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Third Accountability and Transparency Review Team (ATRT3) Final Report

Dear Jennifer,

The Generic Names Supporting Organization (GNSO) Council welcomes the opportunity to provide input on the “Third Accountability and Transparency Review Team (ATRT3) Final Report” as part of the [Public Comment procedure](#).

This statement is made on behalf of the GNSO Council. However, our comments are intended to complement, and not replace, any input that may be provided by individual GNSO Stakeholder Groups and Constituencies.

Assessment of Specific and Organizational Reviews (SECTION 8 of the ATRT3 Final Report)

The Council notes that this is the only set of recommendations designated as “Consensus” rather than “Full Consensus”, presumably due to minority statements by some GNSO- and Security and Stability Advisory Committee (SSAC)-affiliated members of the Review Team.

While the perception and reality of “review overload” is valid, the fact that Specific and Organizational Reviews are provided for in the ICANN Bylaws as an accountability mechanism means that any major changes must be weighed very carefully. The ICANN Board has ultimate responsibility for these reviews and has shown that it is able to exercise some flexibility in scheduling. This could be explored further with the Board and the community.

With regard to Specific Reviews, the Council suggests that timing of further Registration Directory Service (RDS) and Competition, Consumer Trust and Consumer Choice (CCT) Reviews should be informed by the outcomes of current policy development work being undertaken by the Expedited Policy Development Process (EPDP) on Temporary Specification for gTLD Registration Data; the New gTLD Subsequent Procedures PDP; and the Review of All Rights Protection Mechanisms in all gTLDs PDP. Scheduling of Security, Stability, and Resiliency (SSR) Reviews should carefully take into account key ICANN security and stability responsibilities and the evolving nature of the environment in which these must be met.

With regard to Organizational Reviews, it could be argued that Supporting Organizations and Advisory Committees (SOs/ACs) should, as simple good practice, already be undertaking continuous improvement of the type recommended. The GNSO Council, for example, has been doing so for some time through strategic planning sessions, the PDP 3.0 initiative, improved program and project management tools, and opening meetings to observers. Further improvements for all community structures should flow from implementation of the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 (CCWG-Accountability WS2) Recommendation on SO/AC Accountability. However, removing a regular external review (usually conducted by independent examiners engaged by ICANN org) would seem to remove not just an important external accountability measure but also a valuable resource to assist with continuous improvement.

Prioritization and Rationalization of Activities, Policies and Recommendations (SECTION 10 of the ATRT3 Final Report)

The GNSO Council does not disagree with the Problem Statement for this set of Recommendations with regard to implementation outcomes of Specific and Organizational Reviews and Cross-Community Working Groups.

However, the Council does have reservations about the creation of a new entity for priority-setting and, in essence, clearing a backlog should be assessed carefully, especially from the implementation point of view. The ICANN Board should accept ultimate responsibility for implementation of what has been approved and ensure that there is continuous assessment of progress in consultation with the community.

There may be scope for enhancing existing mechanisms to ensure better transparency and accountability in this area. For example, community scrutiny of and input to the strategic and financial planning cycle could include whether, and precisely how, programs and indicators link to approved review recommendations. Many SOs/ACs, including the Council, already have budget and planning processes that include or could include a priority-setting dimension that captures proposals not obviously implemented. Cross-community coordination could be explored through existing mechanisms such as a more collegial approach by the Empowered Community when dealing with issues mandated for it by the Bylaws such as scrutiny of the ICANN draft budget, or substantive review and discussion in the regular meetings of community leaders and ICANN Org.

There are also other proposals concerning prioritization of work that have arisen from the initiative on Enhancing the Effectiveness of ICANN's Multistakeholder Model (MSM) and are contained in the [ICANN document](#) which is out for public comment in parallel with the ATRT3 Report (see pp. 10 and 12-13 of that document). The complete range of proposals in the MSM initiative and ATRT3 needs to be assessed with regard to efficiency, effectiveness and, not least, impact on the resources the community can make available both in the current difficult circumstances and in the longer term.

If a new entity is established, the Council notes that having one member for each SO/AC would leave the diverse range of community interests represented within the GNSO under-represented.

EPDP Accountability and Transparency (PROLOGUE of the ATRT3 Final Report)

The GNSO Council notes: "ATRT3 is concerned about the accountability and transparency of the Generic Names Supporting Organization (GNSO) policy development process when considering the EPDP as it relates to data protection." (pp. 5-6)

It appears that the concerns were based on a minority view in ATRT3. These concerns were elaborated in a minority statement from Dr. KC Claffy, an ATRT3 member representing the SSAC (see excerpt below at p.330 of ATRT3 Final Report); [SAC111](#) was referenced as "an example of these concerns":

"In my roles on SSAC and SSR2 I have watched growing dissatisfaction with the EPDP, culminating in a recent SSAC document describing fundamental accountability failures of EPDP as a multistakeholder

process. Access to accurate RDS data has been an accountability and transparency issue for decades, and this ‘Expedited’ process has been ongoing for 2 years and is still failing to achieve its goals. It represents another foundational gap in accountability and transparency for ICANN.”

The GNSO Council has provided a [detailed response](#) to the comments in SAC111 concerning process management. The Council would also point out that all ongoing PDPs, including the EPDP, are governed by the rules and procedures outlined in Article 11 and Annex A of the ICANN Bylaws. The principle of accountability and transparency and the goal of maximizing accountability and transparency underpin these rules and procedures throughout each and every step in a PDP cycle.

The Council appreciates the SSAC’s important role and acknowledges its representatives on the ATRT3 Team are perfectly entitled to express their views. However, the SSAC is one of the many structures within ICANN and its views and perspective of the EPDP should not be taken as representative of the entire community or the ATRT3 Team. Furthermore, dissatisfaction with the progress or potential outcome of the ongoing EPDP should not be conflated with accountability and transparency issues. As such, the Council believes the language in the Prologue of the ATRT3 Final Report perhaps should have been more explicit in pointing out that these concerns came from a minority statement.

For nearly two decades, ICANN’s policies and contracts failed to keep up with data protection laws and regulations. As noted in the ATRT3 Final Report, the EPDP is “***in response*** to the Temporary Specification enacted by the ICANN Board ***in response to*** the European Union’s General Data Protection Regulation (GDPR)” (emphasis added). Reactive policy-making has its own inherent challenges, not to mention the enormity and complexities of the topics that the EPDP is tasked to tackle.

Understandably, for some, the situation we find ourselves in raises legitimate accountability and transparency concerns but describing them as “fundamental accountability failures of EPDP” is unfair as it fails to recognize that the long-standing conflicts between Whois and data protection laws are the result of collective failures rather than any one party or process. Such a description is also unhelpful as it devalues the hard work of so many dedicated volunteers participating in the EPDP, including those from the SSAC.

In chartering the EPDP, the GNSO Council made a number of deliberate changes that are intended for improving efficiency and effectiveness as well as maximizing accountability and transparency. For example, a carefully scoped charter, a representative membership model, the requirement of a statement of participation, and the selection of Chair by the Council, etc. These changes have their origin from the PDP3.0 initiative and the EPDP has served as a pilot to implement some of the PDP3.0 improvements. The full suite of PDP 3.0 improvements are intended to be applied mainly to new GNSO PDP working groups launched in the future, or invoked when circumstances warrant their application. The Council fully intends to conduct a review after all PDP 3.0 improvements have been implemented, including assessing what worked well, what did not, and what lessons may be learned in the EPDP experience.

Finally, the GNSO Council is happy to answer any clarifying questions that you may have regarding the above.

Yours sincerely,

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GNSO Chair

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Non-Contracted Parties House

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