the Independent Review Process.

Issue 7: Assessing the extent to which prior Accountability and Transparency Review recommendations have been implemented.

Issue 8: Specific and Organizational Reviews.

¹ <https://www.icann.org/public-comments/atrt3-draft-report-2019-12-16-en>
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Issue 9: Review of ICANN’s Accountability Indicators (<https://www.icann.org/accountability-indicators>).

Issue 10: Prioritization and rationalization of activities, policies, and recommendations.

Specifically, the ATRT3 team has sought comment on proposals for Issues 8 and 10 and this document provides the SSAC input on those issues. The SSAC also provides comment on Issue 7 but has no comment on other Issues in the draft report. In addition, the SSAC wishes to prelude its comments by highlighting two underlying problems that impact the suggestions and recommendations that may result from ATRT3.

Volunteer Overload and Burnout: The SSAC notes that the workload on community members has significantly increased in recent years, in no small part due to the large number of reviews and CCWGs and the numerous recommendations arising from them. All potential recommendations should be carefully assessed for absolute necessity, practicality and cost effectiveness before being proposed, and should be fashioned to reduce the burden on volunteers. Reviews and CCWGs must withstand domination by those with singular viewpoints that prevent them reaching consensus and functioning efficiently. Realistically, only fewer reviews and CCWGs will reduce this burden on volunteers.

ICANN Org Overload: The SSAC recognizes that the large number of reviews and CCWGs and the recommendations arising from them, in the absence of a process to prioritize them, has led to an intractable workload for ICANN Org. All potential recommendations should be posed cognizant of the need to reduce the demands on staff and resources wherever possible.

Issue 7: Assessing the extent to which prior Accountability and Transparency Review recommendations have been implemented.

SSAC Comment: The SSAC is greatly concerned by the large disparity between ICANN's self-assessment of implementation of review recommendations and the assessments of the review team. We note that for all of RDS, SSR2, and ATRT3, the review teams disagreed with ICANN's self-assessments. However, the ATRT3 Draft Report also states in Section 9 that *“The new Operating Standards for Specific Reviews adopted by the ICANN Board in June 2019, combined with the new website for tracking the implementation of review recommendations should address most if not all of these issues going forward.”*

The observed disparity is a fundamental accountability problem and it is certainly hoped, though yet to be proven, that the new operating standards and website will go some way towards resolving this. Part of the problem is inherent in the untrackable nature of some recommendations as they were provided to ICANN and new operating standards and website will not help that aspect. Another aspect is the preservation of the true intent of recommendations so that their successful implementation can be accurately assessed. While ICANN accepted all of these past recommendations, the tracking of their implementation and effectiveness has not necessarily been transparent or accurate.

Thus the SSAC agrees in principle about the need for some independent accountability oversight function, although we think ATRT3 should consider more deeply how something

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like an Independent Accountability Office (IAO), proposed as part of Issue 8, could work and be funded. In particular, it is important that such a function not add to the underlying problems of volunteer and ICANN Org overload and ideally should relieve them. Perhaps it would be a reasonable use of the gTLD Auction Proceeds funds, some of which are currently being used to replenish ICANN's Reserve Funds anyway.

Issue 8: Specific and Organizational Reviews.

The SSAC notes that it has previously provided feedback on this topic in the following documents:

SSAC2018-18: SSAC Comment on Short-Term Options to Adjust the Timeline for Specific Reviews dated 24 July 2018²

SSAC2018-19: SSAC Comment on Long-Term Options to Adjust the Timeline of Reviews dated 24 July 2018³

The SSAC appreciates the acknowledgement of SSAC2018-19 in the ATRT3 report and offers feedback on the two options proposed by ATRT3 in line with the views expressed in our earlier comment.

Option 1

- *Keep the current set of Specific and Organizational Reviews as they are, given they are important accountability mechanisms for the community, in combination with a new oversight mechanism to manage reviews and the implementation of their recommendations.*
- *This new oversight mechanism should be the responsibility of a new Independent Accountability Office (in some ways similar to the Office of the Ombuds with respect to oversight), that includes responsibility for SO/AC accountability as well as the coordination of reviews and the implementation of their recommendations.*

SSAC Comment: The SSAC has mixed views on this option. We understand that the introduction of a new entity, an Independent Accountability Office (IAO) would transfer the responsibility of managing reviews (presumably from MSSSI), so this is a transfer of cost (perhaps even an increase in cost) rather than a potential saving, but we acknowledge that the IAO would ideally provide better transparency and accuracy of the implementation of review recommendations. While this option goes some way towards resolving the problem identified as Issue 7, without further detail, it is not clear how it would be implemented to relieve the underlying problems of volunteer and ICANN Org overload. The SSAC would welcome a more detailed proposal from ATRT3 regarding how an IAO would function.

Option 2

- *Organizational Reviews: Maintain the current concept of individual Organizational Reviews for each SO/AC, but conduct them as three to five-day workshops focused*

² <https://www.icann.org/en/system/files/files/ssac2018-18-24jul18-en.pdf>

³ <https://www.icann.org/en/system/files/files/ssac2018-19-24jul18-en.pdf>

on SO/AC self-inspection in a context of continuous improvement. These reviews would be conducted every three years, or more frequently, as determined by each SO/AC. The reports of these reviews would then feed into a new holistic review. This new holistic review would focus on the improvements made by all SO/ACs as presented in their Organizational Review reports, as well as on the interactions between SOs and ACs. This new holistic review would be conducted every 7 years for a maximum duration of 12 to 18 months to allow for the implementation and maturing of the recommendations made by the individual Organizational Reviews and those of the previous holistic review.

SSAC Comment: The SSAC does not support this option as presented, since in some respects it is adding bureaucracy to what should be an ongoing internal process of self-improvement within each SO and AC. The way in which each SO/AC conducts its own ongoing self-improvement should be a matter for that group. The group's self-improvement efforts may not necessarily be recorded in a report, but rather, as in SSAC's case, be incorporated as changes to Operational Procedures. Furthermore, it is not clear to SSAC what a 7-yearly "holistic" review is, who would undertake the review (an external contractor?) and how it would even be possible to do such a thing with a single review team. While it does seem to provide opportunity for views external to the SO/AC to be taken into consideration by virtue of the focus on "*the interactions between SOs and ACs*", it appears to remove the opportunity for valuable external comment on a specific SO/AC offered by the current Organizational Reviews. It is critical for both external as well as internal views to inform the recommendations of such a review. Perhaps it is feasible for an ongoing self-improvement process within an SO or AC to incorporate the opportunity to augment its own internal views by valuable external views. Some members of SSAC support extending the timeline of external reviews to 7 years while others believe this is exactly the wrong direction. However, all of SSAC agrees that reviews need to be much shorter in duration and more focused, which is not consistent with the notion of a "holistic" review, contributing to lack of clarity on what problem a holistic review would solve. Our rationale is that ICANN as an organization must become more agile, not less, if it is to survive in a rapidly evolving ecosystem. The SSAC also recommends that scheduling flexibility be incorporated into the Bylaws to enable an approach that avoids volunteer burnout and ICANN Org overload.

- *Specific Reviews: Specific Reviews include the Accountability and Transparency Review (AT), the Security, Stability, and Resiliency Review (SSR), the Competition, Consumer Trust, and Consumer Choice Review (CCT) and the Registration Directory Service (RDS) Review (formerly WHOIS Review.) AT as well as the relevant portions of CCT and RDS would be combined into a single AT review which would be conducted every 7 years for a maximum duration of 12 to 18 months to allow for the implementation and maturing of the previous recommendations by this review. SSR could either be a three to five-day workshop or a more traditional review period depending on topic.*

SSAC Comment: The SSAC does not support this option exactly as presented, but considers that there is merit in seeking to combine the scope of some of the Specific Reviews and even considering very seriously whether some aspects of these reviews are required at all. Furthermore, the SSAC believes that staffing the review teams with volunteers is inherently broken. Paid consultants should be engaged to undertake Specific Reviews and the role of the volunteer Review Team should be limited to oversight: scope setting, reviewing the report, and considering the veracity and practicality of its

recommendations. Both volunteers and paid consultants should be subject to Conflict of Interest oversight, potentially by the independent oversight function described above, if introduced. The paid consultants should allow the review process to condense to weeks or months rather than years. One of the factors to be considered in further developing such a proposal to combine reviews is the likelihood of finding the appropriate skills within the community volunteers, even if only for an oversight role. For example, if AT, CCT and RDS were to be combined, it may be feasible that an SO/AC representative has the requisite skills for AT and CCT, but not for RDS. This factor may also be a consideration for consultants undertaking the review. Section 2.4 of the ICANN Operating Standards for Specific Reviews⁴, which details the skills set relevant to each of the four reviews, illustrates how different these required skills are. With respect to the SSR Review, an external appropriately skilled consultant would be a preferable approach to a three to five-day workshop. The SSAC does however support the extension of the timeline between external reviews to approximately 7 years and recommends that scheduling flexibility be incorporated into the Bylaws to enable an approach that avoids budget stress and volunteer burnout.

Issue 10: Prioritization and rationalization of activities, policies, and recommendations.

Developing a Prioritization Process

- *Overall the ATRT3 believes that the Operating Standards for Specific Reviews could serve as a good base for framing the creation and operation of a community-led entity tasked with developing an annual prioritization process.*
- *All community members participating in this process must have significant experience in ICANN and have actively participated in a major process in ICANN (CWG, CCWG-Accountability WS1 and 2, EPDP, etc.)*
- *Members must include representatives from the Board and ICANN org.*
- *The community-led entity developing the prioritization process should be given a fixed one-year term to complete its task.*
- *The community-led entity could request the services of a professional facilitator to expedite its work.*

Requirements for a Prioritization Process

- *Overall the ATRT3 believes that the Operating Standards for Specific Reviews could serve as a good base for framing the operation of the annual prioritization process.*
- *Must be conducted annually by members of the community with the participation of the Board and the ICANN org.*
- *The group actually performing the prioritization should be a standing group which will perform the annual prioritization process but which can also be called upon to deal with exceptional circumstances such as emergency re- allocation of funds if a prioritized implementation needs to be cancelled or an emergency approval of a new critical recommendation which is extremely time sensitive.*
- *Must be conducted in an open and transparent fashion and each decision should be justified and documented.*
- *The prioritization process should apply to all recommendations of CWGs, CCWGs, Organizational Reviews, Specific Reviews as well as any other type of community-*

⁴ <https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf>
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driven recommendations. The process would also apply to any such recommendations which have been approved but not yet implemented.

- *The prioritization process should only consider the information it is provided with respect to recommendations and should not be required to generate or have generated any additional information for the evaluation of recommendations for prioritization.*
- *The prioritization process can fund multi-year implementations but will review these annually to ensure they are still meeting their implementation objectives and the needs of the community.*
- *Elements to be considered when prioritizing recommendations should include:*
 - *Budget availability*
 - *Cost of implementation*
 - *Complexity and time to implement*
 - *Prerequisites and dependencies with other recommendations*
 - *Value and impact of implementation*
 - *Relevance to ICANN's Mission, Commitments, Core Values and Strategic Objectives*

SSAC Comment: The SSAC does support a community-led process for prioritising the recommendations of Specific Reviews on an annual basis but not exactly as proposed by the ATRT3. Rather, it would be preferable for the SO/AC Leadership to develop the ongoing prioritization framework and process, aligned to the Strategic Plan, which would then be subject to community consultation before finalization. Once developed, that prioritization framework and process should be reviewed regularly but should not need to substantially changed from year to year. Furthermore, the SO/AC Leadership, facilitated by ICANN Org, should lead the annual process to prioritize the FY Operating Plan and Budget, encompassing the recommendations of Specific Reviews. The FY Operating Plan and Budget would then, as currently occurs, be subject to community consultation and adjustment based on feedback. The SO/AC Leadership are well-placed to undertake this task, since they are not only fully knowledgeable about the priorities of their respective SO/ACs but are also well-informed about ICANN's priorities. While this does pose an additional burden on the community leadership, the SSAC considers this to be a more efficient community-led process than that proposed.

Rod Rasmussen
Chair, ICANN Security and Stability Advisory Committee