

## **GNSO gTLD Registries Stakeholder Group Statement**

**Issue: On the Accountability & Transparency Review Team 1 (ATRT 1)**

Date: 6 June 2013

1. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate the level to which the ICANN Board and staff have effectively, transparently, and fully implemented the recommendations of the ATRT1. Please provide specific information as why you believe specific recommendations have or have not been effectively, transparently, and fully implemented. What metrics do you believe would be appropriate to measure effectiveness, transparency, and completeness of recommendation implementation?

**6 - The RySG commends ICANN for adopting many of the ATRT recommendations of the ATRT. The process followed in this request attests to that fact, as it is the results of work on Recommendations 15-17. By accountings done by a RySG member and other entities, including ICANN staff, at least 16 of the recommendations have been implemented in full with others underway. We note with particular approval strides in making the bases for Board decisions clearer and in improving the comment processes.**

2. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate to what level the implementation of the ATRT1 recommendations have resulted in the desired improvements in ICANN. Please provide specific information as to why you believe the recommendations have or have not resulted in improvements. What metrics do you believe would be appropriate to measure improvements?

**3 - Following a check list is only one measure for assessing the extent to which ICANN has internalized the ATRT’s advice, and a somewhat artificial one at that. The true measure is an overall view of ICANN actions on a day to day basis, and the RySG believes that the organization largely forgets the ATRT mandates except when asked to document item by item progress. The RySG and individual participants already are on record with respect to recent ICANN strategies and actions concerning new gTLD processes, most notably amendments to the Base Agreement, the Public Interest Commitment Dispute Resolution Procedure, and the development of the Trademark Clearinghouse process. It is very difficult to find any level of accountability, transparency, or any other kind of openness at work.**

**In addition and with respect to specific ATRT recommendations, ICANN failed with respect to Items 23 and 25, which called on ICANN to create an experts panel to assess and make recommendations for enhancements to ICANN’s Reconsideration and Independent Review processes, are examples. Nothing was done on these issues until September 11, 2012, when ICANN appointed an Accountability Structure Experts Panel (ASEP). The Panel issued its report in a commendable time, on October 26, suggesting a radical alteration of the standard of review to be applied by an independent review panel. Under this change, in considering**

**whether or not an action or inaction by ICANN or the Board violated ICANN’s Bylaws, the relevant questions are limited to asking whether or not the Board: (1) acted without conflict of interest in taking its decision; (2) exercised due diligence and care in having a reasonable amount of facts in front of them; and (3) exercised independent judgment in taking the decision, believed to be in the best interests of the company.**

**Only two comments were submitted on the report, both of which expressed the view that the recommendations were fundamentally flawed and in fact ran counter to the concept of accountability. In addition, they noted more work was needed because the timing of the expert panel was such that resources to comment were limited. The Board fundamentally ignored the public comments, using a consent agenda in April to establish the panel with a comment that a RySG point about using outside experts could be followed.**

**Other RySG concerns about ATRT progress have been documented and will continue to be noted as discussions on these and other problematic topics continue. Topics include handling of the new gTLD base agreement, TMCH matters, and reconsideration processes in more detail.**

***Affirmation of Commitments, paragraph 9.1 (a): ICANN Board of Directors Governance***

3. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), what is your assessment of how ICANN’s Board is continually assessing and improving its governance as specified in the Affirmation ¶ 9.1 (a)? Are there issues related to this provision you believe should be addressed or investigated by the ATRT2? If so, please provide specific information and suggestions for improving Board governance. What metrics do you believe would be appropriate to measure whether ICANN’s board is continually assessing and improving its governance?

**5 - The RySG finds it difficult to respond to this question apart from Questions 1 and 2. “Continual assessment and improvement” requires a longer period to assess than has passed since the first ATRT report and implementation of recommendations. Having said that, our response to 2 suggests that the Board does need to take a closer look at the extent to which the spirit of ATRT is being followed on a regular basis.**

4. Are you aware of the process through which ICANN Board Members are nominated/elected? On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate how well the Board follows clear rules and proceedings in its operation and decision-making. On a similar scale, please indicate whether you believe the Board makes decisions in a transparent way. On a scale of 1 to 10 (1 meaning “no idea” and 10 meaning “full understanding”), please indicate your sense of the Board’s rationale for taking decisions and giving advice. What should the ATRT2 ask the Board specifically to change in the way it normally works? Would any metrics allow you to better follow up their work? Do you think Directors should stay for longer/shorter terms? For individual members do you see any source of potential conflict with the rest of the community? If so, on a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “completely”), please indicate how effective you believe the existing conflict of interest declarations/recusal mechanisms are at preventing actual conflicts.

**With due regard to the initial work of the ATRT 2, this item needs to be more focused. It is difficult to answer it in any coherent manner**

5. On a scale of 1 to 10 (1 meaning “none” and 10 meaning “fully sufficient”), please indicate your view of the level in which the Board takes the necessary care and dedicates enough time for discussion relating to GAC advice. What metrics would be appropriate to measure the level of this care and/or dedication of time?

**6 - The RySG finds it hard to quantify the level of necessary care and time that the Board takes and struggles with how to measure it, a problem that is common to many items in this Request for Comments. Objective measures such as documents examined, time spent, statements released, or actions taken cannot measure the quality of the work. The disparity between completed ATRT recommendations and the reality of ICANN behavior are proof of that statement. With that said, the RySG does see the publication of a Request for Comments on the Beijing GAC Communiqué as a measure of commitment to full consideration of GAC input, but how the public comments and GAC Advice are handled will be the real test. Such requests are necessary if the Board is to have a full sense of how to effectively respond to GAC submissions in ways that can have fundamental effects on community work relative to ICANN’s mission in the multi-stakeholder model.**

***Affirmation of Commitments, paragraph 9.1(b): GAC’s Role, Effectiveness & Interaction with ICANN Board of Directors***

6. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate your assessment of the role and effectiveness of the GAC and its interaction with the Board as specified in the Affirmation ¶ 9.1 (b). Are there issues related to this provision you believe should be addressed or investigated by the ATRT2? If so, please provide specific information and suggestions for improving the role and effectiveness of the GAC and its interaction with the Board. What metrics do you believe would be appropriate to measure GAC effectiveness?

**5 - The RySG notes completion of ATRT recommendations 9-11 concerning consideration of GAC advice. We have not observed improvements in constructive interaction as a result. We cannot say where the responsibility rests.**

7. Are you aware how the process under which the GAC members are appointed? On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”) please indicate your view of the transparency of GAC decisions. On a similar scale, please indicate your understanding of the GAC’s rationale for taking decisions and giving advice to the Board. What should the ATRT2 specifically ask the GAC to change in the way they normally work? What metrics would allow you to better follow up the GACs work? For individual GAC members do you see any source of potential conflict with the Board and the rest of the community? If so, on a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “completely”), please indicate how effective you believe the existing mechanisms are at preventing actual conflicts.

**2 - The GAC can be transparent where the process requires it, such as when it provides advice on activities that involve multiple parties, such as registrar agreement negotiations. However, its discussions concerning advice to ICANN generally are not publicized and documents with potential far-reaching consequences are published without the ability for public contributions. Rationales often have questionable bases and show a lack of understanding of, or concern for, the business realities of Internet operations. The GAC Communiqué published in Beijing is a recent example of questionable conclusions and apparent lack of public input.**

7. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate your view of the level to which the GAC has done a good job in terms of checks and balances on the accountability and transparency of ICANN as a whole. What metrics do you believe would be appropriate to measure GAC’s performance in this role?

**The RySG is unclear on how to answer this question. The GAC is an advisory committee, albeit a critical one given its membership, not another decision center. We do not believe that it has a traditional checks and balances role with respect to ICANN, and should not be singled out here apart from other advisory groups.**

*Affirmation of Commitments, paragraph 9.1(c): Public Input*

8. On a scale of 1 to 10 (1 meaning “unacceptable” and 10 meaning “fully sufficient”), what is your assessment of the processes by which ICANN receives public input and whether ICANN is continually assessing and improving these processes as specified in the Affirmation ¶ 9.1 (c)? Are there issues related to this provision you believe should be addressed or investigated by the ATRT2? If so, please provide specific information and suggestions for improving the processes by which ICANN receives public input.

**4 - ICANN has improved its formal processes for public input, and possible efforts have been mentioned to improve processes put in place to effectuate ATRT 15-17. These efforts deserve a high mark. However, as mentioned already, recent behavior concerning the new gTLD process shows a lack of interest in public input.**

10. On a scale of 1 to 10 (1 meaning “unacceptable”, 10 meaning “excellent”), please indicate how easy it is to put forward new public inputs to ICANN. How easy is it over the course of a year? When did you last use the public comment mechanism? On a scale of 1 to 10 (1 meaning “unacceptable”, 10 meaning “excellent”), how would you rate ICANN staff’s work in processing public input transparently and publicizing its possible impact? On a similar scale, how would you rate ICANN staff in helping the community identify the pros and cons of those inputs in a clear and transparent way? How do you think the overall public input process can be improved?

**6 on new public inputs, although time periods could be longer. More time is essential for groups that must deliberate, determine levels of support, and edit before submitting remarks. The RySG uses the public comment regularly.**

**6 also on processing community submissions. The quality of the work varies, but ICANN has improved the public comment mechanism significantly through improved up front information, revised procedures, and clearer discussions of its review of submissions. It generally is clear in its discussions of points made in comments but “helping the community identify” is a misnomer; staff does that in its reviews.**

**More background information is always helpful for public assessments, as is the ability to find information on the ICANN website. While steps have been taken to increase the site’s effectiveness, such as the MyICANN system and design revisions, the search feature and internal structure still make it difficult to find resources, especially older ones. A review of comment and reply period lengths would be useful, as would improved efforts to avoid deluges of comment requests before ICANN meetings.**

11. On a scale of 1 to 10 (1 meaning “unacceptable” and 10 meaning “excellent”), please rate your view of the sufficiency and transparency of communication between the different SO/ACs on public inputs. On a scale of 1 to 10, how would you rate the chances for discussions between the different SO/AC during the public meetings? Do you think some communities have a larger say than others? If so, which communities? How could the ATRT2 review process improve communication between the different stakeholders groups? How should ICANN improve its outreach to the larger Internet community? To participating and non-participating Governments? To regional organizations?

**8 - This question is particularly subjective, and necessarily varies according to individuals and group processes involved. Limiting ourselves to an area in which the RySG is directly involved, the transparency and clarity of communication between the GNSO and ALAC appears to function very well because of the success of the ALAC liaison function. Liaison with the ccNSO and GAC are not nearly so successful.**

***Affirmation of Commitments, paragraph 9.1(d): ICANN decisions being embraced, supported and accepted by the public and Internet community***

12. On a scale of 1 to 10 (1 meaning “not at all”, 10 meaning “fully”), please indicate your assessment of the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community as specified in the Affirmation ¶ 9.1 (d)? Can you provide specific example(s) when ICANN decisions were or were not embraced, supported and accepted by the public and the Internet community? Are there issues related to this provision you believe should be addressed or investigated by the ATRT2? If so, please provide specific information and suggestions for improving the acceptance of ICANN decisions by the public and the Internet community.

**4 - The RySG does not believe that a measure is achievable in the abstract. ICANN’s decisions affect a large number of constituencies and individuals, and are certain to**

**generate a varied level of embrace, support, adoption, and rejection. Improving communications, accountability, and transparency certainly would help with the first three, again as demonstrated by ongoing new gTLD issues. The issue to be examined in this context is how to ensure that accountability and transparency are internalized by ICANN and not merely check list exercises.**

13. As a percentage, please indicate your view of the chances for a revision of Board's decisions since the ATRT1.

**The RySG does not have enough information to respond. This question should be asked again in a few months after the Board makes final decisions with regard to several key new gTLD issues that are subject to extensive public input.**

14. How do you embrace, support or accept the decisions of the ICANN Board, for example, do you embrace the decisions of the Board after an internal review of it in your community and/or working group? Have you asked for a review of Board decision? If yes, which ones?

**The RySG is more likely to do formal reviews of staff actions than Board decisions. However, we do not always embrace or support Board decisions. We have not signaled a refusal to accept them through a request for a review yet.**

*Affirmation of Commitments, paragraph 9.1(e): Policy Development Process*

15. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please provide your assessment of whether the policy development process in ICANN facilitates enhanced cross-community deliberations and effective and timely policy development as specified in the Affirmation ¶ 9.1 (e)? Can you identify a specific example(s) when the policy making process in ICANN did or did not facilitate cross-community deliberations or result in effective and timely policy development? Are there issues related to this provision you believe should be addressed or investigated by the ATRT2? If so, please provide specific information and suggestions for improving the policy development process to facilitate cross-community deliberations and effective and timely policy development.

**7 - PDP success may be more a matter of behavior rather than process. The process does facilitate cross community deliberations, providing an opportunity for groups that don't necessarily work with each other and might even be seen as adversarial a formal chance to discuss issues together. Timeliness often depends on leadership strength and member commitment, and consistent refusal of certain groups to participate at all or not until late in a PDP's work. Development of mechanisms for ensuring timely work and participation would be valuable.**

16. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please provide your assessment of ICANN staff adherence to the policy decisions of the ICANN policy development process in its operational activities. On a similar scale, please indicate the level to which ICANN staff has been accountable to the ICANN community in its

activities. Can you give examples of where ICANN staff has restricted its decision-making to the boundaries set by the Policy Development Processes or gone beyond those boundaries to either make new policy or replace existing policy without Community development process or consultation? Are there specific accountability issues the ATRT2 should explore related to ICANN staff's interactions with the Community policy development process?

**4 - The RySG finds it difficult to identify where ICANN staff activities relate to the results of PDP processes as opposed to policies reached by other mechanisms. We are concerned that staff recently has used imaginative definitions of “implementation” as opposed to “policy” to avoid consulting the community or to ignore community input.**

#### **Security, Stability & Resiliency of the DNS Review Team (SSR RT)**

1. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate the level to which the ICANN Board and staff have effectively, transparently, and fully implemented the recommendations of the SSRRT. Please provide specific information as to why you believe the recommendations have or have not been effectively, transparently, and fully implemented. What metrics do you believe would be appropriate to measure effectiveness, transparency, and completeness of recommendation implementation?

**7 - A complete analysis of the 28 recommendations in the SSR RT is a difficult task and beyond the RySG’s resources. In addition, given the number of items and complexity of some of them, an accounting less than a year after release of its report is premature.**

**The RySG is satisfied with progress made on items concerning efforts to define a remit and publish frameworks. We commend security staff in particular for its active solicitation of responses to RFCs. We also have seen increased efforts to explain ICANN staff’s security mission and also its general outreach, both to ICANN constituencies and the broader public.**

**On the other hand, the RySG notes that formal documents such as risk management analyses have not been forthcoming. That kind of work takes time. What should not have taken this long are activities related to Recommendation 11 on potential problems with the new gTLD program. Potential security issues were identified by the SSAC in 2010, even before finalization of the ATRT recommendations, that appear to have been largely ignored until very recently. Similar concerns, and others, have been raised by other members of the community. However, the RySG did not see significant efforts to address issues until after public concerns were raised in Beijing, and a contract to examine the ramifications of issues raised by SSAC and others was issued only at the May 18 Board meeting.**

2. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate the level to which the implementation of the SSRRT recommendations has resulted in the desired improvements in ICANN. Please provide specific information as to why you believe the recommendations have or have not resulted in improvements. What metrics do you believe would be appropriate to measure improvements?

**7 with respect to transparency and communication. Much more needs to be done before we can provide an overall grade.**



## **WHOIS Policy Review Team (WHOIS)**

1. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate the level to which the ICANN Board and staff have effectively, transparently, and fully implemented the recommendations of the WHOISRT. Please provide specific information as to why you believe the recommendations have or have not been effectively, transparently, and fully implemented. What metrics do you believe would be appropriate to measure effectiveness, transparency, and completeness of recommendation implementation?

**The RySG believes that the Board and staff have addressed the Whois RT recommendations adequately, given constraints that exist. The first step, creation of the EWG, was critical and the RySG applauds its creation. While the EWG does not follow the model suggested by the RT, the alternate approach taken from SAC 055 seems appropriate. The effectiveness of the EWG cannot be gauged until it produces a report that then goes through a public comment process. In addition, it would be premature to implement many of the RT recommendations before the EWG report is final and necessary policy development work occurs in light of EWG recommendations. As a final note, certain policy work cannot reasonably happen until the work of the IETF WEIRDS group is complete.**

**In any event, the RT report became final in May, 2012, but the EWG did not begin its work until the end of February, 2013. The length of the delay is particularly disturbing given that the announced start date was January. In addition, the selection process lacked sufficient transparency. ICANN did issue a request for volunteers. However, some volunteers were rejected while others who had not stepped forward were solicited. Rather than hand pick EWG members, ICANN should have accepted initial volunteers or, to make certain that the best possible candidates were considered, issued new calls for volunteers with needed skills or backgrounds if it perceived any gaps.**

2. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please indicate the level to which the implementation of the WHOISRT recommendations has resulted in the desired improvements in ICANN. Please provide specific information as to why you believe the recommendations have or have not resulted in improvements. What metrics do you believe would be appropriate to measure improvements?

**It is not reasonable to expect that the myriad Whois issues that have been present since the creation of ICANN and before can be addressed in a short time. In addition, as suggested above, meaningful considerations of many issues raised in the Whois RT report cannot begin until the EWG, WEIRDS and PDP efforts have been completed.**

## **Improving Accountability & Transparency**

1. How do you evaluate overall accountability and transparency of the ICANN processes? On a scale of 1 to 10 (1 meaning “none” and 10 meaning “full”), how would you rate the participation of the community in accountability and transparency issues? Are there other issues that should be addressed or investigated by the ATRT2 consistent with its mandate? If so, please provide specific and detailed descriptions of any such issues along with an explanation as to why such issues should be addressed by the ATRT2.

**5 - Paths exist for accountability and transparency. ICANN staff and the Board have relatively well defined roles. The community can participate through comments and participation in activities such as working groups. However, broader participation would be valuable. Too often the same names and organizations are on view. In addition, a critical and ongoing problem with respect to transparency and accountability exists with respect to policy vs. implementation distinctions, and the resulting extent to which essential community input is not solicited.. TMCH development is a prime example. When ICANN develops agreements with third parties: there is often no transparency to the community and agreements are not published even after repeated requests; ICANN includes terms to protect ICANN the corporation and the third party vendor but rarely assumes any accountability to protect members of the community.**

2. Are there other questions we should be asking consistent with the mandate of the ATRT? What are those questions? How would you answer those questions?

**The RySG notes that the AoC uses the term public interest. While reaching a consensus might be difficult, an attempt to craft a definition would be very useful in discussions of accountability, transparency, and the AoC.**

## **Affirmation of Commitment Reviews**

1. On a scale of 1 to 10 (1 meaning “not at all” and 10 meaning “fully”), please rate the effectiveness and efficiency of the Affirmation of Commitment review team processes. Please provide specific information as to why you believe the Affirmation review team processes have or have not been effective and efficient. What metrics do you believe would be appropriate to measure ATRT effectiveness and/or efficiency?

**9 - The work of the initial ATRT was excellent in its identification of the range of relevant issues and the clarity with which it explored them. Issues concerning effectiveness and efficiency relate to implementation, not the work of the team. Again, metrics are an issue. Progress completing a task does not indicate quality of the work.**

**The RySG recognizes that the last point begs an item in this question and many others. We applaud the ATRT 2 focus on metrics but do not necessarily have the expertise to suggest methods that don't ultimately become subjective, such as quality of work. We also recommend that, when making its final recommendations, it be more cognizant of time, money, and personnel resources needed to implement them than perhaps was the case with ATRT 1.**

- Have you/your community had sufficient time to review their recommendations and ICANN's implementation of the recommendations? If not, how much time do you believe is necessary?

**The RySG has followed ICANN's responses to ATRT recommendations since the team issued its final report and has had sufficient time to consider implementation matters.**

### **Concluding Thoughts**

**The RySG commends the ATRT2 for this effort. We believe that the survey shows that the Review is headed in a very useful direction, but the very broad extent of the questions and their critical importance to the review of the ICANN model demand much more time than has been available, even with the extension of time granted. The press of other time sensitive issues related to the new gTLD program, such the Beijing GAC Communiqué, finalizing registry & registrar agreements, and completing requirements for the TMCH, have prevented a thorough review of all items.**

**"We strongly believe that the ATRT2 would benefit greatly from well thought out and detailed responses to the questions it has asked. In the event of follow-up efforts, we suggest breaking the questions down into smaller sets and providing different response times for each set. This process will afford a more directed focus for each area.**

## RySG Level of Support

### 1. Level of Support of Active Members: (Supermajority)

1.1. # of Members in Favor:	11
1.2. # of Members Opposed:	0
1.3. # of Members that Abstained:	0
1.4. # of Members that did not vote:	3

### 2. Minority Position(s): N/A

## General RySG Information

- Total # of eligible RySG Members<sup>1</sup>: 14
- Total # of RySG Members: 14
- Total # of Active RySG Members<sup>2</sup>: 14
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 14
- Names of Members that participated in this process:
  1. Afiliias (.info, .mobi & .pro)
  2. DotAsia Organisation (.asia)
  3. DotCooperation (.coop)
  4. Employ Media (.jobs)
  5. Fundació puntCAT (.cat)
  6. ICM Registry, LLC (.xxx)
  7. Museum Domain Management Association – MuseDoma (.museum)
  8. NeuStar (.biz)
  9. Public Interest Registry - PIR (.org)
  10. RegistryPro (.pro)
  11. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)

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<sup>1</sup> All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RySG Articles of Operations can be found at [http://www.gtldregistries.org/about\\_us/articles](http://www.gtldregistries.org/about_us/articles) .

<sup>2</sup> Per the RySG Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

12. Telnic (.tel)
13. Tralliance Registry Management Company (TRMC) (.travel)
14. VeriSign (.com, .name, & .net)

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