Summary of Public Input on the Accountability and Transparency Review Team Exercise

This document provides an overview of public comments received on the Accountability & Transparency Review Team (ATRT) exercise, in addition to comments provided during public comment periods dedicated to specific ATRT questionnaires and documents. In June 2010, the ATRT decided to launch a public forum that would be open throughout its mandate to allow for continuous community input. The comments received in this forum are summarized below in a chronological order, since comments occasionally developed into dialogues between parties. Some comments are duplicates of submissions to dedicated ATRT public comment fora - these are indicated below as *duplicates* with a link to the original forum. The summary does in no way substitute for the original contributions, which should be consulted for complete information. The number of comments submitted on this paper tallies up to twenty-eight, featuring multiple comments from some parties. The comments are hyperlinked below for easy access and available at: http://forum.icann.org/lists/atrt-public-input/

Contributions provided by (in alphabetical order):

Andrew Mack	AM	Kieren McCarthy	KMC
Andrew Mack	AM	Kieren McCarthy	KMC
Avri Doria	AD	Kieren McCarthy	KMC
AT&T	AT&T	Mary Wong	KMC
AT&T	AT&T	Mary Wong	MW
Becky Burr	BB	Multilingual Internet Group	MIG
Canadian Internet Registration Authority	CIRA	Network Solutions	NS
Coalition Against Domain Name Abuse	CADNA	Olga Cavalli	OC
Dan Krimm	DK	Olga Cavalli	OC
Internet Society	ISOC	Robin Gross	RG
Internet Society of China	ISC	Steven Metalitz	SM
Internet Society of China	ISC	M Sivasubramanian	MS
Kieren McCarthy	KMC	M Sivasubramanian	MS
Kieren McCarthy	KMC	M Sivasubramanian	MS

Date	SUMMARY OF COMMENTS
13 Jul 2010	**DK:** It is important to address the distinction between formal policy-making processes and informal policy-making dynamics. This came up in the context of evaluating the processes of the WHOIS RT and how its final results feed into policy-making ultimately by the Board. The suggestion was made that the combination of RT consensus building and public comments may provide a meaningful channel for stakeholders "at large" to shape the policy development process. This is true only to the extent that the Board accepts the public input as given. It seems possible (bureaucratically) for the Board to declare that public input is not representative and to replace the public record with an estimate. Conversely, the public record may not be representative but if it serves the Board's purposes it may accept it as such. In such cases where consensus is difficult to reach, the validity of public input will be called into question. What informal (and perhaps hidden) influence has ICANN staff on the Board? ICANN staff may not be accountable formally to any stakeholders, yet they may have preferences which could influence policy-making. It is important to create a formal definition of effective decision-making standards in the process. When informal influences affect the final decision, the result is ad hoc decision-making, with formal processes as window-dressing rather than meaningful policy drivers, doing the public interest a disservice. Go beyond the formal structures and seriously evaluate the implicit, informal dynamics that influence policy-making at ICANN, as deeply and thoroughly as possible. **AD**: Providing late response to the "ATRT Questions", as follows: 1. ICANN Policy "Support" Staff has operated in a non-accountable way in dealings with the Board. Secret reports (prone to false statements) should be made public. Change the mentality from Culture of Secrecy to Culture of Openness. 2. The Ombudsman is not a viable accountability mechanism. The Ombudsman should change every 2-3 years, be an outsider and remain separate from Staff and volunteers to guarantee neutrality. 3. Staff reports should be publicly vetted and Board deliberations should be audiocast and recorded. 4. ICANN is not focused on Global Public Interest when preferring to release IDN ccTLDs over IDN gTLDs. The Review Team should dig into email archives and question staff members (past and present) under guarantees of personnel immunity. In addition to eliminating staff ability to work in secret, whistle blower programs and protections should encourage staff members who see problems to report them publicly without fear or retribution. 5. A committee composed of SO and AC members should do the evaluation and an appeals mechanism is necessary. Consider a standing multi-stakeholder oversight entity. 6. The by-laws requirement that the GAC give non-binding advice and the policy for responding to such advice should be extended to the ALAC. To regard GAC principles as addenda to the by-laws is misplaced and a serious error. 7. The reviews of GAC and ALAC issues need to be deliberate and specific, with discussions open to the community and results published for reference. 8. All comments should be reviewed and responded to in writing. Not all comments require or merit a change in the process, policy or document under review, but all need to be reviewed with responses documented. 9. Most operational decisions are neither fully explained nor opened to review unless the community complains. Great improvement is required here, as all operational issues have a certain policy impact. 10. The recent ICANN staff decision to reserve geographical names in a way contrary to the GNSO policy recommendation approved by the Board is a case where the decision was neither embraced nor supported nor accepted. 11. The PDP is improving, with more diverse working groups and earlier discussion of issues. That the policy recommendations can be obviated at the top through various means (including secret misinformation), remains a serious problem.
	MW: Stating that NCSG Members have submitted comments in their personal capacities. **ISC**: Duplicate – please refer to http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt **MW**: Providing late response to the "ATRT Questions", as follows: 1. ICANN should be accountable to all stakeholders. Other commentators as well as an ALAC and NCSG joint statement have highlighted problems caused by lack of access to Staff briefing documents to the Board concerning SO and AC activities. In a multi-stakeholder, bottom-up organization, the default position should be disclosure, with exceptional legitimate instances for non-disclosure declared in advance. 2. The Ombudsman operates in an arbitrary and unfair way, e.g. the complaint filed by an individual community member against the NCUC Chair, alleging incivility towards this individual. The concerns were: (1) the potential exceeding of jurisdiction by the

14 Jul 2010	Ombudsman; and (2) the way the Chair was treated during the process (limited time to file a response, blog post, breach of privacy). The accountability mechanisms surrounding the Ombudsman's exercise require investigation and improvement. 3.4. The Board has a commitment to transparent decision-making and seems to be sincere about acting in the interests of global Internet users, but for the NCSG there has been a lack of transparency in some of the Board's dealings with it during its formative process. The NCSG-in-formation drafted an interim charter that had considerable support among its members as well as more broadly in civil society. In Seoul, the Board agreed to meet with the NCSG to discuss the charter but a new interim charter drafted by the Board's Structural Improvements Committee (SIC) was emailed to the NCSG without any notice. No one in the NCSG had the opportunity to even review it prior to the meeting. Time was lost and community mistrust triggered by this. (2) Although the NCSG interim charter had community support, the staff analysis of public comments characterized it as a "letter writing campaign" on the part the NCUC Chair. All the Chair and several members had done was to write to civil society colleagues seeking support for the charter. While staff workload can be heavy, and analyzing numerous public comments can mean occasional use of careless language, such treatment magnifies the perception that staff has the power to distort and minimize contributions from the community, and lead to poor relations between staff and community. **KMC**: There are too many comment periods and no rating system that enables people to discern their importance. There is no process for deciding when and for what a public comment is opened. Comment periods are announced passively and often with nothing more than a big document and "what do you think of this?". Comment periods are used too frequently as a substitute for actually talking to people and building consensus. The public comment process is ineffective at gathering useful feedback and in desperate need of reform. **OC**：Fellowship Selection Committee – Transparency: the independent selection committee members, with backgrounds and statements of interest, should be made public as well as the selection process, the frequency of call for applicants, and how long members serve. Fellow´s Selection Process: Candidates in isolated regions of the world have less chances of being selected. A different selection process is needed. **AM**: Translation services are not available where they are needed most. The attitude of English-fluent Board Members is at times almost dismissive of comments in a language other than English. The language issue remains a barrier to participation. IDNs remain the exclusive province of the ccTLDs: with no plan to fast track IDN gTLDs for the vast majority of businesses and consumers and no plan for IDN gTLDs in the academic or NGO space (.org and .edu). Very few ccTLDs have agreements with ICANN and a small number of gTLDs provide most of ICANN's budget, while ccTLD contributions are shockingly low. This favoritism for the ccIDN is inappropriate. Accountability and transparency are fundamentally about access and choice. ICANN is doing better, but there is still a long way to go. **AT&T**: Duplicate – please refer to http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt
15 Jul 2010	**OC**: Stating that there should be a call for applications to serve on the Fellowship selection committee with a published procedure for selecting members. Membership of the selection committee should be broad, representing all stakeholders. The amount of work involved in the selection process seems to be heavy and more members could help balancing the work load. **AT&T**: Duplicate – please refer to http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt **ISOC**: Providing late response to the "ATRT Questions", as follows: 1. ICANN must act in the best interests of the public, while being accountable to all stakeholders, not just the most influential or active constituencies. Accountability to any stakeholder group must be balanced against the responsibility to act as the steward of the DNS. 2. Accountability should result from creating the conditions for the Internet model to work, rather than post hoc appeal procedures, but remedial steps are needed when part of the community does not believe processes have worked. 3. -. 4. ICANN is responsible for DNS activities and must be accountable to ICANN participants and the global community of Internet users for the responsibility to preserve stability and security of the Internet's unique system of identifiers. Progress is being made, but a better balance is needed. 5. Evaluation of Board performance is best achieved through open and transparent processes, a part of ICANN's organizational learning. Periodic formal performance evaluation studies tend to be static, time bound and focus on specific cases rather than on learning and improvement. 6. The GAC should remain advisory and more

	governments, particularly from developing countries, should participate actively in GAC and ICANN processes. The GAC must provide advice more broadly that genuinely reflects citizens' interests and desires regarding the DNS. Advice needs to be clear and must be recognized in the balance with more specialized interests. For example, the GNSO and ALAC bring different perceptions of the public interest, which should be taken into account in the policy development process. The GAC and the Board should have a more focused dialogue about the nature of the advice. There are misunderstandings on both sides as to what constitutes advice and whether it has been accepted. This needs to be cleared up. For Board selection, highly competent people with experience of the stakeholder groups should be selected, based on quality rather than political considerations. ICANN should also contract recognized external experts to provide a compulsory education process, for Board members to understand and to best carry out their responsibilities. 7. GAC-Board interaction could be improved by a joint work plan, to identify priorities and to improve the timeliness of GAC contributions. 8. The main remaining problem is the number, frequency, and level of detail of consultations. There should be fewer and more strategic public consultations, while using the SOs/ACs for input on a more granular level. Pre-meeting communications should also be delivered with enough lead-time. 9. Public input sometimes receives cursory treatment. ISOC advice on the draft proposal on "Affirmation reviews requirements" was summarized without many key points, prompting skepticism about the process. 10. Decisions have not always taken into account the public stewardship role, but rather favored the views of current and potential registries and registrars. 11. More cross-constituency dialogue about issues is needed, as the issues impact multiple SOs/ACs and existing processes do not sufficiently promote discussion among the constituencies nor do they drive those involved to agree what is best for the Internet or best for end users. All necessary experts and interests need to reach acceptable recommendations to the Board, occasionally requiring ICANN to reach out to organizations that do not regularly participate in ICANN processes. **CADNA**: Duplicate – please refer to http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt
19 Jul 2010	**MIG**: Copy of a letter to ICANN CEO and ICANN Board Chair, expressing concerns over a recent introduction of arbitrary terrorism verification in the Applicant Guidebook for the New gTLD program, without clear definitions or standards, and in violation of ICANN's bottom-up processes and transparency requirements.
20 Jul 2010	**RG**: Duplicate – please refer to http://icann.org/en/public-comment/public-comment-201007-en.htm#atrt
29 Jul 2010	**CIRA**: Providing late response to the "ATRT Questions", as follows: 1. Many stakeholders are concerned that ICANN is not accountable to all. ICANN should earn the trust of its stakeholders by being true to its promises. Many decisions are made without adequate transparency, e.g. the FY 10 mid-year review found that actual expenditures would end up over budget by 3 MUSD due to legal expenses, new facilities, senior-level hires and strategic consulting contracts, and costs for programs like New gTLDs. Under the Board Finance Committee, a cost containment effort was initiated and presented without opportunity for comment in the draft FY11 Operating Plan and Budget. The mid-year review should offer an opportunity to comment prior to decisions. The 10 MUSD expenses for support of ccTLDs and ccNSO should be declared in more detail, especially since ccNSO members are asked for contributions, without an opportunity to analyze the costs driving the requests. 2. Diversity of expertise and background is needed on the Board of Directors, so that various stakeholder viewpoints can be heard and have weight in decision-making. This could be emphasized in NomCom guidelines. Make accountability a performance measure among staff. 3. Not all decision-making is transparent. 4. The commitment to global internet users is well established, but commitment to global internet stakeholders could be improved by translating documents prior to release, by conducting meetings in a manner which encourages participation, and by directly soliciting input from stakeholders in developing countries. The importance of other stakeholders, like ccTLDs, should be better recognized. ICANN should seek input from global stakeholders on how to make its own processes more multicultural. 5. Formal self-assessments, as well as expert assessments, are required for the Board, Chair, Committees, Committee Chairs and individual Directors. Evaluation should include whether Board is being transparent, including when conducting meetings. The Board selection process is lengthy. Board composition should move towards further Director expertise and competency. An appeal mechanism is required for

	Board decisions, permitting appeals against actions contrary to Bylaws and policies. 6. No. A multi-stakeholder body, not limited to GAC members, should advise the Board on what constitutes public interest, but GAC formal advice should be considered very seriously. 7. GAC (and all ACs/SOs) advice should be considered seriously and deviations from them be motivated. 8. Documents should be posted simultaneously in all languages to allow equal time for all to comment. 9. There was neither sufficient explanation nor transparency regarding expenditures changes following the FY10 mid-year review. 10. While many developments and decisions are well received, some are not; e.g. accounting and financial reporting and the size of the reserve fund. 11. When proceeding in a bottom-up, multi-stakeholder manner, a PDP is successful, but if ICANN does not follow this process the policy development fails; e.g. the DNS-CERT proposal without consultation with the community. 12. The proposal for a DNS-CERT showed lack in consultation with security stakeholders and in analysis of gaps in current response mechanisms. Unilaterally forging ahead with an ICANN-centric solution does not facilitate cross-community deliberations or result in effective policy development.
5 Aug 2010	**ISC**: Providing a suggested addition to the summary of their comments to the "ATRT Work Teams and Highlights", as follows: *Language synchronization includes Translation of Documents, Simultaneous Interpretation for Meetings and Website Multilingualization. It is very disappointing that many important documents, such as DAG v4, latest annual report and ICANN bylaw, are merely in English version, while the Chinese versions are seldom produced. It has been always inconvenient for the Chinese-speaking Internet community to get involve in ICANN-related activities. Taking ICANN public meeting in Brussels for example, the simultaneous interpretation service was provided in French and Spanish, but not including Chinese. In most of AC/SO meetings, English is the only working language. At present, the Chinese Internet users already exceed 400 million. ICANN should maintain real-time contents and services in Chinese on its website for Chinese-speaking community to follow and join in ICANN processes. When it comes to the performing of IANA function, the practice that ICANN submits reports to one government authority tremendously undermines its accountability and transparency. Under IANA contract, ICANN cannot guarantee accountability to all countries and stakeholders. Documents state that ICANN and VeriSign on behalf of one government authority perform the functions like issuing, managing, changing and distributing of KSK and ZSK. Currently, DNS system has become the Internet infrastructure worldwide; this arrangement greatly damages the accountability and transparency of ICANN.*
11 Aug 2010	**NS**: Highlighting that ICANN must adopt more effective oversight mechanisms and decision-making procedures for the Board; improve its financial disclosures; and require public review of important contracts.
18 Aug 2010	**KMC**: Providing an analysis of published Board review materials for an upcoming Board meeting, stating that the effort is good but that there are numerous deficiencies, including undue redaction of material in many cases.
19 Aug 2010	**KMC**: Highlighting the need to identify how the ATRT work will be followed up and implemented and the need for appropriate mechanisms to that effect, including auditing of implementation and actions to take if recommendations are not followed or implemented properly.
31 Aug 2010	**MS**: Identifying two occasional issues with public participation: 1) As ICANN is not widely known participation in ICANN public forums is primarily by constituency members. 2) Processing of input sometimes become subjective and unequal, enabling powerful interests to brush aside opinions. **MS**: Stating that appeal/reconsideration processes are needed also for constituency level decisions, in a manner that does not delay implementation. **MS**: Suggesting that the Ombudsman process can be greatly improved if expanded beyond a 'one man office' to create multiple levels where peripheral issues could be handled by deputies and issues that are escalated or of high importance addressed by the Ombudsman.
2 Sept 2010	**BB**: Copy of a Reconsideration Request 10-2 regarding approval by the ICANN Board of Employ Media's Phased Allocation Program, including an independent review of ICANN staff's summary of public comments on the program, stated to be relevant to the work of the ATRT.
23 Sept 2010	**KMC**: Identifying a recent WG report posted for public comment, regarding recommendation 6 in GNSO's New gTLD policy, as an example of lack of transparency and accountability, as well as providing redundant and confusing information.

25 Sept 2010	**SM**: Responding to KMC, supporting that comment and highlighting lack of transparency in the NomCom selection process as well as lack of information about the performance of individuals serving on the NomCom.
8 Oct 2010	**KMC**: Raising issues about lack of transparency in the selection process for the ATRT, including the process for replacement of members, and lack of transparency in the work of the ATRT, including ATRT discussions and decision-making.
4 Dec 2010	**AM**: Reminding the ATRT about his previous comments to the public forum regarding two issues that affect non-English speakers: earlier translation of the sessions and papers so non-English speakers can review them, and the issue of having a fast track for IDN ccTLDs but not for IDN gTLDs.