



**AT&T Response to Accountability and Transparency Review Team  
Questions for the ICANN Community  
July 14, 2010**

AT&T Inc., on behalf of its affiliated companies, (“AT&T”) appreciates the opportunity to provide comments on the Accountability and Transparency Review Team (“ATRT”) Questions for the ICANN Community. The ATRT review process, including the opportunity for community engagement and input, is an important component of the Affirmation of Commitments.

AT&T supports the multi-stakeholder, private-sector led model of ICANN. We have participated in a number of public comment proceedings related to accountability and transparency issues, and have offered constructive proposals for enhanced accountability and transparency mechanisms. AT&T discusses some of these proposals below with the goal of informing the ATRT review process and achieving the shared objective of ensuring that ICANN’s decision-making furthers the public interest and represents the interests of the multi-stakeholder community.

As a preliminary matter, AT&T agrees with the approach that the ATRT is taking with respect to the review process. The review process appropriately is designed to obtain extensive input from the multi-stakeholder community and to facilitate a comprehensive review of ICANN’s accountability and transparency. Ultimately, the ATRT review process will be most effective if it produces an analysis of community input, as well as proposals for specific accountability and enhancements that can be implemented by ICANN.

- 1. Do you think ICANN is accountable to all stakeholders? Can you identify a specific example(s) when ICANN did not act in an accountable manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN’s actions were not taken in an accountable manner.**

ICANN is a unique organization that must be accountable to a diverse group of community stakeholders and to the community of global Internet users who rely on the operation of the Domain Name System (“DNS”). There are some aspects of ICANN’s structure and decision-making process which are designed to promote accountability. However, there are also examples of how accountability could be improved and mechanisms that would serve to institutionalize accountability more consistently within ICANN.

ICANN must have a stable and representative organizational structure that balances the diverse interests of stakeholders and avoids both external and internal capture. The significant changes that have been taking place over the past several years make it difficult to assess the extent to which ICANN’s structure of constituency organizations effectively promote accountability. For example, the Generic Names



Supporting Organization, in which AT&T participates, has undergone a major restructuring that has affected the representation of business and commercial users. The implementation of these changes and the development of new policymaking procedures remain a work in progress. The ATRT review process should consider ICANN's evolving organizational structure and policymaking process and assess how it should be structured to provide stability and ensure accountability.

The various proceedings that ICANN has initiated to consider accountability and transparency provide an example of how accountability can be improved. These proceedings focused on improving institutional confidence in ICANN and they generated extensive input from the community which identified areas of concern and constructive proposals for enhancing accountability and transparency. Yet these proceedings did not produce an overall assessment of accountability and transparency or lead to tangible enhancements being implemented by ICANN. AT&T is hopeful that the ATRT review process itself will improve accountability and identify specific mechanisms that can be implemented by ICANN.

The ongoing proceeding to establish a process for introducing large numbers of new generic Top Level Domains ("TLDs") provides another example of how ICANN's accountability can be improved. AT&T and other stakeholders raised a number of significant concerns about the potential impact of new gTLDs on our customers and the operation of the DNS. Nevertheless, ICANN initially produced a draft applicant guidebook and tentative launch date for the introduction of new gTLDs without adequately addressing these issues. Last year, ICANN eventually acknowledged the importance of addressing four overarching issues (i.e., trademark protection, malicious conduct, economic analysis, trademark protection and security and stability) prior to moving forward with the implementation of the new gTLD program. A number of cross-functional work streams were initiated to analyze these issues, which resulted in various substantive work products such as the recently received economic analysis and malicious conduct recommendations report. While these are positive developments, ICANN simultaneously has been developing subsequent versions of the applicant guidebook, so it remains to be seen how the overarching issues will be incorporated into the final plan for the implementation of the new gTLD program. The general point is that it would be much better if ICANN thoroughly addressed community concerns and significant policy issues earlier in the decision-making process.

**2. Do ICANN's accountability mechanisms, including the Ombudsman, the Board reconsideration procedure and the Independent Review Panel, provide meaningful accountability and, if not, how could they be improved?**

AT&T previously identified several mechanisms that would help to increase ICANN's accountability to the multi-stakeholder community. One such mechanism would be a more detailed charter, which would help to provide a meaningful standard of review for assessing whether ICANN has satisfied its public interest obligations. By delineating the limits of ICANN's authority and responsibilities, the charter also would help to reduce the risk of external capture and conflicts with other organizations. The



charter could be developed by convening a group of experts consisting of both well-respected ICANN community members and independent experts drawn from outside the community.

In addition, ICANN should establish an independent adjudicatory panel that is authorized to hear appeals of Board decisions or staff actions by affected stakeholders and to assure adherence to its charter and procedural guidelines. This panel would complement existing accountability mechanisms, which are merely advisory and depend on the resources of the staff and the Board. By establishing an effective appeals panel with a well-defined role, ICANN can mitigate pressures for external oversight mechanisms that would be inconsistent with its multi-stakeholder, private-sector led model.

**3. Do you think ICANN’s processes and decision making is transparent? Can you identify a specific example(s) when ICANN did not act in a transparent manner? If so, please provide specific information as to the circumstances and indicate why you believe ICANN’s actions were not taken in a transparent manner. Are ICANN’s transparency mechanisms robust and how could they be improved?**

There are aspects of ICANN’s processes and decision-making that are transparent. ICANN generally makes information about pending proceedings broadly available to the community and it also publishes information about public comments and its decisions. Further, ICANN encourages community participations in its public meetings and provides transcripts of the main meeting sessions. AT&T does, however, have concerns about the consistency of ICANN’s transparency, particularly when it comes to providing an analysis of community input and clearly explanations the reasoning behind its decision-making.

As previously discussed, ICANN’s ongoing proceeding to develop a program for introducing new gTLDs is an example of a decision-making process that should have been conducted in a more transparent manner. In the initial stages of the proceeding, the concerns raised by AT&T and others in the community were not adequately addressed in the decision-making process. While ICANN provided a summary of comments received, it did not provide a detailed analysis of the concerns that were raised or explanation of its reasoning for ignoring or rejecting the comments that were submitted. Now that ICANN has initiated a number of separate workstreams to address the four overarching issues raised by the introduction of new gTLDs, it has an opportunity to thoroughly analyze and address these issues in the decision-making process.

In some cases, the issues and concerns that AT&T identified in its comments in the new gTLD proceeding were not reflected in the comment summary prepared by the ICANN staff. We greatly appreciate the comment summaries as an important transparency mechanism and recognize that substantial staff resources are involved in preparing them. In order to be effective, however, the summaries must fully and accurately reflect the community input that has been received. An effective and



straightforward transparency mechanism, which has been utilized in some ICANN proceedings, is to provide commenters with an opportunity to review a draft of the comment summary and make suggested edits regarding how their comments are characterized.

Moreover, ICANN should institutionalize transparency by establishing clear written guidelines for conducting its business, particularly decisions affecting its organization and structure, substantive policy-making decisions and contractual compliance activities. These guidelines should include full “Administrative Procedure Act” notice and comment procedures for public consultation and decision-making. In addition to providing adequate notice of specific policy proposals and the opportunity to provide meaningful comments, it is critical that ICANN support its policymaking with a full analysis of the comments received from the community and the basis for its decisions.

**4. What is your general assessment of ICANN's commitment to the interests of global Internet users? Can you provide a specific example(s) when ICANN did not act in the interests of global Internet users? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were not taken in a manner consistent with the interests of global Internet users.**

AT&T supports ICANN's efforts to promote effective participation by global Internet users and other members of the multi-stakeholder community. This should include providing effective mechanisms for business and commercial users from around the globe to participate in the ICANN decision-making process. ICANN should continue to support remote participation and other efforts that ensure developing country perspectives and interests are reflected in ICANN's decision-making.

For example, the introduction of new gTLDs raises important issues and concerns for global Internet users. As AT&T has shown, enabling the registration of large numbers of new gTLDs that infringe on global brands is a recipe for protracted disputes and user confusion. It is beyond question that thousands of defensive registrations exist solely to protect global brands, which creates confusion for global Internet users and provides a tempting target for those who want to confuse end users and engage in fraud and abuse. ICANN has recognized the potential for user confusion and malicious conduct, but it also must implement robust safeguards and protections to address them prior to implementing its new gTLD program. The ultimate resolution of these issues will be extremely important to the interests of global Internet users.

Moreover, the introduction of Internationalized Domain Names (“IDNs”) has a key role to play in internationalizing the Internet itself. ICANN has made progress toward the implementation of IDNs and should continue to prioritize these efforts. By delivering on the promise of IDNs, which includes addressing security and operational issues, ICANN can take a major step in helping to meet the needs of global Internet users.



5. **What is your assessment of the ICANN Board of Directors' governance with respect to the following factors:**
- **ongoing evaluation of Board performance,**
  - **the Board selection process,**
  - **the extent to which Board composition meets ICANN's present and future needs , and**
  - **whether an appeal mechanism for Board decisions is needed?**

As previously discussed in response to Question 2, AT&T supports the establishment of an independent adjudicatory panel as a complement to the existing accountability and appeal mechanisms.

6. **What is your assessment of the role of the GAC and its interaction with the Board? How do you view the role of the GAC within the overall ICANN process?**
- **What is your assessment of the interaction between the GAC and the Board?**
  - **Should the GAC be viewed as the body best placed to advise the Board on what constitutes the "public interest" regarding the coordination of the DNS?**

The GAC plays an important role in representing the public interest and the interests of governments more broadly, although it is not the sole representative of the public interest within ICANN. As a global Internet provider, for example, AT&T represents the interests of the millions of Internet users we serve and has a direct interest in safeguarding the security and sustainability of the Internet infrastructure. The ATRT's assessment of accountability and transparency mechanisms should include a specific focus on ensuring that public interest considerations are consistently and consciously incorporated into ICANN's policymaking and decision-making process.

7. **Are additional steps needed to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS? If so, what specific steps would you recommend?**

AT&T supports efforts to ensure and enhance the effectiveness of the GAC's participation in ICANN. In many respects, the issue of GAC participation can be addressed through general efforts to ensure that input from community stakeholders is effectively incorporated into the ICANN policy development process. Thus, the focus should be on improving coordination within the current advisory process as opposed to fundamentally changing the role or structure of the GAC.



8. **What is your assessment of the processes by which ICANN receives public input? What is your assessment on how ICANN receives input of English-speaking and non-English speaking communities? Can you identify a specific example(s) when ICANN did not adequately receive public input from English or non-English speakers? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate public input.**

As previously discussed, ICANN has a number of processes in place to promote community engagement and obtain community input in its decision-making process. AT&T is concerned about the volume of public comment proceedings and believes the process could be streamlined and structured to encourage more participation. For example, ICANN should prioritize its public comment proceedings and ensure that the process builds on the community input that has already been received. ICANN also should continue to support participation and conduct outreach for non-English speakers, particularly stakeholders in developing countries.

9. **Does ICANN provide adequate explanation of decisions taken and the rationale thereof? Can you identify a specific example(s) when ICANN did not provide adequate explanation of decisions taken and the rationale thereof? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate explanation of decisions taken and the accompanying rationale.**

As previously discussed in response to 3, there are cases where ICANN could improve the process of analyzing the input it has received from the community and explaining the reasoning behind its decision-making. In some cases, a decision not to take action or respond to community input also warrants an explanation. For example, ICANN could have been more responsive to community concerns raised about institutional confidence issues and the introduction of new gTLDs. It also could have provided more detailed analysis of community input and explanations for not adopting constructive proposals submitted by community stakeholders.

10. **What is your assessment of the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community? Can you identify a specific example(s) when ICANN decisions were not embraced, supported and accepted by the public and the Internet community? If so, please provide specific information as to the circumstances and indicate why you believe ICANN's actions were taken without adequate support and acceptance by the public and the Internet community.**

ICANN has a challenging responsibility to build consensus within a diverse group of community stakeholders, while also serving the public interest and protecting the stability and security of the Internet. There is a high likelihood that a particular community stakeholder will not agree with at least some aspect of an ICANN decision. It



is critical therefore, that the multi-stakeholder community support and accept the process that ICANN uses to reach its decisions. As previously discussed, there have been cases where community stakeholders have been concerned that their concerns and perspectives were not adequately addressed and considered in ICANN's decision-making process. These types of concerns tend to undermine confidence in the ultimate decisions themselves.

**11. What is your assessment of the policy development process in ICANN with regard to:**

- **facilitating enhanced cross-community deliberations, and**
- **effective and timely policy development**

**Can you identify a specific example(s) when the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development? If so, please provide specific information as to the circumstances and indicate why you believe the policy making process in ICANN did not facilitate cross-community deliberations or result in effective and timely policy development.**

In order to build broad multi-stakeholder consensus and support for ICANN's decisions, the policy development process must facilitate effective cross-community deliberations. The use of issue-specific working teams is one mechanism that ICANN has used to help facilitate effective and timely policy development. In the proceeding to consider the new gTLD program, the various inter-related issues of trademark protections, malicious conduct and the economic analysis would benefit from cross-community deliberations across all three issues, which has not yet occurred.