

**Business Constituency Submission**

**GNSO//CSG//BC**

Comments on Second Accountability and Transparency Review Team (ATRT 2) Final Report & Recommendations

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**Background**

This document is the response of the ICANN Business Constituency (BC). The BC’s comments arise from the perspective of Business users and registrants, as defined in our Charter[[1]](#footnote-1):

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.

On 31 December 2013, the Second Accountability and Transparency Review Team (ATRT2) submitted its Final Report and Recommendations to the ICANN Board of Directors. The report is now posted for public comment to inform Board action on the ATRT2's proposed recommendations.

**BC General Comment**

The BC greatly appreciates the extraordinary efforts of the Affirmation review team over many months as it gathered community input and compiled its findings and recommendations. The work of this review and the recommendations are the most effective way to keep ICANN’s board and management team accountable to the interests of global internet users.

Moreover, the thorough and professional way this team conducted its review is a superb precedent for future reviews. This assumes that ICANN will continue doing reviews called for in the *Affirmation of Commitments*. We take some reassurance that ICANN intends to continue its *Affirmation* obligations from the CEO’s recent statement regarding the present review:

There won’t be a day when we decide: “*OK, we’re accountable and transparent now, so we can stop reviewing these things*.” Long-term accountability is not a box you check, or a certificate you hang on the wall. It’s a continuous, evolving process of careful implementation and review.[[2]](#footnote-2)

The BC encourages ICANN to make the *Affirmation* a permanent obligation, whereas the present *Affirmation* could be unilaterally canceled by ICANN at any time.

Another general comment from the BC is to express concern that ICANN of late is tending to use more top-down strategy and policy direction, including advice from ‘experts’ not part of the ICANN community. That, coupled with expert advice to move to crowdsourcing of policy decisions, would diminish the role of stakeholder groups and advisory committees (AC/SO) that are now responsible for ICANN policies. In the comments below, the BC calls attention to several ATRT2 Recommendations that would strengthen the AC/SO structures and process.

A final general comment from the BC is to remind ICANN’s board of the limited technical mission the organization is charged with. We note that the top-down strategy panels and crowdsourcing initiatives are more likely to tempt ICANN to expand its reach beyond DNS coordination, which exposes the organization to greater criticism and risk of interference from intergovernmental bodies. One way to limit ‘scope-creep’ would be for ICANN to develop a specific definition of ‘public interest’ that is limited to the scope of ICANN's mission, i.e., to ensure the availability and integrity of registration and resolution services.

The ultimate definition of *public interest* for ICANN purposes should be derived through a process that is open to the ICANN community and Internet stakeholders – including a prominent role for representatives of governments, which claim to have unique standing to know what is in the public interest of their citizens.

**BC Comments on specific ATRT2 Recommendations**

As the ICANN board considers the ATRT2 proposal, the BC offers these comments to highlight specific recommendations that are particularly important to the business community.

**Governmental Advisory Committee (GAC)-related recommendations**

In accord with our mission statement, the BC works closely with GAC members who share our interest in having a DNS that is reliable and secure while helping consumers feel safe and confident they are reaching domains they actually intended to reach. To that end, we endorse these ATRT recommendations that would improve GAC-Board coordination and bring more governments into the GAC:

6.7. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to regularize senior officials’ meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock-taking after each High Level meeting should occur.

6.8. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to work with ICANN’s Global Stakeholder Engagement group (GSE) to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

6.9. The Board should instruct the GSE group to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

a. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;

b. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the transparency on how ICANN react

**Public Comment Process**

The BC endeavors to submit comments on any topic relevant to business interests, and we provided written comments on over 20 topics in 2013[[3]](#footnote-3). However, BC members find that public comment periods are too short to allow for meaningful consideration of increasingly complex issues. Large and small companies – and especially membership organizations – require more than 21 days to examine an issue, prepare comments, and circulate for approval.

The BC therefore encourages ICANN’s board to extend initial comment periods. And when a reply comment is necessary, it should come after a longer initial comment period. These comments are relevant to ATRT2’s recommendation 7.1:

7.1. The Board should explore mechanisms to improve Public Comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.

The BC has often been disappointed that a carefully considered and substantiated comment filing was not adequately or accurately reflected in a staff summary of public comments. We understand the importance of staff synthesis and summary to inform management and board decisions, given the quantity of individual comments received. To that end, we endorse ATRT2’s recommendation 7.2:

7.2. The Board should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the staff incorrectly summarized their comment(s).

**Consideration of decision-making inputs and appeals processes**

The BC fully supports ATRT2’s recommendation to institutionalize ICANN’s obligation to respond to review team recommendations:

9.1 Mandate Board Response to Advisory Committee Formal Advice

ICANN Bylaws Article XI should be amended to include:

*The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees explaining what action it took and the rationale for doing so.*

Over the past year, the BC has been surprised and disappointed at inconsistent and inadequately justified decisions coming from expert panels handling string confusion objections in the new gTLD process. Moreover, reconsideration requests regarding those decisions were rejected in a perfunctory manner that failed to consider underlying policies and broader implications. The BC therefore strongly endorses ATRT2’s recommendation 9.2:

9.2. Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Committee to discuss options for improving Board accountability with regard to restructuring of the Independent Review Panel (IRP) and the Reconsideration Process. The group will use the report of the Experts Group Report (ESEP) on Restructuring as one basis for its discussions.

**Effectiveness of cross-community deliberations**

BC members are active in several cross-community working groups, including critical work on definitions and metrics to evaluate the gTLD expansion in an upcoming *Affirmation* review. That experience leads us to specifically endorse ATRT2’s recommendation 10.1:

10.1.c The Board should work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy development processes to utilize volunteer time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

As noted above, the BC works closely with the GAC on consumer protection and competition issues that are vital for businesses and our customers. We therefore support ATRT2’s recommendation 10.2:

10.2. The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the AoC.

The BC is part of the GNSO. As such, it supports the model of having an SO in charge of defining policy for generic Top Level Domains, with groups such as our constituency able to actively participate. This work of developing policy, which is then managed by the GNSO Council, is crucial to ICANN's function as technical coordinator for the Internet's naming and addressing system. The BC therefore supports ATRT2’s recommendation 10.4:

10.4. To improve the transparency and predictability of the policy development process the Board should clearly state to what degree it believes that it may establish gTLD policy in the event that the GNSO cannot come to closure on a specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO Policy Recommendations, either before or after formal Board acceptance.

**Effectiveness of the Review Process**

As noted above with respect to ATRT2 recommendation 9.1, the BC endorses formal commitments by ICANN to address review team recommendations, including an expected time frame for implementation:

11.6. Board action on Recommendations
The Board should address all AoC Review Team recommendations in a clear and unambiguous manner, indicating to what extent they are accepting each recommendation.

11.7. Implementation Timeframes
In responding to Review Team recommendations, the Board should provide an expected time frame for implementation, and if that time frame is different from one given by the Review Team, the rationale should address the difference.

Steve DelBianco and Marilyn Cade led drafting of these comments, which were approved in accordance with the BC Charter.

1. Business Constituency Charter, at <http://www.bizconst.org/charter.htm>. [↑](#footnote-ref-1)
2. Fadi Chehade, “How ICANN is Accountable to the Global Community”, 12-Feb-2014, at <http://blog.icann.org/2014/02/how-icann-is-accountable-to-the-global-community/> [↑](#footnote-ref-2)
3. See Business Constituency website, at <http://www.bizconst.org/positions.htm> [↑](#footnote-ref-3)