



December 4, 2013

Ms. Alice Jansen
Strategic Initiatives Manager
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

VIA ELECTRONIC TRANSMISSION

Re: Second Accountability and Transparency Review Team (ATRT2) Draft Report & Recommendations

Dear Ms. Jansen:

The US Council for International Business (USCIB) is pleased to respond to ICANN's October 21 solicitation of comments on Draft Proposed Recommendations resulting from the second Accountability and Transparency Review (ATRT2), mandated by the Affirmation of Commitments. USCIB is a trade association composed of multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members therefore welcome this opportunity to offer the business community's perspective on the ATRT2's draft recommendations.

USCIB members have decided to focus on selected report recommendations. These generally address issues and concerns we raised in our May 1 comments on questions posed by the ATRT2. We respectfully request that you consider the following:

1. ATRT1 Recommendation 6 – Undertake initiatives to enhance understanding and transparency of Board Deliberations
 - As USCIB mentioned in its previous filing, the ICANN Policy Development Process (PDP) should ensure predictability so that stakeholders have a sense, *ex ante*, of which decisions will be subject to the PDP. The ATRT 2 recommendations need to be strengthened to address this deficiency. There is a sense, particularly among business stakeholders, that the ICANN Board and staff call an item “implementation” when they want to execute on the item without community input. (Likewise, if the ICANN Board and staff do not want to act upon a particular matter, then they may call the matter “policy” and have it lost within the lengthy PDP process.) The ATRT 2 recommendations need to acknowledge the current dilemma and advocate for more effective solutions than the “additional efforts” called for in the draft report.
2. ATRT1 Recommendations 9-14 – Addressing GAC-Board relations
 - USCIB completely agrees with the ATRT2's call for open GAC meetings. While individual members of the GAC represent their countries, we note that the GAC itself is not a government entity, but instead is part of the ICANN structure and is subject to the ICANN bylaws and articles of incorporation. Thus, all GAC processes and procedures should follow the limitations set forth in the bylaws, such as openness and transparency, as does the ALAC and the GSNO.

- We also agree with the ATRT2's recommendations that rationales for GAC Advice should be published. The Board and the community should not have to guess about why the GAC Advice includes or does not include certain provisions.
 - We also believe that the ATRT2 should include additional recommendations that we called for in our earlier comment. The role of the GAC and GAC processes and decisions are probably the most important issues for business stakeholders. Thus, we urge the ATRT2 to include additional recommendations based upon the previous issues we noted, such as:
 - USCIB members believe the process through which GAC members serve on the GAC is entirely opaque and the community would benefit greatly from a better understanding of how things work.
 - A greater understanding of the role of the leadership of the GAC would be beneficial. Are they serving in governmental capacities or in their own individual capacities?
 - In general, the GAC does an excellent job, but there is almost no interaction between the GAC and the community. At times when there is an important decision to make, the GAC closes its doors to debate in private. Consequently, when the GAC faces a potentially controversial decision, the community has virtually no ability to engage in open dialogue with its members. This makes it incumbent upon individual members of the community to try to communicate with individual GAC members in order to make their voices heard. This is not the way the multistakeholder process was envisioned.
 - The GAC occasionally deliberates on matters relating to a particular entity (versus on broader policy). This will happen with more frequency given their review of new gTLD applications. Specific entities that are likely to be subject to GAC advice should be given the opportunity to present to the GAC as a whole, prior to deliberations, and to answer questions, to prevent (1) one-sided characterizations, and (2) lobbying of individual GAC members.
3. ATRT1 Recommendations 15-17 – Pertaining to improving public notice and comment procedures
- We do not feel that this ATRT 2 recommendation goes far enough. The public comment period is critical to ensuring community input into the multistakeholder process. As the ATRT2 notes, the reply period is not being utilized as intended (as it is being used by many organizations for submitting initial comments). USCIB believes that the 21-day comment and reply periods are too short to offer meaningful input. We believe that a reply comment period should come after a longer initial comment period. Given the volume of material, it takes some amount of time for companies to become aware, analyze, and obtain internal approval for public comments. We would suggest at least a 30-35 day initial comment period, with a similar amount of time for the reply period. Additionally, we appreciate the Board's effort, as reflected in the ATRT2, to more fully utilize staff public comment reports in its recommendations, and we encourage those efforts to continue and to deepen.
4. New Recommendation – Improving the Effectiveness of Cross-Community Deliberations
- USCIB agrees with the following aspects of this recommendation and believes that their implementation is important for the multistakeholder process:
 - 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.

5. New Recommendation (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.”
- USCIB has reservations about this recommendation or at least the way it is stated. First, it assumes that it should always be possible to find consensus on an issue. Second, it conflicts 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. Third, it assumes that a specified time frame could be reasonably defined in advance and that one time frame would fit all policy development efforts.
 - The latter makes sense in a case where security and stability may be at risk. That 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.
 - ICANN says its mandate is to preserve and enhance the multistakeholder model. But adherence to arbitrary deadlines risks undermining the multistakeholder approach. In our extremely diverse global community, bottom-up, multistakeholder processes will be slow and messy. We should do all we can to speed them up but we must be aware that expediting them 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.
 - Finally, USCIB believes that there needs to be more predictability and transparency when, as the result of PDP Recommendations, the Board decides an expert working group or panel needs to be appointed. Currently, there is no real process for such appointments.

USCIB appreciates this opportunity to provide input on draft recommendations and asks that our comments receive ICANN’s due attention as the ATRT2 prepares its final report to the Board.

Sincerely,



Barbara P. Wanner
Vice President, ICT Policy

cc: Peter Robinson, President
Robert Mulligan, Senior Vice President, Policy and Government Affairs