Third Accountability and Transparency Review Team (ATRT3)

Draft Report for Public Comment
December 2019

Presentation SBT – for CPWG 20191223

Summary, Key Points
Questions for the Public Comment

- Third Accountability and Transparency Review Team (ATRT3)
  - First meeting on 3-5 April 2019
  - Final report within 12 months, that is by 5 April 2020
- Key findings
- Recommendations
- Specific areas where the ATRT3 is seeking comment
  - But better to consider the entire document and comment on any portion

ATRT3 Scope

- The ATRT3 assessed the following scope items
  - 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

ATRT3 Methodology

- Organized its report based on the list of topics
- Reviewed the implementation and effectiveness of the 47 (46) distinct ATRT2 recommendations
- Conducted a survey, on a wide range of topics, of individuals and Structures
  - Supporting Organizations (SOs)
  - Advisory Committees (ACs)
  - Generic Names Supporting Organization (GNSO) constituent bodies
  - Regional At-Large Organizations (RALOs)
- Held interviews and meetings with the community at ICANN65 and ICANN66.
- Received briefings from various groups
  - ICANN org's Public Comment team
  - 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 the report) varied significantly from those reported by ICANN org that all recommendations had been implemented
  - 60% implemented
  - 23% partially implemented
  - 17% not implemented
- To avoid such divergence in implementation assessments for Specific Reviews going forward, ATRT3 notes
  - The new Operating Standards for Specific Reviews adopted by the ICANN Board in June 2019
  - The new website for tracking the implementation of review recommendations should address most if not all of these issues going forward

Survey Results (1/2)

- icann.org website
  - 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
- Prioritization and rationalization of ICANN activities
  - 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

Survey Results (2/2)

- Specific Reviews (ATRT, SSR, RDS, CCT)
  - How would you rate the effectiveness of the Specific Reviews 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 be reconsidered or amended?
    - Individuals responded   78% yes
    - Structures responded   91% yes

- Organizational Reviews (SO/Acs)
  - How would you rate the effectiveness of Organizational Reviews, as they are currently structured in the ICANN Bylaws?
    - 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

- Public Comment
  - Please rate how effective the current system of Public Comment consultations is for gathering community input.
    - 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 Comment

Accountability Indicators

- Initial consideration of the Accountability Indicators (Section 11) generated concern about the relevance or effectiveness of a number of these

- Additionally, the ATRT3 survey results show
  - 54% of Structures are unaware of the existence of Accountability Indicators
  - 67% of Structures find the Accountability Indicators somewhat ineffective

- Assessment
  - It is unclear what the accountability value
  - Referenced website does contain relevant and up to date information, but it is unclear how this slide is a useful Accountability Indicator

Questions for the Public Comment

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

Key Recommendations and Suggestions

- ATRT3 makes a distinction between 'recommendations' and 'suggestions'
  - Recommendations will meet the requirements as set out in the Operating Standards for Specific Reviews
  - Suggestions may not necessarily meet this standard
- ATRT3 does not consider suggestions to be less important than recommendations
- Determination if an item is a suggestion or a recommendation will be finalized in ATRT3's final report

Issues
Implementation of ATRT2 recommendations

- ATRT3 makes suggestions to complete the implementation of a number of ATRT2 recommendations which were only partially implemented or not implemented

- **Suggestions**
  - The Board should ensure that
    - First Competition, Consumer Trust, and Consumer Choice (CCT1)
    - Second Registration Directory Service (RDS2)
    - 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 Prioritization

- Considering the strong support in the responses to the ATRT3 survey indicating that ATRT3 should make recommendations with respect to prioritization

- 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

- ATRT3 proposes that only a community-led process can legitimately develop a system for prioritizing the implementation of reviews, CWG, and CCWG recommendations

- ATRT3 wishes to align with the efforts currently underway to develop a prioritization system to avoid conflicting recommendations or duplication of work

- 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

Issues Prioritization: Suggestion

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

Issues Prioritization: Suggestion

- 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
  - 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

Issues
Specific and Organizational Reviews

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
  - Somewhat ineffective or ineffective
    - 67% of Structures (SO/ACs and their sub-components)
  - Should be reconsidered or amended
    - 91% of Structures
- ATRT3 survey results with respect to Organizational Reviews
  - Effective or very effective
    - 46% of Structures
  - Should be reconsidered or amended?
    - 83% of Structures
- Issues of timing and cadence of reviews
  - *"The Board believes that streamlining entails improving both the timing and the cadence of the reviews"*
  - 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

Issues Specific and Organizational Reviews: Pending Recommendation

- ATRT3 could not come to consensus on a single proposal to address the issues related to Organizational and Specific Reviews

- Two distinct possibilities for this draft report

- ATRT3 is seeking input from the community on these to assist it in coming to a conclusion on this topic for its final report

Issues Specific and Organizational Reviews: Pending Recommendation

- 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

Issues Specific and Organizational Reviews: Pending Recommendation

- Option 2
  - Organizational Reviews
    - Maintain the current concept of individual Organizational Reviews for each SO/AC
      - Conduct as three to five day workshops focused on SO/AC self-inspection in a context of continuous improvement
      - Conduct 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
    - 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
      - Conduct 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

Issues Specific and Organizational Reviews: Pending Recommendation

- Option 2
  - Specific Reviews
    - Specific Reviews include
      - Accountability and Transparency Review (AT)
      - Security, Stability, and Resiliency Review (SSR)
      - Competition, Consumer Trust, and Consumer Choice Review (CCT)
      - 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
Public Comments

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

- **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