Third Accountability and Transparency Review Team (ATRT3)

Presentation of Draft Report for Public Consultation

ICANN

January 2020

Overview of Presentation

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Background on ATRT3 Draft Report

ATRT3 Background

- This Third Accountability and Transparency Review is being carried out in accordance with the ICANN Bylaws Section 4.6(b).

- The 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 2019.

- ATRT3 has opted to make both recommendations and suggestions (in some cases strong suggestions) in its final report due to the new requirements for recommendations.

- ATRT3 will limit making recommendations to topics which it believes are of critical importance.

Difference between Recommendations and Suggestions

- o ATRT3 is subject to the new The new Operating Standards for Specific Reviews* adopted by the ICANN Board in June 2019. This requires that all Recommendations provide significant details to justify making a recommendation as well as providing clear implementation requirements, ranking and evaluation criteria which can be a major undertaking for each recommendation.
- o In this context ATRT3 will limit making Recommendations to topics which it believes are of critical importance and will include all the information required of recommendations by the new Operating Standards.
- o However ATRT3 will also make Suggestions and Strong Suggestions which it believes are also important but may not include all of the information required by the Operating Standards. These should be considered similarly to recommendations by the Board.
- o Strong Suggestions will be ranked as having higher priority vs Suggestions.

ATRT3 Scope

The ATRT3 assessed the following scope items:

- Assessing and improving Board governance (produced 5 suggestions related to ATRT2 recommendations and 5 suggestions based on the results of the survey)

- Assessing the role and effectiveness of the Governmental Advisory Committee (GAC) (produced 3 suggestions related to ATRT2 recommendations and 3 suggestions based on the results of the survey)

- Assessing and improving the processes by which ICANN receives public input (produced 1 strong suggestion related to ATRT2 recommendations, 1 strong suggestion based on the results of the survey and 1 strong suggestion based on other inputs)

- Assessing the extent to which ICANN's decisions are supported and accepted by the Internet community (produced no suggestions or recommendations)

ATRT3 Scope

- Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development (produced 1 strong suggestion related to ATRT2 recommendations)

- Assessing and improving the Independent Review Process (produced no recommendations or suggestions)

- Assessing the extent to which prior Accountability and Transparency Review recommendations have been implemented (produced 2 suggestions related to ATRT2 recommendations)

- Specific and Organizational Reviews (produced 3 suggestions related to ATRT2 recommendations and 1 recommendation based on the results of the survey)

ATRT3 Scope

- Review of ICANN's Accountability Indicators (https://www.icann.org/accountability-indicators) (produced 1 strong suggestion and 1 suggestion based on the results of the survey)

- Prioritization and rationalization of activities, policies, and recommendations (produced 2 suggestions related to ATRT2 recommendations and 1 suggestion based on the results of the survey)

- Summary
  - Related to ATRT2 – 16 suggestions and 1 strong suggestion
  - Related to the Survey – 1 recommendation, 11 suggestions and 2 strong suggestions
  - Related to Other topics – 1 strong suggestion

GAC Considerations

- It is important to understand the specific nature of the GAC when assessing ATRT2 recommendations

- The GAC is usually composed of official government representatives.

- These representatives are subject to a number of expectations as to how they can interact with the ICANN community and can rarely commit their government to anything prior formal authorization.

- The recommendations ICANN can make for the GAC via such processes, as the ATRT reviews, may have limited applicability or may have to be adapted to fit into the GAC context

ATRT3 Methodology

◉ Reviewed the implementation and effectiveness of the 47 distinct ATRT2 recommendations.

◉ Conducted a major survey of individuals and structures (SOs, ACs, as well as GNSO constituent bodies and RALOs) on a wide range of relevant topics. Results of the survey can be found in Annex B of the draft report.

◉ 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 Nominating Committee Review Implementation Working Group.

◉ Reviewed the ICANN Accountability Indicators in detail.

◉ Reviewed a large number of ICANN documents.

◉ Requested and received a number of clarifications from ICANN org.

Key Findings

Implementation of ATRT2 Recommendations

- ATRT3's assessment of the implementation of the 46 distinct ATRT2 recommendations (see Section 9 of the draft report) varied significantly from ICANN org's reporting that all recommendations had been implemented. ATRT3 made the following assessment of the implementation of ATRT2 recommendations:

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

- As a result ATRT3 proposes 2 strong suggestions and 15 suggestion related to ATRT2 recommendations.

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

Survey Results

◉ 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 and Structures responded 100% yes.

◉ Should the ATRT3 make recommendations about prioritization and rationalization of ICANN activities?

- Individuals responded 73% yes and 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 and 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 and Structures responded 100% yes.

Survey Results

- 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 and Structures responded 91% yes.

- Should Organizational Reviews be reconsidered or amended?

  - Individuals responded 85% yes and 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.

Key Recommendations and Suggestions

◉ In addition to its earlier suggestion on ATRT2 recommendations the ATRT3 suggests:

- 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

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, ICANN Board Paper on Resourcing and Prioritization of Community Recommendations: Draft Proposal for Community Discussions) ATRT3 proposes that only a community-led process can legitimately develop a system for prioritizing the implementation of reviews, CWG, and CCWG recommendations.

As such the ATRT3 suggests guidance for the creation of a community-led entity tasked with development and operation of a prioritization process (see draft report Section 12 for details).

Issues with Respect to Specific and Organizational Reviews

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.

The ATRT3 is seeking input from the community via the Public Comment to assist it in coming to a conclusion on this topic for its final report.

Issues with Respect to Specific and Organizational Reviews

- 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 Ombudsman with respect to oversight), that includes responsibility for SO/AC accountability as well as the coordination of reviews and the implementation of their recommendations.

Impact of Option 1

- Initial impact on scheduling would be limited (see Reviews Timeline – if no changes are made - slide)
- No changes to current format or duration of reviews (1 year Organizational and Specific Reviews with potential extensions for Specific Reviews).
- Creation of a new oversight body (potentially independent) which would mainly ensure proper implementation of review recommendations and coordination of reviews (eg every 7 years vs current every 5 years).

Issues with Respect to Specific and Organizational Reviews

◉ 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.

- Option 2 continued
  - 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 reviews 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.

Comparing scheduling and duration of options 1 and 2

	2021Q1	2021Q2	2021Q3	2021Q4	2022Q1	2022Q2	2022Q3	2022Q4	2023Q1	2023Q2	2023Q3	2023Q4	2024Q1	2024Q2	2024Q3	2024Q4	2025Q1	2025Q2	2025Q3	2025Q4	2026Q1	2026Q2	2026Q3	2026Q4	2027Q1	2027Q2	2027Q3	2027Q4
Specific Reviews scheduling per Bylaws and Option 1 (no change to current)																												
AT														ATRT4 - 12 Months														
RDS						RDS-WHOIS 3 - 18 months																				RDS-WHOIS 3 - 18 months		
SSR					SSR3 - 18 months																				SSR4 - 18 months			
CCT																	CCT2 - 18 months											
Organizational Reviews scheduling per Bylaws and Option 1																												
GNSO		GNSO3 Review - 12 months																										
At Large											At Large 3 Review - 12 months																	
ASO												ASO 3 Review - 12 months																
NomCom														NomCom 3 Review - 12 months														
RSSAC										RSSAC 3 Review - 12 months																		
SSAC														SSAC 3 Review - 12 months														
CCNSO															CCNSO 3 Review - 12 months													
Total # of reviews per quarter	0	1	1	1	2	2	2	2	2	3	3	2	2	4	4	5	5	2	1	1	1	0	0	0	1	2	2	2
Specific Reviews - Option B																												
AT																									ATRT4+ - 12 months			
SSR							1 week												1 week								1 week	
CCT																			CCT3 - 12 Months									
Organizational - Option B																												
GNSO	1 week												1 week												1 week			
At Large			1 week												1 week												1 week	
ASO					1 week												1 week											
NomCom						1 week												1 week										
RSSAC							1 week												1 week									
SSAC								1 week												1 week								
CCNSO											1 week										1 week							
Holistic														Holistic Review - 12 Months														
Total # of reviews per quarter	1	0	1	0	1	1	1	0	1	0	2	0	1	1	2	1	2	1	3	1	2	1	1	0	2	1	3	1

Comparing scheduling and duration of options 1 and 2

Assumptions regarding Option 2
- Specific Reviews
  - Assuming the next round of new gTLDs is 2022 the last CCT review would be held in 2025.
  - Relevant elements of RDS and CCT reviews would be integrated into ATRT4.
  - SSR would be 3 to 5 day workshops held periodically as called for by the Technical Committee.
- Organizational Reviews
  - Each SO/AC would have at least two reviews in each 7 year cycle – except for the first one.
  - Each 3 to 5 day workshop should focus on priority items and can be scheduled per SO/AC preferences at least every 3 years.

Issues with Respect to Public Comments

ATRT3 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.

Issues with Respect to Public Comments

◉ 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.

Issues with Respect to Public Comments

- 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

- 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.

Key Questions ATRT3 is Seeking Input from the Public Comment

Key Questions

Per suggestions for Public Comments (Section 5 of this report), 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

- Suggestion with respect to prioritization

The Public Comment on the Third Accountability and Transparency Review Team (ATRT3) Draft Report will close on 31 January 2020 and can be found at:

https://www.icann.org/public-comments/atrt3-draft-report-2019-12-16-en

Thank You and Questions

ATRT3 wiki: **https://community.icann.org/x/QK7DAw**
Email (publicly archived): input-to-atrt3@icann.org