AT-LARGE ADVISORY COMMITTEE
ALAC Statement on Third Accountability and Transparency Review Team (ATRT3) Draft Report

Introduction

On 16 December 2019, Public Comment opened for Third Accountability and Transparency Review Team (ATRT3) Draft Report. On the same day, an At-Large workspace was created for the statement. The At-Large Consolidated Policy Working Group (CPWG) as well as the four At-Large Members of the ATRT3 (Cheryl Langdon-Orr, Sebastien Bachollet, Vanda Scartezini and Daniel Nanghaka) decided it would be in the interest of end users to develop an ALAC statement on the Public Comment. Abdulkarim Oloyede, ALAC Member of the African Regional At-Large Organization (AFRALO), and Laurin Weissinger, member of the European Regional At-Large Organization (EURALO), volunteered as co-penholders for the ALAC statement.

On 23 December 2019, Sebastien Bachollet provided a presentation along with the other At-Large members of the ATRT3 regarding the Public Comment, in order to facilitate discussion within the CPWG.

On 06 January 2020, a CPWG Single Issue Call was held with the ATRT3 At-Large members and co-penholders to discuss the main themes of the Public Comment and consensus within At-Large. On 08 January 2020, the co-penholders and ATRT3 At-Large members presented to the CPWG their points. Abdulkarim Oloyede and Laurin Weissinger posted the first draft ALAC statement on the topic on a Google Doc for At-Large Community discussion. ICANN policy staff in support of the At-Large community sent a call for comments to the CPWG mailing list.

On 28 January 2020, after weekly CPWG meetings and discussions on the CPWG mailing list, the co-penholder spresented an updated draft of the ALAC statement regarding Third Accountability and Transparency Review Team (ATRT3) Draft Report.

On 28 January 2020, the co-penholders and ICANN policy staff in support of the At-Large community sent a call for comments to the CPWG and ALAC mailing lists, requesting final feedback from the community by 31 January 2020.

On 31 January 2020, the co-penholders finalized the ALAC statement.

On 31 January 2020, the ALAC Chair, Maureen Hilyard, requested that the statement be transmitted to the ICANN Public Comment process, copying the ICANN staff member responsible for this topic, with a note that the statement is pending ALAC ratification.

On 03 February 2020, staff confirmed the online vote resulted in the ALAC endorsing the statement with 14 votes in favor, 0 votes against, and 0 abstentions. Please note 93.33% (14) of the 15 ALAC Members participated in the poll. The ALAC Members who participated in the poll are (alphabetical order by first name): Abdulkarim Oloyede, Bastiaan Goslings, Carlos Raul Gutierrez, Dave Kissoondoyal, Humberto Carrasco, Javier Rua-Jovet, Joanna Kulesza, Jonathan Zuck, Justine Chew, Marita Moll, Matthias Hudobnik, Maureen Hilyard, Sylvia Herlein Leite and Tijani Ben Jemaa. One ALAC Member, Holly Raiche, did not vote. You may view the result independently under:
https://www.bigpulse.com/pollresults?code=1338404TLG2ajvnhuBVfpkMYyVt

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Accountability and Transparency should be the cornerstone of any organization and the ALAC is glad to provide comments on the ATRT3 draft report, just as we have contributed actively with dedicated volunteers who helped in shaping the work of the review team. In this regard, we believe that it is important for the appropriate arms to fully implement the recommendations of ATRT.

General concerns:

1. The lack of differentiation between "recommendation" and "suggestion" is confusing, so it is recommended to stick to one of these terms in order to avoid confusion.

2. Clarification is needed on what ATRT identifies and attempts to solve with their recommendations. Problems with the current process include:

    1. Volunteer burnout.
    2. Disparity between ICANN's self-assessment and the reviews' assessment.
    3. Recommendation overload versus prioritization.
    4. Most importantly, how will ATRT proposals increase or maintain transparency and accountability and perceived trustworthiness?

    Point 1 will always be a problem, particularly for non-commercial actors (volunteers), but reduced when less reviews are undertaken simultaneously or if their workload is reduced. However, that solution might impact on accountability, with longer "oversight-free" periods, while on the other hand allowing time to actually complete recommendations. This former could be addressed by having a constant, continuous oversight function within the ICANN community that could, in some way, serve some of the review functions.

    Point 2 likely requires some sort of community-based oversight function and clear rules on how recommendations are given (SMART criteria). The latter was not the case in the past and could be a contributor. The problem goes beyond wording, considering the level of disparity between staff and community assessment. Transparency would likely be another key building block, e.g. a centralized, up-to-date tracking tool.

    Point 3 is difficult to address, as most recommendations seem sensible. However, some key issues have been raised by multiple review teams and appear to be central.

    Point 4 is a key issue of the review, and it must be clearly laid out how options 1 and particularly 2 (as it constitutes a departure from current rules) would address this. How can the community ensure that ICANN org and ICANN generally remain accountable, transparent, and actually maintain the system in a manner that takes into account the public interest (e.g. availability, competition, security, et al)?

3. The ATRT review has produced a considerable amount of work in little time and this is laudable. Nevertheless, from an end-user perspective, ATRT should consider deliberating the following questions:

- How can ICANN better address conflicts of interest? The ICANN community is relatively small, with relatively few actors involved in the process. Conflicts of interest, perceived or real, can impact negatively on ICANN's standing.
- How can transparency be increased?
- How can ICANN ensure that in cases where issues persist, processes are initiated to correct trajectory?
  - For example, if multiple reviews identify the same issue or if they find implementation to be lacking, how can this be fast-tracked transparently and effectively?
- Might it be necessary to "silo off" or ring-fence certain functions, including reviews, compliance, and other types of community oversight?
- How can ICANN improve their responsiveness to community and review team questions and affairs, and what policies should be created to ensure these are dealt with?

4. One of the most important issues tackled by ATRT is that of how future reviews, and by extension, ICANN's foremost accountability function would be designed. From an ALAC perspective, the most important consideration is how appropriate oversight and representation of billions of internet end users can be ensured going forward.

Option 2 is the preferred option of the ALAC, However It appears that option 2 requires more fleshing out to inform the community about what it would specifically entail. While the status quo is not working according to a variety of stakeholders, more description and consideration should go into option 2 going forward, or indeed any other solution that is supposed to solve the current concerns. For example, what options are available to optimize and streamline review processes, and are there any elements that can be removed, or reviews combined, without causing problems in the current ICANN structure? While option 2 addresses some of these concerns, the description in the current report is too curt to determine its impact. The proposals should be more detailed and consider the pros and cons, e.g. when it comes to the specific concern of option 2.

It is obvious that the review team cannot provide a complete solution for a variety of reasons, including procedural and due to the amount of required work. Yet, it would be very useful to provide more details on how this approach could look like, and what would have to be considered when putting the proposal into practice. Tackling how these changes would improve on current levels of accountability and transparency is important to maintain ICANN's standing and potentially its existence going forward. From an end user perspective, more, not less, accountability and transparency is required from the ICANN community and org.

ICANN should welcome input from outside and utilize additional studies carried out by reputable researchers across the globe, and such research should not necessarily be commissioned by ICANN.

Specific concerns:

1. Prioritization is a complex process that requires a lot of information and support from ICANN org, and any teams must include individuals with insight into the ICANN structures and processes. At the same time, this process requires a level of transparency (wherever possible) so that the community can follow and understand the choices made, and must also involve individuals with an "outsider" perspective to ensure a balanced and holistic assessment. Process and outcomes need to be extremely well thought through, resourced, and transparent.

2. Concluding SSR (as well as or any other) reviews in short, 5-7 day workshops seems difficult to achieve, at least under current conditions. Such short time frames will complicate asking questions to staff or constituencies. Therefore, the preparations for such workshops need to be extremely well thought-through and comprehensive. In terms of accountability, it would be necessary for ICANN to undergo continuous assessment as favored by ATRT (e.g. regular security audits) with reports being made available so that the SSR review can essentially review those reports instead of conducting their own lengthy research. The review team should consider how delays (e.g. slow staff responses) could be dealt with in this case.

We support the suggested changes to the ICANN Public Comment, public input as well as the accountability indicators. We believe those changes would make the Public Comments more effective and show better transparency. We strongly believe that a wide, open and inclusive process should be maintained in policy development process especially with input representing the multistakeholder environment. Policy development must be transparent, efficient and should not be biased or skewed towards a group.