At-Large Workspace: Third Accountability and Transparency Review Team (ATRT3) Draft Report

<table>
<thead>
<tr>
<th>Public Comment Close</th>
<th>Statement Name</th>
<th>Status</th>
<th>Assignee(s)</th>
<th>Call for Comments Open</th>
<th>Call for Comments Close</th>
<th>Vote Open</th>
<th>Vote Close</th>
<th>Date of Submission</th>
<th>Staff Contact and Email</th>
<th>Statement Number</th>
</tr>
</thead>
</table>

Hide the information below, please click here >>

06 January 2020 CPWG Single Purpose call presentation by Sebastien Bachollet:

[ATRT3_Draft_20...G_20200106.pdf]

23 December 2019 CPWG presentation by Sebastien Bachollet:

[ATRT3_CPWG_20191223.pdf]

Third Accountability and Transparency Review (ATRT3) Draft Report:
Brief Overview

**Purpose:** This Public Comment proceeding is on behalf of the third Accountability and Transparency Review Team (ATRT3), who seeks to solicit input on its draft report. The Accountability and Transparency Review is mandated by ICANN’s Bylaws (Article 4, Section 4.6) to review “ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community.”

**Current Status:** The report drafted by the ATRT3 contains key findings and draft suggestions and recommendations. The ATRT3 has not reached consensus on its suggestions and recommendations. It is seeking input from the community on the proposals included in the draft report.

**Next Steps:** The ATRT3 will carefully consider comments received and amend the report as it deems appropriate and in the public interest before submitting its final report to the Board. The ATRT3 expects to submit its final report to the Board in March 2020. The final report will be published for Public Comment in advance of the Board's consideration.

Section I: Description and Explanation

This Public Comment proceeding is on behalf of the third Accountability and Transparency Review Team (ATRT3), who seeks to solicit input on its draft report.

The report drafted by the ATRT3 contains findings, suggestions and recommendations with regard to ICANN accountability and transparency in key areas:

- Board
- Governmental Advisory Committee
- Public Input
- Policy Development Process
- Specific and Organizational Reviews
- Accountability Indicators
- Prioritization of Activities, Policies, and Recommendations

The ATRT3 collected opinions on ICANN's accountability and transparency from individuals and ICANN structures via a survey and engagement sessions at ICANN Public Meetings. This input helped the team identify areas which require improvement and could benefit from a suggestion or recommendation. More information on the ATRT3's key findings, suggestions and recommendations is detailed in the draft report summary (see Section 1).

The ATRT3 welcomes community comment on all sections of its draft report and highlights the following topics as particularly critical:

**Specific and Organizational Reviews** (see Section 10.5): As stated in the draft report, "Although ATRT3 could not come to consensus on a single proposal to address the issues related to Specific and Organizational Reviews it did manage to narrow the options down to two distinct possibilities for this draft report which are presented [in the report]. The ATRT3 is seeking input from community on these to assist it in coming to a conclusion on this topic for its final report."

**Prioritization of activities, policies, and recommendations:** The draft report includes a suggestion on this topic (see Section 12.4).

Section II: Background

The Accountability and Transparency Review is mandated by ICANN's Bylaws (Article 4, Section 4.6) to review "ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community."

On 20 December 2018, ICANN announced the selection of an 18-member team to conduct the third Accountability and Transparency Review (ATRT3). The ATRT3 is mandated by the Bylaws to issue its final report within one year of convening its first meeting, i.e. by 5 April 2020.
Per the Bylaws, the issues that the Accountability and Transparency Review Team may assess include, but are not limited to, the following:

- Assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN's present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws.
- Assessing the role and effectiveness of the GAC's interaction with the Board and with the broader ICANN community, 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.
- Assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- 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; and

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

The above items are included in the ATRT3 scope, along with the following topics (see the terms of reference and work plan for more information):

- Review of ICANN's Accountability Indicators (https://www.icann.org/accountability-indicators)
- Prioritization and rationalization of activities, policies and recommendations

To undertake its work, ATRT3:

- Organized its report based on the above list of topics.
- 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.

Section III: Relevant Resources

- Third Accountability and Transparency Review (ATRT3) Draft Report

Section IV: Additional Information

- ATRT3 Review Team wiki space: https://community.icann.org/x/QK7DAw
- Accountability and Transparency Review page on icann.org: https://www.icann.org/resources/reviews/specific-reviews/atrt
- Second Accountability and Transparency Review implementation wiki page: https://community.icann.org/display/atrt/ATRT2+Implementation+Program

Section V: Reports

FINAL VERSION SUBMITTED (IF RATIFIED)

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.
FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.

DRAFT SUBMITTED FOR DISCUSSION

The first draft submitted will be placed here before the call for comments begins. The Draft should be preceded by the name of the person submitting the draft and the date/time. If, during the discussion, the draft is revised, the older version(s) should be left in place and the new version along with a header line identifying the drafter and date/time should be placed above the older version(s), separated by a Horizontal Rule (available + Insert More Content control).

See Google Doc for comment

First draft copied below:

ALAC STATEMENT
Accountability and Transparency should be the cornerstone of any organisation and the ALAC is glad to provide comments on the ATRT3 draft report just as we have contributed actively with dedicated volunteers who helped in shaping the work of the review team. In this regard, we believe that it is important for the appropriate arms to fully implement the recommendations of ATRT.

General concerns:

1. The lack of differentiation between recommendation and suggestion seems confusing and it might be better to stick to one of them to avoid confusion.

2. Clarification is needed on what ATRT identifies and tries to solve with their recommendations. Problems with the current process include:
   1. Volunteer burnout
   2. Disparity of ICANNs self assessment and the reviews' assessment.
   3. Recommendation overload and prioritization
   4. Most importantly: how will ATRT proposals increase accountability (currently too low, acceptable, … ?) and perceived trustworthiness?

Point 1 will always be a problem, particularly for non-commercial actors (volunteers) but reduced when less reviews are undertaken or if their workload is reduced. However, that solution impacts on accountability, with longer oversight-less periods. This could be addressed by having an independent and constant oversight function that could, in some way, serve some of the review functions.

Point 2 likely requires some sort of independent oversight function, and clear rules on how recommendations are given (SMART criteria). This was not the case in the past and could be a contributor but the problem goes beyond wording, considering the level of disagreement. How could this oversight be organized, is another committee a sufficient solution? Transparency would likely be another key building block, e.g. a centralized, up to date tracking tool.

Point 3 is hard to deal with, as most recommendations seem sensible. However, some key issues have been raised by multiple review teams and appear to be central.

Point 4 is a key issue of the review, and it must be clearly laid out how options 1 and particularly 2 (as it constitutes a departure from current rules) would address this. How will the options make sure that ICANN org and generally remain more accountable and actually maintains the system in a manner that balances contracted party interests with public interest (e.g. availability, competition, security, …)?

The ATRT review has produced a considerable amount of work in little time and this is laudable. Nevertheless, from an end-user perspective, ATRT should consider to deliberate the following questions:

• How can ICANN better address conflicts of interest? The ICANN community is relatively small, with relatively few actors involved in the process. Conflicts of interest, if perceived or real, can impact negatively on ICANN's standing.
• How can the transparency be increased?
• How can ICANN ensure that in cases where issues persist (after they have been identified by the community), processes are initiated to correct trajectory? Consider, for example implementation being considered incomplete in the majority of cases.
  • For example, if multiple reviews identify the same issue, how can this be fast tracked transparently and effectively?
• Might it be necessary to "silo off" or ring fence certain functions, including reviews, compliance, and other types of oversight?
• How can ICANN improve their responsiveness to community and review team questions and affairs, and what policies should be created to ensure these are dealt with?

One of the most important issues tackled by ATRT is that of how future reviews, and by extension ICANN's foremost accountability function would be designed. From an ALAC perspective, the most important consideration is how appropriate oversight and representation of billions of internet users can be ensured going forward.

It appears that options one and particularly require more fleshing out to inform the community about what they would specifically entail. While the status quo is not working according to a variety of stakeholders, more research and consideration should go into option 2 going forward, or indeed any other solution that is supposed to solve the current concerns. While option 2 addresses some of these concerns, it is too curt to determine its impact. The proposals should be more detailed and consider the pros and cons, e.g. when it comes to specific concern 2.2.

It is obvious that the review team cannot provide a complete solution for a variety of reasons, including procedural and due to the amount of required work, it would be very useful to provide more details on how this approach could look like, and what would have to be considered when putting the proposal into practice. Tackling these changes would improve on current levels of accountability and transparency is important to maintain ICANN's standing and potentially its existence going forward. From an end-user perspective, more, not less, accountability and transparency is required from the ICANN community and org.

A key approach to some of the issues raised could be the use of external, independent review and audit, involving standard compliance and regular external reviews (that should be published, likely in redacted form) drawing, specifically, from parties that are not financially conflicted.
Specific concerns:

1. Prioritization is a complex process that requires a lot of information and support from ICANN org and any teams must include individuals with insight into the ICANN structures and processes. At the same time, this process requires a level of transparency (wherever possible) so that the community can follow and understand the choices made, and must also involve individuals with an “outsider” perspective to ensure a balanced and holistic assessment. Process and outcomes need to be extremely well thought through, resourced, and transparent.

2. Concluding SSR (as well as any other) reviews in short, 5-7 day, workshops seems difficult to achieve. Such short time frames will not allow for questions being asked to staff or constituencies. Therefore, the preparations for such workshops need to be extremely well thought through and comprehensive. In terms of accountability, it would be necessary for ICANN to undergo stringent and regular security audits with reports being made available so that the SSR review can essentially review those reports instead of conducting their own research. The review team should consider how delays (e.g. slow staff responses) could be dealt with in this case.

One option might be to include a level of flexibility for this review, wherein the team can decide to conclude after one two or three F2F meetings, should further investigation be necessary or in case key information is not available.

We support the suggested changes to the public comment, public input as well as the accountability indicators. We believe those changes would make the public comments more effective and show better transparency. We strongly believe that a wide, open and inclusive process should be maintained in policy development process especially with input representing the multi stakeholder environment. Policy development must be transparent, efficient and should not be biased or skewed towards a group.