

gTLD REGISTRIES STAKEHOLDER GROUP
COMMENTS ON THE ATRT2 FINAL REPORT AND RECOMMENDATIONS

Date: **21 February 2014**

Public Comment URL:

<http://www.icann.org/en/news/public-comment/atrt2-recommendations-09jan14-en.htm>

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

Introduction

The RySG wants to first of all thank and compliment the Second Accountability and Transparency Review Team (ATRT2) for the extensive and thorough efforts that they expended in performing the review. It is clear from the process leading up to the final report as well as from the quality and completeness of the report that the review team spent huge amounts of time fulfilling their responsibility and in our opinion that time was very well spent.

We also want to express our appreciation for the ATRT2's careful consideration and inclusion of the input that the RySG and its participants submitted during the process. The report demonstrates that our input was not only received but also incorporated into the ATRT2's conclusions.

The comments that follow only address a subset of all the recommendations in the final report, but we want to be clear that, except as stated otherwise, the RySG generally supports all of the recommendations whether we commented on them or not. Our comments below focus on recommendations that are especially relevant to registries; they are organized in the order that they appear in the report and, where applicable, the text of the final recommendation is indented and copied in *italic font*.

We note that many of the recommendations are in follow-up to ATRT1 recommendations that never have been fully implemented. We are very pleased that the ATRT2 thoroughly evaluated the fulfillment of ATRT1 recommendations, and that recommendations were included in this report to ensure that the earlier recommendations will be addressed fully. We also hope that the speed and completion rate of ATRT2 recommendations will be much better than that of ATRT1.

On the other hand, the RySG would like to applaud the fact that ICANN already has taken steps to address issues raised in the ATRT2 Initial and Final Reports. For example, the Board has begun developing a scorecard system for reporting the status of its consideration of Advisory Committee (<https://www.myicann.org/board-advice>).

Report Section 5, Board Performance & Work Practices

Recommendation #4

“The Board should continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and policy implementation. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the Board on matters, including but not limited to policy, implementation and administrative matters, on which the Board makes decisions.”

We agree that a “continuing lack of clarity about “policy v. implementation” causes uncertainty at best and distrust at worst about whether ICANN Board or staff is acting within their proper scopes, or whether ICANN is acting in a “top-down” as opposed to a “bottom-up” manner.” In the new gTLD implementation process, in our opinion, the Board and staff sometimes acted in a ‘top-down’ manner and justified their conduct on the basis that they determined that an issue was ‘implementation’ and not ‘policy’. It is our firm belief that the multi-stakeholder model does not end when policy development concludes and implementation begins. That is why we support the decision in the GNSO to change the issue title from “policy v. implementation” to “policy & implementation.” We recognize that guidelines are needed in this area and we fully support and are actively involved in the work of the Policy & Implementation WG currently underway in the GNSO.

Report Section 8, GAC Operations and Interactions

Recommendations #6

“Increased transparency of GAC-related activities”

We want to preface our comments on this by recognizing that, since ATRT1, there have been increased efforts on the part of the GAC to improve transparency and that efforts are currently underway to find ways in which the GAC can be involved in GNSO policy development much earlier in the process. We support those efforts and will contribute as possible to making them successful.

In our view there are lots of useful examples of activities under this recommendation but we want to call attention to two that particularly stand out to us:

- “Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself”
- “When deliberating on matters affecting particular entities, to the extent reasonable and practical, give those entities the opportunity to present to the GAC as a whole prior to its deliberations.”

We fully agree with ATRT1 and ATRT2 that “there continues to be a lack of GAC early involvement in the various ICANN policy processes.” As noted in the report, this is especially true with regard to GNSO policy processes. And we are pleased that discussions are presently underway between the GAC and the GNSO to explore ways that this could be improved.

We also agree with this conclusion in the report: “Comments show that large portions of the ICANN community do not share a common understanding of the different roles of the Board, the GAC and the GNSO, and that this lack of understanding of the different roles ‘can result in a lack of respect for the input of the various stakeholders.’” And we would add that this lack of understanding applies to both the GAC in understanding GNSO processes as well as to the GNSO in understanding GAC processes.

Report Section 11. Decision-Making, Transparency & Appeals Processes

Recommendation #9.2, Explore Options for Restructuring Current Review Mechanisms

“The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN’s structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.”

The RySG strongly supports this recommendation, but we note that previous efforts in this area have resulted in negligible change, so we encourage the Board to consider the results of this group very seriously.

Report Section 13. Cross-Community Deliberations

Recommendation 10.3

“The Board and the GNSO should charter a strategic initiative addressing the need for ensuring more global participation in GNSO policy development processes, as well as other GNSO processes. The focus should be on the viability and methodology of having the opportunity for equitable, substantive and robust participation from and representing:

- a. All ICANN communities with an interest in gTLD policy and in particular, those represented within the GNSO;*
- b. Under-represented geographical regions;*
- c. Non-English speaking linguistic groups;*
- d. Those with non-Western cultural traditions; and*
- e. Those with a vital interest in gTLD policy issues but who lack the financial support of industry players.”*

The RySG supports this recommendation especially if it results in removing barriers for some groups to participate. We have a suggestion for consideration in the strategic initiative: In the case of the GNSO, what if one each of the NomCom appointees to the GNSO Council were appointed from each of the three ICANN regions that the ATRT2 report identified as underrepresented and they were assigned to a special liaison role to their respective regions to encourage greater participation? Various details of NomCom processes and GNSO Council roles would need to be adjusted but those seem like manageable tasks.

Recommendation 10.5

“The Board must facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.”

We think this is a good idea but we question whether it is achievable. What does ‘equitable participation’ mean? That question would need to be answered so that the fulfillment of the recommendation could be measured. We support efforts to facilitate participation of those who lack financial support but participation involves more than just financial resources. Providing financial support for those who are not willing or able to commit the time needed would not be a good use of funds.

Any such program must be cost effective. Providing financial support is only a means to an end. Meaningful eligibility criteria, transparent application and selection processes, expectations of meaningful participation, and full reporting seem necessary to achieve the desired outcome. In addition, careful consideration to how financial limitations might conflict with “equitability” will be essential.

Report Section 14, AoC Review Process Effectiveness

Considering how long it took to complete many of the ATRT1 recommendations and the fact that 10 are still incomplete (including 4 ongoing), we strongly support ATRT2 Recommendation 11 with special emphasis on these parts of that recommendation:

- *11.1 The Board should ensure that the ongoing work of the AoC reviews, including implementation, is fed into the work of other ICANN strategic activities wherever appropriate.*
- *11.4 The Board should prepare a complete implementation report to be ready by review kick-off. This report should be submitted for public consultation, and relevant benchmarks and metrics must be incorporated in the report.*
- *11.6 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 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.*

Report Section 15. Financial Accountability & Transparency

The community has been requesting improvements to ICANN financial accountability since nearly the beginning of ICANN with only limited responsiveness. It is time for that to change. Therefore, we strongly support ATRT2 Recommendation 12:

- *12.1. The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.*
- *12.2. The Board should explicitly consider the cost-effectiveness of ICANN's operations when preparing its budget for the coming year, in keeping with ICANN's status as a non-profit organization operating and delivering services in a non-competitive environment. This should include how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.*
- *12.3. Every three years the Board should conduct a benchmark study on relevant parameters, (e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc.) suitable for a non-profit organization. If the result of the benchmark is that ICANN as an organization is not in line with the standards of comparable organizations, the Board should consider aligning the deviation. In cases where the Board chooses not to align, this has to be reasoned in the Board decision and published to the Internet community.*
- *12.4. In order to improve accountability and transparency ICANN's Board should base the yearly budgets on a multi-annual strategic plan and corresponding financial framework (covering e.g. a three-year period). This rolling plan and framework should reflect the planned activities and the corresponding expenses in that multi-annual period. This should include specified budgets for the ACs and SOs. ICANN's {yearly} financial reporting shall ensure that it is possible to track ICANN's activities and the related expenses with particular focus on the implementation of the (yearly) budget. The financial report shall be subject to public consultation.*
- *12.5. In order to ensure that the budget reflects the views of the ICANN community, the Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and sufficient time is allocated for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting among the Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.*

Regarding 12.2, the RySG believes that this recommendation is of critical importance. Cost-effectiveness should continually be measured against the value of services delivered. To this end, there should be well defined metrics and detailed reporting to the community. ICANN functions as a monopoly in its space and should ensure proper checks and balances are in place to fulfill its public interest mandate. It is too easy to just increase revenue via registrar and registry fees that

ultimately are borne by gTLD registrants to cover increased expenses. ICANN has a stewardship responsibility to registrants just like it does to other members of the community.

Regarding 12.5, this recommendation reflects what a significant number of ICANN stakeholders have been saying for many years. Unfortunately, very little progress has been made to date. ICANN now has new financial systems that can support the consultation process recommended by ATRT2. However, for the FY15 budget process, it is not clear that the community will be provided enough detail early enough to provide comments in time for staff and the Board to make changes in the proposed budget before it is approved. It is time for this unsatisfactory budgeting cycle to end.

RySG Level of Support

1. Level of Support of Active Members: Supermajority

1.1 # of Members in Favor:	24
1.2 # of Members Opposed:	0
1.3 # of Members that Abstained:	0
1.4 # of Members that did not vote	1

2. Minority Position(s): None

General RySG Information

- Total # of eligible Voting RySG Members¹: 25
- Total # of Voting and Non-voting RySG Members: 30
- Total # of Active Voting RySG Members²: 30
- Minimum requirement for supermajority of Active Voting Members: 17
- Minimum requirement for majority of Active Voting Members: 13
- # of Members that participated in this process: 30
- Names of Members that participated in this process:

¹ 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://gtldregistries.org/sites/gtldregistries.org/files/Charter_of_the_gTLD_Registries_Stakeholder_Group.pdf

² 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.

1. Afilias, Ltd.
2. Charleston Road Registry (non-voting member)
3. .CLUB Domains LLC
4. CORE (non-voting member)
5. Donuts Inc.
6. DotAsia Organisation
7. dotBERLIN GmbH & Co. KG
8. dotCooperation
9. Dot Kiwi Ltd.
10. Dot Latin, LLC
11. DotShabaka Registry
12. dotStrategy Co.
13. Employ Media LLC
14. GMO Registry, Inc. (non-voting member)
15. ICM Registry LLC
16. Neustar, Inc.
17. Public Interest Registry (PIR)
18. Punkt.wien GmbH
19. Societe Internationale de Telecommunication Aeronautiques (SITA)
20. Starting Dot Limited
21. Telnic Limited
22. TLDH Limited
23. Top Level Design LLC
24. Tralliance Registry Management Company (TRMC)
25. Uniregistry Corp. (non-voting member)
26. United TLD Holdco Ltd. (non-voting member)
27. Universal Postal Union (UPU)
28. VeriSign
29. XYZ.COM LLC
30. Zodiac

- Names & email addresses for points of contact
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