Summary of Public Comments on the
ATRT Draft Proposed Recommendations

This document contains a summary of the public comments[1] received in response to the draft proposed recommendations issued by the Accountability and Transparency Review Team, with a view to facilitating the reading of the contributions provided by the Internet Community. The comments are summarized in order of submission for each recommendation group as applicable, with references to individual recommendation numbers if provided. General comments are summarized in "general comments", first. Even though this summary was drawn-up to reflect as accurately and objectively as possible the views expressed by participants, it does not substitute in any way the original contributions which are publicly available for full reference at: http://icann.org/en/public-comment/public-comment-201012-en.htm#atrt-draft-proposed-recommendations

Contributions provided by (in alphabetic order):

Alan Greenberg (+addendum)	AG
Association for Competitive Technology	ACT
AT&T	AT&T
Coalition against Domain Name Abuse	CADNA
Coalition for Online Accountability	COA
Danish Ministry of Science, Technology and Innovation	DMSTI
European Telecommunications Network Operators' Association	ETNO
French Ministry of Foreign and European Affairs	FMFEA
International Chamber of Commerce	ICC
Kieren McCarthy	KMC
Norwegian Post and Telecommunications Authority	NPTA
Netchoice (general comments + comments on public interest)	NET
Shawn Gunnarson	SG

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[1] The public comment period ran from 23 October 2010 to 21 November 2010.

TOPIC	SUMMARY OF COMMENTS
General comments	ICC: The ICC and its members applaud the efforts of the ATRT. The document reflects a thorough analysis and assessment of the issues, community concerns and inputs and thoughtful consideration. The process and report establish a model for how future reviews should be conducted. ICC supports the recommendations, encourages careful consideration of them and urges prompt implementation. We state this as it is unclear how and when the ATRT recommendations will be taken up.
	DMSTI: We commend the work and believe that the recommendations are well suited to improve accountability and transparency. The next important step is to ensure implementation, for which specific timelines and oversight are needed. It is important that the recommendations in the executive summary are not detached from the findings and conclusions in the report.
	NPTA: We commend the ATRT for the recommendations to enhance accountability and transparency. The recommendations are well suited to meet this goal, provided that ICANN works with all stakeholders, including GAC, timely implement them. Oversight procedures as proposed will be beneficial for the implementation. Transparency and accountability should be improved in the short and long term, throughout the organization. We welcome the recommendation to establish an internal review cycle, and this mechanism should ensure accountability and transparency. Recommendations in the executive summary must not be detached from the findings and conclusions in the report.
	COA: COA appreciates this opportunity to comment on the proposed recommendations. We welcome the recommendations and commends the Team for its efforts. In view of the limited time available, COA restricts its specific comments to certain aspects of sections A and C of the proposed recommendations.
	KMC: The report needs to be clearer, shorter, less dense and without prevarications so more people would read it. An answer to the question "is ICANN sufficiently accountable and transparent?" plus an ordered list of the most important recommendations would improve the report and the public comment process. *See contribution for detailed suggestion*. The report fails to highlight that the ATRT team itself was subject to many of the constraints that community members complain about regarding accountability and transparency. *See contribution for detailed examples*. This is the first run of the process and it makes sense to review the actual process. There were tensions throughout the process and they should be stated explicitly as they are real issues with a broader everyday impact.
	FMFEA: France thanks the ATRT for its work and commitment to improve governance of ICANN in the global public interest. The recommendations are useful for ICANN to become an internationalized, multi-stakeholder, transparent and accountable regulator of critical Internet resources. ICANN should accept the report and work with the stakeholders to implement its recommendations. In particular,

	France welcomes the recommendations about establishment of a regular review cycle, establishment of a more formal relation between the GAC and the Board, and explanation of Board decisions.
	AG: I strongly support the overall direction and tone of the report.
	ETNO: We welcome the opportunity to contribute to the consultation on the recommendations and congratulate the Team for considerable work in a short period. We appreciate that the Team based its analysis on several sources: community input, interviews and fact finding, as well as the Berkman report, etc. The recommendations should be implemented timely, as they reflect the views of stakeholders for ensuring that decisions reflect the public interest and that ICANN is multilaterally accountable. Accountability and transparency are of importance given ICANN's unique model and also because ICANN must evolve to a truly international organization to enjoy trust and confidence. We support most recommendations but there are a few issues requiring additional consideration or refinement. The Team mainly focused on the Board, GAC and GNSO, but they are only part of ICANN's mission and responsibilities. Issues related to the ASO were not analyzed: public debate would have been useful about the absence of ASO public meetings and the rejection of a recent Global Policy Proposal. Time was limited and the task massive, but we hope that such issues will be dealt with soon.
	NET: The ATRT should have defined "public interest" in the ICANN context, as this term is used frequently and has a central role. The ATRT should consider AoC paragraph 4 and define who are the 'public' and what are their interests. This was raised when the ATRT started and repeatedly thereafter, but the team's attention was elsewhere. The term is now left for anyone to interpret and has thereby become a catch phrase that means nothing at all. See suggestion for a definition at: http://forum.icann.org/lists/affrev-draft-processes/msg00000.html
	AT&T: We appreciate the transparent, inclusive and fact-based process used to obtain stakeholder input and develop recommendations to enhance accountability and transparency. ICANN should implement the recommendations and use the report as model for future reviews. The recommendations are structured as mechanisms to enhance accountability, reflect stakeholders' input and correspond to the AoC commitments. They prioritize the critical issues of maintaining organizational stability, establishing a formal process for decision-making, and ensuring an independent review process.
	SG: The AoC requires a review of ICANN's operations as measured against standards of transparency, accountability and actions in the public interest. The review is significant as it involves institutional standards for which ICANN has been criticized and may also set the pattern for future reviews. The ATRT's work is laudable in many respects, but the decision to make the recommendations "future looking" is at odds with the mandate, which authorizes ATRT to judge ICANN, not merely to make

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<tr><td></td><td>suggestions. The shift in perspective diminishes the scope of ATRT authority by sacrificing the power to say where ICANN has fallen short. Moreover, in some cases, ICANN has acted in ways that may have compromised ATRT's work (late approval of Berkman contract, attempt to prescribe methodology etc)

ACT: The ATRT should first have established metrics for ICANN actions. Absent that, a review team could hardly hold ICANN accountable and the process was contentious as a result of reviewing in the abstract. Making up criteria was fraught with hazard and the results are disheartening as the ATRT makes the same missteps as ICANN. There are recommendations for a structured public comment handling, but it is hard to tell which comments ATRT considered and why some were set aside. Future review teams should lead by example. ICANN will never be accountable or transparent without performance metrics. The report suggests that ICANN looks into some metrics but this should be treated more seriously. A framework of measurable objectives is needed and a metric like timelines for implementation is a start, lest effort be presented as a proxy for results. The review should not limit itself to existing mechanisms of transparency. Transparency is to understand what the organization intends to do and ability to determine success is a requirement for accountability. A system of metrics is needed across all initiatives, to clarify objectives and record success. *See contribution for detailed suggestions on metrics.*</td></tr>
<tr><td>A. ICANN Board of Directors (Board) governance, performance and composition (rec 1 - 10)</td><td>ICC: 1 - 3. ICC supports formalizing the requirements for Board members and benchmarking against similar organizations. NomCom should be provided with input on factors that would make the Board more effective, also from the community, while NomCom's independence should be preserved. NomCom has an important responsibility and its deliberations and decisions about candidates should remain confidential. 4 - 7. ICC supports Board consultation with SOs and ACs on policy issues. Board interactions should be analyzed to find new useful mechanisms. The Board should encourage discussions between SOs and ACs, especially when views diverge and the Board should not be the only space to resolve differences. The community should be encouraged to build consensus views on policy issues, not just express a view on behalf of a given AC or SO. 8. ICC supports the recommendations to improve transparency, but cautions that full disclosure of Directors' statements may constrain the Board. Directors must be able to engage in frank discussions in closed session and use material that is not public, without having to make public statements. Properly balanced, this recommendation should be incorporated into the Bylaws. 10. This is a core component for transparency, accountability and community confidence in decision-making. This recommendation should be incorporated in the Bylaws.

DMSTI: 10. Outcomes at all levels of the decision making process should be explained in detail.

NPTA: Board members should act in the interest of the global Internet community but are not accountable in the normal sense, especially not the NomCom appointees, a system indicating deficits in accountability and democracy. Despite the lack of recommendations in this respect, we support the</td></tr>
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	recommendations regarding governance, performance and Board composition, especially 1- 3. The Board must conduct business so that it cannot be questioned that decisions are in the public interest.
	COA: 1. COA supports identifying the collective skill-set required by the Board as specifically as possible. Legal skills, including intellectual property law in the online environment, should be included. These requirements should be integrated in NomCom's work. Announcing skill-set criteria would increase NomCom transparency while maintaining confidentiality. Skill-set criteria should be given priority over general requirements and should be emphasized in the orientation of NomCom members. NomCom should explain its selections related to the collective skill-set. Accountability and transparency is limited as a majority of Board members are selected in a way that lacks accountability and transparency. The recommendations could address this paradox. 6. COA supports clarification of which decisions are made at Board level, but it is unclear who should clarify this. For issues currently decided at Board level that will be addressed elsewhere in the future, it should also be clarified where they will be handled. 10. To implement this recommendation would enhance accountability and transparency by explaining how input was considered and how and why it was adopted or discarded. Such explanations should also be required for decisions made by ICANN staff, not only by the Board.
	AG: 1. The Board needs skills in many areas, but this should not be overrated as there is a risk to get silos of expertise fighting between them. Board members must be able to deal with complex issues and find a balance between conflicting requirements. Expertise in conflict management is useful, but above all people who can resolve issues based on careful analysis and work in areas where the ground is moving. 7. This recommendation requires notice of what will be addressed when. Agendas are often one-liners where the issue is hard to identify. Board meetings at two recent retreats were opaque and the Board has also dived into policy issues and made adjustments to policy formulated by community groups, diverging from agreed compromises. The process when AC, SO or cross constituency WGs send reports to the Board is not working well as WGs try to be brief to avoid incorrect condensation by staff before Board consideration. A complex subject discussed at length cannot be captured briefly. Board involvement and interaction is necessary in the discussion process. Alternatively, there must be an opportunity for discussion with the WG after the report is created. 10. The intent is good, but it is unclear how effective the measures will be and how accurately the output will reflect reality. The Board explaining a decision implies staff writing what they believe contributed to a decision, with uncertain accuracy. To have winning and losing Board members write papers similar to a Supreme Court decision would be better, but Board members do not have the time, skill or interest to do so after a decision, when they move on to the next issue. This recommendation must be made so that the results are meaningful instead of just massive make-work efforts that may not reflect the actual process.

	ETNO: 1. ETNO supports mechanisms for identifying the Board skill set. Benchmarking against similar structures is useful, but may not be appropriate if isolated from other criteria, as ICANN is unique. Once skills are defined they could be considered by the NomCom, as well as by the SOs, when they select Board members. 2. Review of the training and skills building program should take place every 3 years. 5. Compensating only the Chair could create an unbalance and any evolution must be progressive and balanced against potential side effects. Compensation of the Board should only be implemented after consultation with the stakeholders and be subject to frequent review. 7. ETNO supports this recommendation, which also should also apply to ASO and ccNSO policies. 8. More and better transparency does not mean that everything must be published as certain issues need to develop before becoming public. This recommendation must be implemented at the appropriate level (i.e. for final positions etc.). 10. This is crucial for transparency and public trust and should be implemented soon.
	NET: 1. The recommendation is unclear on how strictly NomCom should base selections on skill-set deficiencies in the incumbent Board. The recommendation should be explicit on whether skill-set deficiencies should constrain or just guide the NomCom. 10. The Board should explain why it opts to consider a matter but should also explain when declining to take a matter under consideration.
	AT&T: We support benchmarking the Board against similar organizations. ICANN has unique attributes, such as a diverse community of stakeholders and coordination of globally used Internet resources. As there is nothing similar, a variety of organizations should be included in the benchmarking. We support institutionalizing assessment of Board skill-sets and reasonable compensation for Board members. In addition, we support efforts to ensure transparency of the Board member selection process and the Board's decision-making process, including mechanisms to facilitate Board consultation with SOs and ACs on policy issues. There is a need for confidential Board deliberations, but the Board should operate pursuant to a well-defined process and serve as a model for transparent deliberations and decision-making. The Board should explain its decisions, stating how community input was considered and why it was adopted or discarded. Unlike other boards, the ICANN Board issues decisions that have policy implications and affect Internet users, service providers and businesses around the globe.
	CADNA: 1. CADNA applauds efforts to address Board governance, performance and composition but wishes clarifications on how to benchmark Board skill-sets against similar structures. ICANN is unique and it must be ensured that the Board is capable of overseeing operations in the global public interest, delivering best practice in corporate governance. 9. CADNA supports the recommendations to improve transparency but lacks clarifications and details. More information is needed on the process and on who will decide how, when and what material to redact, as this could be counter to transparency and accountability. Transparency and accountability are important to gain community trust and confidence.

	Some cases require confidentiality, but ICANN should strictly limit the ability to redact material.
	SG: Identifying way and how certain issues are considered by the Board is especially important but also staff decision-making deserves clarification, as many issues are resolved without Board intervention.
B. The role and effectiveness of the GAC and its interaction with the Board (rec 11-16)	ICC: 11 - 12. ICC supports recommendations to improve the relationship with the GAC. GAC should decide when input is advice and when it is input the Board must act on. Consensus should not be understood as "strict majority", as it may well imply "no objection against". 13. The Board and GAC should work together to ensure timely delivery of GAC advice. 14 - 16. Effective communication and a good working relationship between the Board and GAC are essential to ICANN's evolution. We support efforts to engage governments from developing countries in the work of GAC. There is value in engaging senior government officials on public policy issues and it should be clarified how this could be done.
	DMSTI: Regarding the GAC and its interaction with the Board, it should be noted that governments are accountable to the general public and must act in the public interest. ICANN's legitimacy as a public interest organization requires increased support and commitment of governments to the GAC. To this end we welcome recommendation 16. Governments and the GAC should do the outmost to timely participate in ICANN's multi stakeholder processes, but it should be recognized that government processes are different from processes in other sectors. Moreover, it should be acknowledged that governments have different views on public policy and that this is valuable information for ICANN.
	NPTA: The present Board handling of GAC advice should be improved which could imply an enhanced role for the GAC. We welcome and support recommendations 12 - 16 regarding the role and effectiveness of GAC and its interaction with the Board. The recommendations, if implemented, will strengthen ICANN as an accountable public interest organization.
	FMFEA: The Internet's growing importance for society requires governments to be more actively involved in key decision making for Internet's development. It should be recognized that public attitudes towards the concept of self-regulation have changed in the wake of the financial crisis. For critical resources, there are expectations on governments to defend the public interest more proactively than in the past. Governments do not need any stronger role in the day-to-day Internet operations but they must guarantee that governance arrangements reflect the public interest of society as a whole and will not be captured by narrow interests. France welcomes the proposal that a consensus GAC advice be mandatory for the Board. The ATRT should also explore other ways to improve the role of governments. The Board makes the final decisions and voting rights for the GAC liaison could be considered
	ETNO: 11-16. ETNO believes that these recommendations are essential to allow the GAC a better involvement in the policy development and decision processes.

	NET: 12. This recommendation sets incorrect expectations about GAC advice: '...that triggers the Board's obligation to … work with the GAC to find a mutually acceptable solution.' Page 27 states ICANN obligations: .., if the Board determines to take an action that is not consistent with the GAC advice 'it shall … state the reasons why it decided not to follow that advice.' GAC and the Board are then obligated '…to find a mutually acceptable solution.' If no solution can be found, the Board 'will state … why the GAC advice was not followed.' The recommendation should state that the Board may disagree with GAC, if it explains why. A 'mutually acceptable solution' is not required in present Bylaws.
	CADNA: 12. CADNA agrees that ICANN needs to improve its relationship with GAC and that GAC input is important on matters affecting public policy. Strict constraints on GAC's power could impede efforts to hold ICANN accountable. Limiting GAC's influence by requiring consensus to trigger a Board obligation is troubling. The Board should be required to accept oversight from GAC. 13. The Board and GAC should work together to ensure that GAC advice is taken into account, but it is unclear how this would add to transparency as GAC only meets three times a year. Regarding GAC needing consensus to trigger a Board obligation, language should be added to define consensus or modify rules to take into account the low GAC meeting frequency, e.g. a clarification on mechanisms to reach timely agreements.
	AT&T: The Board must have an effective working relationship with GAC. We support the recommendations to address areas of concern and formalize the relationship in ways that do not fundamentally alter or expand GAC's role. The same steps that should be taken to ensure that stakeholder input is considered and reflected in the decision-making will improve the interaction between the Board and the GAC. This is particularly important at the conclusion of the decision-making process. We support efforts to increase the level of support and commitment from governments to the GAC process, but this should be part of a wider effort on outreach and support for all stakeholders. We agree to a particular focus on nations in developing areas of the world but not only for governments. There should also be increased efforts to engage with businesses and Internet users in these areas.
	SG: The ATRT makes an accurate assessment of the relationship and proposes a compromise. However, this ignores GAC being a body of nation-state representatives, accustomed to more respect. A sharper definition of advice is needed and the time-lag between Board and GAC schedules needs addressing, e.g. by the Board submitting relevant documents to GAC at least 45 days before each ICANN meeting.
C. Public input processes and the policy development process (rec 17 -24)	ICC: 17. ICC supports the recommendation and the need for prioritization. 18-19. ICC supports recommendations to improve the comment process. Besides setting priorities and adequate comment timeframes, one must consider the number of parallel comment periods and the internal processes for many in the community. 22. ICC supports this, but only text in English should be binding. 23. A checklist should include a point on the range of stakeholder input. It should be ensured that relevant concerns

have been addressed, like the impact on security, stability and resiliency of the DNS.

DMSTI: Transparent processes are crucial to improve accountability. Explanations of the outcomes at all levels of the decision making process are needed as well as clarification of issues and publication of work programs with adequate timelines for community engagement. We support recommendation 17.

NPTA: Views of all stakeholders, including governments, should be taken into account in all policy development stages and GAC advice is important. The legitimacy of ICANN as a multi stakeholder body working in the global public interest is essential. Input, proposals and opinions should be traceable throughout the process including final Board decisions.

COA: COA supports recommendation 17 for stratified and prioritized public notice and comment periods and for adding a reply comment cycle, at least for major items. COA appreciates that ATRT has responded to concerns about the broken public comment process. The recommendations should be a step toward repairing the process. The reforms should apply to decisions taken by staff as well as by the Board. The sheer number of public comment proceedings exemplifies a transparency mechanism that diminishes effective transparency. In the prioritization process, past public comment proceedings should be analyzed to identify those that are unnecessary or can be batched together. Stratification and prioritization of the public comment process is complex, but must be done to ensure that comments received are considered and that their impact is explained.

ETNO: 17. ETNO reiterates that prioritization is a key element, which will increase the meaningful involvement of all stakeholders in ICANN activities.

CADNA: CADNA agrees that this recommendation should be adopted. By identifying comments that influenced a decision, the Board will provide a better understanding of how comments contribute to ICANN processes. This will allow the public to determine whether ICANN is responsive to its constituencies and would lend needed credibility to the public comment periods.

AT&T: We support the recommendations for adoption of public notice and comment processes, for stratification and prioritization, for standardized timelines for comments/reply comments, and for issuing decisions with the basis for the decision and showing how input was adopted or discarded. The ATRT has focused on the most urgent issues regarding the PDP, and we note the requirements for standardized processes. ICANN should conduct a review of the re-organized constituency organizations and their impact on the PDP. For example, ICANN has established cross-constituency WGs to address various issues. This can be effective, but it is worthwhile to analyze functioning and effectiveness in practice. Community support and acceptance of policy decisions should also be assessed.

SG: Codifying a stratified and prioritized public comment process, with reply comments, would improve

	stakeholders' ability to engage in policy-making. However, it is a mistake to recommend articulation of the basis for decisions, as this repeats an existing commitment. The ATRT should have stated the obvious - that ICANN has fallen short in this regard.

ACT: The area of public comments is well explored. Structured handling of comments should have been considered long ago and these ideas should be realized. |
| D. Review mechanism(s) for Board decisions (rec 25 - 29) | ICC: ICC supports recommendation 25 and urges that this assessment should investigate how the IRP may have binding authority to overturn Board decisions in order to help ensure independence. The assessment should consider benchmarking against similar corporate and other structures.

DMSTI: It is essential that decisions reflect the global public interest. ICANN's legal accountability is very narrow as the organization is incorporated under Californian law. As PSC recommended, ICANN should explore ways to create an international legal entity (Brussels and Switzerland were suggested) to enhance accountability to global internet users. Working methods and processes for early engagement and dialogue in ICANN's policy and decision-making should be improved.

NPTA: Referring to the PSC recommendations, ICANN should explore ways to establish an international legal entity. The incorporation under US law means that ICANN's legal accountability is narrow and needs to be enhanced. The possibilities should be improved for all stakeholders to contribute to and influence ICANN's decision-making through the process up to and including decisions by the Board.

FMFEA: ICANN is a global institution but governed by only one legal system. An internationalized legal status could be considered, with some privileges and immunities to guarantee its independence and to improve legal certainty of its decisions. France also calls for a systematic use of the international legal framework (private international law) and international arbitration mechanisms (e.g. ICC) in international contracts or agreements involving ICANN.

AT&T: We support the recommendation and that a committee of independent experts should assess existing review mechanisms and how they interrelate. We also support setting standards for the review process, such as timelines for issuing decisions. A new review mechanism that is binding on the ICANN Board should be considered, for example an independent panel, authorized to hear appeals of Board decisions or staff actions by affected stakeholders on specific grounds, such as assuring adherence to charter and guidelines. An effective appeals panel with a well-defined role can mitigate pressure for external oversight that would be inconsistent with ICANN's multi-stakeholder, private-sector led model.

SG: Accountability is the most important review area, but one where the recommendations disappoint. ICANN's accountability deficit affects its institutional confidence more than anything else. The WG4 was correct in proposing reform with a panel that could overturn Board decisions, but based on flawed legal |

	analysis the ATRT refrained from this recommendation. The WG4 proposal is compatible with the applicable law and should be put forward. *See contribution for a memo with detailed analysis*.
E. Overarching Recommendation (rec 30)	ICC: ICC supports the recommendation and recommends specific documentation and implementation timelines, since previous efforts to enhance accountability have not progressed with sufficient focus or speed. Contract enforcement is an important accountability issue for all stakeholders, as suggested in the Berkman Report. We also suggest providing adequate funding for this issue and other priorities.

DMSTI: We welcome the recommendation to establish an internal review cycle to improve transparency and accountability throughout the organization. The review should be designed to ensure transparency and accountability. All stakeholder input must be duly taken into account in all process stages. This is essential for the legitimacy of a multi-stakeholder body working in the global public interest.

NPTA: It is important to maintain transparency and accountability in the short and long term by establishing an internal review cycle that ensures that all stakeholder input is duly taken into account in all stages of policy development, with particular consideration of the importance of GAC advice.

ETNO: ETNO supports establishing a regular schedule of internal reviews distinct from the AoC review. Clarification should be given to the difference with the existing independent reviews of ICANN structures, as defined in the bylaws and currently implemented.

FMFEA: A global organization should have staff representing various regions, languages and cultures, not only Board and constituencies. ICANN should rapidly implement recommendation 30. France is looking forward to contributing to improve ICANN decision making for the benefit of all internet users.

AT&T: ICANN should establish a schedule of internal reviews to ensure that accountability and transparency is maintained. Implementation and follow-through are essential components of the review process. A schedule enables ICANN to keep the institutional focus and prepare for subsequent reviews. The same review process should be effective for other issues periodically reviewed under the AoC.

SG: The recommendation is flawed as it departs from the AoC mandate and reiterates an existing commitment. It is unclear how the review could be distinct from ICANN's self-review obligation. Also, the qualification "appropriate" for transparency and accountability may weaken the objectives. |