

Staff Report of Public Comment Proceeding

Third Accountability and Transparency Review Team (ATRT3) Draft Report			
Publication Date:	14 February 2020		
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Public Comment Proceeding		Important Information Links	
Open Date:	16 December 2019		
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		Announcement	
		Public Comment Proceeding	
		View Comments Submitted	
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Section I: General Overview and Next Steps			
<p>Comments were received on all sections of the ATRT3 draft report. For the purposes of this summary report, comments have been separated by the following themes, in accordance with the key recommendations and suggestions that ATRT3 identified in the summary section of its draft final report:</p> <ul style="list-style-type: none">• Implementation of ATRT2 Recommendations• Prioritization• Specific and Organizational Reviews• Public Comment• Accountability Indicators <p>This report also includes a summary of comments in the following two themes, due to the number of comments received on these topics:</p> <ul style="list-style-type: none">• Recommendations and Suggestions• Formulation of Recommendations <p>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 by April 2020. The final report will be published for Public Comment in advance of the Board's consideration.</p>			
Section II: Contributors			

At the time this report was prepared, a total of sixteen (16) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
GNSO Intellectual Property Constituency	Brian Scarpelli	IPC
Security and Stability Advisory Committee	Andrew McConachie	SSAC
Registrar Stakeholder Group	Zoe Bonython	RrSG
Business Constituency	Steve DelBianco	BC
At-Large Advisory Committee	ICANN At-Large Staff	ALAC
gTLD Registries Stakeholder Group	Samantha Demetriou	RySG
ICANN Board	Wendy Profit	Board
Governmental Advisory Committee	Robert Hoggarth	GAC
Non-Commercial Stakeholders Group	Rafik Dammak	NCSG
Internet Society Cameroon Chapter	Master Esther Sandrine NGOM	ISOC-C
Consortium d'Appui aux Actions pour la Promotion et le Développement de l'Afrique	Michel Tchonang Linze	CAPDA

Individuals:

Name	Affiliation (if provided)	Initials
Russ Housley		RH
Дарья Хвостовец		ДХ
Heather Flanagan		HF
Chokri Ben Romdhane		CBR
Laurin Weissinger		LW

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Implementation of ATRT2 Recommendations

BC and RySG support both of ATRT3's suggestions regarding implementation of prior ATRT recommendations. BC "suggest[s] that "Implementation Shepherds" be recruited from among community volunteers who actively participated in the identified prior review." RySG "strongly encourage[s] this and future RTs to close issues where the recommendations are implemented but could be improved with minor adjustments. The minor adjustments could form the basis for new "improvement" recommendations."

ISOC-C and CAPDA also "support ATRT3's proposals following its analysis of the implementation of the ATRT2 recommendations. In particular their retroactive uses for CCT1, RDS2 and WS2. It is important that for each recommendation, the person designated to liaise with the review team is regularly consulted by ICANN org. implementation."

Prioritization

The Board “supports the proposal of a “holistic suggestion with respect to prioritization.” This is the right strategy. The Board believes strongly that prioritization of review recommendations cannot take place in isolation and that the prioritization process must fit into ICANN’s existing budget and planning mechanisms.” However, the Board notes a concern that “the ATRT3’s “guidance for the creation of a community-led entity tasked with developing a prioritization process,” and the development of a standing group to perform prioritization work does not recognize existing mechanisms that could be leveraged, and is not the right approach to solving the imminent problem of prioritization and resourcing over 300 community-issued recommendations ... Instead of creating new community structures, the Board encourages the ATRT3 to refine its recommendation to build on existing community groupings, mechanisms and processes, so as to leverage expertise, build on what has been tested and ease any additional burdens in the challenges around the prioritization and resourcing work.”

BC “does not believe [the proposed] prioritization mechanism is necessary or helpful.”

RySG “see[s] the formation of yet another standing- type committee of ICANN insiders as another layer of separation from the bottom-up multistakeholder process and are particularly concerned that the committee might be co-opted by long-time industry insiders without the benefit of fresh new perspectives. Additionally, the committee will further slowdown work by requiring a year for prioritization. Instead the RySG, in line with our suggestions to the Evolving MSM report, suggests stronger controls at the SO/AC level, better recommendations and project scoping (including budgeting), and smaller (and better-managed) projects.”

ISOC-C and CAPDA note “the proposal that prioritization must be carried out in an open and transparent manner and every decision must be justified and documented seems useful, but with currently more than 200 recommendations to prioritize is not too much asked and will it not lengthen the time frame too much? It would also be useful to add to the criteria to use that of the needs/priorities of the various ICANN players.” CAPDA adds, “proposals for prioritization should be recommendations, not just suggestions. The use of the new operational standards for specific reviews that are proposed to serve as the basis for the operation of the annual priority-setting process must be tested to ensure that they meet all prioritization of all recommendations.”

NCSG notes “the ATRT3 should re-think the community-led entity process since it can lead to a greater community burden. We suggest that the prioritization should be made inside the review process since it would save resources allocation and avoid duplication of effort. But if not possible, the ATRT3 should aim for a more friendly, and longer period term that would not collide with other significant reviews.”

ALAC notes “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.”

IPC “agrees that a number of the proposed listed requirements for a prioritization process seem sensible and should help the community to prioritize its workload and the implementation of the many recommendations of past reviews, in addition to likely future

recommendations.” However, IPC “strongly objects to the proposal that a new entity/standing group be put in place to conduct the so-called annual prioritization process. An “annual prioritization process” which “should be given a fixed one-year term to complete its task” means that as soon as the task is concluded for one year, it will start up again. This would therefore appear to envisage the creation of an effectively permanent small group of “ICANN insiders”, who will then operate in a top-down manner. This is not a true “community-led process.”

RrSG “is supportive of the ATRT3’s suggested Prioritization Process, as greater coordination and oversight should certainly have a positive impact on volunteer workload, timelines and efficiency. The RrSG believes a professional and neutral facilitator should be used by default, to ensure excessive time (and therefore resources) are not being wasted on handling the differences that inevitably come out of multistakeholder discussions. There should also be a liaison or representative member from GNSO Council in the Prioritization Process, to ensure coordination with the organization and prioritization of PDP work.”

SSAC “does support a community-led process for prioritizing the recommendations of Specific Reviews on an annual basis but not exactly as proposed by the ATRT3. Rather, it would be preferable for the SO/AC Leadership to develop the ongoing prioritization framework and process, aligned to the Strategic Plan, which would then be subject to community consultation before finalization.”

Specific and Organizational Reviews

Option 1:

SSAC notes that it “agrees in principle about the need for some independent accountability oversight function, although we think ATRT3 should consider more deeply how something like an Independent Accountability Office (IAO), proposed as part of Issue 8, could work and be funded. In particular, it is important that such a function not add to the underlying problems of volunteer and ICANN Org overload and ideally should relieve them.”

NCSG notes that “Option 1 suggests an oversight mechanism that should be responsible for auditorship the implementation of the recommendations of the reviews done by the community. While this would reduce the responsibility of the community, duplication of efforts, and be an efficient way to guarantee that ICANN implemented the recommendations without having a holistic review, for example, this oversight mechanism could also present problems if it’s an external reviewer”. NCSG believes “ATRT3 should “focus on improving the Option 1 proposition by ensuring that the Independent Accountability Office if implemented, would not be composed by external reviewers of ICANN’s Community and ecosystem.”

The RySG “does not support Option 1 as it does not represent a significant departure from the status quo.”

The Board “does not consider Option 1 (as described in the Draft Report) to be viable.”

IPC notes “the proposal for a newly created Independent Accountability Office would appear to create an unnecessary level of additional bureaucracy.”

The BC has “little confidence that the “new oversight mechanism” in Option 1 would address dissatisfaction expressed with the current review processes.”

Option 2: Overarching Comments

ALAC notes that “Option 2 is the preferred option of the ALAC. However, it appears that option 2 requires more fleshing out to inform the community about what it would specifically entail.”

The Board notes that it “supports the direction of Option 2, which offers interesting considerations and will benefit from clarifications and further refinement to capture ongoing discussions identified above... The Board acknowledges the complexity associated with this streamlining work, given the range of discussions and dependencies, including the ongoing Bylaws-mandated review work. Given ATRT3’s limited remaining time, the Board encourages the ATRT3 to define overarching criteria that can guide the future review streamlining work. Such criteria should focus on the intent and requirements of the Bylaws, the needs of the ICANN community, as well as ICANN’s Strategic Plan.” Further, the Board suggests “the ATRT3 might want to consider how to bring consistency and standardization” to Organizational Reviews.

Option 2: Organizational Reviews

RrSG “believes Option 2 to be the best way forward for Organizational Reviews, for its emphasis on self-review and continuous improvement. However, this is dependent on the self-review workshops and overarching ‘holistic’ review done after seven years being overseen by an independent professional and its recommendations being limited, but appropriately implemented by the organization. Any recommendations should be valid and implementable, so it should be known how long it will take, what it will impact, what the budget will be and when it should be finished. To ensure a reasonable use of ICANN’s budget, the self-review workshops should also be less than three days if the SO/AC deemed it necessary to hold them more than every three years and participation should be limited to those necessary to make the decisions/recommendations.”

BC “supports the Option 2 “workshop” approach for Organizational Reviews, based on our experience that face-to-face working group sessions increase focus, interaction, and consensus building – especially relative to what we achieve via long email exchanges and often unfocused conference calls. We further suggest that all SO/ACs be invited in advance to submit observations and recommendations to whichever SO/AC is scheduled to hold its self-inspection workshop. And the subject SO/AC should be encouraged to ask ICANN staff to provide data or analysis in advance of the Workshop, to provide factual basis to evaluate progress since the last review in terms of participation, diversity, outreach, process improvements, etc.” BC also “supports ATRT3’s Option 2 suggestion to hold a “holistic” review every 7 years. We further suggest that SO/ACs be invited in advance to submit observations and recommendations. And SO/AC leaders should be encouraged to ask ICANN staff to provide data or analysis in advance of the Workshop, to provide factual basis to evaluate progress since the last review in terms of participation, diversity, process improvements, etc.”

SSAC “does not support [Option 2] as presented, since in some respects it is adding bureaucracy to what should be an ongoing internal process of self- improvement within each SO and AC. The way in which each SO/AC conducts its own ongoing self-improvement should be a matter for that group.”

IPC “would favor some streamlining, for example by adopting a maximum duration for such

reviews. However, we strongly oppose the proposal that these organizational reviews be conducted as 3-5-day workshops focused on self-inspection.”

NCSG notes that Option 2 “presents problems when addressing the Organizational Reviews. It’s unreasonable to believe that the community will be able to conduct a whole review process, which sometimes takes a whole year into a 5 (five) days workshop, even if focused on SO/AC self-inspection in the context of continuous improvement.”

Option 2: Specific Reviews

ALAC notes “concluding SSR (as well as or any other) reviews in short, 5-7 day workshops seems difficult to achieve, at least under current conditions. Such short time frames will complicate asking questions 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 continuous assessment as favored by ATRT (e.g. regular security audits) with reports being made available so that the SSR review can essentially review those reports instead of conducting their own lengthy research. The review team should consider how delays (e.g. slow staff responses) could be dealt with in this case.”

The Board notes “consideration of overarching criteria could guide the simplification of the review processes and result in more impactful outcomes. The ATRT3 could propose and clarify several areas including, for example: guidance on how to support appropriately skilled and impartial review teams; propose strategies to help future review teams set their scope in a way that allows them to focus on issues most relevant and important to the ICANN community; and encourage review teams to improve the quality of their recommendations, including how to achieve effective and resource-conscious solutions. Additionally, the ATRT3 could also consider focusing on the overarching criteria and recommend that the Board, community, and ICANN org develop streamlined review processes based on those criteria.”

RrSG “support[s] Option 2, but notes its concerns about potentially limiting the timeline to as little as 12 months... The RrSG would also question what the process is intended to be for any new Specific Review that was required in response to a future issue and going forward how it would be decided whether a Specific Review should be done every 7 years like the AT review, or through a workshop or traditional review process, as with SSR reviews.”

RH notes “a Specific Review could be conducted in less than a year” and sets out a proposed timeline for consideration.

ISOC-C and CAPDA “agree with the proposals made in the report but we believe that one or more new journals could be created, for example on the issue of DNS abuses. These will be conducted under a group of workshops of 3 to 5 days.” Further, ISOC-C and CAPDA “suggest merging the organization holistic review projects with ATRTx to allow for a completely comprehensive vision of ICANN once every 7 years.”

SSAC “does not support this option exactly as presented, but considers that there is merit in seeking to combine the scope of some of the Specific Reviews and even considering very seriously whether some aspects of these reviews are required at all. Furthermore, the SSAC believes that staffing the review teams with volunteers is inherently broken. Paid consultants should be engaged to undertake Specific Reviews and the role of the volunteer Review Team should be limited to oversight: scope setting, reviewing the report, and considering the

veracity and practicality of its recommendations... The SSAC does however support the extension of the timeline between external reviews to approximately 7 years and recommends that scheduling flexibility be incorporated into the Bylaws to enable an approach that avoids budget stress and volunteer burnout.”

IPC notes “combining the AT, CCT and RDS reviews (each of which, on its own, can be very deep and intricate) into a single review would create more problems than it solves – the remit of this review would be so expansive as to make it unworkable, exacerbating concerns about workload and the length of time such reviews take. The IPC does not favor the further complication of reviews in this manner. Instead, the SR’s should be maintained and improved upon. ICANN Org has repeatedly contended that it has fully implemented all past community review recommendations. We know, however, from recent assessments by the Review Teams of WHOIS/RDS, ATRT3 and SSR2, that prior reviews were not implemented fully. We would certainly favor clarity of scope and remit at the outset of such individual reviews to ensure that they do not duplicate work already under way or recently completed. Additional efficiencies could be achieved by developing a clear structure and timeline for all such reviews, and a pro-forma template report to be completed.”

LW notes “the aim (option 2) to reduce the SSR review to short workshops is concerning. While the OCTO team is doing a lot of excellent work (e.g. outreach, engagement, stakeholder support, etc.) and SSAC and RSSAC contribute important advice, there are systemic security issues within the DNS and the ICANN ecosystem that need to be addressed.” LW further notes that “continuous assessment and audits by independent third parties, reviewed by the community in intervals or partly “staffed” by community volunteers, could be an approach as well as shorter but more frequent reviews on SSR, e.g. twice per year. In the latter case, having overlapping terms (at least 1 year overlap, better 1.5/2) to ensure knowledge transfer would be useful.”

HF suggests “rather than require a review team to try and do all its work in a 5 day workshop, which seems unreasonable and almost designed to result in a very shallow review, I personally would recommend that ICANN treat this as a more typical audit process and hire a firm that does audits for a living to evaluate if ICANN is following its own processes and procedures, and to make recommendations where those processes/procedures are insufficient or otherwise not being met. The final report from the audit company can be made available for public comment, thus keeping that public accountability open.”

Public Comment

ALAC notes it “support[s] the suggested changes to the ICANN Public Comment [and] public input.” ISOC-C and CAPDA note, “as part of the public comment procedure, ICANN’s translations of a summary and key issues into ICANN’s official languages are very important improvements.”

The RySG also notes its support for ATRT3’s suggestion with regard to Public Comment (Section 5.4.2) but identifies several items for ATRT3 to consider further as part of the suggestion. Further, RySG notes it is “particularly supportive of ATRT3’s suggestion to “develop a system similar to, and integrated with, the Public Comment tracking system which would show all uses of alternate mechanisms to gather input including results and analysis of these”. The RySG has experienced difficulty finding all input opportunities in the past and would support a mechanism which streamlined communication expectations for non-public comment input.”

CBR notes “public comment process may include a mechanism that give the opportunity to commenters to give their opinions about the staff report on the Public Comment proceeding and to claim any omission.”

The Board “encourages the ATRT3 to engage with ICANN org to ensure that any recommendations issued in the Final Report are complementary to the recently completed and ongoing improvements [to public comment procedures].”

Accountability Indicators

ALAC “support[s] the suggested changes” to the Accountability Indicators. RySG notes it “generally supports [ATR3’s] suggestion but is concerned that it lacks specificity. We suspect ICANN would mark at least items 2-4 as complete. We suggest a “SMART” recommendation that ties the recommendations to the problem to be solved so that staff will know when they’ve hit the target. We additionally observe that any review of the Accountability Indicators be dependent on the outcome of a communications exercise with the community on what the Accountability Indicators are and what purpose they serve.”

The Board notes that ICANN org “has undertaken and/or plans to undertake improvements to” accountability indicators, and “encourages the ATRT3 to engage with ICANN org to ensure that any recommendations issued in the Final Report are complementary to the recently completed and ongoing improvements.”

Recommendations and Suggestions

The Board “requests clarity on which of the ATRT3’s outputs are formal recommendations. To the extent that the ATRT3 also includes categories of items other than “recommendations” in its final report, this could create confusion as this is not aligned with the Bylaws or Operating Standards.”

ALAC believes “the lack of differentiation between “recommendation” and “suggestion” is confusing, so it is recommended to stick to one of these terms in order to avoid confusion.”

CAPDA notes the distinction between recommendations and suggestions “does not seem very clear to everyone, however, even if the recommendations require significant work to meet the requirements of the new standards, there should be more. Moreover, if all proposals are of the same importance and if the Executive Board does not distinguish, why are they treated and named differently?”

ISOC-C notes “the terms recommendations and suggestions are not well specified as to their definition and especially as to their content. Based on the intricacies of language, recommendations always have a greater force of constraint than suggestions, and recommendations are generally required to take into account, while suggestions are not very restrictive.”

Formulation of Recommendations

The Board notes that “the Operating Standards (Section 4.1) provide guidance for the drafting of recommendations and encourage[s] the ATRT3 to adhere to these as closely as possible. Overall, the Board is committed to an effective outcome-based implementation of clear and focused community recommendations, and believes that concrete fact-based problem statements and clear definition of what the desired outcome will look like, including how

implementation should be evaluated by the community and the next review team, will go a long way toward more impactful outcomes. The Board strongly encourages the ATRT3 to consider this when compiling its final report.”

The SSAC suggests that “all potential recommendations should be carefully assessed for absolute necessity, practicality and cost effectiveness before being proposed, and should be fashioned to reduce the burden on volunteers.” Further, “all potential recommendations should be posed cognizant of the need to reduce the demands on staff and resources wherever possible.”

RySG “suggest[s] making your recommendations and suggestions easy for the Board to prioritize. The RySG is concerned that making recommendations for “continuous improvement” are not specific, meaningful, achievable, realistic, nor time bound (SMART). Continuous improvement recommendations are well intended, and, in many cases, we support the principles underlying these recommendations. However, we believe that such recommendations are vaguely worded, making them difficult to implement and impossible for the community to measure whether or not they are met over time. We recommend that ATRT3 revisit these recommendations in the Final Report and attempt to make them more specific and include measurable metrics.”

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

The ATRT3 will undertake an analysis and evaluation of the comments which will be published as an appendix to the ATRT3 Final Report.