



**Comment on Third
Accountability and
Transparency Review Team
(ATRT3) Draft Report**

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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.

Business Constituency (BC) Comment on Third Accountability and Transparency Review Team (ATRT3) Draft Report¹

The ATRT review was established in the Affirmation of Commitments and brought into ICANN bylaws as part of the IANA transition. ATRT has broad remit to assess the other “Specific Reviews” (Whois, New gTLDs, and SSR).

ATRT3 has also addressed the “Operational Reviews” of SO/ACs that has long been required by ICANN bylaws, and performed largely by outside consultants.

ATRT3 relied heavily on results of their Sep-2019 survey of [15 Groups](#) and [88 Individuals](#), concluding there is widespread dissatisfaction with both Specific and Operational. The BC [responded](#) to the review team’s Survey, but none of the BC suggestions made it to the team’s recommendations².

Below is the BC response to three key recommendations/suggestions.

ATRT3 suggested 2 options on Specific and Organizational Reviews (Section 10.5)

ATRT3 offered Option 1: Status quo plus a new oversight mechanism to coordinate reviews and implementation: an Independent Accountability Office similar to ICANN Ombuds Office.

The BC does not support Option 1. We have little confidence that the “new oversight mechanism” in Option 1 would address dissatisfaction expressed with the current review processes.

ATRT3 offered Option 2 with two parts, addressing Organizational and Specific Reviews:

Organizational Reviews: Maintain current Organizational Reviews for each SO/AC, but conduct as three to five-day workshops focused on SO/AC self-inspection in a context of continuous improvement. These reviews would be every three years, or more frequently, as determined by each SO/AC. The reports of these reviews would feed into a new holistic review--focused on improvements made by all SO/ACs in their Organizational Review reports. This new holistic review would be conducted every 7 years for a 12 to 18 months to allow for the implementation

¹ See ICANN public comment page at <https://www.icann.org/public-comments/atrt3-draft-report-2019-12-16-en>

² See BC response to ATRT3 Survey, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_09September_15%20BC%20response%20to%20ATRT3%20survey%20final.pdf

and maturing of the recommendations made by the individual Organizational Reviews and those of the previous holistic review.

Specific Reviews: Accountability and Transparency Review (AT) and relevant portions of Competition, Consumer Trust, and Consumer Choice Review (CCT) Security, Stability, and Resiliency Review (SSR) Registration Directory Service (RDS) Review would be combined into a single AT review conducted every 7 years to allow implementation of the previous recommendations. SSR could either be a 3-5 day workshop or a traditional review period.

The BC supports Option 2 for the Organizational Reviews (not for Specific Reviews), with this explanation and further suggestions:

The BC supports the Option 2 “workshop” approach for Organizational Reviews, based on our experience that face-to-face working group sessions increase focus, interaction, and consensus-building – especially relative to what we achieve via long email exchanges and often unfocused conference calls.

We further suggest that all SO/ACs be invited in advance to submit observations and recommendations to whichever SO/AC is scheduled to hold its self-inspection workshop.

And the subject SO/AC should be encouraged to ask ICANN staff to provide data or analysis in advance of the Workshop, to provide factual basis to evaluate progress since the last review in terms of participation, diversity, outreach, process improvements, etc. For example, see the Workstream 2 recommendations for SO/AC Accountability, where we also addressed Transparency, Participation, Group Outreach, and Policies and Procedures³.

The BC also supports ATRT3’s Option 2 suggestion to hold a “holistic” review every 7 years. We further suggest that SO/ACs be invited in advance to submit observations and recommendations. And SO/AC leaders should be encouraged to ask ICANN staff to provide data or analysis in advance of the Workshop, to provide factual basis to evaluate progress since the last review in terms of participation, diversity, process improvements, etc.

Also, this new holistic review could become the focal point for the ICANN community to suggest structural and procedural changes such as the Board seat recommendation offered by the BC in our response to the ATRT3 survey and in our comment on ICANN’s multistakeholder model evolution⁴:

One factor that fuels in-GNSO disputes is the limited number of GNSO seats on the Board, which are only 2 of the 15 seats. Considering that gTLDs are responsible for 98% of ICANN’s revenue and for most of ICANN’s policy work, 2 seats seems like an insufficient

³ Annex 6 – SO/AC Accountability sub-group Final Report and Recommendations – CCWG- Accountability WS2 – March 2018, at <https://www.icann.org/en/system/files/files/ccwg-acct-ws2-annex-6-soac-final-recs-27mar18-en.pdf>

⁴ BC Comment on Evolving ICANN’s Multistakeholder Model, Jun-2019, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_06June_13%20BC%20Comment%20on%20Evolving%20ICANN%20Multistakeholder%20Model.pdf

representation for the GNSO. One way to get around this would be to give 2 of the 8 NomCom seats to the GNSO. This would still allow the NomCom to name 6 of the 15 board members, while giving more room to accommodate the many stakeholders of the GNSO. A potential working model would be that each of these GNSO stakeholder groups would get one board seat: Registrars, Registries, Commercials, Non-Commercials.

The BC does not support Option 2 for the Specific Reviews, with this explanation and further suggestions:

The BC fully acknowledges ATRT3's findings on volunteer fatigue, serious problems in how ICANN Board addresses Specific Review recommendations, and how ICANN Org is *not* implementing Specific Review recommendations. We also agree that there are inefficiencies in how the specific reviews are conducted now.

The BC disagrees, however with Option 2's consolidation of the Specific Reviews.

Community-driven Specific Reviews are focused on critical areas of ICANN's remit and necessarily involve significant effort by community experts. Combining the SSR, CCT, ATRT and WHOIS/RDS reviews – all extremely involved subject matters – would create a review so onerous and complex that it would be effectively impossible for the community to organize and deliver consensus recommendations. We do not favor making any review process over-complicated, unnecessarily rushed, weak or ineffective.

The Specific Reviews are the most important mechanism for the ICANN multistakeholder community to hold ICANN Org and Board accountable. The Specific Reviews evolved from the Affirmation of Commitments between the United States and ICANN and were brought into ICANN Bylaws as part of the IANA transition. These community reviews should be maintained and improved – not compromised by consolidation.

Of particular concern is the systemic problem of ICANN Org failing to implement Board-approved recommendations, even while declaring that all recommendations have been fully implemented. Three review teams -- WHOIS/RDS, ATRT3 and SSR2 -- have recently documented that a significant portion of the previous Specific Review recommendations were not fully implemented, despite staff claims to the contrary. While some Specific Review recommendations certainly could be clearer, it's equally clear that ICANN's Board has not fulfilled its responsibility to ensure their directives are carried out, and that ICANN Org has failed to execute its responsibilities to fully implement all recommendations approved by the Board.

The BC supports the ATRT3 comment just submitted by SSAC: *to stagger Specific Reviews such that no more than one Specific Review is running at any time.*⁵

Additionally, the BC believes that several improvements and streamlining of Specific Reviews should be undertaken:

- All Specific Review teams should have a one year deadline for submission of final report and recommendations.
- ICANN Org should provide experienced staff and independent consultant support for each review.
- ICANN Org should complete detailed implementation documentation and provide relevant background information before each review begins; ICANN's CEO should ensure that review team requests for information are fulfilled in a timely manner (e.g. two weeks) to support expeditious review work.
- ICANN Board and ICANN Org should provide explicit input to each review while the review teams are developing their recommendations and before recommendations are finalized.
- Review recommendations should be drafted as SMART goals.
- Review recommendations should be assessed on whether they are likely to be effective in improving the performance and accountability of ICANN, or in addressing identified significant problems. If the answer is yes, then implementation planning, budgeting and prioritization should follow accordingly.
- Review teams should designate individual members of the team to provide continuity and a primary source of reference for the implementation of recommendations.
- It is the expectation and practice that, absent compelling justification, the Board will accept the recommendations in specific reviews (as was done prior to the IANA transition).
- All review recommendations should have a clear implementation plan developed by ICANN Org and reflective of the review team's guidance. Implementation should be completed within 5 years and completion should be confirmed by the team that authored the recommendation.
- There should be ongoing, independent, transparent, public tracking of review recommendation implementation progress. The ICANN CEO is responsible for achieving implementation and the ICANN Board is responsible for ensuring implementation is complete and fully documented.

⁵ Comment submitted by Russ Housley (SSAC) on 31-Dec-2019, at <https://mm.icann.org/pipermail/comments-atrt3-draft-report-16dec19/2019q4/000000.html>

- Implementation plans and associated budgets should be integrated into the subsequent financial years as needed, after the usual consultation and input from ICANN community members.

ATRT3 suggestion for prioritization of reviews (Section 12.4)

To address volunteer burnout and overlapping reviews, ATRT3 suggests creation of a community-led entity to develop a prioritization process.

That group would spend a year to develop a process for annual prioritization of reviews, considering Budget, Cost of implementation, Complexity and time to implement, Prerequisites and dependencies with other recommendations, Value and impact of implementation, and relevance to ICANN's Mission, Commitments, Core Values and Strategic Objectives.

The BC does not believe this prioritization mechanism is necessary or helpful.

ATRT3 suggestion for Implementation of ATRT2 recommendations:

ATRT3 found there was less progress than reported by ICANN staff, and made these suggestions:

Board should ensure that the first Competition, Consumer Trust, and Consumer Choice (CCT1), second Registration Directory Service (RDS2), and Cross Community Working Group on Enhancing ICANN Accountability – Work Stream 2 (CCWG- Accountability WS2) review teams provide Implementation Shepherds as defined in the Operating Standards for Specific Reviews to avoid any confusion as to the intent of their recommendations during implementation. Implementation of these recommendations should also be tracked using the reviews website.

If the implementation of Specific Review recommendations is transferred to another process, the Board should ensure factual reporting on the progress of the implementation.

The BC supports both these suggestions regarding implementation of prior ATRT recommendations.

The BC further suggests that "Implementation Shepherds" be recruited from among community volunteers who actively participated in the identified prior review.

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This comment was drafted by Steve DelBianco, Barbara Wanner, Tola Sogbesan, and Denise Michel. It was approved in accord with the BC Charter.