



## **Responses to questions to the Community on Accountability and Transparency within ICANN (ATRT2)**

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

- 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?**

From the update to the community provided by the ATRT implementation report on 29 January 2013, it appears that all of the ATRT1 recommendations have been implemented. We note the improvement in the availability of Board-related materials such as; Board briefing documents and the rationale behind Board decisions. We welcome this improved communication, but this could be further improved to show that the Board has considered the wider implications of its decisions. In particular, the Board needs to be particularly attentive to concerns from those not normally involved in ICANN activities and ensure that they do give a reasoned response to input. We would also see as useful the Board’s response to substantive consultation input.

The metrics around the implementation of the first Accountability and Transparency review were adequate and the regular updates to the community helped in monitoring progress in the implementation of the recommendations. However, there does need to be a balance between making the updates simple and top line enough to be easy to follow, but also providing sufficient detail for the community to assess the extent of the implementation. Ideally updates should provide a summary which gives a clear overview at a glance, but then also provide more detail to enable the community to get a full picture of the extent to which the recommendation is embedded into ICANN processes and what the full effects of the implementation are.

We would recommend that the response to, and progress in implementation of, ATRT recommendations (or to the recommendations of any of the Affirmation of Commitments reviews) should feature as part of a Board update at every ICANN meeting. The fundamental role of these reviews in assuring ICANN’s accountability suggests that they should be given the highest visibility and priority.

As part of its work, we think that it would be useful for an ATRT to define what it sees as a successful outcome. This would allow the ICANN community to understand the reason for recommendations and the expected improvement. This could be supplemented by community surveys to see how effectively the objectives are being met, looking at deliverables, rather than process.

- 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?**

The update to the community provided by the ATRT implementation report on 29 January 2013 outlines how the ATRT review and subsequent recommendations have triggered other improvements which are outside the scope of the original ATRT review. We would agree that, due to the nature of the recommendations, more improvements will be seen in the long term which makes it hard to assess the effectiveness of the implementation at this stage.

***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?**

We welcome the work that has been done already on improving the Board governance as part of the Conflict of Interest and Ethics Reviews, for example clarification around the issue of payments to Board members, and setting a clearer policy for recusal of conflicted parties from Board discussions and decisions. We note that the Board has established codes of behaviour. However, it would be useful to have a report on the outcome of the reviews and how these have been implemented.

Since the first ATRT, the ICANN Board has shown ever increased professionalism and the work of ATRT-1 must take some credit for this. However, this should not be review driven: the Board should also monitor and improve accountability and transparency: this should feed in to the reviews and could be a metric for Board performance..

- 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.**

We support the mechanism for nominating and electing ICANN Board members and believe that it is a good example of a bottom-up mechanism for community input.

We believe that it is necessary for a significant part of the Board to be from within the various communities directly involved in the DNS to ensure the necessary expertise and industry knowledge. However, as part of the ongoing process of encouraging engagement in ICANN from the wider Internet Community, we would welcome initiatives to encourage recruitment of independent Board members from outside the ICANN community and who bring wider expertise into the discussion.

ICANN is an unusual type of organisation, and the issues that the Board discusses are complex. We support the current length of Board member terms as it allows time for new members to get up to speed with the issues being discussed, as well as with the organisation, its nature and its

role. This is particularly important if ICANN is able to increase representation from outside the usual ICANN community: shorter appointments could be a barrier to this and to getting the full benefit from such “external” appointees.

The improvements coming from the Conflict of interest Review have resulted in a much clearer process for the nomination and election of Board members. We believe that the Board operates to a very high professional standard, but it also needs to demonstrate the standards it works to.

- 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?**

How the Board interacts with the GAC is crucial in ensuring that it understands the public policy concerns and is able to address them. Recently the Board has improved its interactions with the GAC. However, to continue to strengthen this relationship and make it even more productive, perhaps the Board could lead the way in opening earlier discussions with the GAC on upcoming issues and in particular to ensure understanding of the public policy principles that need to underpin the discussions. A more dynamic and interactive exchange in open GAC/ Board meetings could be explored to try to achieve this.

***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?**

We would refer to the answer to the previous question, around early engagement with the GAC.

As indicated in the WSIS Tunis Agenda (paragraph 70), the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources in an important role for government engagement within ICANN. Earlier engagement with the GAC would help develop these high level public policy principles and allow the GAC to identify areas of concern earlier in the discussion process and help the community understand the issues. Good regulation should be predictable, proportionate and consistent. While not a formal regulatory environment, these principles should still apply to GAC advice, yet somehow it often appears to catch the community by surprise. Early engagement to understand the issues could help address this and it would be desirable and beneficial for increased interaction between the GAC and other stakeholder groups, as well as better engagement between the GAC and the Board.

- 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.**

The process for appointment of GAC members is a decision for national Governments. GAC members are accountable to their Governments and it would not be appropriate for ICANN or the wider community to seek to establish rules for their appointment. However, GAC members might wish to consider whether a code of conduct might be appropriate, not least to show the importance that the GAC places on standards of behaviour.

GAC members have a responsibility to their citizens and the wider public interest. Early engagement of the GAC is also important to ensuring predictability: improving understanding of the rationale behind decisions will help the wider community understand the advice and recognise how it fits in with the underlying principles.

- 8. 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?**

There are few occasions when the GAC discusses issues in a consensus-developing dialogue with the Board or with other stakeholders. Part of the result of this is that messages from the GAC are often misunderstood or seen as aggressive, and vice versa. This probably has a limiting effect on the GAC’s impact.

The members of the GAC bring considerable experience from their work with advisory and regulatory committees within their governments. The recent discussions around conflicts of interest and ethical values are a good example of where the GAC has a lot to bring to the discussion and where there are important lessons to learn for this input. So GAC engagement here was very important. However, it was also clear that both sides were frustrated by the discussions, perhaps in part because of misunderstanding in the exchanges.

The way that discussions are structured should allow more frequent exchanges between the Board and the GAC on key topics to ensure a mutual understanding of the main issues at stake. As well as focussing on the GAC/ Board discussions, we believe that it is also key to improve communication and interaction between the GAC and all the SO/ AC so that a mutual understanding and positive dialogue can be developed.

However, the GAC’s workload (as with other communities) is heavy and this might be a barrier to its ability to provide an effective oversight on ICANN’s accountability and transparency.

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

- 9. 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.**

ICANN has well documented procedures for receiving input from within the ICANN community. However, there appears to be insufficient forward planning for the schedule of consultations and their priority.

We would note that the number of consultations is very high: we can understand the reasons for this, bearing in mind the bottom-up nature of ICANN, but we can also see it as a barrier to engagement: many stakeholder simply do not have the capacity to respond to so many consultations.

Clear summaries, good explanations of the purpose of the consultations, improved indexing so that stakeholders can identify what is important to them, advanced planning (scheduling), and spacing out consultations could help improve appropriate engagement resulting in higher response rates and more useful results from consultations.

We welcome the steps made by the current CEO to increase global participation and to reach out beyond the existing ICANN community. These are new initiatives and it will be important to monitor progress in promoting wider engagement.

We would like to take this opportunity to suggest that, as well as creating new forums and structures, it is important that ICANN works with its existing global stakeholders to reach out in their local communities where they are already well established and networked. For example, ccTLD registries can provide a ready-made global network for ICANN to use for outreach.

We would like to take this opportunity to note that in order to fully support the global outreach and ensure relevant input, ICANN documentation needs to be easier to understand and more accessible. Even for a native English speaker, it can be hard to understand a lot of the documentation. Clear summaries, including on the purpose of the proposal and its main implications, would also make it easier to reach out to potentially interested communities.

**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?**

Nominet has provided input to ICANN on a number of occasions. However, it is not always clear what happens with consultation responses. We would like to highlight this example of responding to consultation input: <http://archive.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf>. This report is extremely thorough and sets out the different themes of responses and sets what action was taken in response and why (including, crucially on where input was not accepted).

We would note that there are a number of barriers to public input into ICANN. In particular there are too many consultations running at any one time which makes it hard to monitor and keep track of them all. They are not clearly advertised and it is not always clear the purpose of the consultation. There is often too much complex and difficult to understand material around each consultation.

There are a number of existing groups within ICANN such as the GAC, ccTLDs and other regional organisations that are a good gateway to specialists within their own countries but they appear to be under-utilised as a way of raising awareness of consultations.

We would recognise the work of the ICANN staff in processing public input transparently, in particular in summarising responses. We believe that this role is vital: before a recommendation

goes to the Board, it should be clear what substantive issues have been raised and what action is proposed in order to address concerns.

- 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?**

Prior to the policy development process on new gTLDs, the ICANN meeting agenda included cross-constituency discussions on particular issues or themes. We would encourage the re-instatement of these and particularly we wonder whether cross-constituency workshops prior to, or early in the process would allow broad understanding of the issues across communities. This approach would also help break down silos within ICANN. The overall scheduling of the constituency meetings will need to be revised in order to enable all SO/ACs to participate.

***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.**

By facilitating early engagement, in particular from those not normally engaged in ICANN, and encouraging all relevant community groups to be involved, we believe that decisions could be more consensus-based.

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

Recent improvements have led to a documented, transparent process with clearer reasoning behind decisions. As a result, we hope that the Board’s decisions will be less controversial and more easily defended.

- 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?**

***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.**

As outlined above, we believe that there is still too little interaction between the different ICANN communities. This could be improved, looking to seek more cross-community engagement and consensus.

- 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?**

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

- 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?**

Some progress has been made on implementation of the SSRT with the high level framework being discussed at ICANN Beijing. However it is still quite high level and there is much to do before Durban. We agree with ICANN’s recommendation that full implications of these recommendations should be explored.

- 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?**

The Board needs to monitor not just the implementation, but also what the effect of the implementations is.

#### **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?**

We welcome the creation of the Expert Working Group on gTLD Directory Services. We are pleased to note that the group will consider the WHOIS review team report as part of their discussions. However, we would be grateful for more information on how these groups relate to each other.

- 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?**

**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.**

Other than the four yearly accountability and transparency reviews, we are not aware of any processes to monitor and recommend changes in between other than the general responsibility of the Board mentioned above. The process for implementing the ATRT recommendations was slow because of the need to develop community buy-in. Some thought needs to be given to this interaction and how the reviews and the bottom-up policy development processes work together,

- 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?**

**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?**

We welcome the Board’s decision to accept the recommendations of the ATRT, SSRRT and WHOIS review teams. Nominet believes that it is very important for these recommendations to be implemented, or at least carefully considered, in order to improve the accountability of ICANN. The reviews are fundamental to ensuring ICANN’s wider accountability and the recommendations have to be taken very seriously at all levels in the organisation. The quick and timely implementation of these recommendations is key. ICANN needs to manage this process and keep the community informed on progress.

Board responsibility for overseeing this is important. We are not convinced that this process is in place.

- 2. Have you/your community had sufficient time to review their recommendations and ICANNs implementation of the recommendations? If not, how much time do you believe is necessary?**



We believe that it should be very easy for the community to keep track of the implementation. Clear and concise updates should be given under the headline of each recommendation with clearly identified timescales. Again we are not convinced that this process is in place.

**Alex Blowers**  
**Director of Legal & Policy**  
**Nominet**  
**May 2013**