

## **Personal Comments on the ATRT2 Draft Recommendations – 21 Nov 13**

These comments are submitted by Becky Burr, Paul Diaz & Chuck Gomes. Note that the comments are provided in *italic font* after each ATRT2 recommendation. Also note that they are our personal comments, i.e. we are submitting them before review and endorsement by the Registries Stakeholder Group (RySG) because of time constraints. We do expect comments from the RySG will be submitted during the Reply Period.

### **New ATRT2 Recommendations arising from issues addressed by ATRT1**

1. Develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyze those findings over time.

*Provided that the measures are not only objective but also communicated in advance to Board members and also used to improve Board selection going forward, this recommendation seems fine.*

2. Develop metrics to measure the effectiveness of the Board's functioning, and publish the materials used for training to gauge levels of improvement.

*This seems useful with the same conditions as for 1 above.*

3. Conduct qualitative/quantitative studies to determine if the qualifications of Board candidate pools improved once compensation was available, and regularly assess Director's compensation levels.

*What data points would be needed as inputs into such studies? Is this data sufficiently objective and available at reasonable cost? Would "quality" be measured at the time of appointment or subsequently, based on performance? Assuming the Nominating Committee rules permit the kind of study based on documents submitted in support of an Expression of Interest, at some point it would be important to evaluate the quality of a Board Member's contribution in that role to ensure that an increasingly qualified candidate pool delivers an increasingly functional Board. Regularly assessing Director compensation levels seems like a reasonable recommendation as long as there are clear metrics by which to do it.*

4. Develop complementary mechanisms for SO/AC consultation on administrative and executive issues to be addressed at the Board level.

*We are not clear what this means. Complementary to what?*

5. Determine how the proper scope of redaction could be reasonably confirmed.

*This is an excellent recommendation. It is our sense that many in the community feel that ICANN too easily avails itself of redaction, and would welcome clearer rules that underscore accountability and transparency.*

6. Undertake initiatives to enhance understanding and transparency of GAC deliberations, including publication of GAC meeting agendas, transcripts, rationales for decisions, and a formal

process for notifying and requesting GAC advice; expanding public observation/participation in GAC conference calls, and restructuring meetings to better engage the community; and exploring ways to facilitate GAC early on ICANN's policy development processes.

*This is also an excellent recommendation, but the implementation plan will be key. In fact, it contains a lot of parts that might be better off broken into distinct categories. For example, publication of GAC meeting agendas, transcripts, and rationales all involve a more robust flow of information from the GAC to the rest of the community. Formal, documented, and agreed upon processes help to set expectations, avoid surprises, and provide more predictability and stability. Expanding public participation in GAC meetings, and facilitating early GAC participation in the policy development process is probably the most important – and the most difficult – change that needs to be made. While extremely important, it is also very complex and a dramatic departure from the status quo. Therefore it might be more manageable if broken into parts.*

6.1. The Board should request that the GAC consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard.

*We support these recommendations and encourage sincere efforts by ICANN staff, the Board and the community in collaborating with the GAC in considering and implementing improvements as illustrated in the examples provided.*

7. 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.

*These are all useful suggestions. As one example of a mechanism that could improve the value of public comments, time allotments might be permitted to vary as part of the formal comment process depending on the complexity of issues or expected need for quantitative studies. The value of any such variation would have to be documented thoroughly*

8. To support public participation, ICANN should review capacity of the language services department versus the Community need for the service, and make relevant adjustments such as improving translation quality and timeliness and implementing continuous improvement via benchmarking of procedures used by international organizations.

*These should be ongoing management practices with the goal of continuous improvement.*

9. Consideration of decision-making inputs and appeals processes (Report Section 11)

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."

*Agree. However, this amendment should be more detailed, with language if nothing else such as adding “or did not take” after “took.”*

## 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.

*We strongly support this recommendation. ICANN should commit to adequately support the work of the Special Community Committee, including with respect to research and independent expertise.*

## 9.3. Review Ombudsman Role

The Ombudsman role as defined in the Bylaws shall be reviewed to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

- A role in the continued process review and reporting on Board and Staff transparency.
  - A role in helping employees deal with issues related to the public policy functions of ICANN
  - A role in proper treatment of whistleblowers and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

*Agree.*

## 9.4. Develop Transparency Metrics and Reporting

As part of its yearly report, ICANN should include:

- A report on the broad range on Transparency issues with supporting metrics.
  - A discussion of the degree to which ICANN, Staff and Community, are adhering to a standard of default transparency or where decisions to either use Chatham House Rule or redaction is made on a case by case basis and is documented in a transparent manner.
  - Statistical reporting on ICANN Board information and report disclosure, to include:
    - The usage of the Documentary Information disclosure Policy (DIDP)
    - Percentage of Board Book and other information that is released to the general public
    - Number and nature of issues that Board determined should be treated at either:
      - Under Chatham House Rule
      - Completely confidential

- A section on employee whistleblowing activity, to include metrics on:
  - Reports submitted
  - Reports verified as containing issues requiring action
  - Reports that resulted in change to ICANN practices
- An analysis of the continued relevance and usefulness of existing metrics, including
  - Considerations on whether activities are being geared toward the metrics (aka, teaching to the test) without contributing toward the goal of genuine transparency
  - Recommendations for new metrics

*These all seem like useful recommendations but it might be costly to implement them so cost-effectiveness relative to perceived value should be evaluated with community input.*

#### 9.5. Establish a Viable Whistleblower Program

Adopt the One World Trust and/or Berkman Center recommendations to establish a viable whistleblower program. The processes for ICANN employee transparency and whistleblowing should be made public. ICANN also should arrange for an annual professional audit of its whistleblower policy to insure that the program meets the global best practices.

*Agree.*

### **New Recommendations Arising From Issues Not Addressed by ATRT1 Recommendations**

#### 10. Improve the effectiveness of cross community deliberations (Report Section 13)

10.1. To enhance GNSO PDP processes and methodologies to better meet community needs and be more suitable for addressing complex problems, ICANN should:

- Develop funded options for professional facilitators to assist GNSO PDP WGs, and also draft explicit guidelines for when such options may be invoked.
- Provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO PDPs. The GNSO must develop guidelines for when such meetings are required and justified.
- Work with the GNSO and the wider ICANN community to develop methodologies and tools to make the GNSO PDP process more time-effective, resulting in quicker policy development as well as increasing the ability to attract busy community participants into the process.

*These are all worthwhile goals but they must be pursued without compromising the bottom-up multi-stakeholder model.*

10.2. The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to PDP WGs and that the GAC has effective opportunities to provide input and guidance on draft PDP outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment.

*Strongly agree.*

10.3. The Board and the GNSO should charter a strategic initiative addressing the need of ensuring global participation in GNSO PGP, as well as other GNSO processes.<sup>6</sup> The focus should be on the viability and methodology of having equitable participation from:

- under-represented geographical regions;
- non-English speaking linguistic groups;
- those with non-Western cultural traditions; and
- those with a vital interest in GTLD policy issues but who lack the financial support of industry players.

<sup>6</sup> The ATRT2 is also considering generalizing the fourth bulleted item of 10.3 to facilitate having such volunteers in all areas and not just the GNSO PDP, ensuring that the public interest is properly supported in all ACs and SOs. Comments on such a recommendation would be appreciated. This is an extension of the concerns listed in the PDP expert's report from the GNSO PDP to the breadth of ICANN's bottom-up activities.

*A critical term in this recommendation is 'equitable participation'. It is quite possible that that is an unachievable goal regardless of how many resources are devoted to it. A more realistic term would be 'equitable opportunity to participate'. The bottom line is that the interest and willingness to constructively participate will vary greatly by the topic, by individual and organizational availability and by how individuals and organizations may be impacted. Also, what does 'equitable' mean? Assuming it means 'equal', it should be realized that 'equal participation' is not always needed at all stages of a process. For some stakeholders, reviewing and commenting on the results of a process at the end will be sufficient depending on the subject matter. A very good example of this in the GNSO is the Inter-Registrar Transfer Policy PDPs where there were only a small group of participants that were active in the PDP WGs from just a few constituencies but they had the needed expertise to produce recommendations for broader community review and comment; moreover, there was opportunity of input from all throughout the process. It could easily be argued that there was not 'equitable participation' but a good case can be made that the results achieved to date have received broad support, benefit the public interest and are implementable.*

*Participation in all workgroups should be encouraged with the same goals discussed for GNSO PDP WGs. Non-policy development groups may focus on more narrow topics or*

*require different analytical approaches than are common to PDPs. In addition, some value may exist in having individuals serve on non-PDP projects first because of increased process complexities with PDP WGs.*

10.4. To improve the transparency and predictability of the PDP process:

- The Board should clearly state the process for setting gTLD policies in the event that the GNSO cannot come to closure on a specific issue in a specified time-frame. This resolution also should note under what conditions the Board believes it may alter PDP Recommendations after formal Board acceptance.

*We have serious reservations about this recommendation, or at least the way it is stated. The first problem with this recommendation is that it assumes it should always be possible to find consensus on an issue. It is also in tension with ICANN's bottom-up multi-stakeholder approach, and assumes that the Board should be empowered to make a unilateral decision when there is no consensus for a particular action in the community. The third problem is that it assumes that a specified time-frame could be reasonably defined in advance and it also seems to assume that one time frame would fit all policy development efforts.*

*This does make sense in a case where security and stability may be at risk, which is why the Board has always had authority to enact temporary specifications and policies without a formal process leading to the adoption of Consensus Policy. Outside that context, however, the legitimacy of any such action by the Board – and ICANN itself – is put at risk. It is hypocritical to give lip service to the multi-stakeholder model only to cut it short if it takes longer than some arbitrary time limits. In our extremely diverse global community bottom-up, multi-stakeholder processes will be slow and messy. We should do all we can to speed them up but we must be aware that speeding them up may risk the opportunity for all stakeholders to participate in a meaningful way and to work together to try to reach solutions that most can support.*

*We also note that the 2013 RAA and the New gTLD Registry Agreement now contain processes that permit unilateral action by the Board. Absent experience that demonstrates the inadequacy of those mechanisms, it is not clear why more is needed at this point.*

- ICANN should add a step in the PDP Comment Process where those who commented or replied during the Comment Period can request changes to the synthesis reports in cases where they believe the Staff improperly summarized their comment.

*This seems like a reasonable goal but it should be recognized that it could lengthen the process.*

## 11. Effectiveness of the Review Process (Report Section 14)

### 11.1 Institutionalization of the Review Process

ICANN should ensure that the ongoing work of the AoC reviews, including implementation, is fed into the work of other ICANN strategic activities wherever appropriate.

*Agree.*

#### 11.2 Coordination of Reviews

ICANN should ensure strict coordination of the various review processes so as to have all reviews complete before next ATRT review begins, and with the proper linkage of issues as framed by the AoC.

*Agree.*

#### 11.3. Appointment of Review Teams

AoC Review Teams should be appointed in a timely fashion allowing them to complete their work over a minimum one (1) year period that the review is supposed to take place, regardless of the time when the team is established. It is important for ICANN staff to appreciate the cycle of AoC reviews, and that the Review Team selection process should begin at the earliest point in time possible given its mandate.

*Agree.*

#### 11.4. Complete implementation reports

ICANN 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.

*Agree.*

#### 11.5. Budget transparency and accountability

The ICANN Board should ensure in its budget that sufficient resources are allocated for Review Teams to fulfill their mandates. This should include, but is not limited to, accommodation of Review Team requests to appoint independent experts/consultants if deemed necessary by the teams. Before a review is commenced, ICANN should publish the budget for the review, together with a rationale for the amount allocated that is based on the experiences of the previous teams, including ensuring a continuous assessment and adjustment of the budget according to the needs of the different reviews.

*This is a reasonable goal as long as it is understood that unanticipated needs will sometimes be encountered so some flexibility should be built into the process.*

#### 11.6. Board action on Recommendations

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

*Agree.*

#### 11.7. Implementation Timeframes

In responding to Review Team recommendations, the Board must 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.

*Agree.*

### 12. Financial Accountability and Transparency (Report Section 15)

ATRT2 recommends that, in light of the significant growth in the organization, ICANN undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

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.

*We strongly support this recommendation but note that it is very difficult for community members to effectively participate if they don't receive sufficient detail until after it is too late to make changes. It is easy to claim this goal is met by showing how community members were able to participate at a high level in the process and that is what has been happening for years, but that is not sufficient. The ARTR2 needs to be much more specific in terms of what is expected.*

12.2 As a non-profit organization operating and delivering services in a non-competitive environment, ICANN should explicitly consider the cost-effectiveness of its operations when preparing its budget for the coming year. This should including 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.

*We strongly support this recommendation and we add that it should be applied to the recommendations in this report.*

12.3 As a non-profit organisation, every three years ICANN should conduct a benchmark study on relevant parameters e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc.

*More detail is needed on this recommendation. What would be the purpose of the study? How would the study be used? Would comparisons with comparable*



*organizations be included in the study? If so, how would comparable organizations be selected? Etc.*

12.4 In order to improve accountability and transparency and facilitate the work of the Review Teams, ICANN's Board should base the yearly budgets on a multi-annual financial framework [covering e.g. a two- or three-year period] reflecting the planned activities and the corresponding expenses. The following year, a report should be drafted describing the actual implementation of the framework, including activities and the related expenses. This should include specified budgets for the ACs and SOs.

*We fully support the second part of this recommendation. It is not clear though whether the first part is realistic; we would be very pleased if it could be done. Community members who have tried to actively contribute to the process of developing an operating plan and budget for just one year have been repeatedly told that it is not possible to provide detailed budget information until it is too late to make significant changes. In many cases it is not possible to make meaningful contributions without having budget information at the task and sub-task level earlier in the process, so what happens is this: detailed budget information is provided late in the fiscal year, we make comments, but it is too late for any significant changes to be made because the Board has to approve the budget before its next fiscal year.*

12.5 In order to ensure that the budget reflects the views of the ICANN community, the ICANN 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 enough time 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 between the ICANN Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

*We strongly support these recommendations.*

In its Final Report, ATRT2 will consider "prioritizing" certain Recommendations based on their respective importance. ATRT2 considers Recommendations relating to the Board, GAC, Metrics and Multilingualism to be priority Recommendations. ATRT2 welcomes feedback on prioritization of proposed Recommendations from the Community.

*These priorities seem reasonable. In particular, we would prioritize the recommendation to Convene a Special Community Committee to discuss options for improving accountability through restructure of Independent Review and Reconsideration, using the report of the Experts Group Report as baseline.*