

# Third Accountability and Transparency Review Team (ATR3)

Presentation of Draft Report for Public Consultation



January 2020

# Overview of Presentation

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1. Background on ATRT3 Draft Report
2. Key Findings
3. Key Recommendations and Suggestions
4. Key Questions ATRT3 is Seeking Input from the Public

Comment

5. Q&A

# Background on ATRT3 Draft Report

# ATRT3 Background

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- 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 2020.
- 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.
- The determination if an item is a suggestion or a recommendation will be finalized in ATRT3's final report.

## Difference between Recommendations and Suggestions

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- The new Operating Standards for Specific Reviews adopted in June 2019 were retroactively applied to the ATRT3.
- The new Operating Standards for Specific Reviews are untested and the ATRT3 is the first review which will be making recommendations under this standard.
- The ATRT3 concluded that not all its recommendations could or should meet the requirements of the new standards. As such ATRT3 recommendations which do not meet all the requirements will be labelled suggestions.
- The ATRT3 has been assured that all its recommendations and suggestions will be considered similarly by the Board.

# ATRT3 Scope

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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

# ATRT3 Scope

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- 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

# GAC Considerations

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- 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 to a formal authorization.
- The recommendations ICANN community 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

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- Reviewed the implementation and effectiveness of the 46 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
  
- 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

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- 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

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- 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

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- 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

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- Very Strong support in the ATRT3 survey to have the ATRT3 make recommendations on prioritization.
- The ATRT3 recognizes that there are other activities on prioritization and that its work should align with these other activities.
- As such the ATRT3 suggests guidance for the creation of a community-led entity tasked with development and operation of a prioritization process (see next slide):

# Issues with Respect to Prioritization

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- Creating 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.<sup>8</sup>
  - 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.
  - The community-led entity could request the services of a professional facilitator to expedite its work.

# Issues with Respect to Prioritization

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- Requirements for operating 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.<sup>9</sup>
  - 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.

# Issues with Respect to Prioritization

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- 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.

# Issues with Respect to Prioritization

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- 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 with Respect to Specific and Organizational Reviews

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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

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- 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

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- 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

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- 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.

# Issues with Respect to Specific and Organizational Reviews

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- 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

calendar	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Specific Reviews scheduling per Bylaws and Option 1 (no change to current) - 18 months duration is based on the fact that specific reviews generally take between 12 &amp; 24 months (except AT which is mandatory)</b>											
AT	ATRT3 - 3 months			R4 - 3 months	R4 - 9 months				R4 - 3 months	R4 - 9 months	
RDS					R3 - 11 months	R3 - 7 months				R3 - 11 months	R3 - 7 months
SSR	SSR2 - 6 mths		R3 - 10 Months	R3 - 8 Months				R3 - 10 Months	R3 - 8 Months		
CCT				R2 - 7 months	R2 - 11 months						
<b>Organizational Reviews scheduling per Bylaws and Option 1</b>											
GNSO		R3 - 6 mths	R3 - 6 mths				R3 - 6 mths	R3 - 6 mths			
At Large				R3 - 6 months	R3 - 6 months				R3 - 6 months	R3 - 6 months	
ASO				R3 - 8 months	R3 - 4 months				R3 - 8 months	R3 - 4 months	
NomCom				R3 - 6 months	R3 - 6 months				R3 - 6 months	R3 - 6 months	
RSSAC				R3 - 1 month	R3 - 11 months				R3 - 1 month	R3 - 11 months	
SSAC				R3 - 1 month	R3 - 11 months				R3 - 1 month	R3 - 11 months	
CCNSO							R3 - 11 months	R3 - 1 months			R3 - 11 months
<b>Total # of review months per year</b>											
	9	6	16	40	69	18	7	16	33	58	18
<b>Specific Reviews - Option B</b>											
AT	ATRT3 - 3 months									ATRT systemic 12	ATRT systemic 6
SSR	SSR2 - 6 months			SSR3 - 1 week			SSR4 - 1 week				
CCT						CCT2 - 12 mths					
<b>Organizational - Option B</b>											
GNSO				1 week			1 week				
At Large				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		6 months	12 months								
<b>Total # of reviews per year</b>											
	9	6	12	1	1	13	1	1	1	12	6

# Comparing scheduling and duration of options 1 and 2

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## 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 2 reviews in each 7 year cycle – except for the first cycle.
  - 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

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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

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- 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

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- 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

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- 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

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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. **Comments made after this date may not be considered due to ATRT3's tight timeline.**

# Report Layout

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Sections 3,4,5,7,10 and 12 of the report are structured similarly:

- Introduction
- Information Gathering
  - ATRT2
  - ATRT3 Survey
  - Other information
- Analysis of Information and Identification of Issues
- Suggestions Relative to Issues
- Recommendations to Address Issues

# Report Layout

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1. Summary, Key Points, and Questions for the Public Comment      pages 5 -16

Special section for the public comment – this is a condensed version which highlights all the key points from the report. This section has been translated in all the ICANN languages.

2. Executive Summary                      pages 17 -21

Similar in some respects to section 1 but include a listing of all recommendations and suggestions.

3. Issue 1 – Board                      pages 33 – 47

Deals with Board related issues.

4. Issue 2 – Governmental Advisory Committee (GAC)              pages 48 – 54

Deal with GAC related issues.

5. Issue 3 - Public Input              pages 55 – 66

Deals with ICANN translation services and public comment process.

# Report Layout

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6. Issue 4 - Acceptance of ICANN Decisions      pages 67 – 68

The ATRT 3 survey concluded there was general acceptance of ICANN decisions.

7. Issue 5 - Policy Development Process (PDP)      pages 69 – 74

Deals with PDP related issues.

8. Issue 6 – Assessment of the Independent Review Process (IRP)      pages 75 – 76

Notes that this was undertaken by the CCWG-Accountability WS2

9. Issue 7 – Assessment of Relevant ATRT2 recommendations      pages 77 – 82

This takes a holistic view at how ATRT2 recommendations were implemented

10. Issue 8 – Assessment of Periodic and Organizational Reviews      pages 83 – 90

Deals with reviews related issues.

# Report Layout

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## 11. Issue 9 – Accountability Indicators pages 93 – 96

ATRT3's comments on accountability indicators.

## 12. Issue 10 – Prioritization and Rationalization of Activities, Policies, and Recommendations pages 97 – 106

Deals with prioritization issues.

## 13. SO/AC and Sub-Structures Accountability pages 107 – 115

Results of ATRT3 survey questions to SO/ACs on accountability.

## 14. Prioritization and Interdependencies of Recommendations (TBD) page 116

As per the requirements in the new Operating Standards for Specific Reviews ATRT3 will prioritize its suggestions and recommendations.

# Report Layout

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ANNEX A: ATRT2 Analysis Details      pages 117 – 154

ATR3 analysis of all ATRT2 recommendations.

ANNEX B: Detailed Survey Results and Analysis   pages 155 – 222

ATR3 analysis of the results of its survey.

ANNEX C: GAC Input from ICANN65      pages 222 - 223





## Thank You and Questions

ATRT3 wiki: <https://community.icann.org/x/QK7DAw>

Email (publicly archived): [input-to-atrt3@icann.org](mailto:input-to-atrt3@icann.org)