



IPC Comments on the ATRT2 Final Report
February 21, 2014

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) is pleased to provide comments on the ATRT2 Final Report.

The IPC appreciates the efforts of the ATRT2 for developing a detailed and comprehensive report. Overall, we support the ATRT2's recommendations for improving ICANN's transparency and accountability. We previously provided comments on the ATRT2 Draft Report¹, and are pleased that some of our input has been incorporated. Subject to our comments below, we encourage the Board to adopt the Final Report (and develop a respective implementation plan) as soon as possible.

In our comments on the ATRT2's Draft Report, the IPC focused on three pertinent issues, in particular: (i) the Board's Performance and Work Practices; (ii) the Public Comment process; and (iii) Financial Accounting and Transparency. While we find the ATRT2's analysis and recommendations to be very constructive in these areas, we offer additional suggestions to help build and foster the "culture of accountability and transparency" that is currently lacking within ICANN as identified by the ATRT2.

Financial Accounting and Transparency

The Draft Recommendations of the ATRT2 published on October 15, 2013, set forth five recommendations intended to increase the Financial Accountability and Transparency of the organization. These included: (1) implementing new financial procedures to ensure the ICANN community can participate and assist the Board in

¹ See IPC Comments available at: <http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfToree1LWR0.pdf>

planning and prioritizing the work and development of the organization; (2) recommending that the Board to explicitly consider, through a separate consultation, the cost-effectiveness of its operations when preparing upcoming budgets, including how expected increases in income can be reflected in priority of activities and pricing of services; (3) recommending that ICANN conduct a benchmark study every three years on relevant parameters as a non-profit organization; (4) recommending that the Board base yearly budgets on a multi-annual financial framework reflecting planned activities and corresponding expenses and tracking implementation across years; (5) recommending that the Board improve the budget consultation process by ensuring sufficient time is given so that the community can provide input and the Board can take that input into account before approving the budget; this would also include time for an open meeting between the Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

In the IPC's comments submitted December 13, 2013, we strongly supported these five recommendations to increase Financial Accountability and Transparency. The IPC also stressed the importance of prioritizing Recommendation 12 in the Final Report and of ICANN continuing to seek a higher level of accountability and transparency as an ongoing objective over the next few years.

The ATRT2 Final Report and Recommendations explicitly referenced the comments of the IPC and other community stakeholders supporting the draft recommendations and their objective of increasing financial accountability and transparency. The Final Recommendation 12 also provided more detail regarding key elements of the recommendations that suggest continued progress towards a more accountable and transparent ICANN.

The IPC applauds the ATRT 2's consideration of and continued attention to the issues and public comments relating to financial accountability and transparency. We continue to stress that these Recommendations be given high priority and remain an ongoing focus for ICANN especially over the next few years.

These specifications in the Final Report that expand or clarify draft recommendations include:

- with respect to the Board’s benchmark study (Recommendation 12.3), the Final Recommendation clarifies that if the result of the benchmark shows that if ICANN is not in line with the standards of comparable non-profit organizations, the Board should consider aligning the deviation. If the Board chooses not to align, it must provide and publish the reasoning for this decision to the Internet community.
- with respect to the Board basing yearly budgets on a multi-annual strategic plan and corresponding financial framework (Recommendation 12.4), the Final Recommendation clarified the importance of ensuring that it is possible to track ICANN’s activities and the related expenses with particular focus on the implementation of the yearly budget through the Board’s yearly financial reporting. The Final Recommendation included a recommendation that the financial report be subject to public consultation.

With respect to Recommendation 12, the Final Report considers the previous comments of the IPC and other stakeholders and provides further details as to how the Board can increase its accountability and transparency in financial matters. We believe the changes made to the Final Recommendation provide a means for increased accountability by way of suggesting alignment of finances should the recommended benchmark study reveal a deviation from the standards of comparable organizations, and by recommending the tracking of the implementation of budget and strategic plans through yearly financial reporting (as set forth in Recommendation 12.4). The recommendations will also increase transparency by suggesting that the Board provide and publish any reasoning behind a decision should it choose to not to align itself (with comparable organizations) if the benchmarking study reveals a deviation from these standard practices, and by recommending that the yearly final reports be subject to public consultation in Recommendation 12.4.

The Public Comment process

In IPC’s previous comments, the constituency expressed several concerns regarding the current ICANN public comment process. These included:

- Experiences leading to the belief that comments were often not considered seriously
- Inadequate time in which to develop consensus comments on complex and important matters, notwithstanding the adoption of a standard initial and reply comment periods of 21 days each.
- Failure to suspend ongoing comment periods when ICANN meetings are taking place concurrently.
- Actions taken before or immediately after the end of a public comment period, again creating the impression that comments are not seriously considered in final decision-making.
- Lack of clarity in initial notices regarding the scope of comments being sought.

The Final Recommendation on this subject, found at page 45 of the ATRT2 report, states:

Final Recommendation #7

Public Comment Process

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.

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).

While we support these recommendations, they appear to be generally nonresponsive to the concerns expressed in our prior comments because there is no commitment that staff will meaningfully review public comments before decisions are made, and refrain from taking actions immediately after or even before the end of the public comment period that addressed the subject at issue. It contains no specific recommendations for lengthier comment periods for Board

consideration which appears to have broad community support as expressed in various comment forums. The final recommendation does not explicitly address the need to suspend comment periods during ICANN public meetings, nor contain an indication that any action will be taken to clarify the scope of requested comments.

While we appreciate the consideration of a process whereby commenters can request changes in staff's characterization of their comments, this change in itself is insufficient to address the fundamental problems previously articulated by the IPC. Also, while noting that staff "was developing new tools to allow for Comment through different means (e.g. social media tools) and would consult with the community before deploying such tools", we question that such means can supply the depth of detail required for many important issues issued for public comment – and believe that it is far more important for ICANN to make fundamental improvements to its existing public comment process before it experiments with new means of receiving comments.

The Board's Performance and Work Practices

The ATRT2's Draft Recommendation 2 as published in the Draft Report set forth: "Develop metrics to measure the effectiveness of the Board's functioning, and publish the materials used for training to gauge levels of improvement." Recommendation 2 in the ATRT2 Report published December 31, 2013 added "and improvement efforts" after the word "functioning." Based on this change, it is apparent there was agreement that improvement efforts by the Board in this area should be monitored as well as the actual functioning of the Board.

We support this Recommendation in its revised form, so far as it goes.

In the IPC's prior comments on this recommendation, the constituency suggested that records be kept of not only instances of Board member recusals, but the reasons behind the recusal, and whether the recusal is one-time or recurring.

Further, we recommend that ICANN focus on the nomination and approval qualifications and procedures for Board members in an effort to determine whether such nominating and approval procedures should be modified in a manner that would reduce the number of conflicts and recusals.

Accordingly, we suggest a slight modification to Recommendation 2 that will further enhance ICANN accountability, as per:

“Develop metrics to measure the effectiveness of the Board’s functioning, *member selection criteria*, and improvement efforts, and publish the materials used for training to gauge levels of improvement, *and publish the results of the measurements.*”

Conclusion

The IPC commends the ATRT2 for its efforts in developing a comprehensive report, and subject to our suggestions above, we strongly encourage the ICANN Board to adopt the recommendations to ensure ICANN is accountable to all stakeholders.

Thank you for considering our views on these important issues.

Respectfully submitted,

Intellectual Property Constituency (IPC)