Third Accountability and Transparency Review Team (ATRT3)

Draft Report for Public Comment

December 2019

1. Summary, Key Points, and Questions for the Public Comment

The Accountability and Transparency Review is being carried out in accordance with the ICANN Bylaws Section 4.6(b). The third Accountability and Transparency Review Team (ATRT3) held its first meeting on 3-5 April 2019 and must hand in its final report within 12 months, that is by 5 April 2020.

This is a special section of the Draft Report of the ATRT3 specifically prepared for Public Comment activity and should be of interest to all parts of the ICANN community.

This section highlights key findings, recommendations, and specific areas where the ATRT3 is seeking comment from the community. However, it is important to point out that commenters should try to take the time to consider the entire document and comment on any portion.

Questions for Public Comment Respondents

Per suggestions for Public Comments (Section 5 of this report), the ATRT3 is including a list of topics and questions it believes are critical for comment from respondents:

- Recommendation with respect to Specific and Organizational Reviews (this section and Section 10.5).
- Suggestion with respect to prioritization (this section and Section 12.4).

ATRT3 Scope

The ATRT3 assessed the following scope items: (please see the Executive Summary for complete details).

- Assessing and improving Board governance.
- Assessing the role and effectiveness of the Governmental Advisory Committee (GAC).
- Assessing and improving the processes by which ICANN receives public input.
- Assessing the extent to which ICANN's decisions are supported and accepted by the Internet community.
- Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.
- Assessing and improving the Independent Review Process.
- Assessing the extent to which prior Accountability and Transparency Review recommendations have been implemented.
- Specific and Organizational Reviews.

- Review of ICANN's Accountability Indicators (https://www.icann.org/accountability-indicators).
- Prioritization and rationalization of activities, policies, and recommendations.

Methodology

To undertake its work, ATRT3:

- Organized its report based on the above list of topics.
- Reviewed the implementation and effectiveness of the 47 distinct ATRT2 recommendations.
- Conducted a major survey of individuals and Structures[1] - Supporting Organizations (SOs), Advisory Committees (ACs), as well as Generic Names Supporting Organization (GNSO) constituent bodies and Regional At-Large Organizations (RALOs) - on a wide range of relevant topics. Results of the survey can be found in Annex B.
- Held interviews and meetings with the community at ICANN65 and ICANN66.
- Received briefings from various groups such as ICANN org's Public Comment team and the NomCom Review Implementation Working Group.
- Reviewed the ICANN Accountability Indicators in detail.
- Reviewed many ICANN documents.
- Requested and received several clarifications from ICANN org.

Key Findings

Implementation of ATRT2 recommendations

ATRT3's assessment of the implementation of ATRT2 recommendations (see Section 9 of this report) varied significantly from those reported by ICANN org that all recommendations had been implemented.[2] ATRT3 made the following assessment of the implementation of ATRT2 recommendations:

- 60% implemented.
- 23% partially implemented.
- 17% not implemented.

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[1] 14 of 17 SOs, ACs, gNSO constituent bodies and RALOs responded to the Structures survey and 88 individuals responded to the survey but only about 50 answered most of the questions.

[2] https://community.icann.org/display/atrt/ATRT2+Implementation+Program?preview=/48350211/96214045/Recommendations%201-12%20(Oct%202018).pdf

To avoid such divergence in implementation assessments for Specific Reviews going forward, ATRT3 notes in Section 9 of the report that "The new Operating Standards for Specific Reviews[3] adopted by the ICANN Board in June 2019, combined with the new website for tracking the implementation of review recommendations[4] should address most if not all of these issues going forward."

Survey Results

The ATRT3 survey results provided some very strong results (full survey results can be found in Annex B):

- Do you believe the information ICANN makes available on the icann.org website should be better organized to facilitate searching for specific topics?
  - Individuals responded 82% yes.
  - Structures responded 100% yes.
- Should the ATRT3 make recommendations about prioritization and rationalization of ICANN activities?
  - Individuals responded 73% yes.
  - Structures responded 92% yes.
- Should such recommendations include a process to retire recommendations as it becomes apparent that the community will never get to them or they have been overtaken by other events?
  - Individuals responded 85% yes.
  - Structures responded 100% yes.
- Should the community or representative(s) of the community be involved as a decisional participant in any mechanism which makes recommendations for prioritizing and rationalizing work for ICANN?
  - Individuals responded 97% yes.
  - Structures responded 100% yes.
- How would you rate the effectiveness of the Specific Reviews (ATRT, SSR, RDS, etc.) as they are currently structured in the ICANN Bylaws?
  - Only 16% of Structures responded that Specific Reviews were effective or very effective.
- Should Specific Reviews (ATRT, SSR, RDS, etc.) be reconsidered or amended?
  - Individuals responded 78% yes.
  - Structures responded 91% yes.
- How would you rate the effectiveness of Organizational Reviews, those reviewing SO/ACs as they are currently structured in the ICANN Bylaws?

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[3] https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf

[4] https://www.icann.org/resources/reviews/specific-reviews

- ○ Only 46% of Structures responded that Specific Reviews were effective or very effective.
- Should Organizational Reviews be reconsidered or amended?
  - ○ Individuals responded 85% yes.
  - ○ Structures responded 83% yes.
- Please rate how effective the current system of Public Comment consultations is for gathering community input.
  - ○ Only 50% of individuals thought Public Comments were effective or very effective.
  - ○ However, 88% of individual respondents were in favor of re-examining the concept of Public Comments.

Accountability Indicators

Initial consideration of the Accountability Indicators (Section 11 of this Report) by the ATRT3 generated concern about the relevance or effectiveness of a number of these.
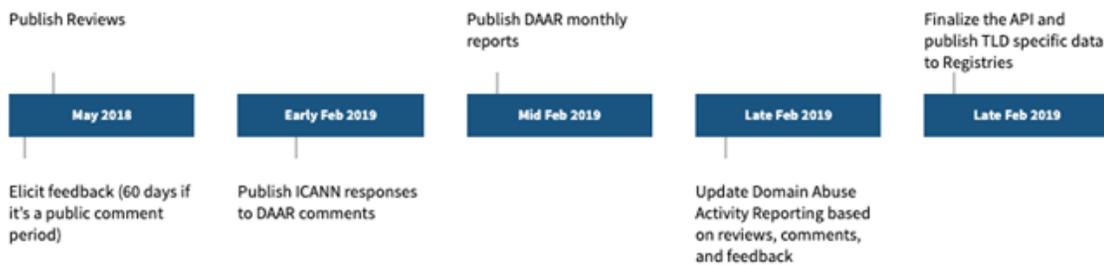
Additionally, the ATRT3 survey results show that:

- 54% of Structures are unaware of the existence of Accountability Indicators.
- 67% of Structures find the Accountability Indicators somewhat ineffective.

As an example of this:

- Objective 2 | Goal 2.2 - Domain Abuse Activity Reporting

[Text accompanying the slide] The Domain Abuse Activity Reporting project (https://www.icann.org/octo-ssr/daar) is a system for studying and reporting on domain name registration and security threat (domain abuse) behavior across top-level domain (TLD) registries and registrars. The overarching purpose of Domain Abuse Activity Reporting is to report security threat activity to the ICANN community, which can then use the data to facilitate informed policy decisions.

ATRT3 assessment on this Accountability Indicator: It is unclear what the accountability value as of December 2019 is of this high-level project plan which is presented as ending in late February 2019. The text accompanying the slide is definitional and of little accountability value. The referenced website does contain relevant and up to date information, but it is unclear how this slide is a useful Accountability Indicator.

Key Recommendations and Suggestions:

ATRT3 makes a distinction between 'recommendations' and 'suggestions'. The ATRT3 is focused on ensuring that its recommendations meet the requirements as set out in the Operating Standards for Specific Reviews while suggestions may not necessarily meet this standard.[5] The ATRT3 does not consider suggestions to be less important than recommendations. The determination if an item is a suggestion or a recommendation will be finalized in ATRT3's final report.

Issues with respect to the implementation of ATRT2 recommendations (Section 9 of this report)

As a result of its assessments ATRT3 makes suggestions to complete the implementation of a number of ATRT2 recommendations which were only partially implemented or not implemented (see Annex A on ATRT2 recommendations for details).

Suggestions:

- The Board should ensure that the first Competition, Consumer Trust, and Consumer Choice (CCT1), second Registration Directory Service (RDS2), and Cross Community Working Group on Enhancing ICANN Accountability – Work Stream 2 (CCWG-Accountability WS2) review teams provide Implementation Shepherds as defined in the Operating Standards for Specific Reviews to avoid any confusion as to the intent of their recommendations during implementation. Implementation of these recommendations should also be tracked using the reviews website.
- If the implementation of Specific Review recommendations is transferred to another process, the Board should ensure that any implementation reporting should clearly note this and ensure factual reporting on the progress of the implementation of such transferred recommendations.

Issues with respect to prioritization (Section 12.4 of this report)

Considering the strong support in the responses to the ATRT3 survey indicating that ATRT3 should make recommendations with respect to prioritization, and recognizing that there are several significant activities being undertaken in parallel by other parts of the ICANN Community regarding prioritization (Evolution of ICANN's Multistakeholder Model[6], ICANN Board Paper on Resourcing and Prioritization of Community Recommendations: Draft Proposal for Community Discussions[7]) ATRT3 proposes that only a community-led process can

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[5] https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf

[6] https://www.icann.org/news/announcement-2-2019-08-27-en

[7] https://www.icann.org/en/system/files/files/draft-proposal-resourcing-community-recommendations-29oct19-en.pdf

legitimately develop a system for prioritizing the implementation of reviews, CWG, and CCWG recommendations.

Additionally, ATRT3 wishes to align with the efforts currently underway to develop a prioritization system to avoid conflicting recommendations or duplication of work. As such, ATRT3 has opted to provide some high-level guidance for the proposed community discussions regarding the creation and objectives of a community-led entity tasked with developing a prioritization process.

ATRT3's starting point was the following section from the ICANN Board Paper on Resourcing and Prioritization of Community Recommendations: Draft Proposal for Community Discussion:

Section 5B - *"The ICANN community and ICANN org will collaboratively develop a methodology for prioritizing recommendations across review teams and for funding implementation of prioritized recommendations as part of the annual budget process. This methodology will be consistent with the existing budget development process, including the solicitation and consideration of community input. See also the discussion in Section 4 on prioritization".*

Suggestion:
With the above context in mind, the ATRT3 suggests the following guidance for the creation of a community-led entity tasked with developing a prioritization process:

- Developing a Prioritization Process:

  - Overall the ATRT3 believes that the Operating Standards for Specific Reviews could serve as a good base for framing the creation and operation of a community-led entity tasked with developing an annual prioritization process.[8]
  - All community members participating in this process must have significant experience in ICANN and have actively participated in a major process in ICANN (CWG, CCWG-Accountability WS1 and 2, Expedited Policy Development Team (EPDP), etc.).
  - Members must include representatives from the Board and ICANN org.
  - The community-led entity developing the prioritization process should be given a fixed one-year term to complete its task.

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[8] https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf

- The community-led entity could request the services of a professional facilitator to expedite its work.

- Requirements for a Prioritization Process
  - Overall the ATRT3 believes that the Operating Standards for Specific Reviews could serve as a good base for framing the operation of the annual prioritization process.[9]
  - Must be conducted annually by members of the community with the participation of the Board and the ICANN org.
  - The group actually performing the prioritization should be a standing group of represented structures and not necessarily specific individuals which will perform the annual prioritization process but which can also be called upon to deal with exceptional circumstances such as emergency re-allocation of funds if a prioritized implementation needs to be cancelled or an emergency approval of a new critical recommendation which is extremely time sensitive.
  - Must be conducted in an open and transparent fashion and each decision should be justified and documented.
  - The prioritization process should apply to all recommendations of CWGs, CCWGs, Organizational Reviews, Specific Reviews as well as any other type of community-driven recommendations. The process would also apply to any such recommendations which have been approved but not yet implemented.
  - The prioritization process should only consider the information it is provided with respect to recommendations and should not be required to generate or have generated any additional information for the evaluation of recommendations for prioritization.
  - The prioritization process can fund multi-year implementations but will review these annually to ensure they are still meeting their implementation objectives and the needs of the community.
  - Elements to be considered when prioritizing recommendations should include:
    - Budget availability.
    - Cost of implementation.
    - Complexity and time to implement.
    - Prerequisites and dependencies with other recommendations.
    - Value and impact of implementation.
    - Relevance to ICANN's Mission, Commitments, Core Values and Strategic Objectives.

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[9] https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf

Issues with respect to Specific and Organizational Reviews (Section 10 of this report)

ATRT3 believes it needs to address the issue of Specific and Organizational Reviews in a holistic fashion for the following reasons:

- ATRT3 survey results with respect to Specific Reviews were that 67% of Structures (SO/ACs and their sub-components) found these somewhat ineffective or ineffective. The companion question that asked, *"Should Specific Reviews (ATRT, SSR, RDS, etc.) be reconsidered or amended?",* had a 91% yes response from Structures.
- ATRT3 survey results with respect to Organizational Reviews were that Structures (SO/ACs and their sub-components) only found these effective or very effective in 46% of responses. The companion question asking, *"Should Organizational Reviews be reconsidered or amended?",* produced some very strong results with Structure responses of 83% yes.
- Issues of timing and cadence of reviews. The Board paper on "Enhancing and Streamlining ICANN's Reviews: Issues, Approaches, and Next Steps" states that, *"The Board believes that streamlining entails improving both the timing and the cadence of the reviews"*.[10] Obviously holding four Specific Reviews and seven Organizational Reviews every five years is a challenge for ICANN org and the community and needs to be addressed.

In addition, it is important to note the "SSAC2018-19: SSAC Comment on Long-Term Options to Adjust the Timeline of Reviews"[11], referred to in the survey results, states:

"The SSAC shares the widespread concerns within the ICANN Community on the number of concurrent reviews, including the demands these place on ICANN Community members and on ICANN resources and budgets. The SSAC is acutely aware of these concerns since the SSAC is considerably constrained in its ability to be directly involved in and provide public comment on such reviews due to its small, all-volunteer composition, and heavy demands for its primary SSR advice. In particular, the SSAC has considered the key principles that have been proposed with the aim to rationalize the review schedule to make it more practical for the community. The SSAC supports the following principles:

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[10] https://www.icann.org/news/blog/enhancing-and-streamlining-icann-s-reviews-issues-approaches-and-next-steps

[11] https://www.icann.org/en/system/files/files/ssac2018-19-24jul18-en.pdf

- *Staggering the reviews to have no more than one Specific Review and two Organizational Reviews running concurrently;*
- *Adding timing criteria to ensure that the next cycle of a Specific or Organizational Review is not initiated until prior review recommendations are fully implemented and operational for a period of 12 months;*
- *Where appropriate, adding requirements that, like the Accountability and Transparency Review (ATRT), other Specific Review teams complete their work within 12 months;*
- *Focusing Specific Review teams' work on topics of highest priority to the community; and*
- *Adding scheduling flexibility for Specific Reviews to the Bylaws, with appropriate checks and balances.*

The SSAC supports the development of detailed changes to the ICANN Bylaws to enable these principles to be adopted."

Pending Recommendation
Although ATRT3 could not come to consensus on a single proposal to address the issues related to Organizational and Specific Reviews it did manage to narrow the options down to two distinct possibilities for this draft report which are presented below. The ATRT3 is seeking input from the community on these to assist it in coming to a conclusion on this topic for its final report.

Option 1:

- Keep the current set of Specific and Organizational reviews as they are given they are important accountability mechanisms for the community, in combination with a new oversight mechanism to manage reviews and the implementation of their recommendations.
- This new oversight mechanism should be the responsibility of a new Independent Accountability Office (in some ways similar to the Office of the Ombuds with respect to oversight), that includes responsibility for SO/AC accountability as well as well as the coordination of reviews and the implementation of their recommendations.

Option 2:

- Organizational Reviews: Maintain the current concept of individual Organizational Reviews for each SO/AC, but conduct them as three to five day workshops focused on SO/AC self-inspection in a context of continuous improvement. These reviews would be conducted every three years, or more frequently, as determined by each SO/AC. The reports of these reviews would then feed into a new holistic review. This new holistic review would focus on the improvements made by all SO/ACs as presented in their Organizational Review reports, as well as on the interactions between SOs and ACs. This new holistic review would be conducted every 7 years for a maximum duration of 12 to 18 months to allow for the implementation and maturing of the recommendations made by the individual Organizational Reviews and those of the previous holistic review.
- Specific Reviews: Specific Reviews include the Accountability and Transparency Review (AT), the Security, Stability, and Resiliency Review (SSR), the Competition, Consumer Trust, and Consumer Choice Review (CCT) and the Registration Directory Service (RDS) Review (formerly WHOIS Review). AT as well as the relevant portions of CCT and RDS would be combined into a single AT review which would be conducted every 7 years for a maximum duration of 12 to 18 months to allow for the implementation and maturing of the previous recommendations by this review. SSR could either be a three- to five-day workshop or a more traditional review period depending on topic.

Issues with respect to Public Comments (Section 5 of this report)

ATRT3 recognizes that the number of Individual respondents to its survey do not represent a statistically significant sample. ATRT3 further recognizes that allowing respondents to only respond to survey type questions could easily open the door to abuse of the Public Comment process.

This being said, ATRT3 also recognizes that individuals, especially those whose mother tongue is not English or who lack detailed technical knowledge, may find it challenging to provide meaningful input on long and often complex documents that are published for Public Comment only in English. Key elements to comment on may be difficult to identify without reading the entire document.

Suggestion:

Considering all of the above, ATRT3 strongly suggests that Public Comments not only seek general input on entire documents but also:

- Clearly identify who the intended audience is (general community, technical community, legal experts, etc.). This will allow potential respondents to quickly understand if they wish to invest the time to produce comments. This is not meant to prevent anyone from commenting but is rather meant as clarifying who is best suited to comment.
- Each Public Comment proceeding should provide a clear list of precise key questions in plain language that the public consultation is seeking answers from its intended audience.
- Results of these questions should be included in the staff report on the Public Comment proceeding.
- Where appropriate and feasible translations of a summary and precise key questions should be included in the Public Comment proceeding which could also allow for responses in the official ICANN languages.

Accountability Indicators (Section 11 of this report)

Suggestions:

- ATRT3 suggests that ICANN undertake a communications effort to make the community aware of the Accountability Indicators. Part of this effort could include a formal presentation of these at an ICANN meeting.
- ATRT3 strongly suggests that ICANN rapidly undertake a serious review of its Accountability Indicators to ensure that these:
  - Meet the stated objective in each section and subsection.
  - Provide data that is useful as an Accountability Indicator.
  - Provide data that can inform decision making processes.
  - Present data that is up to date.