

# ATLAS II Thematic Group on ICANN Transparency and Accountability

TG 4 Team:

SMEs: [Avri Doria](#) and [Hong Xue](#) (jointly)

Moderator: [Holly Raiche](#)

Assistant Moderator: [Chester Soong](#)

Reporter: [Alan Greenberg](#)

Staff Support: TBD

## Abstract

ATRT Final Recommendation #9 generally reflects the community feedback on existing appeals mechanisms and includes a set of necessary improvements. Rec.9.2 is particularly important for accountability of decision-making process and reform of appeal mechanism. It's suggested to form a Stakeholder Group Committee to examine the options to restructure the current Board reconsideration process and the Independent Review Process (IRP).

However, it is unclear whether Board reconsideration process and the IRP will remain the only or the "final" appeal channel available for reviewing other appeals decisions, either from internal bodies or outside service providers, especially in the various gTLDs and ccTLDs processes. For example, will improved appeals mechanisms take into account the processing of reconsideration requests and objections on decisions made in the new gTLD program by ICANN or its dispute resolution providers, or will it apply to a review procedure for decisions made in IDN ccTLD program, for issues such as string similarity.

In the long run, enhancement of accountability depends on the improvement and development of mechanisms in three correlated areas, namely (1) institutional transparency, particularly in the decision-making process; (2) check and balance through duly separation of powers, especially after the transition of stewardship of IANA function; and (3) effective and efficient appeal system, within or outside ICANN, including the external final appeal system to "judicially" supervise the decision of ICANN Board and its members, like the constitutional court.

As we have not seen what the Board intends to do about recommendation 9.2 it is good to be cautious. But if the Board and ICANN staff do honor the suggestion for a community wide discussion of ICANN accountability and appeals, then At-large needs a strategy for contributing to that and needs to begin substantive work on identifying the features required in a well formed ICANN appeals process. In developing accountability and transparency mechanisms, from a At-Large perspective, discussion needs to extend to all of the At-Large Structures (ALS) so that they can contribute from the diversity of global user experience on accountability and transparency and access to appeals mechanisms, that only At-Large can bring to ICANN.

## Questions raised by the community:

1. What sort of appeals mechanisms does ICANN need? Does ICANN need a final appeal mechanism to supervise the Board and its (paid) members?
2. Is the soft bottom-up oversight offered by the AOC adequate or does ICANN need some other form of oversight, especially in this time of IANA stewardship transition?
3. How can the AOC process and current Accountability and Transparency measures be improved?
4. Do you agree with Transparency by default for an organization like ICANN? Should all issues that are not treated with full transparency be logged as such with a description of why Transparency was not appropriate treatment for the issue? Should there be a time limit on items that are deemed secret?
5. Does ICANN need a yearly Transparency audit? Why or why not?

## Questions raised by ICANN for enhancement of accountability:

1. What issues does the community identify as being core to strengthening ICANN's overall accountability in the absence of its historical contractual relationship to the U.S. Government?
2. What should be the guiding principles to ensure that the notion of accountability is understood and accepted globally? What are the consequences if the ICANN Board is not being accountable to the community?
3. Do the Affirmation of Commitments and the values expressed therein need to evolve to support global acceptance of ICANN's accountability and so, how?
4. What are the means by which the Community is assured that ICANN is meeting its accountability commitments?
5. Are there other mechanisms that would better ensure that ICANN lives up to its commitments?

## Reference Documents

[Thematic Group 4 Document Store](#)

# Report

## **FINAL VERSION TO BE INCLUDED IN THE DECLARATION:**

*The final version to be included in the Declaration and endorsed by the ALAC will be placed here.*

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## **FINAL DRAFT VERSION TO BE ENDORSED BY THE ATLAS II PARTICIPANTS**

*The final draft version to be endorsed by the ATLAS II participants will be placed here.*

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## **FIRST DRAFT SUBMITTED**

*The first draft submitted will be placed here.*

ICANN under its own Bylaws and the Affirmation of Commitments must ensure that decisions made related to the global technical coordination be made in the public interest and must be accountable and transparent. In making recommendations in the context of global acceptability, the ATLAS II Accountability and Transparency Thematic Group recognizes that there are two constituencies: the ICANN community and the larger global community of Internet users.

### **Definitions:**

**Accountability:** The responsibility to answer for whether you have achieved what you committed to do.

**Transparency:** The openness and accessibility of decision-making processes and outcomes. All stakeholders, including users and governments, must be able to trace back how a particular decision has been reached. The default mode of operation within ICANN must be complete transparency.

### **Recommendation:**

This group recognizes there are many areas for internal reform that were identified by the ATRT2 report and we support their implementation. Our recommendations relate to ICANN's relationship to the wider global community.

### **Accessibility**

Members of the general public should be able participate in ICANN on an issue-by-issue basis. Information on the ICANN website should, where practical, be in clear and non-technical language.

### **Public complaints**

The roles and jurisdiction of the Ombudsman should be expanded. The website should provide a clear and simple way for the public to make complaints.

### **Identification of public issues**

Both the areas of the Ombudsman and Compliance should report regularly on complaints received by category of complaints, issues being complained and their outcomes. Issues that are not resolved should have reports on how they will be addressed, .

### **Board oversight**

There should be a mechanism to hold the board itself responsible for action or in-action:

- Cross-community Standing Oversight Body that:
  - Must have access to all relevant information
  - Should have power to compel the ICANN Board to take remedial action
  - Membership that is independent of the ICANN Board