

DRAFT

Accountability and Transparency Review Team 2 (ATRT2): Terms of Reference and Methodology

1. The Affirmation of Commitments

The Affirmation of Commitments signed on September 30th 2009 between ICANN and the US Department of Commerce (the “AoC”) contains specific provisions for periodic review of four key ICANN objectives, including “ensuring accountability, transparency, and the interests of global internet users.” Under the AoC (¶ 9.1), ICANN has committed to: “maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by:

- a) Continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;
- b) Assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;
- c) Continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- d) Continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and
- e) Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

This document sets forth the terms of reference and the methodology that the ATRT2 will use to carry out its duties under the AoC to “consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest.” The goal of the ATRT2 is to balance internal and external stakeholder equities by providing a rigorous, objective assessment process for measuring progress and outcomes; deliver transparent, defensible results that enhance credibility of overall ICANN assessments, and establish a foundation from which ICANN can logically map, align, and champion future programs and initiatives.

2. Framework

At its simplest, “accountability” refers to a process by which individuals or organizations are answerable for their actions and the consequences that follow from them. Accountability is not only a means by which individuals and organizations are held responsible for their actions. It is also a means by which organizations can take internal responsibility for shaping their organizational mission and values, for opening themselves to external and/or independent scrutiny and for assessing performance in relation to its goals. This includes both the sanctioning elements of accountability and the learning and participatory aspects.

What ICANN *is* – that is to say, ICANN’s role in the **DNS** ecosystem - *necessarily* affects the parties to whom ICANN must be accountable in any

given situation, and the manner in which it should be accountable in any given circumstance. The ATRT2 is cognizant that ICANN is, as a legal matter, a California not-for-profit corporation, and acknowledges that ICANN must operate within the constraints imposed on such institutions. The ATRT2, however, rejects the argument that such legal formalities dictate – and limit - the degree to which ICANN can be accountable to affected stakeholders.

A clear understanding of what ICANN *does*, or is expected to do, is likewise critical. ICANN coordinates the Domain Name System (DNS), Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions.

ICANN is a unique institution. Its accountability requirements cannot be captured by reference to familiar types of organizations (e.g., standards body, foundation, international organization, self- regulatory organization, private corporation). Accordingly, the work of the ATRT2 will therefore include an affirmative examination of the conceptual framework by which ICANN’s accountability should be assessed. [The <link to Framework> attached is a working document, and refinement of the Framework is expected to be a key deliverable of the ATRT2.](#)

With respect to its work, the ATRT2 assumes that ICANN’s accountability should encompass at least the following three spheres:

1. Public sphere accountability which deals with mechanisms for assuring stakeholders, including the global internet community, that ICANN has behaved responsibly;
2. Corporate and legal accountability which covers the obligations that ICANN, as a corporation, has through the legal system and under its bylaws; and
3. Participating community accountability that ensures that the Board and executives perform functions in line with the wishes and expectations of the ICANN community.

The ATRT2 believes that all of these forms of accountability must be considered – and balanced. In other words, the “public interest” and the interests of “individual stakeholders” are interdependent. The ATRT2 also believes that the public interest is served, ultimately, by creating an environment in which all stakeholders can be assured that the rules will be (i) debated; (ii) refined to reflect relevant input from the community, including the community of governments participating in the ICANN process; and (iii) honored in implementation.

ICANN’s transparency provides a basis for the public understanding of its processes and decisions. Transparency is both a necessary foundation for ICANN’s accountability and enables participation in ICANN’s processes by the broader Internet Community.

In this review transparency is defined as: adhering to the fundamental principle that all materials, processes and discussions leading to decisions by ICANN, or any part of ICANN, are made public in an accessible and timely manner. Accessibility is defined by the needs of the Internet Community, and may include but is not limited to: translation, detailed explanations, and rationales.

While occasional exceptions to transparency may be made on privacy or legal bases, these must be documented in a transparent manner.

With respect to its work, the ATRT 2 will conduct its business with transparency as defined above as the default condition for its activities.

3. Work Methodology

a) Modus operandi

- i. Teleconferences will be recorded, subject to the right of a member of the ATRT2 to take the discussion “off the record.” Face to face meetings of the ATRT2 will be streamed, to the extent practicable and subject to the right of a member of the ATRT2 to take the discussion “off the record.” Wherever a

meeting is taken “off the record,” however, the record shall reflect this decision, as well as the underlying considerations that motivated such action.

- II. The ATRT2 will endeavor to post (a) “summary minutes” within 24 hours of any telephonic or face to face meeting; (b) detailed minutes within 5 business days of any telephonic or face to face meeting; and (c) streaming video and/or audio recordings as promptly as possible after any such meeting, subject to the limitations and requirements described in subsection (i) above.
- III. The ATRT2 will maintain a public website, <https://community.icann.org/pages/viewpage.action?pageId=40176025> on which it will post: (a) minutes, correspondence, meeting agendas, background materials provided by ICANN, members of the RT, or any third party; (ii) audio recordings and/or streaming video; (c) the affirmations and/or disclosures of members of the ATRT2 under the ATRT2’s conflict of interest policy; (d) input, whether from the general public, from ICANN stakeholders, from ICANN staff or Board members, governments, supporting organizations and advisory committees, etc. Absent overriding privacy or confidentiality concerns, all such materials should be made publicly available on the ATRT2 website within 2 business days of receipt.
- IV. Email communications among members of the ATRT2 shall be archived automatically via the AT-review email atrt2@icann.org. Any Member has the right to request that a thread be taken “off the record,” for a period of xxxx weeks.

b) ICANN Staff Input

The ATRT2 met with ICANN staff in Los Angeles on March 14 and 15, 2013, and will meet with ICANN staff as needed in the view of the ATRT2, to discuss staff’s views on ICANN’s implementation with respect to AoC transparency and accountability goals. The goal of the ATRT2’s initial exchange with staff was to establish a dialogue with ICANN staff regarding work on accountability and transparency, and to gather preliminary staff

views on “next steps” in furtherance of the AoC goals. Following this initial exchange, staff may be asked to provide their answers and/or additional information to the ATRT2 in writing. Whether or not the ATRT2 requests written follow up, ICANN staff may provide written responses to any questions posed by the ATRT2, and/or in connection with issues that the ATRT2 did not raise but which, in the estimation of staff, are relevant to the work of the ATRT2. The ATRT2 has submitted an initial list of questions for the ICANN staff, which are posted on the ATRT2 website. Further questions may be added later and will be posted on the same website.

c) Community/Stakeholders/Public

The ATRT2 will issue a call for public comments regarding ICANN’s current practices and procedures, and proposed changes to those practices and procedures, on or before 4 April 2012, with an initial deadline of 2 May 2012 for the first Comment period. The ATRT2 will review public comments in its face to face meeting in its meeting in Durban in July 2012. In addition, the ATRT2 will meet in a public forum with ACs, SOs and members of the ICANN community in Durban to provide a progress report, to request further input from the community based on the public comments, and to solicit additional community comments. Further calls for public comments may be announced later during the process as necessary.

- I. SOs/ACs: In addition to all the other opportunities for providing input as spelled out in this document, each ICANN Supporting Organization and Advisory committee is encouraged to submit its own set of recommendations and/or observations through its representative(s) on the review team. The ATRT2 will contact each SO and AC to offer a meeting with members of the RT in Durban. The ATRT2 will provide a list of discussion topics for those meetings, which will be posted in advance on the ATRT2 website.
- II. Board Input: The ATRT2 will meet with members of the ICANN Board of Directors during the ICANN meeting in Durban. The ATRT2 will provide a list of discussion topics and questions for the Board, which will be posted in advance on the ATRT2 website.

- III. Governments: The ATRT2 will meet with the GAC during the ICANN meeting in Durban. The ATRT2 will provide a list of discussion topics for this meeting, which will be posted in advance on the ATRT2 website. The ATRT will explore other avenues to reach out to Governments.
- IV. GAC/Board Working Group: The RT will meet with the GAC/Board Working Group on during the ICANN meeting in Durban.
- V. Outreach: The ATRT will explore other avenues for outreach to the public to engage and collect inputs with respect to ICANN's accountability and transparency with respect to the AoC reviews. This means that the ATRT will explore if other fora can be contacted in order to collect input.
- VI. Management Review: The ATRT2 may appoint a working group to consider engaging an external expert to assist the ATRT2.

4. Work of Review Team

a) Decision-making within the ATRT2

Under the AoC, the ATRT2 is to make recommendations regarding ICANN's accountability and transparency processes in services of the public interest, to be provided "to the Board and posted for public comment." The ATRT2 will seek, but will not require, full consensus with respect to such recommendations. To the extent that the ATRT2 is unable to achieve consensus with respect to any such recommendations, its reports and recommendations will reflect the variety and nature of the ATRT member's views. Any conflicts of interest that may affect the views of an ATRT2 member will be disclosed and addressed in accordance with the conflict of interest policy discussed below. The ATRT2 will ensure that all documents are full consensus documents i.e. they accurately reflect the discussion held.

b) Meetings

- I. Face to Face Meetings: The RT intends to hold its meetings concurrent with ICANN meetings and as needed to advance and complete its review. The

ATRT2 met in person in (a) Los Angeles on 14-15 March, 2013; the ATRT2 will meet in Durban on 14-18 July 2013; in Buenos Aires on 17-21 November, 2013 and on additional dates as needed.

- ii. Telephonic Meetings: In between these face to face meetings, the ATRT2 and/or working groups of the ATRT2 shall conduct telephonic meetings as necessary. All such meetings shall be publicly noticed on the ATRT2 wiki as far in advance as possible, and agendas for each such meeting will be published no fewer than 5 days in advance.

c) Reporting

- i. Members of the ATRT2 are, as a general matter, free to report back to their constituencies and others with respect to the work of the ATRT2.
- ii. While the ATRT2 will strive to conduct its business 'on the record' to the maximum extent possible, members must be able to have frank and honest exchanges among themselves, and the ATRT2 must be able to have frank and honest exchanges with stakeholders and stakeholder groups. Moreover, individual members and the ATRT as a whole must operate in an environment that supports open and candid exchanges, and that welcomes re- evaluation and repositioning in the face of arguments made by others.
- iii. Accordingly, the ATRT2 will retain the authority to determine that an interaction will be held under the "Chatham House Rule". "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."¹

¹ See <http://www.chathamhouse.org/about-us/chathamhouserule> for more information This rule was developed by the UK "Royal Institute of International Affairs" (whose home is at Chatham House in London) "with the aim of providing anonymity to speakers and to encourage openness and the sharing of information. It is now used throughout the world as an aid to free discussion. Meetings do not have to take place at Chatham House, or be organized by Chatham House, to be held under the Rule".

- IV. Members of the ATRT2 are volunteers, and each will assume a fair share of the work of the team. Where appropriate, and with the consensus of the ATRT2, ICANN staff will be used to provide administrative support services related to travel, meeting logistics, and technology. To preserve the independence and integrity of the ATRT2, however, ICANN staff will not be asked to perform substantive tasks (i.e., report drafting, etc.) with respect to the work of the ATRT2. If necessary, the Chair and Vice Chairs of the ATRT 2 shall propose an approach to providing appropriate support to the ATRT 2 efforts.

d) Participation

- I. Members could be assisted when necessary (e.g. for translation purposes) although the emphasis must remain on direct interaction between the named members. Assistants should not intervene themselves, nor should they be able to substitute for a member who is unable to participate. This applies to conference calls as well as face-to-face meetings. Remote participation possibilities should be provided in cases where a member is unable to attend a face-to-face meeting. Independent experts are deemed to be full Members of the ATRT 2.
- II. The Chair and Vice Chairs of the working group will coordinate the work of the ATRT2, but will serve as full participants in the substantive deliberations of the ATRT2 and in the development of the ATRT2's deliverables. All members of the ATRT2 will have equivalent voting rights.
- III. External Experts (if applicable). The External Experts are third parties that may be engaged with to support the ATRT 2 work.

e) Tools /Means of Communications

- I. The ATRT2 will endeavor to use online communications capabilities to further its work. In particular, the RT will use Adobe meeting rooms in connection with its telephonic meetings. The materials available in these settings will be made available to the public in keeping with the policies

articulated in this methodology.

f) Indicators/Metrics

Identification of reliable indicators of progress with respect to accountability and transparency is important to assess effectiveness and whether continual improvement is occurring. The ATRT2 has therefore tasked a working group to identify potential metrics to assist stakeholders and others in determining how ICANN is progressing in its efforts to be more transparent and accountable. The initial recommendations of the working group are available [<here>](#). Members of the ICANN Community and others will be invited to submit suggestions for such metrics as well.

5. Deliverables

a) Final Recommendations to ICANN

- I. The ATRT2 will endeavor to post draft recommendations in October 2013, in order to solicit public comment in advance of its November meeting in Buenos Aires. Recommendations should be clear, concise, concrete, implementable and, where appropriate, offer metrics to ICANN to measure implementation and effects.
- II. Those recommendations should aim at
 - building greater trust;
 - establishing an open, candid debate on enhanced accountability and transparency (which is necessarily an ongoing process);
 - building a partnership that includes the ICANN staff, Board, and stakeholder community commitment to work as a team to improve the organization;
 - enhancing the legitimacy of ICANN in the eyes of the global Internet Community.
- III. The Team will endeavor to demonstrate the rationale it has employed for any individual recommendation but focusing on recommendations rather than on a lengthy report of proceedings.

b) Recommendations to next Review Panel(s)

Based on substantive review of the three previous Review Teams, the ATRT2 will provide recommendations regarding the procedures and conduct of future reviews as called for in the AoC.

6. Conflicts of Interest

The ATRT2 has adopted the conflict of interest policy set forth in Attachment A to this Methodology. All member declarations submitted in accordance with the conflict of interest policy will be posted on the ATRT2 website. At every meeting the ATRT2 members confirm their declaration is still valid.

7. Timeline

The Review Team will meet in early May 2013 in Los Angeles to interact with ICANN staff, based on a set of questions, and will begin gathering data.

In Durban (14-18 July 2013) the Review Team will meet with ICANN SO/ACs, constituencies, stakeholders, Working Group Chairs, the GAC, the ICANN Board as well as with the ICANN Community to collect feedback. A structured set of questions will be prepared in anticipation of these sessions and shared in advance.

On the week of August 19th 2013, the Review Team will convene in Australia to analyze elements received during the data-gathering phase. Penholders will be requested to stay an extra day in order to draft conclusions reached during the analysis phase.

The Review Team will issue the draft report for public comment in October 2013 and solicit input from the Community and stakeholders at the ICANN meeting in Buenos Aires (15-21 November 2013).

Post Buenos Aires, the Review Team will review the comments received on its draft recommendations and refine the report with the goal of producing the final recommendations by 31 December 2013.