Accountability and Transparency Review Team 2

Report and Recommendations

31 December 2013

Table of Contents

EXECUTIVE SUMMARY

The Affirmation of Commitments (AoC)[1] requires ICANN to conduct recurring reviews of its deliberations and operations "to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders." To date, reviews have been conducted and Recommendations presented to the ICANN Board of Directors (the Board) by the first Accountability and Transparency Review Team (ATRT1),[2] the WHOIS Review Team (WHOIS-RT)[3] and the Security Stability and Resiliency Review Team (SSR-RT).[4]

As the AoC mandates, a second Accountability and Transparency Review Team (ATRT2) was convened in 2013 and hereby presents Final Report and Recommendations Public Comment. ATRT2 performed three fundamental tasks under the AoC:

a. assessed ICANN's implementation of Recommendations of the three prior AoC Review Teams;

b. offered new Recommendations to the ICANN Board to further improve ICANN's accountability and transparency;[5] and

c. offered Recommendations concerning improvements to the Review process itself.

In conducting its review, ATRT2 engaged an Independent Expert, InterConnect Communications (ICC), to provide analysis and recommendations concerning the Generic Names Supporting Organization (GNSO) Policy Development Process (PDP). ICC's final report (attached as Appendix A) helped inform ATRT2's understanding of this important aspect of bottom up, multistakeholder governance. For clarity, the ICANN Board is required to act only on Recommendations offered by ATRT2.

ATRT2 OBSERVATIONS

The following questions guided ATRT2 assessment of ICANN's accountability and transparency:

A. What is the objective of this Review?

[1] http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm
[2] http://www.icann.org/en/about/aoc-review/atrt/1, December 2010.
[3] http://www.icann.org/en/about/aoc-review/whois, May 2012.
[4] http://www.icann.org/en/about/aoc-review/ssr, June 2012.
[5] Specifically, the AoC states that "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."

The ultimate purpose of successfully implementing AoC Review Team Recommendations is to create a "culture of accountability and transparency" throughout ICANN. ATRT2 endeavored to identify how clearly ICANN employees and Directors understand how their respective roles, responsibilities and daily activities relate directly to accountability and transparency. ATRT2 also examined the effect that implementation of Recommendations has had on the perspective of ICANN's Board and staff and on the work of the community.

B. What is the current environment?

ICANN is experiencing significant growth in resources, global engagement and geographic presence. Such growth creates fundamental challenges for any organization. ICANN is also in the process of launching over 1,000 new generic Top Level Domains (gTLDs), and the community is engrossed in related policy and implementation processes.

For ICANN, which is somewhat unique as a bottom-up, multistakeholder organization that coordinates a global resource and whose decisions must take into account the public interest, a deepening of accountability and transparency at this time is essential not only to its successful growth but also to its long term viability.

C. Where does ICANN need to go from here?

In an increasingly challenging global Internet governance environment, ICANN should strive to establish itself as the benchmark of accountability and transparency. The AoC Review Teams are an example of stakeholders working together on equal footing. As such, they provide ICANN with an opportunity to set a global standard of multistakeholder governance.

Going forward, ATRT2 believes that ICANN must:

a. establish and apply clear metrics and benchmarks against which improvements in accountability and transparency can be measured;

b. communicate clearly and consistently about its accountability and transparency mechanisms and performance; and

c. improve and prioritize its AoC Review processes.

ATRT2 RECOMMENDATIONS

ATRT2 offers the following Final Recommendations for Public Comment. These Recommendations fall into two categories: 1) "New" Recommendations arising from issues that were addressed by ATRT1; and 2) "New" Recommendations arising from issues that were not addressed by ATRT1 Recommendations. With respect to WHOIS-RT and SSR-RT Recommendations, ATRT2 provides only an assessment of ICANN's implementation of those Recommendations (see Appendix B and Appendix C, respectively). Any "new" Recommendations on the substance of those reviews will be offered by the forthcoming WHOIS-RT2 and SSR-RT2.

All of the following Recommendations focus on issues that should be addressed by the ICANN Board, but they are not necessarily presented in a hierarchical order. ATRT2 believes that these Recommendations are important and, to the extent accepted by the Board, should be treated as a strategic priority. To that end, ICANN should create an implementation plan and publish it to the Community. ATRT2 wishes to emphasize that the observations appearing in ATRT2's assessments and elsewhere in the body of the Report should be duly considered by the Board and afforded all due weight in ongoing and future implementation efforts.

New ATRT2 Recommendations arising from issues addressed by ATRT1

1. The Board should develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyze those findings over time.

   Category: Board Performance and Work Practices; see Report Section 1

2. The Board should develop metrics to measure the effectiveness of the Board's functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.

   Category: Board Performance and Work Practices; see Report Section 3

3. The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time, and should regularly assess Director's compensation levels against prevailing standards.

   Category: Board Performance and Work Practices; see Report Section 4

4. The Board should continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and policy implementation. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the Board on matters, including but not limited to policy, implementation and administrative matters, on which the Board makes decisions.

   Category: Policy/ Implementation/ Executive Function Distinction; see Report Section 5 (ATRT2 suggests that the terminology "policy v. implementation" be consistently used and that reference to "executive function" or "administrative function" be dropped for purpose of clarity.)

5. The Board should review redaction standards for Board documents, Document Information Disclosure Policy (DIDP) and any other ICANN documents to create a single published redaction policy. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.

   Category: Decision Making Transparency and Appeals Processes; see Report Section 6

6. Governmental Advisory Committee (GAC)-related recommendation

Increased transparency of GAC-related activities

6.1. ATRT2 recommends that the Board work jointly with the GAC, through the Board-GAC Recommendation Implementation Working Group (BGRI working group), to consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard. Examples of activities that the GAC could consider to improve transparency and understanding include:

a. Convening "GAC 101" or information sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;

b. Publishing agendas for GAC meetings, conference calls, etc., on the GAC website seven days in advance of the meetings and publishing meeting minutes on the GAC website within seven days after each meeting or conference call;

c. Updating and improving the GAC website to more accurately describe GAC activities, including intersessional activities, as well as publishing all relevant GAC transcripts, positions and correspondence;

d. Considering whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of liaisons from other ACs and SOs to the GAC, once that mechanism has been agreed upon and implemented;

e. Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself;

f. Establishing as a routine practice agenda setting calls for the next meeting at the conclusion of the previous meeting;

g. Providing clarity regarding the role of the leadership of the GAC; and,

h. When deliberating on matters affecting particular entities, to the extent reasonable and practical, give those entities the opportunity to present to the GAC as a whole prior to its deliberations.

6.2. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC formally adopting a policy of open meetings to increase transparency into GAC deliberations and to establish and publish clear criteria for closed sessions.

6.3. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided. Such rationales should be recorded in the

GAC register. The register should also include a record of how the ICANN Board responded to each item of advice.

6.4. The Board, working through the BGRI working group, should develop and document a formal process for notifying and requesting GAC advice (see ATRT1 Recommendation 10).

6.5. The Board should propose and vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation as developed by the BGRI working group as soon as practicable (see ATRT1 Recommendation 11).

Increase support and resource commitments of government to the GAC (see ATRT 1 Recommendation 14)

6.6. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to identify and implement initiatives that can remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. The BGRI working group should consider how the GAC can improve its procedures to ensure more efficient, transparent and inclusive decision-making. The BGRI working group should develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local Domain Name System (DNS) stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

6.7. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to regularize senior officials' meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock-taking after each High Level meeting should occur.

6.8. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to work with ICANN's Global Stakeholder Engagement group (GSE) to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

6.9. The Board should instruct the GSE group to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

a. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;

b. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the

transparency on how ICANN reacts to GAC advice (e.g. by using information in the GAC advice register);

c. Making ICANN's work relevant for stakeholders in those parts of the world with limited participation; and,

d. Develop and execute for each region of the world a plan to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN's services including new gTLD's.

Category: GAC Operations and Interactions; see Report Section 8

7. Public Comment Process

7.1. The Board should explore mechanisms to improve Public Comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.

7.2. The Board should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the staff incorrectly summarized their comment(s).

Category: Decision Making Transparency and Appeals Process; see Report Section 9

8. To support public participation, the Board should review the capacity of the language services department versus the community need for the service using Key Performance Indicators (KPIs) and make relevant adjustments such as improving translation quality and timeliness and interpretation quality. ICANN should implement continuous improvement of translation and interpretation services including benchmarking of procedures used by international organizations such as the United Nations.

Category: Multilingualism; see Report Section 10

9. Consideration of decision-making inputs and appeals processes

9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.

9.2. Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The

Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN's structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.

9.3. Review Ombudsman Role

The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

a. A role in the continued process of review and reporting on Board and staff transparency.
b. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration related to policy and operational matters.
c. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

9.4. Develop Transparency Metrics and Reporting

The Board should ensure that as part of its yearly report, ICANN include, among other things, but not be limited to:

a. A report on the broad range of Transparency issues with supporting metrics to facilitate accountability.
b. A discussion of the degree to which ICANN, both staff and community, are adhering to a default standard of transparency in all policy, implementation and administrative actions; as well as the degree to which all narratives, redaction, or other practices used to not disclose information to the ICANN community are documented in a transparent manner.
c. Statistical reporting to include at least the following elements:
    i. requests of the Documentary Information Disclosure Policy (DIDP) process and the disposition of requests.
    ii. percentage of redacted-to-unredacted Board briefing materials released to the general public.
    iii. number and nature of issues that the Board determined should be treated confidentially.
    iv. other ICANN usage of redaction and other methods to not disclose information to the community and statistics on reasons given for usage of such methods.

d. A section on employee "Anonymous Hotline" and/or other whistleblowing activity, to include metrics on:
    i. Reports submitted.
    ii. Reports verified as containing issues requiring action.
    iii. Reports that resulted in change to ICANN practices.

e. An analysis of the continued relevance and usefulness of existing transparency metrics, including
    i. Considerations on whether activities are being geared toward the metrics (i.e. "teaching to the test") without contributing toward the goal of genuine transparency.
    ii. Recommendations for new metrics.

9.5. The Board should arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

The professional external audit should be based on the Section 7.1 and Appendix 5 - Whistleblower Policy of the One World Trust Independent Review of 2007[6] recommendations to establish a viable whistleblower program, including protections for employees who use such a program, and any recent developments in areas of support and protection for the whistleblower. The professional audit should be done on a recurring basis, with the period (annual or bi-annual, for example) determined upon recommendation by the professional audit.

The processes for ICANN employee transparency and whistleblowing should be made public.

Category: Decision Making Transparency and Appeals Processes; see Report Section 11

New Recommendations from ATRT2

10. The Board should improve the effectiveness of cross-community deliberations.

10.1. To enhance GNSO policy development processes and methodologies to better meet community needs and be more suitable for addressing complex problems, ICANN should:

a. In line with ongoing discussions within the GNSO, the Board should develop funded options for professional services to assist GNSO policy development WGs. Such services could include training to enhance work group leaders' and participants' ability to address difficult problems and situations, professional facilitation, mediation, negotiation. The GNSO should develop guidelines for when such options may be invoked.

[6] http://www.icann.org/en/about/transparency/owt-report-final-2007-en.pdf

b. The Board should provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO policy development processes. Such face-to-face meeting must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hubs and engagement centers) to support intersessional meetings. Moreover, the possibility of meetings added on to the start or end of ICANN meetings could also be considered. The GNSO must develop guidelines for when such meetings are required and justified, and who should participate in such meetings.

c. The Board should work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy development processes to utilize volunteer time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

10.2. The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the AoC.

10.3. The Board and the GNSO should charter a strategic initiative addressing the need for ensuring more global participation in GNSO policy development processes, as well as other GNSO processes. The focus should be on the viability and methodology of having the opportunity for equitable, substantive and robust participation from and representing:

a. All ICANN communities with an interest in gTLD policy and in particular, those represented within the GNSO;

b. Under-represented geographical regions;

c. Non-English speaking linguistic groups;

d. Those with non-Western cultural traditions; and

e. Those with a vital interest in gTLD policy issues but who lack the financial support of industry players.

10.4. To improve the transparency and predictability of the policy development process the Board should clearly state to what degree it believes that it may establish gTLD policy[7] in the event that the GNSO cannot come to closure on a

[7] This is not referring to Temporary Policies established on an emergency basis to address security or stability issues, a right that the Board has under ICANN agreements with contracted parties.

specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO Policy Recommendations, either before or after formal Board acceptance.

10.5. The Board must facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.

Category: Cross-Community Deliberations; See Report Section 13

11. Effectiveness of the Review Process

11.1. Institutionalization of the Review Process
The Board should ensure that the ongoing work of the AoC reviews, including implementation, is fed into the work of other ICANN strategic activities wherever appropriate.

11.2. Coordination of Reviews
The Board should ensure strict coordination of the various review processes so as to have all reviews complete before next ATRT review begins, and with the proper linkage of issues as framed by the AoC.

11.3. Appointment of Review Teams
The Board should ensure that AoC Review Teams are appointed in a timely fashion, allowing them to complete their work in the minimum one (1) year period that the review is supposed to take place, regardless of the time when the team is established. It is important for ICANN to factor in the cycle of AoC reviews; the Review Team selection process should begin at the earliest point in time possible given its mandate.

11.4. Complete implementation reports
The Board should prepare a complete implementation report to be ready by review kick-off. This report should be submitted for public consultation, and relevant benchmarks and metrics must be incorporated in the report.

11.5. Budget transparency and accountability
The ICANN Board should ensure in its budget that sufficient resources are allocated for Review Teams to fulfill their mandates. This should include, but is not limited to, accommodation of Review Team requests to appoint independent experts/consultants if deemed necessary by the teams. Before a review is commenced, ICANN should publish the budget for the review, together with a rationale for the amount allocated that is based on the experiences of the previous teams, including ensuring a continuous assessment and adjustment of the budget according to the needs of the different reviews.

11.6. Board action on Recommendations
The Board should address all AoC Review Team recommendations in a clear and unambiguous manner, indicating to what extent they are accepting each recommendation.

11.7. Implementation Timeframes
In responding to Review Team recommendations, the Board should provide an expected time frame for implementation, and if that time frame is different from one given by the Review Team, the rationale should address the difference.

Category: AoC Review Process Effectiveness; see Report Section 14

12. Financial Accountability and Transparency
In light of the significant growth in the organization, the Board should undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

12.1. The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.

12.2. The Board should explicitly consider the cost-effectiveness of ICANN's operations when preparing its budget for the coming year, in keeping with ICANN's status as a non-profit organization operating and delivering services in a non-competitive environment. This should include how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.

12.3. Every three years the Board should conduct a benchmark study on relevant parameters, (e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc.) suitable for a non-profit organization. If the result of the benchmark is that ICANN as an organization is not in line with the standards of comparable organizations, the Board should consider aligning the deviation. In cases where the Board chooses not to align, this has to be reasoned in the Board decision and published to the Internet community.

12.4. In order to improve accountability and transparency ICANN's Board should base the yearly budgets on a multi-annual strategic plan and corresponding financial framework (covering e.g. a three-year period). This rolling plan and framework should reflect the planned activities and the corresponding expenses in that multi-annual period. This should include specified budgets for the ACs and SOs. ICANN's (yearly) financial reporting shall ensure that it is possible to track ICANN's activities and the related expenses with particular focus on the implementation of the (yearly) budget. The financial report shall be subject to public consultation.

12.5. In order to ensure that the budget reflects the views of the ICANN community, the Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and sufficient time is allocated for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting between the Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

Category: Financial Accountability and Transparency; see Report Section 15

Observations concerning the ATRT2 review process are included in Appendix E.

ATRT2's ASSESSMENT OF RECOMMENDATION IMPLEMENTATION

ATRT2 provides the following assessment of ICANN's implementation of the Recommendations of ATRT1. ATRT2's assessments regarding WHOIS-RT and SSR-RT are found in Appendix B and Appendix C, respectively. In assessing ICANN's implementation of Recommendations, ATRT2 examined a variety of inputs, including replies to requests for Public Comment and direct interaction with the ICANN community. Taking into account ATRT1 Recommendation 27 that called on the Board to regularly evaluate progress against these recommendations and the accountability and transparency commitments in the AoC, ATRT2 took into account reports from the ICANN staff, ICANN Board resolutions and interviews with members of the staff and Board.

Report Section 1. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #1 (Assessment of ATRT1 Recommendations 1 & 2)

Findings of ATRT1

In the course of its deliberations, ATRT1 found that recommendations from Interisle Consulting Group (2007) and the Boston Consulting Group (2008) to improve the Board selection process had not been implemented, that the NomCom did not have effective operating methods or Board Member selection criteria, and was not serving to increase transparency of the Board member selection process. To address this, ATRT1 offered recommendations calling for continually assessing and improving ICANN Board governance, including ongoing evaluation of Board performance, the Board selection process, and the extent to which the Board's composition meets ICANN's present and future needs. These can be considered as a group and called Recommendation 1. Furthermore, ATRT1 Recommendation 2 called for a continual assessment of existing Board member skills, the programs for improving those skill sets, and ways to identify necessary skills during the selection of new Board members. The ICANN Board adopted all of these Recommendations in June 2011.

ATRT1 Recommendation 1[8]

Recognizing the work of the Board Governance committee on Board training and skills building, pursuant to the advice of both the 2007 Nominating Committee Review and 2008 Board review, the Board should establish (in time to enable the integration of these recommendations into the Nominating Committee process commencing in late 2011) formal mechanisms for identifying the collective skill-set required by the ICANN Board including such skills as public policy, finance, strategic planning, corporate governance, negotiation, and dispute resolution. Emphasis should be placed upon ensuring the Board has the skills and experience to effectively provide oversight of ICANN operations consistent with the global public interest and deliver

[8] ATRT Final Report, http://www.icann.org/en/news/public-comment/atrt-final-31dec10-en.htm, December 2011.

best practice in corporate governance. This should build upon the initial work undertaken in the independent reviews and involve:

a. Benchmarking Board skill sets against similar corporate and other governance structures;

b. Tailoring the required skills to suit ICANN's unique structure and mission, through an open consultation process, including direct consultation with the leadership of the SOs and ACs;

c. Reviewing these requirements annually, delivering a formalized starting point for the NomCom each year; and

d. From the Nominating Committee process commencing in late 2011, publishing the outcomes and requirements as part of the Nominating Committee's call-for-nominations.

ATRT1 Recommendation 2[9]

The Board should reinforce and review on a regular basis (but no less than every 3 years) the training and skills building programs established pursuant to Recommendation #1.

Summary of ICANN's Assessment of Implementation

To implement the core of ATRT1 Recommendation 1, ICANN undertook several actions in cooperation and collaboration with the NomCom. It was generally understood by ICANN staff that these recommendations were meant to not only ensure selection of individuals with the appropriate skills, but also to address "concerns of undue secrecy in the NomCom process and requests for more expansive explanations of NomCom selections."[10]

To improve the process for selecting ICANN Directors and to address Recommendations on Board composition, the NomCom examined its operating procedures to establish clear and transparent skill sets, qualifications and criteria for Board Member selection; improve transparency; and establish and publish the selection procedures and processes the NomCom employs.[11] The new NomCom guidelines, including internal NomCom procedures and a Code of Conduct, were approved by the Board and put into action.[12] The NomCom now annually consults with the ICANN community and public on skill set requirements to consider when making appointments to leadership positions. The Board also embedded in its standard operating procedures a process to inform the NomCom annually by providing information on the existing Board's skill sets.[13] Finally, the Board now

[9] ATRT1 Final Report.
[10] Staff Input Document to the ATRT2, Comments of Amy Stathos; Samantha Eisner; Diane Schroeder, https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx
[11] NomCom Transparency Guidelines, http://nomcom.icann.org/nomcom-transparency-08oct12-en.pdf
[12] NomCom Code of Conduct, http://nomcom.icann.org/conduct-2013.htm
[13] 2012 Annual Report; Implementation of the Accountability & Transparency Review Team Report,

engages in interim training and orientations. To assess the Board's performance in the areas addressed by NomCom's implementation efforts, progress is tracked against skill set benchmarks and training and work program results.[14]

Summary of Community Input on Implementation

There was limited community input on the implementation of Recommendations 1 and 2. In general, the community indicates awareness of the methods and processes for nominating and electing Board members and general satisfaction with their terms. Some comments did note, however, that potential conflicts of interest with the community remain.[15]

Some noted that it's important to draw Board members from existing community groups to ensure the knowledge and understanding of ICANN and technical expertise to serve effectively. One commenter suggested that Board service could be used as a mechanism to grow the community by creating initiatives to recruit from a wider community of participants. This commenter also underscored the importance of clearly demonstrating or articulating the traditionally high professional standard to which the Board works.[16]

In contrast to comments in support of the existing Board selection processes, one commenter asked, "Is it reasonable that the Board should provide to the Nominating Committee the 'profile' of the Board Members it claims it requires in the next turnover?"[17]

Additional public input posed some questions for future work that were not addressed by the ATRT1 recommendation in this area. Specifically, commenters asked about the importance of having an appropriately international Board, as well as one that represents the ICANN community and groups. These comments also delve further into how the Board itself selects Committee Chairs and Board Governance Committee members as important to transparency into Board selection and operations as those committees are the ones that recommend and approve bylaw changes.[18]

ATRT2 Analysis of Recommendation Implementation

Recommendation (s)	Assessment

http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf, January 2013.

[14] 2012 Annual Report; Implementation of the Accountability & Transparency Review Team Report, http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf, January 2013.

[15] Comments submitted in response to ATRT2 Questions to the Community, Vasily Dolmatov, Alejandro Pisanty, Maria Farell (NCUC), Christopher Wilkinson, Nominet, http://forum.icann.org/lists/comments-atrt2-02apr13/

[16] Comments submitted in response to ATRT2 Questions to the Community, Nominet, http://forum.icann.org/lists/comments-atrt2-02apr13/

[17] Comments submitted in response to ATRT2 Questions to the Community, Jean-Jacques Subrenat, (ALAC), http://forum.icann.org/lists/comments-atrt2-02apr13/

[18] Comments submitted in response to ATRT2 Questions to the Community, Jean-Jacques Subrenat, (ALAC), http://forum.icann.org/lists/comments-atrt2-02apr13/

1a Document the methodology used to identify and choose "similar corporate and other governance structures"'	Done
1b Document benchmarks used	Incomplete
1c Improve NomCom outreach/PR	Done
1d Expand the skills survey and benchmarking to include NomCom selections in GNSO, Country Code Names Supporting Organizations (ccNSO), and At-Large Advisory Committees (ALAC)	Done
2(a) Metrics should be defined by which effectiveness of board training programs can be measured.	Incomplete
2(b) Board training materials should be made public.	Incomplete

ATRT2 Assessment of Recommendation Effectiveness

While most of the issues in ATRT1's Recommendation 1 and Recommendation 2 have been addressed, several key concerns remain outstanding:

a. To what degree can the changes be said to have improved the quality of Board members?

b. To date, there are no objective measures for determining the quality of the ICANN Board membership. ICANN community evaluations have neither been discussed nor implemented, yet they may be among the few statistical measures that could be developed.

c. A report on the benchmarks used by the NomCom is needed, and the issue needs to be reviewed after there are more years' experience with the Board under the current NomCom conditions.

d. Metrics are still needed for evaluating the success of Board improvement efforts.

Final Recommendation #1

The Board should develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyze those findings over time.

Report Section 2. No New ATRT2 Recommendation (Assessment of ATRT1 Recommendation 3)

Findings of ATRT1

This issue of Board composition and selection had been the subject of two independent reviews that predated ATRT1. ATRT1 found that the greatest relevance to its review process was the recommendation for ICANN to recruit and select based upon clear skill set requirements. This included the establishment of a formal procedure by which the Nominating Committee (NomCom) would discover and understand the requirements of each body to which it makes appointments. ATRT1 found that, "[a]s such, codifying the processes for identifying, defining and reviewing

these skills requirements, as well as the mechanisms by which stakeholders are consulted, could assist in improving the Board's overall performance."

ATRT1 Recommendation 3

The Board and Nominating Committee should, subject to the caveat that all deliberations and decisions about candidates must remain confidential, as soon as possible but no later than the Nominating Committee process commencing in late 2011, increase the transparency of the Nominating Committee's deliberations and decision-making process by doing such things as clearly articulating the timeline and skill set criteria at the earliest stage possible before the process starts and, once the process is complete, explain the choices made.

Summary of ICANN's Assessment of Implementation

ICANN staff reported to ATRT2 on implementation efforts undertaken by both the Board and NomCom. It has become standard operating procedure for the Board and NomCom to have consultations and information-sharing sessions with respect to the Board skill-set requirements. The Board also implemented transparency guidelines for all NomComs, and compliance with the transparency guidelines is standard operating procedure. The NomCom provides a post-selection report where it justifies its selections as standard operating procedure. These implementation measures and background documentation can be found at http://nomcom.icann.org.

Summary of Community Input on Implementation

ATRT2 did not receive significant comment on implementation of this Recommendation. Nominet stated that it supported the mechanism for nominating and electing ICANN Board members, and it believes that it is a good example of a bottom-up mechanism for community input. Some commenters indicated they were not aware of the mechanisms for nominating and electing Board members, while others indicated their awareness as well as their opinion that the term length for Directors was satisfactory.

Summary of Other Relevant Information

Implementation of this Recommendation involved not only ICANN Board and staff but also the NomCom itself. Two former NomCom Chairs, Vanda Scartezini (2012 term) and Adam Peake (2011 term), responded to ATRT2's questionnaire and provided a substantial overview of the efforts undertaken by the NomCom in implementation. Both Chairs recognized the intent of ATRT1 to bring greater transparency and accountability to the Director nomination process while at the same time respecting fundamental aspects of the process (e.g. confidentiality of candidates). They also recognized that it was important for the NomCom to maintain an independent role in the selection process.

Adam Peake reported that ATRT1's Recommendations suggested a general feeling that the NomCom needn't be so obsessed by secrecy and that this was positive. He also noted that some core ATRT1 recommendations were already NomCom practice, but the ATRT1 gave impetus to take improvements seriously. In 2011, NomCom

held workshops with the community that he judged to be quite successful, and he said that there was an attempt to improve communication throughout the process with the community (e.g. more email to lists, a blog) and with candidates (e.g. more information about the process, some communication conveying the stage of the process). Peake notes, however, that in 2011 these communications efforts were mostly not realized (i.e. ideas that were not put into practice). In general, though, he found that the implementation efforts were worthwhile, as shown by improvements in 2013.

Vanda Scartezini noted a number of specific implementation activities that took place during the 2012 term. In implementing the Recommendations, the NomCom:

a. Published and updated the timeline for NomCom activities during the whole cycle of a NomCom to provide transparency to the community and to candidates;

b. Held formal consultations with all ACs and SOs and their constituencies during the 2011 Annual General Meeting to identify all the profiles needed for the Board and their own leadership positions, and published all of the presentations used;

c. Held public meetings about ATRT1 recommendations and other relevant aspects of the NomCom process during ICANN's Annual General Meeting in 2012;

d. Had a formal meeting with ICANN's Board chair, the CEO and the Board Governance Committee to collect their opinions about Board member skill sets needed for the next selection;

e. Met with ICANN's General Counsel to ensure that all members inside the NomCom understand the requirements regarding privacy of candidate information;

f. Published the identified profile characteristics for all leadership positions as a guideline for candidate application information;[19]

g. Held a session during the first ICANN international meeting of 2012 in San Jose, Costa Rica to recheck with the ACs and SOs and constituencies and to orient the NomCom's members on the selection process;

h. After the selection process, published a final report[20] for the October 2012 Annual General Meeting in Toronto, Canada that included all statistics related to NomCom 2012 (e.g. number of the candidates, gender, and geographic distribution, etc.) as well as a "matching matrix" with the community's and Board's requested candidate skill sets and selectee profiles; and

i. At the October 2012 meeting in Toronto, conducted additional meetings with

[19] http://nomcom.icann.org/index-2012.htm#archives
[20] http://nomcom.icann.org/nomcom-final-report-08oct12-en.pdf

the ACs, SOs and their constituencies to provide feedback about the NomCom's activities and how their requirements for the Board and their own organizations' positions were addressed.

Both former Chairs believe that continued improvement is possible, such as monthly report cards and having a standard matrix to use during and after the process. Scartezini maintains that within the ICANN community there is now a clearer vision about the NomCom process, as well as a clearer view of the selection process and requirements for someone interested in becoming a Board member. She also notes a sense of improvement regarding transparency in ICANN's relationship with the community and the external world. Peake also believes that candidates have a better understanding of what's required, and that there is a better knowledge of what the Board needs in terms of candidate skills and the "gaps" in the Board's collective skill-set. He noted that an indirect benefit of these implementation efforts has been that the improved information about desired candidate profiles has helped a professional recruitment company assist the NomCom in identifying potential candidates.

ATRT2 Analysis of Recommendation Implementation

Implementation of ATRT1 Recommendation 3 appears largely successful. There is improvement in the transparency of the NomCom's processes and in the adoption of standard operating procedures designed to enhance transparency. Importantly, implementation of ATRT1 Recommendation 3 fostered dialogue across the community and had the NomCom interacting with the Board, the staff and ACs and SOs as it went about the business of implementation. In fact, implementation of this Recommendation was not uniquely the responsibility of the ICANN Board or staff. Rather, it required the interaction of the NomCom and the Board, as well as members of the community, to successfully execute all of these tasks. It appears that the multiple bodies undertook individual tasks and interacted successfully to implement ATRT1 Recommendation 3 as a whole.

ATRT2 Assessment of Recommendation Effectiveness

ATRT1 Recommendation 3 has been effective in creating a regular and open exchange of information between the Board and the NomCom for identifying necessary skill sets for Directors and for incorporating these desired attributes into the nominating process. Implementation of the Recommendation has also had the effect of creating more transparent NomCom standard operating procedures. For example, the NomCom now regularly holds open sessions at ICANN meetings. Additionally, post- selection reporting by the NomCom that provides a rationale for selection is consistent with spirit of the AoC.

Report Section 3. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #2 (Assessment of ATRT1 Recommendation 4)

Findings of ATRT1

ATRT1 found that, based on its review and two prior independent reviews, there was a clear need to improve both the individual and collective skill of the Board of Directors. While ATRT1 Recommendation 3 focused on the identification of required skill sets and incorporation of those skill sets as part of the Nominating Committee process, Recommendation 4 called on the Board to enhance its performance and work practices.

ATRT1 Recommendation 4

"Building on the work of the Board Governance Committee, the Board should continue to enhance Board performance and work practices."

Summary of ICANN's Assessment of Implementation

The Board has undertaken a number of activities to enhance its performance and work practices. Those activities include developing work plans that incorporate Recommendation 4 objectives; conducting two "effectiveness" training sessions in 2012; establishing Director performance evaluations that are provided to the Board "appointing" bodies; synchronizing Directors' terms for working efficiency; and creation of a Board Procedure Manual (http://www.icann.org/en/groups/board/documents/draft-procedure-manual-09oct12-en.pdf).

Summary of Community Input on Implementation

Public Comments focused on aspects of Board work practices. Nominet noted work done to improve Board governance (e.g. Conflict of Interest and Ethics Review) and pointed out that the Board had established codes of behavior.[21] The U.K. government called for metrics for Board performance to be implemented, reviewed and monitored independently.[22] Darlene Thompson of At Large noted that more information needs to be available to the public as to what methods are being used by the Board to assess its governance.[23] There was general support for the term for Directors.

Summary of Other Relevant Information

ICANN Board Chair Steve Crocker noted that the ICANN Board is in the process of adding Secretariat support to the Board. This new resource will be charged, in part,

[21] Comments submitted by Nominet: http://forum.icann.org/lists/comments-atrt2-02apr13/msg00010.html
[22] Comments submitted by Mark Carvell, U.K. government: http://forum.icann.org/lists/comments-atrt2-02apr13/msg00014.html
[23] Comments submitted by Darlene Thompson: http://forum.icann.org/lists/comments-atrt2-02apr13/pdf9UP7si771p.pdf

with addressing improvements to Board work plans and processes. Crocker noted that this is an area of distinct interest to him and that ongoing improvements must be achieved.

ATRT2 Analysis of Recommendation Implementation

The Board has clearly taken a number of steps to implement Recommendation 4. While some related tasks have been completed, the nature of that implementation is "ongoing." While there is clear evidence of work undertaken on this front, effectiveness of the work is still difficult to measure.

ATRT2 Assessment of Recommendation Effectiveness

Based on reporting from the ICANN Board and staff, there has been progress on a number of areas in terms of the Board's functioning. However, one challenge to a full assessment of the Recommendation's effectiveness is the lack of benchmarks/metrics against which ATRT2 might be able to measure the effectiveness on implementation. While some of the improvements may be difficult to measure, metrics would assist in drawing qualitative and quantitative conclusions going forward. It is the view of ATRT2 that these activities generally should be visible to the community (unless dealing with Human Resources or other confidential issues). With respect to Board training in particular, ATRT2 has asked whether training materials could be made publicly available as a matter of transparency. The Board has indicated that some training materials are proprietary to the third party providing the training and that the Board may not be able to release them to the community. As a matter of course, the Board Secretariat should be briefed on ATRT1 Recommendations and ATRT2 assessment and integrate that input into its support processes.

Final Recommendation #2

The Board should develop metrics to measure the effectiveness of the Board's functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.

Report Section 4. BOARD PERFORMANCE AND WORK PRACTICES: ATRT2 Recommendation #3 (Assessment of ATRT1 Recommendation 5)

Findings of ATRT1

ATRT1 found that compensation of Directors was an issue closely associated with the theme of developing the ICANN Boards' experience and collective skill set. Furthermore, this issue had been the subject of independent review, Board Governance Committee discussion, and ongoing Board consideration. At the time of the ATRT1 review, only compensation for the Board Chair has been decided.

ATRT1 Recommendation 5

Recommendation 5: "The Board should expeditiously implement the compensation scheme for voting Directors as recommended by the Boston Consulting Group, adjusted as necessary to address international payment issues, if any."

Summary of ICANN's Assessment of Implementation

Upon the advice of the ICANN General Counsel, the Board delayed implementation of Recommendation 5 to allow for independent study and review. Beginning in June 2011, a compensation plan was developed and the Board engaged an Independent Valuation Expert. The Expert's report[24] concluded that compensating the Board was reasonable. Because instituting compensation for Directors would require revision to the Board Conflict of Interest policy as well as to the bylaws, a Public Comment period on these issues was held in September 2011. Commenters generally supported the Recommendation to compensate Directors and also offered input on other aspects of ICANN's Conflicts of Interest policy. On December 8, 2011, the Board voted in favor of implementing compensation to voting Directors. ATRT2 notes that payments were not offered to some Directors until August 2012, a significant delay from the date of approval to implementation, but that there were extenuating circumstances in these cases. Today, voting Board members have the opportunity to elect compensation and the Director's election to accept or decline compensation is posted on the ICANN website.[25]

Summary of Community Input on Implementation

ATRT2 did not receive community feedback concerning implementation of Recommendation.

ATRT2 Analysis of Recommendation Implementation

Implementation of Recommendation 5 is complete.

ATRT2 Assessment of Recommendation Effectiveness

Gauging the "success" or effectiveness of Recommendation 5 is challenging but not impossible. One aspect of the Recommendation's rationale was the assumption that compensation could influence the interest of qualified candidates given the responsibilities and workload of an ICANN Director. ATRT2 is unaware of any qualitative or quantitative studies of the Board candidate pools over time or of any feedback that speaks to the effect of implementing the Recommendation. Perhaps that analysis could become input for future Review Teams. ATRT2 envisions regular assessment of Director compensation levels at a responsible frequency over the course of time.

[24] http://www.icann.org/en/general/report-board-directors-compensation-considerations-13oct11-en.pdf
[25] http://www.icann.org/en/groups/board/documents/ce

Final Recommendation #3

The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time, and should regularly assess Director's compensation levels against prevailing standards.

Report Section 5. POLICY / IMPLEMENTATION / EXECUTIVE FUNCTION DISTINCTION: ATRT2 Recommendation #4 (Assessment of ATRT1 Recommendation 6)

Findings of ATRT1

ATRT1 found significant concern across the community about the way in which issues were identified for Board consideration, how and why particular decisions were taken, and how the outcomes were conveyed to stakeholders. ATRT1 also found that the Board's deliberations were infrequently based on codified procedures or requirements, but rather were driven by organizational conventions based merely on precedent. This lack of clarity about the distinction between policy and "executive function" (or "implementation" or "organizational administrative function") fed confusion in the community about whether the Board and staff were acting in their proper capacity with respect to the bottom-up policy-making process.

ATRT1 Recommendation 6

Recommendation 6: The Board should clarify, as soon as possible but no later than June 2011, the distinction between issues that are properly subject to ICANN's policy development processes and those matters that are properly within the executive functions performed by the ICANN staff and Board and, as soon as practicable, develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level.

Summary of ICANN's Assessment of Implementation

ICANN staff recommended that the Board adopt ATRT1 Recommendation 6, but with an implementation date later than the June 2011 target put forward by ATRT1. Staff maintained that it was important to establish a baseline of understanding about this topic with the community before implementation could be completed.[26] Staff noted that it would immediately undertake a "categorization exercise" using the Resolution wiki. Staff then set out to categorize Board action into policy/executive/administrative and other categories, and then review whether Public Comment was received on those items.

In its response to ATRT2, staff reported that,

[26] http://www.icann.org/en/news/in-focus/accountability/atrt-recommendations-implementation-plans-22oct11-en

ICANN addressed all portions of this recommendation in implementation. Please see 2012 ATRT Implementation Summary[27] and the 2012 Annual Report on ATRT Implementation.[28] Completion of this implementation project inspired further discussion about the distinction between policy and implementation issues that is still ongoing within the community, most recently in a public session in Beijing.

Because of the work undertaken for Recommendation 6, ICANN also published a paper on the Community Input and Advice Function,[29] which has led to an ongoing dialogue in the community. There were sessions in both Toronto and Beijing on this topic, and ICANN staff has since produced a paper for Public Comment on Policy v. Implementation[30] to help frame and move the discussion forward.

Staff further notes that the "community now has a defined set of terms to use when discussing and categorizing Board actions. The follow-up work has reinitiated a challenging debate within the community regarding policy vs. implementation roles and how the community provides advice to the Board." Staff also notes that "[e]very substantive action taken by the Board is now accompanied by an identification of the type of action and the consultation expected or conducted prior to Board decision."

Summary of Community Input on Implementation

The comments received and the discussions at the public sessions reflect common sentiments from the community, including:

a. this continues to be an important issue;

b. outside of policy issues addressed in the well-defined GNSO, ccNSO and ASO policy processes, there is uncertainty about how advice can be provided from the community to the Board;

c. cross-community working groups should be explored as one mechanism for providing advice to the Board;

d. current mechanisms or approaches to provide the Board with advice from the community on non-"P" policy issues are inadequate; and

e. ad hoc groups, experts and fast-track processes that have been used in the new gTLD process have not proven to be satisfactory approaches to address this issue.

ATRT2 Analysis of Recommendation Implementation

Implementation is incomplete and work on the issue is ongoing. ATRT2 views this Recommendation as still important to provide clarity to the community and particularly important in the multistakeholder environment. Although ICANN posted a Community Input and Advice Function paper on September 24, 2012 (more than a

[27] http://www.icann.org/en/news/in-focus/accountability/atrt-project-list-workplans-29jan13-en.pdf
[28] http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf
[29] http://www.icann.org/en/news/in-focus/accountability/input-advice-function-24sep12-en.pdf
[30] http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm

year after the Board was to take action on Recommendation 6 under the AoC), and public sessions were held during the ICANN meetings in Toronto (October 2012) and Beijing (April 2013), the fact remains that this issue was barely addressed during the two-year timeframe envisioned by ATRT1. In fact, staff only developed its "framework" paper and posted it for Public Comment on January 21, 2013.

A continuing lack of clarity about "policy v. implementation" causes uncertainty at best and distrust at worst about whether ICANN Board or staff is acting within its proper scope or whether ICANN is acting in a "top-down" as opposed to a "bottom-up" manner. As in any organization or community, a clear understanding of respective roles, responsibilities and process is foundational to cohesion and successful interaction.[31]

Some maintain that distinguishing between policy and implementation is either too difficult a task or so esoteric that clear lines – and hence clarity for the community and ICANN – are not achievable. While perfect clarity may not be achievable, failure to develop a workable framework that lends clarity to roles, responsibilities and processes in matters of policy and implementation will only continue to foster questions and unnecessary concerns about the accountability of ICANN's decision-making as well as its genuine commitment to the bottom-up, multistakeholder process.

ATRT2 Assessment of Recommendation Effectiveness

The implementation of ATRT1 Recommendation 6 has not yet been effective in achieving the Recommendation's stated objective. While efforts have begun to engage the community in a dialogue concerning the issue, the community and ICANN appear no closer to clarity on this matter. Implementation has had the effect of spurring focused dialogue that informs community members' understanding of the difference between "policy" and "implementation." It may be that additional effort needs to be applied to develop complementary mechanisms for consultation in appropriate circumstances with the relevant SOs and ACs on administrative and executive issues that will be addressed at Board level. Finally, ATRT2 suggests that the terminology "policy v. implementation" be consistently used and that reference to "executive function" or "administrative function" be dropped for purpose of clarity.

Final Recommendation #4

The Board should continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and policy implementation. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the

[31] Comments of the United States Council for International Business: There is a sense, particularly among business stakeholders, that the ICANN Board and staff call an item 'implementation' when they want to execute on the item without community input. (Likewise, if the ICANN Board and staff do not want to act upon a particular matter, then they may call the matter "policy" and have it lost within the lengthy PDP process.) The ATRT2 recommendations need to acknowledge the current dilemma and advocate for more effective solutions than the 'additional efforts' called for…."
http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfGwHm9XvJAd.pdf

Board on matters, including but not limited to policy, implementation and administrative matters, on which the Board makes decisions.

Report Section 6. DECISION MAKING TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #5 (Assessment of ATRT1 Recommendations 7.1 and 8)

Findings of ATRT1

ATRT1 found that ICANN's bylaws emphasize the need for transparency in the Board's processes, stipulating the informed participation of stakeholders, neutrality, objectivity, responsiveness and evidence-based decision making. Likewise, the need for transparency and openness in the way the ICANN Board takes decisions is re-stated prominently in the Affirmation of Commitments. ATRT1 found a need for clear, published guidelines concerning ICANN's decision-making processes.

ATRT1 Recommendations 7.1 and 8

Due to the close relationship between the subject matter of ATRT1 Recommendations 7.1 and 8, ATRT2 has combined its assessment of implementation here.

Recommendation 7.1: "Commencing immediately, the Board should promptly publish all appropriate materials related to decision-making processes – including preliminary announcements, briefing materials provided by staff and others, detailed Minutes, and where submitted, individual Directors' statements relating to significant decisions. The redaction of materials should be kept to a minimum, limited to discussion of existing or threatened litigation and staff issues such as appointments."

Recommendation 8: As soon as possible, but no later than the start of the March 2011 ICANN meeting, the Board should have a document produced and published that clearly defines the limited set of circumstances where materials may be redacted and that articulates the risks (if any) associated with publication of materials. These rules should be referred to by the Board, General Counsel and staff when assessing whether material should be redacted and cited when such a decision is taken.

Summary of ICANN's Assessment of Implementation

ICANN staff reported to ATRT2 that, as a result of implementation, it is now standard operating procedure to post all Board materials, including rationales for resolutions. These and other reference materials are archived at http://www.icann.org/en/groups/board/meetings. In response to ATRT1's recommendation, ICANN developed an implementation plan that noted, in part, the following:

> "[a]s of the 25 January 2011 meeting, staff began including proposed rationale statements in Board submissions, addressing the items set forth in the Affirmation of Commitments. If the Board does not propose significant modification to the draft rationale statements, those draft statements will be posted with the Approved Resolutions for each meeting. This practice was instituted on 27 January 2011,

with the posting of the 25 January 2011 Approved Resolutions. The rationale statements will be considered final when posted with the Minutes as approved for each meeting. The rationale statements are to address the sources of data and information, as well as to address community input accepted and rejected."

With respect to redactions of Board materials, the implementation plan noted that,

> "[w]hile these DIDP (Document Information Disclosure Policy[32]) conditions will remain the baseline for redactions, there is great value in producing a document to guide staff and inform the community on the specific issue of redaction of Board materials. As evidenced through the very publication of the Board briefing materials, ICANN has narrowed the previously-applied scope of its application of the conditions for non-disclosure in favor of increased transparency and accountability. The document was posted in March 2011. Of note, beginning with the 12 December 2010 Board meeting materials, the basis for each redaction was set forth on every page where a redaction occurred. A review of how to best cite to the circumstances requiring a redaction will continue."

In addition to the implementation plan cited above, ICANN staff created a searchable Board resolution wiki "to provide the public with easy-to-access information on every substantive resolution approved by the Board of Directors." The wiki can be found at https://community.icann.org/display/tap/ICANN+Board+Resolutions.

Summary of Community Input on Implementation

Contributors during the Public Comment period recognized the improvement in the availability of Board materials. For example, Nominet stated,

> "[we] note the improvement in the availability of Board-related materials such as Board briefing documents and the rationale behind board decisions. We welcome this improved communication, but this could be further improved to show that the Board has considered the wider implications of its decisions. In particular, the Board needs to be particularly attentive to concerns from those not normally involved in ICANN activities and ensure that they do give a reasoned response to input."

Likewise, the Non-Commercial Stakeholder Group noted, "that some improvements have been made…Specifically, there have been timely publications of Board decisions and the rationale and explanations that have accompanied these. We commend ICANN for these efforts." An individual commenter/former ICANN staffer also called for publication of staff advice to the Board.

ATRT2 Analysis of Recommendation Implementation

Overall, ATRT2 finds that ICANN's implementation of ATRT1 Recommendation 7.1 appears largely successful. Having adopted the recommended practices as standard

[32] http://www.icann.org/en/groups/board/documents/briefing-materials-guidelines-21mar11-en.htm

operating procedure, the Board took a concrete step toward implementation. The Board Briefing Materials, agendas, minutes, resolutions, rationales and other relevant documents are visible and accessible on the ICANN website.

An important aspect of implementation is also the actual practice of making all relevant materials available in a timely fashion. While ATRT2 has heard of instances where materials have not been published in a timely fashion, it appears to a large degree that the standard operating procedure is being respected. A question has been raised about the scope of redactions and whether that practice respects the "minimal" approach of Recommendation 7.1. This question is difficult to explore given the nature of redactions.

ATRT2 Assessment of Recommendation Effectiveness

One measure of effectiveness is feedback from the community that relies on the publishing of Board materials to understand the Board decision-making process. ATRT1 identified a "black box" problem with respect to Board decisions. Otherwise said, the community saw the "inputs" to the Board decision-making process but had little or no visibility into the ICANN Board's deliberations and rationale for the decisions that were "outputs" of the process. Comments to ATRT2 note improvement in this area and reflect a greater sense of transparency. Likewise, there was lesser comment to the contrary than encountered by ATRT1.

Final Recommendation #5

The Board should review redaction standards for Board documents, Document Information Disclosure Policy (DIDP) and any other ICANN documents to create a single published redaction policy. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.

Report Section 7. No New ATRT2 Recommendation (Assessment of ATRT1 Recommendation 7.2)

Findings of ATRT1

ATRT1 found that the ultimate responsibility for ensuring the highest possible levels of transparency and accountability necessarily reside with the Board. ATRT1 also observed that the vast majority of the Board's deliberations were based on organizational conventions. Significant policy issues were identified and determined based on practices established over time, not according to codified procedures or requirements. ATRT1 also noted that the absence of clear, codified guidelines, procedures or processes relating to Board decisions only serves to escalate stakeholders' concerns and could lead to disenfranchisement and disengagement.

ATRT1 Recommendation 7.2

Commencing immediately, the Board should publish "a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and

information on which ICANN relied." ICANN should also articulate that rationale for accepting or rejecting input received from Public Comments and the ICANN community, including Supporting Organizations and Advisory Committees.

Summary of ICANN's Assessment of Implementation

ICANN staff reports that it has fully implemented ATRT1 Recommendation 7.2.

ICANN also notes that the development of rationales has, at times, increased the time needed for Board consideration of items. For major Board decisions, there have been significant costs incurred in both money and resources to develop the rationales.

With respect to effectiveness, ICANN notes that people have more information as to the bases for Board decisions. Sometimes the complexity of the resolutions has decreased because background information can now be provided through the rationale.

Summary of Community Input on Implementation

ATRT2 received little comment on the Board's explanation of decisions and stated rationale. The Registries Stakeholder Group (RySG) did comment, however, that the Board still ignores comments in its decision-making.

Summary of Other Relevant Information

ATRT2 assessed Board resolutions during the period of 2011-2013 with three questions in mind:

a. Does the Board provide a clear explanation of decisions? Are there substantive actions to be taken to further improve the ICANN process?

b. Does the Board provide a clear and reasonable rationale for its decisions?

c. Does the Board provide an explanation of how it considers Public Comments (if any)?

ATRT2 concluded that there is clear evidence that to a large degree, Board decisions do satisfy the three questions posed.

ATRT2 Analysis of Recommendation Implementation

Implementation of ATRT1 Recommendation 7.2 appears largely successful. A review of all Board Resolutions from 2011 through 2013 reflects that detailed rationale is provided for those decisions. ATRT2's assessment reflects an improving trend over the three-year period and while there remain examples that demonstrate room for improvement, implementation of Recommendation 7.2 indicates significant qualitative progress since 2011.

ATRT2 Assessment of Recommendation Effectiveness

The baseline for this Recommendation is that prior to January 2011, the Board had not regularly adopted formal rationale statements for its decisions. Both the analysis and Public Comment reflect significant improvement in this area. See Appendix D.

Report Section 8. GAC OPERATIONS AND INTERACTIONS: ATRT2 Recommendation #6 (Assessment of ATRT1 Recommendations 9-14)

Findings of ATRT1

ATRT1 recognized that the existing GAC-Board relationship was dysfunctional and provided six recommendations aimed at improving GAC-Board interactions.

ATRT1 Recommendation 9

The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy "advice" under the bylaws.

ATRT1 Recommendation 10

Having established what constitutes "advice," the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or database in which each request to the GAC and advice received from the GAC is documented along with the Board's consideration of and response to each advice.

ATRT1 Recommendation 11

The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then "try in good faith and in a timely efficient manner to find a mutually acceptable solution." This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

ATRT1 Recommendation 12

The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.

ATRT1 Recommendation 13

The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.

ATRT1 Recommendation 14

The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.

Summary of ICANN's Assessment of Implementation

After adopting the Recommendations, ICANN created the joint BGRI working group to focus on implementation. For certain issues within the competence of the GAC, it undertook its own work efforts to respond to the Recommendations.

As called for by Recommendation 9, the GAC developed a definition of GAC Public Policy "Advice" that was accepted by the BGRI working group and the Board, and ultimately was added by the GAC to its Operating Principles. This definition served as a key input for developing GAC procedures for the new gTLD program, most notably in the processes for GAC Early Warning and Advice (Objections).[33]

To address Recommendation 10, the BGRI working group developed and implemented a GAC Register of Advice. The GAC Register of Advice is posted publicly on the GAC website. [34] Evaluation of the effectiveness of the Register as a tool for the Board, GAC and community is ongoing, pending longer-term use of the Register by the GAC and the Board, particularly in terms of "follow-up action" and mutual agreement that advice has been fully implemented.

To implement Recommendation 11, the BGRI working group has worked to codify the methods for the GAC-Board Consultations process as called for in the bylaws. The GAC has submitted edits to the document, and the revised text remains to be reviewed/approved by the Board. The Board then will need to develop bylaws amendments that would impose a time limit and require a super majority of the Board in order to reject GAC advice.

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[33] https://gacweb.icann.org/display/GACADV/GAC+Advice. See also ICANN Bylaws, Article XI Section 2.1 at http://www.icann.org/en/about/governance/bylaws, and GAC Operating Principles, Article XII – Provision of Advice to the ICANN Board at https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

[34] https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice

As the BGRI working group tackled Recommendation 12, several complicating factors emerged, including the complexity and length of the Generic Names Supporting Organization's (GNSO) policy development process. Additionally, despite the fact that the policy development processes of various SOs and ACs are open to community participation, there are different levels of explicit participation avenues for the GAC. For example, the ccNSO process affirmatively includes input from the GAC in particular, while the GNSO process is "open" to all interested stakeholders and has no specific path to participation by the GAC. However, the GAC is structured under the bylaws to provide public policy advice directly to the ICANN Board. Some see this as an impediment to early engagement. In addition, considerable differences exist within the ICANN community as to the scope of the terms "policy" and "public policy." The GNSO does not appear to assign any particular or specific weight to "public policy" advice from the GAC in its deliberations. For its part, the GAC is aware that it does not have membership status in the GNSO and cannot influence or determine the outcome of GNSO processes. There is no clear record, for example, of acceptance by the GNSO of GAC input prior to the completion of any specific GNSO policy recommendation; in fact, the reverse is the case (e.g. public order and morality). Recommendation 12 was discussed by the BGRI working group at ICANN Prague, Toronto and Beijing, with focus specifically on the different work methods in the GAC as compared to the other SOs and ACs. The GAC has agreed to develop proposals for new tools/mechanisms for engagement with the GNSO policy development process, and discussions are ongoing.

In relation to Recommendation 13, at the request of the BGRI working group ICANN staff has proposed a monthly policy update for the GAC to assist its members in monitoring/tracking pending policy development initiatives. This effort has been welcomed by the GAC and is considered one of several elements that will support meeting the goal of the Recommendation. There may be additional tools identified by the BGRI working group that could facilitate a broader understanding among GAC members of the variety of pending policy initiatives and deliberations in other ICANN stakeholders groups. The GAC has also proposed, via the BGRI working group, the idea of "reverse" liaisons from ACs and SOs, as well as a Board liaison to the GAC, which remains under consideration in terms of specific implementation measures.

Many efforts were taken to implement Recommendation 14. The Canadian Government hosted the first meeting of senior government officials during the 45th ICANN Meeting in Toronto, which was well attended and highlighted considerable support for the role of the GAC within ICANN. At the request of the GAC Chair, ICANN has made strides to increase funding for GAC member travel to be commensurate with other SOs and ACs and provides interpretation for GAC meetings. This has clearly facilitated broader participation by non-English speaking GAC members in GAC deliberations. In fact, in the last three years the number of GAC members has increased from 100 to 129, and there has been a 77% increase in the level of in-person participation at ICANN meetings since 2010. Finally, the GAC issued an RFP in 2012 to solicit a provider, funded by Brazil, Norway and the Netherlands, to supply additional secretariat support. In the interim, ICANN funded the travel costs of an Australian Continuous Improvements Group (ACIG) staff member to the Durban meeting to provide support to the GAC under the guidance of the GAC Chair and Vice Chairs. In February 2013, a new ICANN staff member was hired under a temporary contract to provide additional support to the Chair and Vice

Chairs of the GAC, and that individual is on track to become a permanent employee.

Summary of Community Input on Implementation

Comments received in response to ATRT2's call for input generally conclude that the Board, working with the GAC, has made a substantial, good-faith effort to implement this series of Recommendations. Nevertheless, highlighted outstanding issues include the need to develop metrics or measurable criteria with which to monitor implementation; fully implement remaining Recommendations; more clearly target future recommendations to aid in implementation; and improve communication to those outside of the immediate ICANN community.

In addition, several commenters note that implementation has taken longer than anticipated by ATRT1, and in some cases there was a gap between the wording of the Recommendation and how it was carried out.[35] Some also claimed that the" role of the Board and the relationship between the Board and the GAC is unclear."[36] In addition, while comments characterize ICANN as making best efforts, the implementation of GAC improvements remains insufficient. Commenters request that "a further smooth channel be provided for GAC to engage into policy-making procedure."[37] Further commenters maintain that ICANN still needs to improve accountability and transparency in decision-making and execution and "strengthen working mechanisms between GAC, Board and SOs/ACs and define roles."[38] Some commenters feel that implementation remains unsatisfactory as some key GAC-related Recommendations have not yet been fully implemented.

ATRT2 Analysis of Recommendation Implementation

Overall, ATRT2 finds that ICANN has made a good-faith effort to implement ATRT1 Recommendations 9-14. While there seem to have been some challenges associated with responsibility for implementation (i.e., the shared nature of both the ICANN Board and GAC) as well as the practicality of priority timing proposed by ATRT1, most of the Recommendations have been addressed. However, there are outstanding implementation details that require further attention (e.g. the functioning of the Register of GAC Advice, whether and how often to hold additional High Level Meetings, etc.). For Recommendation 10, the Board needs to do further work to develop a more formal, documented process for notifying the GAC on matters that affect public policy concerns. Recommendation 12, related to facilitating the early engagement of the GAC in ICANN's policy development process, remains an ongoing work priority for the BGRI working group, which has most recently involved direct consultations with the GNSO. While there has been some progress on the level of support and commitment of governments to the GAC process, further work is needed related to Recommendation 14.

[35] Shawn Gunnarson, Individual Commenter (see footnote 7)
[36] Maureen Hilyard, ALAC, (see footnote 7)
[37] 曹华平, Internet Society of China, (see footnote 7)
[38] Liu Yue, Chinese Academy of Telecommunications Research, (see footnote 7)

Recommendation (s)	Assessment
9	Complete, issue satisfactorily addressed.
10	Incomplete; significant steps have been taken with the GAC Register and the Board responding to GAC input, but further work is needed on the Board seeking GAC input at the outset.
11	Substance complete, but took longer than ATRT1's suggested deadline. Issue of proposing and adopting related bylaws changes remains open.
12	Discussion and implementation of recommendations remain ongoing. Completion involves considerable further work and engagement with other SOs and ACs. [To be reassessed after receiving the expert report]
13	Complete; issue satisfactorily addressed.
14	Actions taken, but further work is needed given broader geo-politics and the concerns of some governments.

ATRT2's New GAC-Related Recommendations

Hypothesis of Problem

Notwithstanding the substantial progress made by ICANN and the GAC in implementing ATRT1 recommendations, there are a number of issues with respect to the GAC that still need evaluation. There is a perceived lack of transparency of GAC work methods as well as concern about the inherent barriers for participation in ICANN due to the complexity of the ICANN model and the immense level of information. As discussed in the ATRT1 report, there continues to be a lack of GAC early involvement in the various ICANN policy processes. Overall, there is concern about whether ICANN is doing everything it can to bolster its legitimacy in the eyes of countries that do not participate in the GAC, especially countries in the developing world.

Summary of Relevant Public Comment Responses

Responses from the community highlighted the feeling that while the GAC's input to policy discussions is important, the processes and discussions involved in developing GAC views are often opaque. There were specific calls for community visibility into GAC work methods and processes. Comments show that this lack of insight into GAC discussion and work methods can result in confusion for the stakeholders upon the receipt of GAC Advice. As confirmed by comments from one government official, the "GAC's role is critical in ensuring the wider public interest is taken into account" in ICANN decision-making, so it is important for its role and performance to be regularly subject to scrutiny by the wider ICANN

community."[39] Another commenter suggested that the GAC employ metrics to measure the GAC's accountability, including "third party assessment of the advice, through interviews with the Board, constituency leadership, and community members."[40]

The GAC has achieved notable progress in defining and providing greater visibility into the GAC consensus process, resulting in an amendment to Principle 47 of the GAC's Operating Principles at the October 2011 ICANN meeting in Dakar. Principle 47 states that "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."[41]

Comments show that large portions of the ICANN community do not share a common understanding of the different roles of the Board, the GAC and the GNSO, and that this lack of understanding of the different roles "can result in a lack of respect for the input of the various stakeholders."[42] Others pointed to the limited visibility into the work methods and deliberations of the GAC, sometimes due to closed-door discussion, that results in confusion in the community as to the process of developing GAC Advice, noting that "it often appears to catch the community by surprise."[43] Comments also suggested greater communication from the GAC during its deliberations and discussions could offer the community better insight into work methods and processes, and GAC Advice relieving the feeling that "messages from the GAC are often misunderstood or seen as aggressive, and vice versa."[44] Understanding that various constituencies within the community are interested in different issues and have different operational styles, "communication processes should be meaningful and relevant to ICANN users."[45] Currently, "GAC external dialogue seems to be mainly Board-focused and the opportunity to interact with the wider ICANN community seems constrained."[46]

In addition, comments from the community focus on the need to increase the level and quality of government participation in the GAC. Specific issues raised were increasing the outreach to developing countries, the need for GAC representatives to be supported individually to encourage consistent participation and to manage how the GAC addresses its work load to ensure it can be addressed in a consistent fashion by GAC representatives. Comments referenced the perceived barriers to participation overall, noting "it is difficult to navigate in the ICANN model."[47] Continuing in that vein, some commenters questioned whether the GAC is currently "effectively taking account of all situations across the globe in differing economies and communities [and] are GAC representatives sufficiently resourced on an individual basis to undertake more work on early policy development?"[48] Comments also suggested that ICANN should provide simple, focused and high quality

[39] United Kingdom Government, Mark Carvell
[40] Alejandro Pisanty
[41] https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles
[42] Danish Business Authority, Julia Wolman
[43] Nominet, Laura Hutchison
[44] Nominet, Laura Hutchison
[45] Maureen Hilyard, Affiliation, ALAC
[46] United Kingdom Government, Mark Carvell
[47] Danish Business Authority, Julia Wolman
[48] United Kingdom Government, Mark Carvell

information rather than information on an ad hoc basis, as well as measures to provide further support to newcomers.

Several commenters also focused on the need to increase engagement and outreach to developing countries as a means to increase membership and gain more varied regional representation of views, noting that the "GAC needs to improve the consistency of levels of engagement across its membership, both at meetings and intersessionally when the level of involvement from developing and least-developed countries are typically extremely low (notably in GAC teleconferences). This is a potentially serious problem given that the committee's level of activity intersessionally needs to increase significantly."[49] Additionally, commenters feel "it will be important to monitor progress in promoting wider engagement." It is important that ICANN work with its existing global stakeholders to reach out in their local communities where they are already well established and networked.[50] Commenters note that ATRT2 should explore "aspects that may contribute to raise the level of participation and strengthening the legitimacy of the multistakeholder model."[51] Finally, several comments offer solutions and identify current efforts that could contribute to increased government involvement in, and support of, the GAC, including the development of a GAC code of conduct.[52] One comment notes that "the deployment of innovative consultation tools may help restore the balance in order to achieve meaningful response levels."[53] In addition, several commenters note that "ICANN's opening of new offices may provide new global awareness, but will not fix problems."[54]

Lastly, comments highlighted the need to incorporate the GAC into policy discussions early in the process. Noting that "early engagement of the GAC is also important to ensuring predictability; improving understanding of the rationale behind decisions will help the wider community understand the advice and recognize how it fits in with the underlying principles."[55] Comments cited the GNSO Policy Development Process (PDP) as an example of where there is weak GAC engagement, stating that the "timeliness often depends on leadership strength and member commitment as well as consistent refusal of groups to participate at all or not until late in process."[56] The Non-Commercial Stakeholder Group submits that they are "concerned about tendencies that threaten multi-stakeholder, bottom-up, consensus-building policy" and offer the drafting and discussion of the GAC Communique in Beijing as an example.[57] In addition, comments highlighted that while all input is valuable, there are often barriers to exchanging information.[58] Comments noted that while GAC-Board interactions and processes have improved, more could be done to include ATRT2, specifically examining "…a more dynamic

[49] United Kingdom Government, Mark Carvell
[50] Nominet, Laura Hutchison
[51] Danish Business Authority, Julia Wolman
[52] Nominet, Laura Hutchison
[53] United Kingdom Government, Mark Carvell
[54] Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly Raiche, Carlton Samuels, Jean-Jaques Subrenat, Affiliation ALAC
[55] Nominet, Laura Hutchison
[56] Registries Stakeholder Group, Paul Diaz
[57] Non Commercial Stakeholders Group, Mary Wong
[58] Nominet, Laura Hutchison

and interactive exchange in open GAC/Board meetings."[59]

Input from Face-to-Face Sessions

Several comments from ATRT2 discussions with the various SOs and ACs, while noting the need to incorporate the GAC early on, also focused on the need for better cross-community communication in general. The At-Large Advisory Committee (ALAC) noted that, in general, groups like the ALAC and the GAC are not coming into the process early enough. The participants noted several barriers to joining various other processes, such as 1) silos, associated with issues and SOs and ACs, create information-sharing and process issues across the community, 2) instances when issues have been "taken" by a particular SO or AC when that issue was cross-cutting and should have been addressed by the entire community, or 3) issues with participating in some other SO or AC processes, due to the tendency for SOs and ACs to be resistant to outside input. Finally, ALAC participants noted that travel, facilities, and the compressed schedule all affect the ability of the ALAC to do its work and proposed that better/alternate ways to connect should be explored (e.g. Adobe Connect).[60]

During discussion with the GNSO, some ATRT2 participants noted (in their own observational capacity, not speaking on behalf of the GNSO) that while the GAC does acknowledge a need and desire to participate in the process, it has not been able to identify how to enable participation effectively while taking into account the different processes of the GAC and the GNSO. The GNSO cited ongoing work and discussions regarding how to incorporate the GAC into their PDP, noting that the ongoing discussion on this issue highlights an important aspect of the multistakeholder process. The GNSO also noted that because discussions were already underway, it is important not to duplicate work by approaching the issue from too many angles at the same time. Several GNSO participants suggested the need to examine whether policy processes as a whole were effective. Additional questions were raised regarding the ability of the GNSO policy process to allow for the development of consensus policies in a timely manner.[61]

Community discussions on cross-community deliberation continued with the Registry Stakeholder Group (RySG). The RySG shared several opportunities to participate in existing processes for the GAC and other SOs and ACs. For example, when a PDP is initiated and a Working Group is formed, a request/notice is sent to SOs and ACs, inviting participants. Some SOs and ACs are able to provide good and consistent participation in various Working Groups. They also noted other attempts to coordinate that did not prove to work well (e.g. liaison with the GAC) and processes that are still being tried (e.g. Intergovernmental Organization Working Group (IGO WG) engagement with the GAC). Some participants noted that the reason liaisons with some communities succeed and others fail rests on the participant SOs or ACs ability to engage and provide consistent feedback.

[59] Nominet, Laura Hutchison
[60] Characterization of notes (B. Cute) from ALAC session
[61] Characterization of notes (B. Cute, E. Bacon) from GNSO session

ICANN Staff Input

In addition to issuing a questionnaire for Public Comment, ATRT2 also asked ICANN Board and staff a series of questions to gain insight into their understanding of the goals of ATRT1 recommendations and to review the process used to review, implement and oversee implementation. The Board and staff responded to several questions from ATRT2 as part of a Staff Input Document into ATRT2,[62] including "whether there were additional opportunities for improvement by virtue of the implementation of these recommendations?" (Question I).

In response to that question in the context of ATRT1 Recommendations 12, ICANN identified several possible additional measures for consideration in the future, including "GAC Chair designates small GAC WG, Reviews Monthly Reports for possible public policy interest**,** post any comments on website, Submit comments to relevant SO, Specially-tailored Webinar prior to Public Meetings, Specifically designed for the GAC to focus on emerging or significant policy issues under development for discussion at public meetings that may raise public policy issues or concerns, Utilize Monthly Report to engage Supporting Organizations, Identify issues that may have public policy interest, Engage with relevant SOs prior to and during ICANN Public Meeting."

With respect to ATRT1 Recommendation 13, ICANN suggested "assisting the GAC to organize/formalize regular consultation at ICANN meetings with the GNSO, ccNSO, ASO, and Advisory Committees on policy issues and matters of concern to the GAC."[63]

For ATRT1 Recommendation 14, ICANN noted that "more could be done to provide new GAC members with sufficient informational resources. MyICANN was, in part, intended to contribute to this objective and the planned Online Education Platform (working title) also is expected to help address GAC members' information needs."[64]

In response to early ATRT2 analysis, staff further elaborated that the Global Stakeholder Engagement (GSE) team produces a monthly report for the Chair of the GAC. This document includes a "look back" reporting on the previous month's activity and projection looking forward at the next month's planned activity involving GSE staff and government interactions. This report was proposed by staff for circulation to the GAC chair. GSE staff has also developed a global government engagement strategy document that was presented to the Board Global Relations Committee (BRGC) for informational purposes at the September 2013 committee meeting in Los Angeles. As a best practice, ICANN's Regional Vice Presidents seek to inform GAC members in their regions of the related community regional engagement strategy working groups' activities and outcomes.

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[62] https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx

[63] https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx

[64] https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx

Staff also informed ATRT2 that one of the staff projects underway is the creation of a Customer Relationship Management (CRM) system. As part of that process, current GAC membership information will be integrated into the electronic database along with the other information being developed through community engagement strategies. A challenge with these types of projects is the need for continuous updating. Previous initiatives involving government outreach will need to be validated and integrated into the CRM as well.

Staff also informed ATRT2 that the GSE team is currently working on regional approaches to the internationalization of ICANN. This means that community member committees staffed by the regional GSE staff are developing, implementing or exploring developing regional strategies, depending on the needs and priorities of the regions. Strategic Plans for Africa, Latin America and the Middle East were announced and launched during the Toronto and Beijing meetings and were updated in Durban. Written updates on the status of the strategies were provided to the BRGC at its September 2013 meeting. Interactive sessions are also held at each ICANN Meeting to provide updates on activity and the process for identifying the initiative.

Relevant ICANN bylaws: Article 11, Section 2.1 (issue 1), Article XI, Section 2.1 (issue 2), Article XI, Section 2.1 (issue 3)

Relevant ICANN published policies: None

Relevant ICANN published procedures: None

Relevant GAC Operating Principles: Principle 47, footnote 1, as amended October 2011.

Findings of ATRT2

ATRT2 has identified three major issues that affect the GAC's ability to effectively interact with the Board and community at large and that have an impact on the accountability, transparency and perceived global legitimacy of ICANN. The first issue is a lack of clarity into, or understanding of, the GAC work methods, agenda and activities by the broad ICANN community, staff and Board. Complicating that relationship is that the relationship is not well understood between advice provided by the GAC to the ICANN Board and the policy recommendations provided to the ICANN Board through the policy development processes within ICANN's Supporting Organizations (particularly the GNSO). The advice provided by the GAC is not well understood outside of government circles and the specifics of it are often a surprise to non-GAC members, particularly on those occasions when the GAC's deliberations are closed to other interested ICANN stakeholders. A lack of understanding of methods and activities of the GAC can contribute to diminished credibility and trust in the GAC and its outputs, impede interaction with the ICANN community and its constituencies, and lead to process and policy development inefficiencies.

Second, challenges continue with barriers for participation both within the GAC and in ICANN more generally. More effective procedures in the GAC, easier access to information from ICANN, as well as a better explanation of the ICANN model, would uphold a continuous and effective level of participation in the GAC.

Finally, GAC participation in the various ICANN policy development processes is limited to non-existent. Without early engagement, the GAC is often put in the position of intervening later into the policy development process, often extending the timeline for those issues. Earlier engagement in policy development by all stakeholders would also produce more comprehensive polices that reflect the views and needs of the community.

Public Comment on Recommendation(s)
(see ATRT2 Draft Report and Recommendations)

Responses from the community on the suite of GAC-related recommendations were generally positive. Egypt commented that "the GAC-related recommendations are of utmost importance and include very constructive ideas." Support was voiced for efforts to make the GAC more open, with one commenter suggesting that ATRT2 go even further and offered additional recommendations. USCIB specifically commented that "the processes which through the GAC members serve on the GAC is entirely opaque and the community would benefit greatly from a better understanding of how things work." However one commenter suggested that "some of the ATRT2 requests may be too demanding (publishing all relevant GAC transcripts, positions and correspondence, publishing meeting minutes on the GAC website within seven days after each meeting…) as may expose GAC members to an undesired publicity and shy them away from open talks. That could lead to negotiations and deals being struck on corridors or far from the limelight with few countries taking part in them. Others noted the strong degree of overlap between some of the ATRT2 recommendations and an internal GAC working-methods reform effort.

The Danish Business Authority highlighted the importance of the recommendations related to stakeholder engagement while other commenters stressed the importance of an implementation plan. The importance of early engagement of the GAC in ICANN's various policy development process was raised as a priority by several commenters, but the challenge of this was also highlighted given "the pace of work in GNSO with that of Governments, which are always slower especially when internal consultations have to be carried through." The GNSO Council pointed out that a recent joint GNSO-GAC initiative has already begun.

There was, however, concern raised about the call for a code of conduct, with some commenters observing that governments are already under their individual government's code of conduct, which may vary and would override any other general agreement." Others suggested that ATRT2 may have gone beyond its remit, stating that "countries are sovereign to decide their Internet policies in the manner they see fit and don´t have to reveal how they make up their national positions." This was in contrast with other comments that pointed out that "while individual members of the GAC represent their countries, we note the GAC itself is not a government entity, but instead is part of the ICANN structure and is subject to the ICANN bylaws and articles of incorporation. Thus, all GAC processes and procedures should follow the limitations set forth in the bylaws, such as openness and transparency, as does the ALAC and the GNSO." Lastly, concerns were expressed regarding the ambiguity of the wording of the recommendations and suggestion was made to identify a specific responsible body.

Final Recommendation #6

Increased transparency of GAC-related activities

6.1. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard. Examples of activities that the GAC could consider to improve transparency and understanding include:

a. Convening "GAC 101" or information sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;

b. Publishing agendas for GAC meetings, conference calls, etc., on the GAC website seven days in advance of the meetings and publishing meeting minutes on the GAC website within seven days after each meeting or conference call.

c. Updating and improving the GAC website to more accurately describe GAC activities, including intersessional activities, as well as publishing all relevant GAC transcripts, positions and correspondence;

d. Considering whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of liaisons from other ACs and SOs to the GAC, once that mechanism has been agreed upon and implemented;

e. Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself;

f. Establishing as a routine practice agenda setting calls for the next meeting at the conclusion of the previous meeting;

g. Providing clarity regarding the role of the leadership of the GAC; and,

h. When deliberating on matters affecting particular entities, to the extent reasonable and practical, give those entities the opportunity to present to the GAC as a whole prior to its deliberations.

6.2. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC formally adopting a policy of open meetings to increase transparency into GAC deliberations and to establish and publish clear criteria for closed sessions.

6.3. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided. Such rationales should be recorded in the GAC register. The register should also include a record of how the ICANN Board responded to each

item of advice.

6.4. The Board, working through the BGRI working group, should develop and document a formal process for notifying and requesting GAC advice (see ATRT1 Recommendation 10).

6.5. The Board should propose and vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation as developed by the BGRI working group as soon as practicable (see ATRT1 Recommendation 11).

Increase support and resource commitments of government to the GAC (see ATRT 1 Recommendation 14)

6.6. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to identify and implement initiatives that can remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. The BGRI working group should consider how the GAC can improve its procedures to ensure more efficient, transparent and inclusive decision-making. The BGRI working group should develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local Domain Name System (DNS) stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

6.7. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to regularize senior officials' meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock-taking after each High Level meeting should occur.

6.8. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to work with ICANN's Global Stakeholder Engagement group (GSE) to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

6.9. The Board should instruct the GSE group to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

a. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;

b. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the transparency on how ICANN reacts to GAC advice (e.g. by using information in the GAC advice register).

c. Making ICANN's work relevant for stakeholders in those parts of the world with limited participation; and,

d. Develop and execute for each region of the world a plan to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN's services including new gTLD's.

Report Section 9. DECISION-MAKING, TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #7 (Assessment of ATRT1 Recommendations 15, 16 and 17)

Findings of ATRT1

ATRT1 found that the timeliness and effectiveness of policy-making was a serious concern among participants in the ICANN process. Key drivers were the sheer volume of open proceedings and the lack of prioritization. ATRT1 found it would be important to improve the nature and structure of the public input and policy-making processes. ATRT1 took into account the fact that the volume of open proceedings is affected by the actions of constituent bodies within ICANN and is not uniquely influenced by ICANN staff or the Board.

ATRT1 Recommendation 15

The Board should, as soon as possible but no later than June 2011, direct the adoption of and specify a timeline for the implementation of public notice and comment processes that are distinct with respect to purpose (e.g. Notice of Inquiry, Notice of Policy Making) and prioritized. Prioritization and stratification should be established based on coordinated community input and consultation with staff.

ATRT1 Recommendation 16

Public notice and comment processes should provide for both a distinct 'Comment' cycle and a 'Reply Comment' cycle that allows community respondents to address and rebut arguments raised in opposing parties' comments.

ATRT1 Recommendation 17

As part of implementing recommendations 15 and 16, timelines for public notice and comment should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment. Comment and Reply Comment periods should be of a fixed duration.

Summary of ICANN's Assessment of Implementation

ICANN staff reports that it has fully implemented ATRT1 Recommendation 16. Staff demonstrated that an implementation plan was developed and put out for Public Comment and that a Comment and Reply Comment cycle were implemented.[65] Staff also notes that, at the same time, review of the public wiki was undertaken to consider improvements to the public interface aspect of submitting Comments. Staff also

[65] http://www.icann.org/en/resources/policy/update/update-dec11-en.htm#1

noted that stratification categories and prioritization methods were developed and put to the community for discussion. Based on community feedback, staff did not implement a stratification and prioritization of Public Comments.

Summary of Community Input on Implementation

Community input reflected a range of views. While there was little comment on the Comment and Reply Comment mechanisms themselves, there was recognition that ICANN spends a great deal of time and resources offering the opportunity to provide comments in ICANN processes.[66] With respect to how "easy" it is to provide comments, views ranged markedly from "very easy" to "not easy." Some commenters recognized the improvements and offered high marks for staff efforts. A number of others pointed to the length of the request for comment period and the time period allotted for comments as creating challenges to effective participation[67] and others noted the need for greater multilingualism[68]. Others noted insufficient planning and the high number of consultations creating barriers to participation.[69]

Summary of Other Relevant Information

Staff also noted that the community had not always utilized the "Reply Comment" cycle as ATRT1 intended it. Some community members apparently have used the Reply Comment cycle to offer comments (either for the first time or in addition to earlier filed Comments). Staff indicated that education regarding the proper use of the Reply Comment cycle had been offered, but that commenters did not follow the recommended use. Staff also noted that it is considering lengthening the time periods for Comments, having heard complaints from the community that the current time period allowed was too short for some to draft and approve Comments for submission. Staff also noted that it was developing new tools to allow for Comment through different means (e.g. social media tools) and would consult with the community before deploying such tools.

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[66] http://forum.icann.org/lists/comments-atrt2-02apr13/msg00003.html

[67] Comments of the GNSO Intellectual Property Constituency: "Deluges of simultaneous or overlapping ICANN Public Comment proceedings on major issues greatly intensify the problem." "The fact that the reply comment period has often been used to submit initial comments is not, as the staff evidently told ATRT-2, because community members were ignorant or resistant to education about 'the proper use of the Reply Comment cycle'; rather, it was a rational response to ICANN's seemingly irrational decision not to provide longer Public Comment opportunities on major and complex issues." … "ICANN should use the hiatus period consistently to exclude the dates of ICANN public meetings in calculating comment deadlines." http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfToree1LWR0.pdf

[68] Comments of the United States Council for International Business, http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfGwHm9XvJAd.pdf; Comments of the At-Large Advisory Committee: http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfDyQDZx5CHT.pdf; Comments by The Government of Egypt, http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfEhY8OBH3XE.pdf

[69] http://forum.icann.org/lists/comments-atrt2-02apr13/msg00010.html (response to Q. 9).

ATRT2 Analysis of Recommendation Implementation

Implementation of ATRT1 Recommendation 16 appears complete but with qualified success. Given the community's use of the Reply Comment cycle, it does not appear that those mechanisms are offering the intended benefit. Additionally, ATRT2 notes that implementation of stratification and prioritization of Comments was abandoned based on community feedback, and the challenges with respect to the Comment process continue to be in the area of time allotment for Comments, frequency of consultations, and complexity (for some) of the requests for comments. Staff should develop new tools and techniques for addressing these persistent issues.

ATRT2 Assessment of Recommendation Effectiveness

The effectiveness of implementation is qualified, but its partial success is not entirely due to staff performance. Interestingly, the Board has improved in reflecting Public Comment in its resolutions. That is a key element of accountability and transparency. ATRT2's assessment is that fulsome, broader and more frequent Public Comment can be facilitated through adjustments to time allotted, forward planning regarding the number of consultations, and new tools that facilitate easier participation in the Comment process.

Final Recommendation #7

Public Comment Process

7.1. The Board should explore mechanisms to improve Public Comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.

7.2. The Board should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the staff incorrectly summarized their comment(s).

Report Section 10. MULTILINGUALISM: ATRT2 Recommendation #8 (Assessment of ATRT1 Recommendations 18, 19, and 22)

Findings of ATRT1

The ATRT1 report focused on language as a potential barrier to the community in the sense that if all documents are in English only, there is a risk that many of the non-native English speakers might have difficulties with comprehending important issues and miss out on important information. Furthermore, it was recommended that the senior staff be multilingual in order to deliver optimal levels of transparency and accountability to the community.

In 2012 ICANN introduced translation services to enable better service to the larger diverse community. Though the language services are welcome, the quality of the

translation in terms of accuracy to the working language of the various communities is important. In addition, the timeliness of the translation in relation to community interaction and participation is necessary. This will ensure effective and clear communication with the community.

ATRT1 Recommendation 18

The Board should ensure that access to and documentation within the policy development processes and the public input processes are, to the maximum extent feasible, provided in multilingual manner.

ATRT1 Recommendation 19

Within 21 days of taking a decision, the ICANN Board should publish its translations (including the required rationale as outlined in other ATRT recommendations) in the languages called for in the ICANN Translation Policy.

ATRT1 Recommendation 22

The Board should ensure that ICANN's senior staffing arrangements are appropriately multilingual, delivering optimal levels of transparency and accountability to the community.

Summary of ICANN's Assessment of Implementation

One of the first accomplishments was the creation and approval by the Board of the Language Services Policy and Procedures document.[70] The resolution adopting this initiative was approved on October 18, 2012.[71] Significantly, the ATRT1 recommendation to "Enhance Multilingual Strategy" also included improvements such as more interpretation support, transcription support, and teleconference interpretation.

During calls[72] with ATRT2, staff explained how the translations services work and the challenges they continue to face. These include, but are not limited to, the need to update and improve glossaries of already used terminologies in the six ICANN languages; budgetary constraints (despite increases from US$2.1M in 2012 to US$3.6M in 2014); and management of the sheer volume of work via staffing levels and how that impacts the timeliness of output.

Staff also shared the process involved as follows:

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[70] http://www.icann.org/en/about/participate/language-services/policies-procedures-18may12-en.pdf
[71] http://www.icann.org/en/groups/board/documents/resolutions-18oct12-en.htm#1.b
[72] See http://audio.icann.org/atrt2-20130620-en.mp3; https://community.icann.org/download/attachments/41890059/20130620_ATRT2_ID795926.pdf?version=1&modificationDate=1372186140000; http://icann.adobeconnect.com/p17n8q2y2qq/ and http://icann.adobeconnect.com/p5fcx7t8u9i/ and https://community.icann.org/download/attachments/41884187/chat+transcript+-+day+2.pdf?version=1&modificationDate=1376620716000; and https://community.icann.org/download/attachments/41884187/DAY2.pdf?version=1&modificationDate=1377345148000

a. Receive the document for translation.

b. Quick estimate of words per page multiplied by days it takes to translate; 1 day = 1800-2000 words.

c. Document goes through polishing.

Delays in getting the materials out at the same time often is a result of the size of the material to be translated and a lean department of two staff members.

Regarding Recommendation 22, ICANN's Director of Human Resources reported that ICANN had 38 individuals in Senior and Executive Management roles in December 2010. Of those, 28 were multilingual (73.4%). As of August 2013, there are 51 individuals in Senior and Executive Management roles, of which 39 are multilingual (76.5%). Staff reported that overall, ICANN staff members speak approximately 45 languages.

Level	On staff as of Dec 2010	Multi-Lingual	On staff as of Aug 2013	Multi-Lingual
Executive	8	7	9	8
Senior Mgmt	30	21	42	31

No information was provided on any ongoing training of ICANN staff at any level in enhancing multilingual skills.

Staff further noted[73] that:

> *While ICANN does not have a written policy for hiring senior staff with multilingual skills, there are a number of well-established practices and standard operating procedures to address this topic. As ATRT2 noted, ICANN has been successful in ensuring that senior staff possess multilingual skills by following these practices, and we anticipate that the level of multilingual knowledge will deepen as ICANN continues to implement its global strategy. ICANN will consider other appropriate documentation of the importance of multilingual skills for senior staff on a go-forward basis.*

Practices and standard operating procedures include:

a. All position descriptions (and job postings) where multilingual skills are appropriate have been written to include multilingual skills as desired, preferred, or required, as applicable.

b. Where appropriate, internal interview survey forms ask each interviewer to comment on the multilingual skills of each interviewed candidate – this is a standard operating procedure.

c. The geographic expansion in the locations of ICANN offices is resulting in expansion of multilingual skills, by design.

[73] http://mm.icann.org/pipermail/atrt2/2013/000958.html

ICANN provides several resources to employees for expanding their language skills. These resources include access to world-class language training tools, such as Rosetta Stone and busuu.com online language training. Additionally, ICANN provides tuition for local instruction classes as needed; such instruction has been provided for Spanish, Dutch and French, among other languages, for staff in hub office cities.

Summary of Community Input on Implementation

Criticism of the accuracy of ICANN's translations is not uncommon. Below is an example of how the translation changes the actual meaning. (The table reflects Russian translations.) It is of great importance that the level of translation accuracy be improved.

Document	Section (Part)	Wording	Actual translation (in Russian)	What it can mean	Correct translation (in Russian)
A Next Generation Registration Directory Service (2013)	Status of this **document**	**This is an initial report from the Expert Working Group on gTLD Directory Services (EWG), providing draft recommendations for a next generation gTLD Registration Directory Service (the "RDS") to replace the current WHOIS system**	Настоящий документ ***представляет собой*** отчёт экспертной рабочей группы (ЭРГ) с рекомендациями по замене существующей системы WHOIS на ***службу каталогов регистрации рДВУ («СКР») следующего поколения***	This is a [*initial - missing*] report of the Expert Working Group on [*draft - missing*] recommendations to replace the existing WHOIS system with *the office (service) of the catalogues of registration* of the *generic* Domains of the Top Level (abbreviation never used in Russian) of the *following* generation	**Настоящий документ является предварительным отчётом Экспертной рабочей группы (ЭРГ) с рекомендациями по замене системы WHOIS справочным сервисом нового поколения («ССНП») по регистрационным данным доменов общего пользования**
WHOIS Policy Review Team Final Report (2012)	Title	**WHOIS Policy Review Team // Final Report**	Группа ***проверки*** политики WHOIS // Итоговый отчёт	The Team on *Checking* WHOIS Policy // Final Report	**Группа по обзору политики WHOIS // Итоговый отчёт**
(*multiple documents*)		**Registry**	***Реестр***	register (list)	**регистратура**
(*multiple documents*)		**Registrant**	***владелец регистрации***	owner of registration	**администратор домена**
(*multiple documents*)		**generic domain names**	***родовые*** домены	ancestral, tribal domains	**домены общего пользования**

ATRT2 Analysis of Recommendation Implementation

The implementation of the language policy is deemed unsuccessful because:

a. The often poor quality of translations undermines public willingness to participate.

b. The ability to encourage broader public participation is constrained by the limited availability of a full translation function.

c. Community members cannot fully participate in the Public Comments process in their preferred language – including languages for which ICANN claims to have established translation services – because they must comment back in English due to the lack of full translations of all comments received.

d. Many ICANN language communities are negatively impacted by the timeliness, i.e. common delays, of the current translations policy's unequal response times.

On the other hand, it appears ICANN has successfully implemented Recommendation 22, given that more than 75% of staff in Senior Management and Executive roles are reported as being multilingual. While it is not clear if ICANN has any policies regarding the use of languages other than English in email or one-to-one person communication, this has not been raised as a problem by the community. Nevertheless, should some members of the community have problems communicating with the senior staff in English, it seems likely that the senior staff's multilingual skills will allow them to deliver a high level of transparency and accountability in their interactions.

ATRT2 Assessment of Recommendation Effectiveness

ICANN should review the capacity of the language service department versus the community's need for the service and make relevant adjustments. The language service is important to what ICANN does and its plans for the future are based on the outreach program already in place. While it is recognized that there has been a significant improvement in the Language Services Department, the Translation Services component should evolve to be able to sustain an expected significant increase in activity. This shift from a craft-based ad hoc supply/demand service to a continuous industrial pipeline of documents involves the ability to:

a. accurately predict the time to translate a document at any time of the year, based on the knowledge of historical periodic activity (past ICANN meeting cycles, peak periods, holidays, etc.);

b. predict peaks of activity proactively and dynamically modulate capacity to supplement permanent staff using a pool of additional freelance translators on demand to smooth out peak delays;

c. enable clients (SOs, ACs, etc.) to automatically track the status of their translation request via use of a CRM system;

d. automatically compile metrics on document translation timeliness;

e. implement a feedback path from the community to improve Language Services with native speaker input;

f. implement best practice documentation management to harmonize translation quality and accuracy between experienced permanent and new or freelance translators; and

g. benchmark related procedures with similar international organizations, the most significant being the United Nations Language and Interpretation Services.

Given that the level of multilingual staff is commendable, ATRT2 has no further input on Recommendation 22 at this issue.

Public Comment on Recommendation
(see ATRT2 Draft Report and Recommendations)

The At-Large Advisory Committee suggested that the language services department work with the community to prioritize documentation/materials for translation, which may differ from constituency to constituency.[74]

Final Recommendation #8

To support public participation, the Board should review the capacity of the language services department versus the community need for the service using Key Performance Indicators (KPIs) and make relevant adjustments such as improving translation quality and timeliness and interpretation quality. ICANN should implement continuous improvement of translation and interpretation services including benchmarking of procedures used by international organizations such as the United Nations.

Report Section 11. DECISION-MAKING, TRANSPARENCY AND APPEALS PROCESSES: ATRT2 Recommendation #9 (Assessment of ATRT1 Recommendations 20, 23, 25, 26)

Findings of ATRT1

ATRT1 reviewed ICANN's policy development and implementation processes and made many recommendations about the inputs and standards used for making and appealing decisions.[75] Both to ease assessment of implementation and to shed light on the interrelationships between ATRT2's mandate[76] and the ICANN Board's decisions on policy and its implementation, a number of these issues have been grouped in this analysis. Importantly, the assessments and recommendations made in this document presume the default condition of transparency as a basis for all ICANN

[74] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfDyQDZx5CHT.pdf
[75] See ATRT1 Final Report.
[76] See https://community.icann.org/display/ATRT2/Mandate, in particular 9.1 (Ensuring accountability, transparency and the interests of global Internet users) subsections (c), (d) and (e).

activities. In those instances where the Chatham House Rule[77] is invoked and discussions are closed and/or reports are redacted, the decision to overrule the transparency imperative still should be publicly documented.

ATRT1 Recommendation 20

The Board should ensure that all necessary inputs that have been received in policy-making processes are accounted for and included for consideration by the Board. To assist in this, the Board should as soon as possible adopt and make available to the community a mechanism such as a checklist or template to accompany documentation for Board decisions that certifies what inputs have been received and are included for consideration by the Board.

ATRT1 Recommendation 23

As soon as possible, but no later than June 2011, the ICANN Board should implement Recommendation 2.7 of the 2009 Draft Implementation Plan for Improving Institutional Confidence which calls on ICANN to seek input from a committee of independent experts on the restructuring of the three review mechanisms - the Independent Review Panel (IRP), the Reconsideration Process and the Office of the Ombudsman. This should be a broad, comprehensive assessment of the accountability and transparency of the three existing mechanisms and of their inter-relation, if any (i.e., whether the three processes provide for a graduated review process), determining whether reducing costs, issuing timelier decisions, and covering a wider spectrum of issues would improve Board accountability. The committee of independent experts should also look at the mechanisms in Recommendation 2.8 and Recommendation 2.9 of the Draft Implementation Plan. Upon receipt of the final report of the independent experts, the Board should take actions on the recommendations as soon as practicable.

ATRT1 Recommendation 25

As soon as possible, but no later than October 2011, the standard for Reconsideration requests should be clarified with respect to how it is applied and whether the standard covers all appropriate grounds for using the Reconsideration mechanism.

ATRT1 Recommendation 26

As soon as possible, but no later than October 2011, the ICANN Board, to improve transparency, should adopt a standard timeline and format for Reconsideration Requests and Board reconsideration outcomes that clearly identifies the status of deliberations and then, once decisions are made, articulates the rationale used to form those decisions.

[77] See http://www.chathamhouse.org/about-us/chathamhouserule "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."

ATRT2, under the terms of its mandate, also determined that the following issues[78] should be addressed in this analysis of accountability and transparency in policy development and implementation processes:

a. Publication of yearly statistical reports on transparency.

b. Enhancement of the employee Hotline that allows relevant information to become transparent (Whistleblower Policy).

Summary of ICANN's Assessment of Implementation

With regard to Board consideration of inputs in policy decision-making, staff undertook an analysis[79] to determine what can be learned based upon actual community usage and participation patterns. The study period was from 1 January 2010 through 31 December 2012 and involved harvesting information from each of 212 archived Public Comments Forums. Ultimately, a checklist was created that is now used with GNSO Policy Development Process (PDP) recommendations to ascertain that all inputs were received. This checklist, now embedded in Standard Operating Procedure, has been used only once to date.

With regard to restructuring review mechanisms, an Accountability Structures Expert Panel (ASEP) was commissioned in September 2012. It included three international experts on issues of corporate governance, accountability and international dispute resolution. The ASEP reported on October 2012 and the Board acted upon its recommendations on 20 December 2012, approving amendments to bylaws Article IV, Section 2[80] (Reconsideration), Section 3[81] (Independent Review), and the corresponding Cooperative Engagement Process for Independent Review.[82]

With regard to the Ombudsman: the Ombudsman undertook a review of his office and function in accordance with ATRT1 Recommendation #23. The Ombudsman recommended to the Board Governance Committee (BGC) that a regular meeting schedule be established, possibly through a committee of the ICANN Board. In turn, the ICANN Board decided (1) that regular meetings would be held by the Executive Committee, and (2) Ombudsman reports that require the full ICANN Board's attention shall be provided to the ICANN Board as a whole, as needed and determined in consultation with the Executive Committee and the Ombudsman.

Summary of Community Input on Implementation

ATRT2 conducted face-to-face sessions with stakeholders in Beijing and Durban, as well as a community-wide survey, to gather their views on ICANN's progress towards institutionalizing more accountable and transparent policy development and

[78] It should be noted that while not discussed to an extent in the ATRT1 report, the last two issues were documented in both the 2010 Berkman Center for Internet & Society report and the 2007 One Work Trust report on "ICANN Accountability and Transparency – Structures and Practices."
[79] See https://community.icann.org/pages/viewpage.action?pageId=41885192
[80] http://www.icann.org/en/about/governance/bylaws/proposed-bylaw-revision-reconsideration-26oct12-en.pdf
[81] Ibid.
[82] http://www.icann.org/en/news/irp/proposed-cep-26oct12-en.pdf

implementation processes. Those relatively few responses to the survey were generally negative (see all of them in the ATRT2 archive at http://www.icann.org/en/news/public-comment/report-comments-atrt2-20jun13-en.pdf). For example, this graphic summarizes some of the survey responses:

Specific ratings (1-10) to the questions 1-3 on the implementation of ATRT1

	AP	Vasily	MFarrel NCUC	MHilyard ALAC	Dthompson AL	GChillcott
Q 1A	8	1	4	4	7	n/a
Q 1B			defensive			
Q 1C: Metrics			timeliness!	wording		
Q 2A	4	2	5	n/a	7	7
Q 2B			lack openness		financial improv	Board's Rationale
Q 2C						
Q 3A	n/a	2	1	3	5	n/a

Some members of the ICANN community raised explicit Reconsideration process concerns. For example, the Registries Stakeholder Group (RySG) challenged staff's implementation of ATRT1 recommendations #23 and #25, claiming that they were fundamentally flawed and in fact ran counter to the concept of accountability.[83] The RySG went on to assert that the Board ignored the Public Comments. Likewise, the Non-Commercial Stakeholders Group (NCSG), responding to ICANN's rejection of its Reconsideration #13-3 (regarding the TMCH+50 case), publicly stated its "belief that the Board's response, or rather, the manner in which it was couched and the rationale which the Board (through its representative sub-committee on the matter) chose to employ, was such as to land yet another blow to the vaunted [Multistakeholder Model]."[84] Other commenters noted that ATRT2 should address the questions left unresolved by ATRT1, such as: should ICANN provide an independent and binding appeal from Board decisions and, if so, what body should have that authority?

There was limited input on the Ombudsman in the open comments or in the face-to-face discussions with the ICANN community. One report did question the independence of the Ombudsman, noting that the office "appears so restrained and contained."

Summary of Other Relevant Information

With regard to Board reconsideration, since December 2010 eight new Reconsideration Request processes were initiated and six of those "resolved." In the course of its work, ATRT2 found that the general perception throughout the ICANN community is that Reconsideration Requests "all end up in a negative decision." An analysis of the results bears this out:

Request 13-5: Booking.com B.V. (Staff action/inaction on non-exact match "hoteis"). BCG recommendation pending.

[83] http://forum.icann.org/lists/comments-atrt2-02apr13/msg00025.html
[84] http://forum.icann.org/lists/comments-atrt2-02apr13/msg00029.html

Request 13-4: DotConnectAfrica Trust (Board action/inaction on the GACs Beijing communique impact on dotafrica application). **Denied** as per BCG recommendation; Board resolution not finalized.

Request 13-3: Non-Commercial Stakeholders Group (against staff action on TMCH+50). Initially **Denied** by BCG**,** but eventually recommends to adopt **"revised"** recommendation, to be brought to the ongoing community discussion on policy versus implementation within ICANN.[85]

Request 13-2: Nameshop (Board/ Staff inaction *on Applicants Support*). **Denied**.[86]

Request 13-1: Ummah Digital, Ltd. (against staff action on Applicants Support). **Denied**.

Request 12-2: GNSO Intellectual Property Constituency (against Board decision on .cat). **Denied.**

Request 12-1: International Olympic Committee (board decision). **Denied** ("*at this time*").[87]

Request 11-1: Michael Gende (staff inaction). **Denied**.

With Regard to the Ombudsman under the ICANN bylaws.[88]

> *The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.*

The Ombudsman maintains its own page on the icann.org website.[89] Annual reports have been included under this page from 2005 – 2010.[90]

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[85] The BCG wrote, "*The Request, however, does demonstrate the import of the ongoing work within the ICANN community regarding issues of policy and implementation, and the need to have clear definitions of processes and terms used when seeking community guidance and input. As such, we believe it is advisable for the Board to pay close attention to the policy/implementation debate, and to make sure that the issues raised within this Request be part of that community work. Further, we believe that it is advisable to ask the community to address the issue of how the Board should consider and respond to advice provided by the Supporting Organizations (outside of the PDP) and what types of consultation mechanisms, if any, are appropriate in the event the Board elects not to follow that advice. As ICANN evolves, this is an important question for consideration in upholding the multistakeholder model.";* The Board, through the NGPC, actually accepted reconsideration of the issue, though the ultimate decision was that the action should not be overturned.

[86] Some interesting case law interpretations appear in the BCG recommendation: "*Reconsideration is not, and has never been, a tool for requestors to come to the Board to seek the reevaluation of staff decisions. This is an essential time to recognize and advise the ICANN community that the Board is not a mechanism for direct, de novo appeal of staff (or panel) decisions with which the requester disagrees. Seeking such relief from the Board is, in fact, in contravention of established processes and policies within ICANN."*

[87] This issue is still pending in a general policy development process between GAC and GNSO on IGO protection.

[88] See http://www.icann.org/en/about/governance/bylaws - V

The Ombudsman now reports to the Board on a quarterly basis in addition to publishing an annual report. Furthermore, the Ombudsman has a Facebook page and writes a regular blog on various topics (see http://omblog.icann.org)

In discussions with ATRT2[91], the Ombudsman mentioned additional functions that were not included in the explicit bylaws charter, including:

"To ensure that there is transparency of the flow of information."

"A mandate to assist with keeping peace and harmony within the ICANN community."

Involvement in some issues with new gTLD program and Dispute Resolution providers that may have not been anticipated as part of the Ombudsman function by program implementers.

On questions of whether the Ombudsman should have a role in the Whistleblower process at ICANN, the current Ombudsman mentioned to ATRT2 that he, as well as his predecessor, had spoken to ICANN legal staff about this issue and that he was basically told "no."[92] He also mentioned that the role had been defined 10 years ago and perhaps that was an issue to be explored.[93]

ATRT2 Analysis of Recommendation Implementation

With regard to Board consideration of input in policy decision-making (ATRT1 Recommendation #20), ATRT2 found this implementation to be incomplete. Although the ICANN Board and the GAC have developed a modality that allows the latter's advice to be received, reviewed, considered, and discussed with decisions explained, and the Supporting Organizations have rich bylaws text defining processes for consideration of policy advice, the remaining Advisory Committees may offer advice but there is no defined response mechanism. In fact, there isn't even a bylaws obligation on the ICANN Board to respond.

With Regard to restructuring review mechanisms (ATRT1 Recommendation #23), ATR2 also found this to be incomplete. Review mechanism is only the last stage of the PDP process, but one where the objectives of AoC 9.1(d) are at risk. Review

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[89] See http://www.icann.org/en/help/ombudsman
[90] See http://www.icann.org/en/help/ombudsman/reports
[91] See http://durban47.icann.org/meetings/durban2013/transcript-atrt2-13jul13-en.pdf
[92] The current Ombudsman, Chris LaHatte, noted "the answer really was, well, we have a perfectly good law which deals with that so you don't need to go there. I can't comment from a legal perspective on whether that's a good answer as opposed to the correct answer." He also indicated that the Ombudsman needs "freedom of information powers, and indeed I have those, because it's in my Bylaw that if I want to see any documents from within ICANN or in the ICANN community, then they must be provided." He went on to note, however, "That's not quite the same, of course, as whistleblowing, but it is perhaps the first step towards that sort of function. If someone were to come to me and say, 'I want to make this confidential complaint about something that's happened,' and it is effectively a whistleblowing complaint, then I have the ability to investigate."
[93] LaHatte noted "And the Bylaw, it seems to also be restrictive in its approach in that it says the role is between ICANN staff and the community, but in other areas of the Bylaw it's not quite as explicit, and it talks about supporting structures. And it's perhaps understandable in the context of something which was written in 2003, 2004 when it was a lot smaller, much less complicated, and when the supporting organizations hadn't reached the degree of sophistication which they have some seven or eight years later."

mechanism should be a "final" guarantee that there is wide support for decisions. It should not be seen as a way to solve process logjams at this stage alone.

With regard to Board Reconsideration issues, ATRT2 found that ATRT1 Recommendation #25 remains incomplete. While steps were taken to clarify the process, the issues described above indicate that it still requires clarification.

Regarding ATRT1 Recommendation #26, though, this item is complete. A timeline and suggested format for generating a Reconsideration Request can be found at http://www.icann.org/en/groups/board/governance/reconsideration.

With Regard to the Ombudsman (ATRT1 Recommendation #24), this item also is complete. ATRT2 believes, however, that ICANN needs to reconsider the Ombudsman's charter and the Office's role as a symbol of good governance to be further incorporated in transparency processes.

ATRT2 New Policy Input-Related Recommendations

Hypothesis of Problem

Full transparency requires that employees have an ability to report irregularities in a safe and reliable manner. While ICANN has a hotline that is meant to serve the whistleblowing activities, evidence does not indicate that this program has been used effectively.

Background Research Undertaken

While ATRT1 did not make any specific recommendations on the manner in which continual assessment could be done, previous ICANN-contracted reports did include relevant suggestions:

In 2007, One World Trust concluded[94] that:

> *ICANN should consider implementing processes that act as deterrents to abuses of power and misconduct which would protect staff who might want to raise such instances. Specifically, ICANN should consider developing a whistleblower policy that enables staff to raise concerns in a confidential manner and without fear of retaliation; and developing appropriate systems to foster compliance.*[95]

[94] See http://www.icann.org/en/about/transparency/owt-report-final-2007-en.pdf

[95] In fact, One World Trust made many recommendations, including:
To ensure compliance with any organizational policy, it is important that there is high level oversight and leadership. Without this, implementation will only ever be piecemeal. To ensure implementation of the information disclosure within ICANN therefore, responsibility for overseeing the policy should be assigned to a senior manager.
Supporting this, a set of indicators should be developed to monitor the implementation of the policy, and an annual review should be undertaken which identifies how ICANN is complying with the policy, where there are problems, and the steps that are to going be taken to address these (see recommendation 5.1 in section 8).

In 2010, the Berkman Center for Internet & Society reiterated[96] One World Trust's recommendation that ICANN carry out and publish the results of a yearly transparency audit.[97]

Findings of ATRT2

ICANN already issues an annual report on implementation and progress on ATRT1 recommendations. Additionally, while the staff does not anticipate any issues with being able to report how the Anonymous Hotline is being used, ICANN's ability to report publicly on results from Anonymous Hotline may be limited in certain cases

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While ICANN has three mechanisms for investigating complaints from members of the ICANN community, the organization does not have a policy or system in place that provides staff with channels through which they can raise complaints in confidentiality and without fear of retaliation. Having such a policy (often referred to as a whistleblower policy) is good practice among global organizations. A whistleblower policy that provides such protections serves as an important means of ensuring accountability to staff as well as preventing fraudulent behavior, misconduct and corruption within an organization.

While the Ombudsman, Reconsideration Committee and the Independent Review Panel provide complaints-based approaches to compliance, to generate greater trust among stakeholders, ICANN needs to take a more proactive approach.

To address this issue, ICANN should consider a regular independent audit of their compliance with accountability and transparency commitments. Alternatively, it could develop a permanent compliance function to emphasize prevention by identifying shortcomings as they emerge and before they become systemic problems. In either case, a regular report on compliance should be produced and publicly disseminated.

[96] See http://www.icann.org/en/about/aoc-review/atrt/review-berkman-final-report-20oct10-en.pdf

[97] Specifically, 2.4 Transparency Audit

(a) Issues

The lack of a comprehensive audit of ICANN's information activities makes it difficult to assess its practices across active, passive, and participatory transparency.

(b) Observations

The 2007 One World Trust review describes an ICANN initiative "to conduct an annual audit of standards of accountability and transparency, including an audit of the commitments made in these Management Operating Principles . . . by an external party" with the results of the audit "published in the Annual Report."xxxv The last annual report does not contain such an audit.

(c) Discussion

ICANN currently lacks an up-to-date, publicly available transparency audit. This makes it difficult to make substantive assessments of ICANN's practices as they relate to active, passive, and participatory transparency. The lack of empirical material (e.g., on the time delays in the publication of documents) currently forces reviewers to look for conceptual, structural, and procedural deficiencies in order to identify if, where, and how there are inconsistencies between guiding policies and practices. A comprehensive audit, in contrast, would allow for periodic, facts-based, internal and external reviewing and benchmarking; ICANN could greatly benefit from this when further improving its information policies. Such a transparency audit needs to be governed by clear policies and processes which set forth the categories of information pertinent to such an audit, among other things. Following an earlier recommendation by the One World Trust review, the transparency audit should be published in the Annual Report. In addition, the Berkman team suggests that the underlying data be released as part of the Dashboard/ICANN Performance Metrics.xxxvi Accountability and Transparency at ICANN: An Independent Review {99}

(*d) Recommendation*

Create and implement policies and processes for conducting and communicating regular transparency audits.

due to legal implications. ICANN may be limited to providing a generic disposition due to such legal limitations.

Final Recommendation #9

9. Consideration of decision-making inputs and appeals processes

9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.

9.2. Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN's structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.

9.3. Review Ombudsman Role

The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

a. A role in the continued process of review and reporting on Board and staff transparency.

b. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration related to policy and operational matters.

c. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

9.4. Develop Transparency Metrics and Reporting

The Board should ensure that as part of its yearly report, ICANN include, among other things, but not be limited to:

a. A report on the broad range of Transparency issues with supporting metrics to facilitate accountability.

b. A discussion of the degree to which ICANN, both staff and community, are adhering to a default standard of transparency in all policy, implementation and

administrative actions; as well as the degree to which all narratives, redaction, or other practices used to not disclose information to the ICANN community are documented in a transparent manner.

c. Statistical reporting to include at least the following elements:

i. requests of the Documentary Information Disclosure Policy (DIDP) process and the disposition of requests.

ii. percentage of redacted-to-unredacted Board briefing materials released to the general public.

iii. number and nature of issues that the Board determined should be treated confidentially.

iv. other ICANN usage of redaction and other methods to not disclose information to the community and statistics on reasons given for usage of such methods.

d. A section on employee "Anonymous Hotline" and/or other whistleblowing activity, to include metrics on:

i. Reports submitted.

ii. Reports verified as containing issues requiring action.

iii. Reports that resulted in change to ICANN practices.

e. An analysis of the continued relevance and usefulness of existing transparency metrics, including

i. Considerations on whether activities are being geared toward the metrics (i.e. "teaching to the test") without contributing toward the goal of genuine transparency.

ii. Recommendations for new metrics.

9.5. The Board should arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

The professional external audit should be based on the Section 7.1 and Appendix 5 - Whistleblower Policy of the One World Trust Independent Review of 2007 recommendations (http://www.icann.org/en/about/transparency/owt-report-final-2007-en.pdf) to establish a viable whistleblower program, including protections for employees who use such a program, and any recent developments in areas of support and protection for the whistleblower. The professional audit should be done on a recurring basis, with the period (annual or bi-annual, for example) determined upon recommendation by the professional audit.

The processes for ICANN employee transparency and whistleblowing should be made public.

Report Section 12. Assessment of ATRT1 Recommendation 21

Findings of ATRT1

ATRT1 found that the timeliness of policy-making was a serious concern among participants in the ICANN processes. The numerous changes in projected completion dates for new Top Level Doman (TLD) round preparatory work were a source of concern that led to a specific proposal (i.e. Expression of Interest) from some members in the community. An often-cited concern was the sheer volume of open Public Comment. The ATRT1 took into account the fact that the volume of open proceedings is affected by the actions of constituent bodies within ICANN and is not uniquely influenced by ICANN staff or the Board.

ATRT1 Recommendation 21

The Board should request ICANN staff to work on a process for developing an annual work plan that forecasts matters that will require public input so as to facilitate timely and effective public input.

Summary of ICANN's Assessment of Implementation

Staff reported that all parts of ATRT1 Recommendation 21 were implemented as originally proposed.[98] ATRT2 notes, however, that the annual update process was not completed by the December 2012 deadline. Staff is currently simplifying the process and templates and expects to launch another formal refresh cycle shortly.

Summary of Community Input on Implementation

One commenter notes that there is "insufficient forward-planning for the schedule of consultations and their priority. Number of consultations is very high; bearing in mind the bottom-up nature of ICANN, it can also be a barrier to engagement."

ATRT2 Analysis of Recommendation Implementation

Although the forecast was implemented late, a new forecast is now made every trimester so Recommendation 21 is considered complete. A resource guide is now published at http://www.icann.org/en/news/public-comment/upcoming.

Although there are no formal metrics to gauge the effect or outcome of publishing Upcoming Public Comments topics, anecdotal evidence indicates that some community members perceive value in consulting the Upcoming topics list. Therefore, a formal study should be undertaken approximately six months after the information has been refreshed.

[98] http://www.icann.org/en/news/in-focus/accountability/atrt-implementation-report-29jan13-en.pdf

ATRT2 Assessment of Recommendation Effectiveness

The recommendation seems to have had some effect based on anecdotal evidence, but ICANN should solicit feedback from the community to determine the effectiveness of forecasting and whether other tools should be used to assist the community.

Report Section 13. CROSS-COMMUNITY DELIBERATIONS: ATRT2 Recommendation #10

Hypothesis of Problem

Although ICANN continues to conduct its Policy Development Processes (PDP) via Working Groups (WGs) composed of ICANN community volunteers that self-select Chairs presumably capable of bridging opinion differences and arriving at generally acceptable policy recommendations, this model often appears to be lacking – especially when dealing with complex issues compounded by widely disparate points of view and/or strongly held financial interests in particular outcomes. This section largely focuses on the formal PDP defined in Annex A of the ICANN bylaws, but largely applies to all policy development processes that may be used by the GNSO and the recommendations apply to the more general case, as well.

Summary of ICANN Input

ICANN stakeholders have recognized the structural shortcomings of the existing PDP WG model for some time. Alternative models have been discussed. For example, the use of professional facilitators was raised at the Beijing meeting and more thoroughly discussed at the Durban meeting.[99] In fact, ICANN brought in professional facilitators to help with a number of activities at the Durban meeting. ICANN staff subsequently drafted a paper, "GNSO Policy Development Process: Opportunities for Streamlining & Improvements," that discusses a variety of potential improvements, including greater use of face-to-face (F2F) meetings and professional moderation/facilitation.[100]

ICANN meetings themselves are a sign that the community highly values F2F interactions. The three international meetings per year draw significant – and growing – numbers of attendees and remain an important opportunity for stakeholders to meet, debate, and decide issues. Likewise, regional meetings of contracted parties and other community members are well-received and attended. ICANN's Board also holds workshop/retreats several times per year. Even the Review Teams established by the Affirmation of Commitments actively use F2F meetings to augment other methodologies.

[99] http://durban47.icann.org/meetings/durban2013/presentation-gnso-pdp-13jul13-en.pdf
[100] See http://gnso.icann.org/en/drafts/pdp-improvements-22aug13-en.pdf

Summary of Community Input

A wide-ranging e-mail discussion among several former PDP WG Chairs and others with much experience in GNSO PDPs raised a number of issues that contributed to the recommendations. Among them were the need for face-to-face meetings, professional or trained facilitation/moderation, and the involvement of the Board in the process, including the benefits and dangers of deadlines and "threats."[101]

- A number of Public Comments also discussed PDP issues, including:
- The involvement of the GAC in the PDP process.[102]
- The need for wider participation and cross-community interactions.[103]
- The need for participation by groups without business-related incentives for participation.[104]
- The need for community buy-in into the process and the belief that the decisions of a PDP will not be over-ridden.[105]
- The need for facilitation or other ways of getting closure on contentious issues.[106]
- The need to include non-English speakers in the process.[107]
- The need to conduct "in-reach" activities to bolster Working Group processes and for formal and informal interaction between the Board and the GNSO to understand the causes for delayed PDPs.[108]
- The need for clarity and transparency in GNSO Operational Procedures and PDP rules and procedures.[109]

Summary of Other Relevant Research

An expert study on the PDP has been commissioned by ATRT2. The full InterConnect Communications (ICC) report can be found in Appendix A. Some of ICC's key observations and conclusions include:
PDPs are largely developed by North Americans and Europeans with little meaningful input from other regions. Reasons include language, time-zone constraints, inadequate communications infrastructure, and cultural issues.

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[101] See ATRT2 mailing list archives, in particular the exchange titled "Discussion with ATRT2" that was conducted between 07-10 August 2013 - http://mm.icann.org/pipermail/atrt2/2013/000682.html through http://mm.icann.org/pipermail/atrt2/2013/000705.html.
[102] US Council for International Business
[103] Maureen Hilyard, Nominet, Gordon Chillcot, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals
[104] Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals
[105] US Council for International Business, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals
[106] US Council for International Business, Registries Stakeholder Group, Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals
[107] Rinalia Abdul Rahim with support of Evan Leibovitch and Carlton Samuals
[108] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdfyS1QVCCIsL.pdf
[109] Comments of Raimundo Beca: http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00001.html

Even from the participating regions, most active participants have economic and other support for their ongoing involvement, dominating attendance records.

The researchers also identified a widespread belief that participation may not be worth the effort since parties dissatisfied with the policy outcomes will find ways to ensure that they are not implemented as prescribed.

The significant time and effort required for PDP WG participation is too great for too many potential volunteers, exacerbating reliance on a small pool of active participants. Furthermore, many of those polled by ICC reported that much of the PDP WG time is not used effectively.

ICC also addresses concerns about operational practice (time difference, resource availability, support for diverse languages, etc.), as well as the current PDP collaboration and discourse model – which often fails to take into account other cultural approaches to developing and building consensus policies.

Relevant ICANN Bylaws, Other Published Policies and Procedures

The GNSO PDP is governed by Bylaws Annex A.[110] This includes the GNSO Operating Procedures[111] and its rules for Working Groups. These annexes also allow work methodologies other than WGs if defined by the GNSO. Furthermore, these procedures do not dictate exact operational aspects of WG meetings.

Findings of ATRT2

There appears to be a growing sense that professional facilitation of PDPs would contribute to the proper addressing of complicated policy issues. Although such support will incur costs, many stakeholders have expressed doubt that the more difficult and contentious problems will be satisfactorily addressed without such support. That would result in either poor policy or a situation where the ICANN Board must intervene and set policy itself. Even that, however, would be inadequate in cases where formal Consensus Policy – which can only be developed by the GNSO PDP – is required.

The current PDP WG model also presumes that virtually all of the work can be done via e-mail and conference calls. Experience within ICANN indicates that face-to-face meetings are extremely beneficial. Of course, this too will require increased budget support.

It is unclear how one provides the incentive to negotiate in good faith and make concessions when stakes are high. In the ICANN context, this has at times involved a Board-imposed deadline with the potential for indeterminate Board action if agreement cannot be reached. This has been effective in achieving an outcome at times, but it is less clear the outcomes achieved have been good ones. In some instances, the Board has given instructions regarding timeframes for which a PDP

[110] See http://www.icann.org/en/about/governance/bylaws#AnnexA
[111] See http://gnso.icann.org/en/node/38709

should provide guidance, and then altered that position before the deadline has past, significantly perturbing the PDP process. Such lack of certainty must be avoided. Similarly, the potential for Board action nullifying outcomes of a PDP is one of the issues that impact the viability of the PDP. If such intervention is viewed as possible or even likely, it impacts the need for good-faith negotiations and for participation in general.

As noted by many observers, the time and effort necessary to effectively participate in a PDP often is too great for many potential volunteers. As a result, many PDPs end up relying on the same handful of active participants. Even then, many of these workers believe that their time is not being well spent due to lack of organization, good methodologies, and effective leadership. While some report that this situation is improving due to the development of new processes that will be available to successive PDPs, it seems clear that more needs to be done.

Public Comment on Recommendations
(see ATRT2 Draft Report and Recommendations)

In general there was strong support throughout the community for much of this recommendation:

- There was some concern with the term "facilitators," and poor experiences with facilitators in other venues. Other methodologies may be of benefit.[112]
- Strong support for wider and more balanced participation in the GNSO policy development processes.[113]
- There was support in At-Large, NCSG and SSAC for generalizing the recommendation on support for those who do not have industry financial backing. The rationale is that many segments of the ICANN community have business activities in the ICANN-related ecosystem, and it is thus to their business and financial advantage to have employees and associates participate in ICANN activities. Those with a strong interest in ICANN, but who lack business-related funding opportunities, are at a distinct disadvantage, and this has the potential to negatively impact the ICANN multi-equal stakeholder model. ICANN currently funds travel costs for many (but not all) AC and SO members, for selected Regional At Large Organization (RALO) leaders, and more recently, for GNSO Constituency and Stakeholder Group leaders.[114]
- Poor participation in policy development processes is not just the lack of participation noted by the independent expert report, but a lack of participation from within the communities that are well represented within ICANN and the GNSO. PDPs rely far too much on a very small and possibly shrinking group of volunteers.[115]

[112] ATRT meeting with the GNSO Council in Buenos Aires, GNSO comment submission
[113] ATRT meetings with the GNSO Council and ALAC, GNSO, ALAC and Egyptian comment submission
[114] ATRT meetings with the ALAC, NCSG and SSAC in Buenos Aires, ALAC comment submission
[115] ATRT meetings with the GNSO Council and ALAC, GNSO and ALAC comment submission, Discussions with Michael O'Connor

- Inter-sessional face-to-face meeting may be needed at times, but ICANN should also explore alternatives such as using regional hubs and engagement center facilities.[116]
- A target of "equitable" participation may not be possible for a number of reasons. A better target may be an "opportunity for equitable participation".[117]
- Allowing commenters to critique staff summaries is reasonable but should not increase the overall process time.[118]
- The recommendation related to the Board creating or altering policy should not presume that such action is acceptable or desirable.[119]
- Focus should be on using volunteer time effectively.[120]

Final Recommendation #10

10. The Board should improve the effectiveness of cross-community deliberations.

10.1. To enhance GNSO policy development processes and methodologies to better meet community needs and be more suitable for addressing complex problems, ICANN should:

a. In line with ongoing discussions within the GNSO, the Board should develop funded options for professional services to assist GNSO policy development WGs. Such services could include training to enhance work group leaders' and participants' ability to address difficult problems and situations, professional facilitation, mediation, negotiation. The GNSO should develop guidelines for when such options may be invoked,

b. The Board should provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO policy development processes. Such face-to-face meeting must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hubs and engagement centers) to support intersessional meetings. Moreover, the possibility of meetings added on to the start or end of ICANN meetings could also be considered. The GNSO must develop guidelines for when such meetings are required and justified, and who should participate in such meetings.

c. The Board should work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy development

[116] GNSO comment submission
[117] Comment submission from Becky Burr, Paul Diaz and Chuck Gomes. Registry Stakeholder Group comment submission
[118] Comment submission from Becky Burr, Paul Diaz and Chuck Gomes. Registry Stakeholder Group comment submission. GNSO comment submission
[119] Comment submission from Becky Burr, Paul Diaz and Chuck Gomes. Registry Stakeholder Group comment submission. GNSO comment submission
[120] GNSO comment submission

processes to utilize volunteer time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

10.2. The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the AoC.

10.3. The Board and the GNSO should charter a strategic initiative addressing the need for ensuring more global participation in GNSO policy development processes, as well as other GNSO processes. The focus should be on the viability and methodology of having the opportunity for equitable, substantive and robust participation from and representing:

a. All ICANN communities with an interest in gTLD policy and in particular, those represented within the GNSO;

b. Under-represented geographical regions;

c. Non-English speaking linguistic groups;

d. Those with non-Western cultural traditions; and

e. Those with a vital interest in gTLD policy issues but who lack the financial support of industry players.

10.4. To improve the transparency and predictability of the policy development process the Board should clearly state to what degree it believes that it may establish gTLD policy[121] in the event that the GNSO cannot come to closure on a specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO Policy Recommendations, either before or after formal Board acceptance.

10.5. The Board must facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.

[121] This is not referring to Temporary Policies established on an emergency basis to address security or stability issues, a right that the Board has under ICANN agreements with contracted parties.

Report Section 14. AoC REVIEW PROCESS EFFECTIVENESS: ATRT2 Recommendation 11

Hypothesis of Problem

The working assumption is that the AoC review processes provide sufficient review and adequate recommendations that facilitate improvement in ICANN's accountability and transparency. There is concern about the level to which the periodic institutional reviews, as required in the ICANN bylaws, create an aspect of "review fatigue" that undermines stakeholder or organizational effectiveness. Therefore, the availability of alternative approaches to review that should be considered by ICANN.

Furthermore, with three other AoC-related reviews to be carried out in a three-year cycle, there is an implied requirement for each of the review processes to be completed within the year it begins. This should enable all the required reviews to be carried out, recommendations shared, and ICANN staff given time to either implement or consider for implementation some of the Recommendations of the review teams before the next ATRT review. However, if the three reviews are not completed and considered within the prescribed cycle, then the subsequent ATRT risks having a deadline for its review when the other reviews have not yet been completed and/or their recommendations not yet fully considered by ICANN Board and staff.

Background Research Undertaken

Prior Review Team reports (ATRT1, WHOIS and SSR) provide some insight into the qualitative aspects of each review process. ATRT1's Final Report provided both an Overview of the Accountability and Transparency Review Process (Appendix A) and Observations of the Review Process (Appendix B), but the WHOIS Review Team and the SSR Review Team did not provide discreet observations of the review process in their respective reports.

ATRT2 also asked for input from former members of those review teams concerning the review process and whether they believe improvements could be made.

Furthermore, ATRT2's review process has provided some insights regarding the effectiveness and efficiency of the review process.

In sum, ATRT2 found that issues that require further discussion include, but are not limited to:

a. Time allotted for the review process.

b. The mechanics of initiating data flow from ICANN staff to the review team.

c. The mechanics of obtaining community input at an early stage.

d. Understanding of budget allocations for the Review Team activities.

e. Dynamics of work stream organization.

f. Volunteer aspects of the review team process.

Summary of ICANN Input

Staff reported that:

a. The AoC does not require the reviews to be completed within one year. While timely completion of the reviews impacts the effectiveness of the three-year cycle, staff recommended that ATRT2 address the three-year cycle mandated by the AoC.

b. Staff prepares regular and frequent implementation reports to the Board and community. In the case of ATRT2, an Annual Report[122] was provided to the Board and community. Additionally, staff has provided several updates[123] to ATRT2 during the course of its Review, in varied forms. Given the wide array of opinions within the Review Team regarding format and substance of staff reports on implementation, staff would find guidance from the Review Team very useful.

c. ICANN has engaged One World Trust (OWT) to assist with the development of Accountability and Transparency Benchmarks and Metrics. The final report is expected by December 31, 2013. Staff will facilitate ATRT2 input and feedback to OWT. Periodic updates on progress of work will also be shared. The ongoing implementation of Accountability and Transparency Benchmarks and Metrics into ICANN operations will include the incorporation of appropriate benchmarks and metrics into the reporting of implementation progress.

d. ICANN's AoC commitments are incorporated into its strategic[124] and operating[125] plans, and improvements related to AoC reviews are integrated into ICANN's standard operating procedures and programs.[126] As the Board, staff and other organizations implement the recommendations of the review teams, ICANN follows a continuous improvement model, integrating the spirit of the recommendations into ICANN's operations and strategic initiatives, as appropriate.

e. ICANN uses various methods to ensure review coordination and already has staff whose mandate is to coordinate reviews. AoC review teams are independent and make their own timelines, and AoC language specifies the frequency of the reviews. The Board and staff do not have control over the timing of the reviews such that they are completed with ample implementation time prior to the next Accountability and Transparency Review. In order to address this concern, the AoC mandate would need to be changed.

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[122] http://www.icann.org/en/news/in-focus/accountability
[123] https://community.icann.org/display/ATRT2/Information+provided+by+ICANN+Staff
[124] http://www.icann.org/en/about/planning/strategic/strategic-plan-2012-2015-18may12-en.pdf
[125] http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf
[126] http://beijing46.icann.org/node/37035

Summary of Community Input

Some notable comments include:

- Former ICANN CEO and President Mike Roberts questioned whether insider dynamics captured prior review teams.

- Alejandro Pisanty – A large part of the recommendations is superfluous and engenders greater bureaucracy. ATRT2 should to try to find a way to make recommendations less burdensome and more substantive.

- Nominet – One should have a full picture of the extent to which the recommendation is embedded into ICANN process and what the full effects of the implementation are. Implementation progress should feature as part of the Board update at every ICANN meeting. They should be given the highest visibility and priority.

- Danish Business Authority - In line with our previous comments to the ATRT2 process, Denmark believes that it is essential to the global legitimacy of ICANN and the multi-stakeholder model that accountability and transparency mechanisms are institutionalized into all parts of the organization. The Affirmation of Commitment Reviews are instrumental to achieving this and it is therefore essential that ICANN prioritize and institutionalize the AOC Reviews in the organization's governance structures.

- At-Large Advisory Committee - We agree with the ATRT2's general Recommendations that, in moving forward, ICANN needs to: establish clear metrics and benchmarks against which improvements in accountability and transparency can be measured.

Summary of Other Relevant Research

ATRT2 members representing various SO/ACs provided the following input on the process:

a. There was limited time to get the actual work done, and future teams should consider the possibility of limiting certain meetings. Whereas the face-to-face meetings were very productive, the conference calls were not as productive.

b. A report is provided to the team on things done, but no report is provided on lessons learned. There is no bench-line identified for developing recommendations. This creates a dilemma in relation to interaction with the secretariat.

c. There is a clear need for adequate financial resources to support the work of the Review Ream, independent experts/consultants (as need is determined by the Review Team), and the secretariat. There was no discussion on the budget for an independent expert and whether or not to engage one, thus limiting the group.

d. Measures (e.g. appointees, budget, operational reporting, etc.) for the next

Review Team should be in place before the official start in January 2016. This will reduce the pressure to meet the year-end deadline.

e. Right from the beginning, Day 1, staff should share reports without compromising ATRT work.

f. Some ATRT2 members felt that they were operating under the shadow of ATRT1. What did or did not work from the previous Review could be assessed by an external expert. At the least, provide judgment criteria and indicators to look for when going back for the review process.

g. While the Review Team's interaction with different stakeholders has been very good, with the Durban process very helpful in data collection, visibility with the rest of ICANN community needs to be improved due to inherent limitations of the reviews' historic versus futuristic approach.

h. Regularity of Reviews has to be strictly coordinated by having all reviews done before the next ATRT, i.e. proper linkage. Future teams may need to consider the possibility of an independent secretariat or technical facilitator. These resources would reduce the focus being driven by input from staff and facilitate balanced input from external communities. This would enable the review team members to carry out evaluation on implementation appropriately.

i. A reliance on volunteers for doing functions that should be carried out by professionals is not a good model for a review group carrying out such an important task. For example, reviewing the other Review Teams' output is a lot of work for a cadre of volunteers.

j. With each ATRT expected to have to look at all of the previous Review Teams' output, community engagement is likely to be difficult for ATRT3.

k. Volunteer involvement with competing priorities for the various communities within ICANN requires that ATRT members go to our own communities to help gather input for the various processes.

l. There seems to be tension between being independent and objective and working with staff. The ATRT should drive the work and the staff should give responses.

Relevant ICANN Bylaws, Other Published Policies and Procedures

Organizational reviews are overseen by the Board's Structural Improvements Committee. The methodology of organizational reviews and background materials can be found at http://www.icann.org/en/groups/reviews.

Final Recommendation #11

11. Effectiveness of the Review Process

11.1. Institutionalization of the Review Process

The Board should ensure that the ongoing work of the AoC reviews, including implementation, is fed into the work of other ICANN strategic activities wherever appropriate.

11.2. Coordination of Reviews

The Board should ensure strict coordination of the various review processes so as to have all reviews complete before next ATRT review begins, and with the proper linkage of issues as framed by the AoC.

11.3. Appointment of Review Teams

The Board should ensure that AoC Review Teams are appointed in a timely fashion, allowing them to complete their work in the minimum one (1) year period that the review is supposed to take place, regardless of the time when the team is established. It is important for ICANN to factor in the cycle of AoC reviews; the Review Team selection process should begin at the earliest point in time possible given its mandate.

11.4. Complete implementation reports

The Board should prepare a complete implementation report to be ready by review kick-off. This report should be submitted for public consultation, and relevant benchmarks and metrics must be incorporated in the report.

11.5. Budget transparency and accountability

The ICANN Board should ensure in its budget that sufficient resources are allocated for Review Teams to fulfill their mandates. This should include, but is not limited to, accommodation of Review Team requests to appoint independent experts/consultants if deemed necessary by the teams. Before a review is commenced, ICANN should publish the budget for the review, together with a rationale for the amount allocated that is based on the experiences of the previous teams, including ensuring a continuous assessment and adjustment of the budget according to the needs of the different reviews.

11.6. Board action on Recommendations

The Board should address all AoC Review Team recommendations in a clear and unambiguous manner, indicating to what extent they are accepting each recommendation.

11.7. Implementation Timeframes

In responding to Review Team recommendations, the Board should provide an expected time frame for implementation, and if that time frame is different from one given by the Review Team, the rationale should address the difference.

Report Section 15. FINANCIAL ACCOUNTABIILITY AND TRANSPARENCY: ATRT2 Recommendation #12

Hypothesis of Problem

ICANN is a non-profit, privately organized institution. The services delivered by ICANN are delivered without any other institutions or bodies competing with ICANN. The political decisions of the ICANN Board and, in the broader context, the multistakeholder mechanism, will - in the absence of direct competition - be the only factors that determine how ICANN should prioritize its resources, its revenue, and its spending.

The combination of a more complex organization (as shown in the ICANN organization chart[127]), increased income and expenses, and the increased complexity of a business going from approximately 20 gTLDs to more than 1,000 gTLDs over the next few years, highlights the importance of increased accountability and transparency in ICANN's financial governance, including decisions related to activities, prices, expenses and investments.

Summary of ICANN Input

ATRT2 members conferred with ICANN CFO Xavier Calvez in late August 2013.[128] The conversation was very informative, and it is evident that ICANN has improved its level of financial reporting during the last couple of years. Calvez reported that ICANN is considering a benchmark study to compare ICANN to other non-profit organizations, but this has not been definitely decided. Responding to a question about separating the expense and budgets for each AC and SO, he noted that would be difficult to do and is not planned or projected yet. When asked for the plans or principles for using any surplus from the New gTLD Program to lower the fees collected by ICANN, Calvez replied that a five-year strategy could enable the suggested principles.

At the ATRT2 meeting in Los Angeles in August 2013, ICANN Board Chair Steve Crocker highlighted the appropriateness of improving accountability and transparency of ICANN's planned activities, implemented activities, and corresponding expenses.[129]

Summary of Community Input

GAC Comments

On numerous occasions, including the ICANN meetings in Toronto[130], Beijing[131] and

[127] https://www.icann.org/en/about/staff/management-org-09sep13-en
[128] https://community.icann.org/download/attachments/40935097/Transcript%20-%20Call%2010.pdf?version=1&modificationDate=1378454662000&api=v2
[129] https://community.icann.org/display/ATRT2/Los+Angeles+-+14-17+August+2013
[130] In particular, see page 3, last bullet at https://gacweb.icann.org/download/attachments/27132072/Summary%20of%20the%20HLM%20Chair%20v%20final.pdf?version=1&modificationDate=1360614203000&api=v2

Durban[132], the GAC has recommended that the issue of accountability and transparency regarding ICANN's finances be further looked into. In fact, the need to analyze improvements to ICANN's financial accountability mechanisms was specifically emphasized by the participants at the High Level GAC meeting at ICANN Toronto in October 2012.[133]

Public Comments

Community input[134] on the FY14 Draft Operating Plan and Budget reveal numerous concerns about ICANN financial issues, including calls for more clarified reporting and/or a different approach to the organization's budget-setting processes. Some comments spoke to broader financial accountability and transparency concerns.[135] Based on the staff summary of the Public Comments, the key issues included:

a. expenses and budgets for AC/SOs (see references # 4, 7,8,26, 75, 78, 79);

b. ICANN income and expenses (see references # 2, 6, 73, 76, 77, 105, 106, 107); and

c. inadequate time to comment and for ICANN to incorporate those comments (see references # 23, 24)

Summary of Other Relevant Research

Being a public-benefit corporation, ICANN needs to strike a reasonable balance between its revenues and expenses. In a situation with increasing revenue, one option is to increase activities corresponding to this additional income. Another option is to lower the prices paid by ICANN's consumers and in turn benefit domain name end-users. Of course, the two options can be combined.

In recent years ICANN's activities and corresponding revenues and expenses have grown significantly. Revenues increased from $18 million in 2005 to $72 million in 2012. Accordingly, expenses increased from $14 million in 2005 to $70 million in 2012[136]. During the same period, staff increased from 36 in 2005[137] to 149 in 2012 and up to 220 in 2013, with a planned increase to approximately 284 in 2014.

In the recently approved Fiscal Year 2014 (FY14) budget,[138] ICANN forecast 2013

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[131] See page 2, Section III.1 at https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

[132] See page 1, Section II.2 at https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2

[133] See Toronto report cited at Footnote 120.

[134] http://www.icann.org/en/news/public-comment/summary-comments-op-budget-fy14-30aug13-en.pdf

[135] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/pdf6b42Ud7VdW.pdf

[136] http://www.icann.org/en/about/annual-report

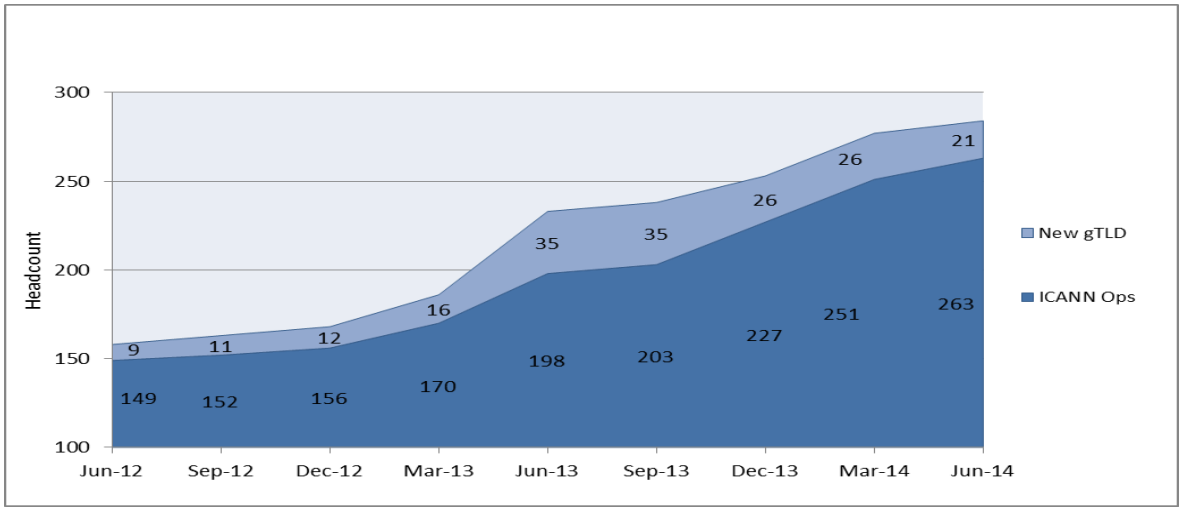
[137] http://www.icann.org/en/about/financials/fiscal-30jun05-en.htm - discussion and analysis paper of significant variances between the reported financial statements for FY2004 and FY2005.

[138] http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf

revenue of more than US$80 million and an expectation of ending 2013 with net income of nearly US$32 million. If the 2013 balance from the New gTLD Program is added in, the net result jumps to US$92 million. In fact, the New gTLD Program is expected to generate at least US$315 million in revenue. While the FY14 budget forecasts that the Program will generate US$197 million in operating expenses, it still leaves a net balance of US$118 million.

The following graphic captures these trends:

FY14 Draft Operating Plan & Budget Headcount Growth[139]



Relevant ICANN Bylaws, Other Published Policies and Procedures

Within the procedure of the board approval of the budget,[140] the ICANN Board Finance Committee is responsible for:

a. Providing oversight on the annual budget process of the Corporation;

b. Reviewing and making recommendations on the annual budget submitted by the President (the CEO of ICANN);

c. Developing and recommending short- and long-range strategic financial objectives for the corporation; and

d. Providing strategic oversight on financial matters for the Corporation.

Findings of ATRT2

Given that ICANN's present and future financial situation forecasts substantial surpluses, the community needs to establish a firmer basis for discussing how to continue developing ICANN and prioritize its work to the benefit of participants within the multistakeholder model. Such a discussion will entail three key elements:

[139] https://www.icann.org/en/about/financials/proposed-opplan-budget-fy14-16may13-en.pdf
[140] http://www.icann.org/en/groups/board/finance/charter

1. The revenue side. How should the revenue in general develop, and what should the future ICANN fee structure look like? One pressing question is whether ICANN can continue the present fee structure, and annual surpluses of over one-third of yearly revenues, given its non-profit status? Should ICANN in general reduce the annual fees in order to balance revenue and spending?

2. The expenditure side. ICANN has expanded its activities dramatically. For example, ICANN staff will nearly double over a two-year period. Is this a trend that should be continued? When has ICANN reached its mature size and organizational setup?

3. The prioritization of the work of ICANN. ICANN is in the very fortunate situation that its financial prospects are very positive and promising. This should not, however, lead to an insufficient or unclear prioritization of its strategic outlook and the work it undertakes. In all organizations, resources are scarce, either because of competition or because of constrains from the granting authority. While this might have negative effects, it should help keep the organization agile and focused on its desired outcomes. Importantly, there must be effective matches between the resources spent and the effects achieved. ICANN should develop new transparent and accountable mechanisms that combine more effective resource allocation and use with the involvement of all the parties within the multistakeholder model.

Public Comment on Recommendation
(see ATRT2 Draft Report and Recommendations)

Responses from the community on the recommendations regarding finances were generally positive.

Both the Danish Government[141] and the Egyptian Government[142] commented on the importance of reviewing and improving ICANN's financial governance and financial accountability and transparency. In particular, the Spanish Government comments.[143] "Likewise, [W]e would be more than pleased to participate in the budget consultation process envisaged in section 15. It is as important to have safe sources of income as allocating enough resources to fulfilling strategic objectives of the organization."

Intellectual Property Constituency (IPC) commented: "The impression is given that ICANN gives top priority to opening new offices around the world and diving headlong into new policy areas such as Internet governance, without directing sufficient resources to 'operational excellence' in the organization's core business of administering the systems for IP addresses and domain names. The only effective way to dispel this impression is through the types of reforms spelled out in these recommendations, including (as sketched out in the preceding section of these comments) by 'ensuring that sufficient time is given to the community to provide their

[141] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00006.html
[142] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00010.html
[143] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00013.html

views on the proposed budget and enough time for the Board to take into account all input before approving the budget.[144]

This comment is well in line with the comments from Registries Stakeholder Group (RySG) regarding the recommendation on financial planning and comment periods:

"We strongly support this recommendation but note that it is very difficult for community members to effectively participate if they don't receive sufficient detail until after it is too late to make changes. It is easy to claim this goal is met by showing how community members were able to participate at a high level in the process and that is what has been happening for years, but that is not sufficient. ATRT2 needs to be much more specific in terms of what is expected."[145]

Regarding recommendation on benchmark-studies, the RySG noted:

"More detail is needed on this recommendation. What would be the purpose of the study? How would the study be used? Would comparisons with comparable organizations be included in the study? If so, how would comparable organizations be selected? etc."[146]

Regarding the recommendation on multi-year planning, the RySG, noted the following:

"We fully support the second part of this recommendation. It is not clear, though, whether the first part is realistic; we would be very pleased if it could be done."

"Community members who have tried to actively contribute to the process of developing an operating plan and budget for just one year have been repeatedly told that it is not possible to provide detailed budget information until it is too late to make significant changes. In many cases it is not possible to make meaningful contributions without having budget information at the task and sub-task level earlier in the process, so what happens is this: detailed budget information is provided late in the fiscal year, we make comments, but it is too late for any significant changes to made because the Board has to approve the budget before its next fiscal year."[147]

IPC had the following comment regarding the importance of adequate time to consult on proposed budgets:

"IPC has frequently expressed its concerns about the lack of transparency and accountability in the ICANN budget process and its financial reporting to the community".

"Unlike many organizations, both for-profit and not-for-profit, which must face tough decisions about spending priorities in the face of flat or diminishing revenues, ICANN has enjoyed years of increasing revenues. But this makes even more critical the need

[144] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00014.html
[145] http://forum.icann.org/lists/comments-atrt2-recommendations-21oct13/msg00008.html
[146] Ibid.
[147] Ibid.

for a transparent process for setting spending priorities, and an accountability mechanism to ensure that the results of that prioritization process are fulfilled. IPC urges that Recommendation 12 be given a high priority in ATRT2's final report, and that achievement of a much higher level of financial accountability and transparency be enshrined as a strategic objective for ICANN over the next few years."

IPC appreciates the recent statements of ICANN Board leaders and senior staff supporting this ATRT2 recommendation. ICANN board meeting with the Commercial Stakeholder Group in Buenos Aires, on November 19, 2013 includes this statement by Cherine Chalaby – "You make an excellent point. You have not seen the strategic plan in its entirety. There will be a five-year financial plan inside the strategic plan as well…. We one hundred percent agree with your point and want to raise it even higher to a completely different level." Likewise, Fadi Chehadé noted: "We are hugely upgrading that whole area. We have a new Chief Operating Officer who is focused on that. As Cherine Chalaby said, it is the first time we moving away from expense management to financial planning within ICANN, not just budgeting, and now leaning to true financial reports—the kind you would expect from any organization our size."[148]

Final Recommendation #12

12. Financial Accountability and Transparency
In light of the significant growth in the organization, the Board should undertake a special scrutiny of its financial governance structure regarding its overall principles, methods applied and decision-making procedures, to include engaging stakeholders.

12.1. The Board should implement new financial procedures in ICANN that can effectively ensure that the ICANN community, including all SOs and ACs, can participate and assist the ICANN Board in planning and prioritizing the work and development of the organization.

12.2. The Board should explicitly consider the cost-effectiveness of ICANN's operations when preparing its budget for the coming year, in keeping with ICANN's status as a non-profit organization operating and delivering services in a non-competitive environment. This should include how expected increases in the income of ICANN could be reflected in the priority of activities and pricing of services. These considerations should be subject of a separate consultation.

12.3. Every three years the Board should conduct a benchmark study on relevant parameters, (e.g. size of organization, levels of staff compensation and benefits, cost of living adjustments, etc.) suitable for a non-profit organization. If the result of the benchmark is that ICANN as an organization is not in line with the standards of comparable organizations, the Board should consider aligning the deviation. In cases where the Board chooses not to align, this has to be reasoned in the Board decision and published to the Internet community.

12.4. In order to improve accountability and transparency ICANN's Board should

[148] IPC Public Comments cited above.

base the yearly budgets on a multi-annual strategic plan and corresponding financial framework (covering e.g. a three-year period). This rolling plan and framework should reflect the planned activities and the corresponding expenses in that multi-annual period. This should include specified budgets for the ACs and SOs. ICANN's {yearly) financial reporting shall ensure that it is possible to track ICANN's activities and the related expenses with particular focus on the implementation of the (yearly) budget. The financial report shall be subject to public consultation.

12.5. In order to ensure that the budget reflects the views of the ICANN community, the Board shall improve the budget consultation process by i.e. ensuring that sufficient time is given to the community to provide their views on the proposed budget and sufficient time is allocated for the Board to take into account all input before approving the budget. The budget consultation process shall also include time for an open meeting among the Board and the Supporting Organizations and Advisory Committees to discuss the proposed budget.

Report Section 16. Summary of ATRT2 Assessment of the Implementation of WHOIS Review Team Recommendations

Board Adoption of Review Team (RT) Recommendations

Although a detailed review of the wording of the Board action indicates that it did indeed approve implementation of the bulk of the WHOIS RT recommendations, it is understandable why that was not the impression left on many community members. The wording of the Board motion specifically identified three areas to be addressed (communications, outreach and compliance) but did not explicitly approve the recommendations that fell outside of those areas. Furthermore, the details of the proposed implementation were embedded in a staff briefing paper. Moreover, the creation of the Expert Working Group (EWG) was based on the recommendation of the SSAC, which essentially recommended that the EWG work be done before anything else. In fact, this was the first action of the Board before addressing the RT report, reinforcing this prioritization.

ATRT Review Timing

ATRT2 notes that the review of the WHOIS implementation recommendations is taking place between six and 12 months after Board action on the WHOIS report, so it is not unexpected that the work is ongoing and in a few cases just starting.

Implementability

To a large extent, the RT recommendations have proven to be implementable. In several cases, the initial staff position was that they either could not readily be implemented, or the problem would need to be addressed using different methodology. However, as work is progressing, it appears that most of the recommendations are being followed reasonably closely, indicating that they were for the most part implementable.

Progress

As few aspects of the implementation have been completed, it is not possible to judge the final outcome. It is clear, however, that the time frame for implementation has far exceeded that proposed by the RT. This can be attributed to a number of different reasons (not in order of relevance):

a. The time frame proposed by the RT was not reasonable given the complexity of the issue and the requirement to put plans and in some cases community working groups in place.

b. The timing of the Board action coinciding with the culmination of the Registrar Accreditation Agreement (RAA) negotiation and implementation put heavy pressures on the small group overseeing both closely related activities.

c. Some of the activities were focused on areas of ICANN which were experiencing heavy staff turnover, and it took time for the new staff to be able to address the issues.

d. Not all parts of the implementation were completely under the control of ICANN staff and in particular have required GNSO action, which itself has experienced heavy workload in 2013.

Allowing for these delays, there is progress being made. Much of it has not been visible to the community, but in a number of critical cases, work has now progressed to the stage where this progress will soon be visible to the community.

There are three areas which are worthy of particular note.

1. The overall plan for approaching the WHOIS recommendations (Recommendation 15) has not been presented in a clear and understandable way so that the community could track implementation. That is not to say that there is not much information available, but it was not sufficiently well organized and clear as to be useful. In fact, for this reason, ATRT2 had great difficulty in carrying out this assessment.

2. Although a wider problem than just WHOIS, there is still a lack of faith in the community that Contractual Compliance is being sufficiently well addressed as to meet ICANN's needs. With regard to WHOIS accuracy, partly because the tools to address it are still in the process of being developed, there is a particular lack of information. The new provisions in the RAA do create some hope.

3. Progress on the handling of WHOIS information for internationalized domain name registrations (that is, for those registration where the information collected is in non-ASCII representations) is problematic. Work has been slow to start and is not expected to complete for close to two years. That leaves registrars and registries with the requirement to populate WHOIS records, which exist purely in 7-bit ASCII, with no guidelines or rules as to how to do this.

Conclusion

Implementation of the WHOIS RT Recommendations is progressing and the expectation is that ultimately most will be reasonably carried out. The Recommendations call for annual reports on implementation, and the deadline for the first such report coincides with the publication of this ATRT2 draft report. Hopefully when this annual report is available, the overall implementation plan and its status will be clearly presented so that the community in general can directly assess the progress.

Further assessment of ICANN's implementation of WHOIS RT Recommendations can be found in Appendix B.

Report Section 17. Summary of ATRT2 Assessment of the Implementation of Security Stability and Resiliency (SSR) Review Team Recommendations

Actions Taken

A majority of the 28 recommendations (and their subtasks) is as yet incomplete; however implementation has at least begun on all recommendations. The 28 recommendations translated to 41 subtasks and of the 41 subtasks; 27 subtasks are as yet incomplete, representing 66%.

Implementability

In nearly all cases, recommendations appear to be implementable. There are cases where implementation is complete. In the vast majority of recommendations, staff has indicated they did not anticipate or experience any issues when implementing the recommendations.

It should be kept in mind, however, that the implementation of a large number of recommendations has not been completed and, in some cases, has not even started. It may be that implementation difficulties will be encountered at some future point. One notable exception to this general implementability is related to recommendation 23, in which it is recommended that ICANN "must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure." While objectivity in reaching decisions is a worthwhile goal, it is difficult to imagine a decision that is "free from external or internal pressure."

Effectiveness

For those recommendations that have been implemented, the overall impression has been that they have been reasonably effective in addressing at least the letter of the recommendation. Unfortunately, many of the recommendations used subjective qualifiers and few specified concrete metrics by which effectiveness could be measured. As such, objective measurement of the recommendations' effectiveness is challenging.

Summary of Community Input on Implementation

A total of three Public Comments were received on the final report of the SSR Review team. A summary of those comments can be found at: http://www.icann.org/en/news/public-comment/report-comments-ssr-rt-final-report-30aug12-en.pdf

Further assessment of ICANN's implementation of SSR Review Team Recommendations can be found in Appendix C.

INTERCONNECT COMMUNICATIONS

ATRT2 GNSO PDP Evaluation Study

Final Report

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The authors of this report would like to acknowledge the passion, commitment and energy of the many volunteers without whom the PDP would simply not exist or function. Many donate hours of their time week by week over multi-year processes. They deserve the thanks and recognition of the communities they serve.

Certainly our research was both informed and inspired by the many stakeholders of the PDP that we had the chance to talk to in a very short period of time. Their involvement and commitment came through in every interview. While differences of opinion on how to improve the PDP were always going to be evident, we were impressed by every interviewee's desire to "get this right". We thank them for the time and energy they willingly gave us during this research.

Table of Contents

Table of Figures

Table of Tables

1 Executive Summary

This document is an attempt to assist ICANN's Accountability and Transparency Review Team 2 (ATRT2) in its assessment of the Generic Names Supporting Organization (GNSO) Policy Development Process (PDP). ATRT2 was convened, in part, to review the GNSO PDP with a view toward identifying its strengths and weaknesses, differences between defined process and actual practice, and the extent to which it incorporates the views, advice and needs of all stakeholders, both those active in ICANN and those not typically present for ICANN deliberations. In addition, the ATRT2 will examine the participation of the GAC in the PDP, how the ICANN PDP compares with similar multi-stakeholder processes, and the extent to which the PDP fulfills the mission of ICANN in developing sound policies in the public interest while at the same time meeting the needs of all stakeholders. The ATRT2 will also identify those areas where the PDP does not help fulfill ICANN's mission and need further investigation and change. This document is the product of interview work and other research conducted in August and September 2013.

An early version of this report was shared with the ATRT2 as part of the effort to assist the ATRT2 is the early drafting of their findings and recommendations.

1.1 Findings Presented to ATRT2

1.1.1 Strengths of the Current PDP

The GNSO PDP is a remarkably flexible process with the ability to adapt to a wide variety of topics and requirements. The transparency and completeness of the historical record is a hallmark of the PDP, making it possible to discover mountains of detail about processes that occurred years earlier. Our interviews with participants and stakeholders uncovered an enormous amount of goodwill toward appreciation for policy staff. Compared with other multi-stakeholder, bottom-up policy processes, the GNSO manages to cope with a greater diversity of stakeholder types, and more varied levels of subject matter expertise. It is also open to any participant who wants to take part, and interviewees in our study indicated that all stakeholders' input was welcomed and valued. There is great deal to be proud of, not least the work of a dedicated number of volunteers over multi-year cycles who form the backbone of ICANN's multi-stakeholder, bottom-up policy development.

Necessarily, given the requirements of the ATRT2's scope of work, this report focuses on a number of areas for improvement, but that should not mask the real achievements of the PDP.

1.1.2 Demands on Regular Participation are Too High

Working Groups

The research conducted for this report shows that fully engaged participation in PDPs requires an extraordinary set of demands on participants. In the last five years:

- The vast majority of people who participate in Working Groups participate only once.
- A small number of participants who have economic and other support for their ongoing engagement have dominated Working Group attendance records.

Having such a small pool poses accountability, credibility, and resource risks for the policy development process. It also results in very few participants who have the experience to lead, moderate and bring to completion the difficult work of guiding participants and policy through the PDP.

The comment period

The comment process, although a less active and more episodic form of participation, is seen as problematic, with a large majority of stakeholders with connections to businesses, constituencies or stakeholder groups reporting that it was very difficult to craft, discuss, and get agreement and approval for submission of comments within the timeframes provided by the PDP.

Ways forward

1. The ICANN community needs to examine the potential for alternative participation models in the PDP.
2. The current PDP also needs to be examined to find ways to break up the enormous commitment associated with Working Groups into component parts.

1.1.3 Unbalanced Global Participation Trends Risk Legitimacy

There is clear statistical evidence that three of ICANN's regions play no meaningful part in the PDP. The research conducted for this report identified two key factors in producing this geographic imbalance:

- Language is a genuine barrier to participation in PDPs.
- The collaboration and discourse model built into the current PDP has a distinctly Western approach and does not take into account other cultural approaches to developing and building consensus policies.

The GNSO risks global legitimacy—a core value of the policy that comes out of the PDPs—when it does not include viewpoints from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

Ways forward

1. ICANN should consider reforming its outreach activities to nurture and support Working Group participants from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions. Several interviewees mentioned that it would be helpful if outreach efforts tied more closely into recruitment for Working Groups or made use of community leaders in the regions.
2. Greater use could also be made of ICANN's contacts and partnerships with organizations in Africa, Asia/Pacific and the Latin American/Caribbean/South American regions to help address language barriers.
3. The ICANN community should reconsider the underlying collaboration and discourse model of the PDP and identify adjustments that could support participants who are not used to working collaboratively under the current model.

1.1.4 Commitment to the Process is Essential

In isolation, the PDP is a multi-stakeholder, consensus-driven, public policy development process. However, the PDP in the GNSO does not work in isolation from other parts of ICANN. The interviews conducted for this report show many people are concerned about the interactions between the work products of the PDP and other parts of the organization. Specifically, there have been a significant number of responses that expose concern about policy built through long collaboration and negotiation being changed or challenged by other parts of ICANN "after the fact". In particular, concern was raised that the ICANN Board could—and has—changed proposed policy or accepted alternative implementation of policy, with the effect of overruling the work of the PDP. Others were concerned that some members of the community are lobbying the GAC, GNSO Council, or ICANN

Board for changes in substance or implementation after a Working Group's Final Report has been completed. Outside of the essential fairness issues that are evident in these concerns, there are more important transparency issues at stake. Any change made by the Board to a consensus-driven policy created by committed, often volunteer, participants in a bottom-up stakeholder engagement process will always be open to questions about why and how those changes were made. This has become such a prevalent concern that, in one very recent Working Group, participants challenged others in the Working Group on the issue of whether they were truly committed to the process or if they simply intended to wait the process out then "lobby" for the results they wanted in other parts of the organization. Some of the people interviewed for this report indicated that cynicism about other participants' commitment to the PDP was a barrier to their own participation.

Ways forward

It is important to stress that the issue identified in this section is not the result of a structural problem with the GNSO PDP. Instead, the issue is the result of slight differences between different parts of the ICANN structure. This report suggests that there needs to be process and procedure applied to ensure that other parts of the organization do not inadvertently subvert the accountability and transparency of the PDP.

1.1.5 The Role of the GAC in the PDP Needs Reconsideration

The GAC represents an important set of stakeholders in any policy development process related to domain names. However, for reasons documented later in the report, the GAC rarely participates in any PDP. The consequence of the GAC not participating in GNSO PDPs is that the GAC may only raise concerns after lengthy processes have been completed, and negotiations and agreements reached. This report also shows that while there are several windows of opportunity for GAC to provide advice during PDPs, those opportunities are not taken.

The research conducted for this report has found that there appear to be no structural barriers that prevent the GAC's participation in the PDP (for instance, we believe that no changes to the Bylaws are required). Instead, a more well-defined and structured relationship between Working Groups and the GAC would help the GAC identify which issues are meaningful to governments and help Working Groups identify topics where they must give early notification to the GAC. Interaction between the GAC and the Working Groups and the GAC must move from "opportunities" to being a structured part of the process. The GAC has a history of successful collaboration in other areas of ICANN, for example, in Country Code Names Supporting Organization (ccNSO) Working Groups and participation in Affirmation of Commitments (AOC) reviews. Therefore, the GAC has a set of existing good practices that can be built upon within the specific context of the GNSO PDP.

1.2 Suggested Improvements from Interviewees

Interviewees offered suggestions for overcoming some of the issues they identified. A wide range of improvements was suggested. The list below highlights the most popular suggestions made during conversations with stakeholders of the PDP:

Suggested improvement	How to achieve
Management of the process	Training, facilitation, management training for WG chairs, a more structured approach from the outset with timeframes and deliverables. Don't take too long.
Facilitate engagement by those without English as a first language	Publish consultation documents in other languages.
Break PDPs down into manageable chunks	Example of IRTP was given as a successful model.
More face to face meetings	Especially when issues get log-jammed.

Better communications, summaries	"Uber technical language" alienates people. "It's very transparent, open, but the question is, how many people actually do understand?" One interviewee suggested an "informal blog" to update people on the progress of PDPs.
Restructure the constituencies	Constituencies, as currently structured, are very developed-country orientated. Interviewees pointed out that there are experts in developing countries, but no ready match with GNSO constituencies in which they can participate.
Devise PDP charters more inclusively to balance stakeholder interests	Involve more stakeholders in drafting PDP charters.
Classify issues more effectively in the Issue Report	For example, "merits a PDP" and "faster track, simpler issue – no PDP required".
Change the outreach strategy, to make use of community leaders in the regions	Open PDPs to more stakeholder groups / mandate participation from stakeholder groups

Other suggestions made include:

- Introduce outside intervention to break logjams
- Have more flexible timelines
- ICANN should fund participants from developing countries
- Create an independent GNSO secretariat
- Reduce time commitment for participants
- Create a specific place in ICANN meetings to encourage public comments on PDPs
- Assign experts to PDPs to answer questions and do research (with all expert advice and reports published)
- Use better/longer comment processes
- Provide capacity building for new participants
- Ensure comments are reflected in the output of the PDP
- Fact-based white papers
- All policy should pass a public interest test (similar to RFC 1591)
- Be AGILE. Aim for the simplest, working solution

1.3 Looking Ahead

The landscape of the GNSO and other ICANN constituencies will change with new gTLDs. The distinctions will become blurred between the stakeholder groups: a single registry could simultaneously exist as a registrar, Intellectual Property Constituency or Business Constituency member, and perhaps also a ccNSO member.

Some interviewees viewed the current, open, system as vulnerable to capture as new players move into the space. These new entrants may want the GNSO and its component parts to behave in the same way as other organizations with which they are familiar. Interviewees predict that new players will be impatient with the lack of speed and the unique ways of doing things, and could easily "take over" the GNSO Council in a short period by placing hard working, competent people across the various GNSO constituencies. If this were to happen, it has the potential to affect GNSO PDPs.

2 Purpose and Overview of Methodology

2.1 Purpose of Study

In September 2009, ICANN and the United States Department of Commerce (DOC), in recognition of the conclusion of the Joint Project Agreement, and to institutionalize ICANN's technical coordination of the Internet's domain name and addressing system, signed an Affirmation of Commitments (AOC).[1] Under the auspices of the AOC, ICANN commits to ensuring that its decision-making reflects the public interest and is accountable to all stakeholders. Toward this end, the AOC calls for ICANN to periodically review progress toward its four key organizational objectives, namely:

1. Ensuring accountability, transparency and the interests of global Internet users
2. Preserving security, stability and resiliency of the DNS
3. Promoting competition, consumer trust and consumer choice
4. WHOIS policy

These periodic reviews of ICANN's execution of its core tasks are conducted by review teams, including the Accountability and Transparency Review Teams (ATRT), which are aimed at ensuring accountability, transparency and the interests of global Internet users.[2] The first ATRT (ATRT1) reviewed three key aspects of the AOC: the ICANN board of directors, the Government Advisory Council (GAC), and public input into the ICANN policy development process.

As per the AOC, a second ATRT (ATRT2) was constituted to conduct a follow-up review. Specifically, the ATRT2 is examining ICANN's activities to ensure they are accountable, transparent, and consistent with the public interest. The ATRT2's work is focused on paragraph 9.1 of the AOC, under which ICANN commits to maintaining and improving robust mechanisms for public input, accountability, and transparency to ensure that the outcomes of its decision-making reflect the public interest and is accountable to all stakeholders. Specifically, ICANN commits to assessing the policy development process to facilitate enhanced cross-community deliberations and effective, timely policy development.

ICANN Bylaws explicitly give GNSO responsibility for developing generic Top Level Domain (gTLD) policy recommendations. Toward this end, the GNSO Council oversees gTLD policy development by the GNSO and approves GNSO policy recommendations. Upon ratification by the ICANN Board of Directors, ICANN staff implements GNSO policy recommendations, often with support from the GNSO.

Although policy may be developed by the GNSO using a variety of mechanisms, the formal Policy Development Process (PDP) mandated by the ICANN Bylaws must be used for developing policy. Policy developed in this way is often referred to as "consensus policy" and, if ratified, is automatically incorporated by reference into the contracts of gTLD Registries (entities that operate gTLDs under contract with ICANN) and Registrars (entities accredited by ICANN to distribute domain name registrations within gTLDs). The PDP is also used in other cases when the rigor of its methodology is desired due to the complexity of the issue and/or there are strongly held and conflicting views held on the issue.

Against this background, the ATRT2 was convened to review the GNSO PDP with a view toward identifying its strengths and weaknesses, differences between defined process and actual practice, and the extent to which it incorporates the views, advice and needs of all stakeholders, both those

[1] http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm
[2] http://www.icann.org/en/about/aoc-review/atrt

active in ICANN and those not typically present for ICANN deliberations. In addition, the ATRT2 review will examine the participation of the GAC in the PDP, how the ICANN PDP compares with similar multi-stakeholder processes, and the extent to which the PDP fulfills the mission of ICANN in developing sound policies in the public interest while at the same time meeting the needs of all stakeholders. The ATRT2 will also identify those areas where the PDP does not help fulfill ICANN's mission and needs further investigation and change.

2.2 Overview of Methodology

To meet the requirements of the ATRT2 Team (as set out in its Request for Proposals[3]), the InterConnect Communications (ICC) Team has undertaken both a quantitative and qualitative approach. The quantitative study involved an analysis of the extensive, published written archive relating to the GNSO PDP, including the documented process (found in the ICANN Bylaws, GNSO PDP Manual and other public records described in Section 4), records of specific PDPs (see Section 5), information provided by ICANN staff, and other GNSO materials. A full description of the sources and metrics developed for evaluating the strengths and weaknesses of the process is documented in Annex A.

These sources were supplemented by qualitative data derived from interviews with participants in the PDP process and others in the ICANN community. A structured question set was developed, using the Likert scale to capture a range of opinions (rather than a binary yes/no), which took the interviewees through the stages of the PDP, and included particular areas of interest identified in the Request for Proposals. The interviews also captured demographic data (including geographic region, constituency, extent of participation in PDPs), and concluded with more open questions which aimed to identify major challenges and invited interviewees to suggest practical responses to those challenges.

In all, thirty interviews were undertaken. A more detailed description of the methodology is included in Annex A.

[3] See http://www.icann.org/en/news/announcements/announcement-2-02jul13-en.htm

3 A Review of the Existing GNSO PDP

The current GNSO PDP became active on 8 December 2011. Given that the majority of PDPs analyzed in this report existed, at some stage of their process, prior to 8 December 2011, it is necessary to include a brief overview of the PDP that existed before that date as well as more comprehensive documentation on the current PDP.

3.1 Historical Background

The previous PDP was documented in detail in Annex A of the ICANN Bylaws. It consisted of the following elements:

1. Raising an Issue
2. Creation of the Issue Report
3. Initiation of PDP
4. Commencement of the PDP
5. Composition and Selection of Task Forces
6. Public Notification of Initiation of the PDP
7. Task Forces
8. Procedure if No Task Force is Formed
9. Public Comments to the Task Force Report or Initial Report
10. Council Deliberation
11. Council Report to the Board
12. Agreement of the Council
13. Board Vote
14. Implementation of the Policy
15. Maintenance of Records
16. Additional Definitions

Annex A of the Bylaws was the sole official documentation of the GNSO PDP, and therefore described each step in considerable detail. In addition to the official documentation of the PDP, the GNSO community had, over time, developed an informal set of practices and procedures associated with managing PDPs.[4]

On 26 June 2008, the ICANN Board approved a set of recommendations designed to improve the effectiveness of the GNSO, including its policy activities.[5] The Board explained that the mandate to update the PDP "arises not from a change in the mission or role of the GNSO, but from the accumulation of experience with the current PDP and the decisions that have been made by the ICANN Board concerning an organizational restructuring of the GNSO".[6] The key objectives of the review were to:

- Maximize the ability for all interested stakeholders to participate in the GNSO's policy development processes
- Ensure that recommendations can be developed on gTLD "consensus policies" for Board review and that the subject matter of "consensus policies" is clearly defined
- Ensure that policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively

[4] See p. 3 of Policy Development Process Work Team Final Report & Recommendations, 2011, http://gnso.icann.org/en/issues/pdp-wt-final-report-final-31may11-en.pdf
[5] Ibid, p. 131
[6] Ibid, p. 132

- Align policy development more tightly with ICANN's strategic and operations plans
- Improve communications and administrative support for GNSO objectives[7]

The PDP Work Team tasked with developing recommendations for a revised PDP approached its work by dividing the PDP into five phases:

Stage 1 – Planning and Request for an Issues Report
Stage 2 – GNSO Council Review of the Issues Report and Initiation of the Policy Development Process
Stage 3 – Working Group
Stage 4 – Voting and Implementation
Stage 5 – Policy Effectiveness and Compliance[8]

Note that under this division, the PDP is considered to start with the planning for an Issues Report (Stage 1), but is "initiated" in Stage 2. Further, implementation (Stage 4) is not considered the final phase of the PDP. Rather, compliance (Stage 5) was considered part of the PDP.

Sections 3.2 and 3.3 below describe the formal documentation—ICANN Bylaws Annex A and GNSO PDP Manual—that resulted from the review of the PDP that was initiated in 2008.

3.2 PDP as Referenced in the ICANN Bylaws

This section describes the GNSO PDP that was approved by the ICANN Board in December 2011.

The GNSO PDP as defined in Section 1 of Annex A, GNSO Policy Development Process, of the ICANN Bylaws lists eight "essential elements" of the PDP. These are listed, paraphrased in active voice, below:

1. The ICANN Board, GNSO Council or Advisory Committee requests a Final Issue Report
2. The GNSO Council formally initiates the Policy Development Process
3. The GNSO Council forms a Working Group or designates another work method for managing the development of a report on the issue that is the subject of the PDP
4. The Working Group, or another work method, produces an Initial Report
5. The Working Group, or another work method, produces a Final Report, which is forwarded to the GNSO Council for deliberation
6. The GNSO Council, following the required thresholds, approves the PDP Recommendations contained in the Final Report
7. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council
8. The ICANN Board approves the PDP Recommendations

Note that implementation is not included as one of the essential elements of the PDP. Implementation is, however, included as Section 10 of Annex A. The Bylaws, therefore, appear to suggest that implementation *can* be an element of a PDP, but that implementation is not essential to a PDP. Note, too, that compliance, which was included in Stage 5 of the PDP Work Team's five-phase review of the PDP, is also not included as an essential element of the PDP.

Section 2 states that the GNSO is to maintain a PDP manual that contains "specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise

[7] Ibid, p. 131
[8] Ibid, p. 8

defined in these Bylaws". The contents of the GNSO PDP Manual will be described in Section 3.3 of this report.

Sections 3 to 9 of Annex A loosely follow the sequential steps of the GNSO PDP and are a mix of descriptions of outcome-oriented steps (Sections 4 and 6) and process-oriented guidelines (Sections 3, 5, 7, 8 and 9):

Section 3. Requesting an Issue Report
Section 4. Creation of an Issue Report
Section 5. Initiation of the PDP
Section 6. Reports
Section 7. Council Deliberation
Section 8. Preparation of the Board Report
Section 9. Board Approval Processes

Section 4, Creation of an Issue Report, describes the fulfillment of the first "essential element" of the PDP: the request for an Issue Report. Section 4 also describes the Issues Report phase as a multi-step process, summarized below, as a numbered list for clarity:

1. The Staff Manager creates a Preliminary Issue Report.
2. ICANN staff publish the Preliminary Issue Report on the ICANN website for public comment.
3. The Staff Manager summarizes and analyzes the public comments received, if any.
4. The Staff Manager creates a Final Issue Report that incorporates the feedback received during the public comment period.
5. The Staff Manager forwards the Final Issues Report, with a summary and analysis of public comments received, to the Chair of the GNSO Council.

Section 5 briefly describes the two ways the GNSO Council can initiate a PDP, following the receipt of the Final Issue Report: if the Board requests an Issues Report, no vote is needed; otherwise, a Council vote is required.

Notably, the third essential element of the PDP described in Section 1 of Annex A, the formation of a Working Group or alternative working method, is not given its own standalone section in Annex A of the Bylaws. Instead, that element is described in the GNSO PDP Manual (see Section 3.3 below).

Section 6 combines the fourth and fifth essential elements of the PDP: the creation of an Initial Report and a Final Report by the Working Group or by an alternative working method.

Section 7, Council Deliberation, differs slightly from the sixth essential element of the PDP, Council approval. It shifts the focus from the outcome (approval of the Final Report), to process (deliberation of the report).

Section 8, Preparation of the Board Report, differs from the activity described as the seventh essential element of the PDP, which focuses on the forwarding of the report, rather than the preparation of the report. Although the difference seems minor, the difference in focus has the potential to cause confusion for less-experienced participants in the GNSO PDP.

As with Sections 7 and 8, Section 9 changes the focus from outcome (Board approval in the eighth and final essential element of the PDP) to process (Board process for approval).

The final four sections of Annex A are:

Section 10. Implementation of Approved Policies
Section 11. Maintenance of Records

Section 12. Additional Definitions
Section 13. Applicability

As noted earlier, it is interesting to note that implementation is not considered one of the essential elements of the PDP, but is still documented as part of the overall PDP description. The inclusion of Section 11, Maintenance of records, is significant, as it places a requirement on ICANN staff to publicly document each step in a PDP, including upcoming steps. There is no reference to compliance as a stage of the PDP in the Bylaws.

3.3 PDP as Defined in the GNSO Operations Manual

This section discusses the PDP as defined in version 2.7 of the GNSO PDP Manual.[9]

The GNSO PDP Manual includes 18 sections to describe the PDP in more detail than in the ICANN Bylaws. Below is a list of those sections. The bold text marks the seven sections associated with the eight essential elements of the PDP listed in Section 1 of Annex A of the ICANN Bylaws:

1. PDP Manual - Introduction
2. **Requesting an Issue Report**
3. Planning for Initiation of a PDP
4. Recommended Format of Issue Report Requests
5. **Creation of the Preliminary Issue Report**
6. Public Comment on the Preliminary Issue Report
7. **Initiation of the PDP**
8. Development and Approval of the Charter for the PDP
9. PDP Outcomes and Processes
10. **Publication of the Initial Report**
11. **Preparation of the Final Report**
12. **Council Deliberation**
13. **Preparation of the Board Report**
14. GNSO Council Role in Implementation
15. Termination or Suspension of PDP Prior to Final Report
16. Amendments or Modifications of Approved Policies
17. Periodic Assessments of Approved Policies
18. Miscellaneous

The eighth essential element, ICANN Board approval, is not included in the GNSO PDP Manual as it would be outside the GNSO's scope to define the Board's approval process in its own documentation.

Section 3, Planning for Initiation of a PDP, introduces the idea of holding workshops before the "initiation of a PDP", in part to "gather support for the request of an Issue Report". The use of the term "initiation of a PDP" in this context is problematic, given the more official use of "initiation of a PDP" in the Section 1 of the ICANN Bylaws to describe the *formal* initiation of a PDP following the GNSO Council's consideration of an Issue report. The more informal use of the term here could be confusing to those not already well versed in the stages of a PDP.[10] Although not explicitly stated, the idea of holding workshops seems to be limited to GNSO-initiated PDPs, as there appears to be no

[9] http://gnso.icann.org/council/annex-2-pdp-manual-13jun13-en.pdf

[10] The PDP Work Team established in 2008 to make recommendations on a revised PDP had highlighted the confusing use of the term "initiation of the PDP" in the 2008 version of the ICANN Bylaws and suggested that "initiation of the PDP" only refer to the formal initiation that follows the GNSO Council's deliberation on the Issue Report. The use of the term in Section 3 of the GNSO PDP Manual, in relation to holding workshops prior to a request for an Issue Report has been made, however, suggests that this confusion has not been entirely eliminated.

documented process for enabling other ACs or SOs to communicate with the GNSO prior to an AC or SO making a request for an Issue Report. In addition, it appears that potential workshops would need to be held as physical events as part of one of ICANN's three meetings per year.

Section 4, Recommended Format of Issue Report Requests, is a detailed description of the form to be used when carrying out the Request for an Issue Report documented in Section 2. It is not clear why this descriptive section has been separated from its parent process, Section 2, by the intervening Section 3, Planning for Initiation of a PDP.

Section 5, Creation of the Preliminary Issue Report, expands on the description of the activity of the same name described in Section 4 of Annex A of the ICANN Bylaws. In particular, it provides guidelines to help ICANN's General Counsel determine whether or not the issue described in the Issue Report is properly within the scope of ICANN's mission, policy process and, more specifically, the role of the GNSO.

Section 6, Public Comment on the Preliminary Issue Report, provides more detail on the Public Comment process. In Annex A of the Bylaws, the Public Comment process is included as the last two paragraphs of Section 4, Creation of the Preliminary Issue Report. The GNSO PDP Manual version of the Public Comment process encourages ICANN Staff to translate the Preliminary Issue Report so it is available in all six official United Nations (UN) languages,[11] but that completion of such translations are not to delay the posting of the original English version, and, by inference, the launch of the Public Comment period. There is no accompanying recommendation discussing how to handle the possibility that delayed publication of translated versions could negatively affect the ability of non-English speakers to digest the summary in their own language and then comment in time in English.[12]

Section 7, Initiation of the PDP, expands significantly on the brief description given in Section 5 of Annex A of the ICANN Bylaws. In particular, it details the timeframe the GNSO Council should use for voting on whether to initiate a PDP and under what circumstances a suspension of further consideration of the Final Issue Report can be permitted. Section 7 also describes how, if the GNSO Council decides not to initiate a PDP, any GNSO Councilor can appeal the decision or, if an AC requested the Issue Report, the AC can discuss the decision with the Council and request a re-vote.

Section 8, Development and Approval of the Charter for the PDP, contains procedural details not included at all in the Bylaws. The section describes how the GNSO Council is to convene a group to develop a draft Charter for the PDP Team, what elements must be included in the draft Charter, a timeframe within which the GNSO Council is expected to consider the proposed Charter and voting thresholds to approve the PDP Charter.

Similar to Section 8, Section 9, PDP Outcomes and Processes, contains details of process not included at all in the ICANN Bylaws: the working methods of the team responsible for developing the Final Report. Interestingly, although, in 2008, the ICANN Board requested that the PDP Work Team review the PDP with the aim of replacing the Task Force model of development with one of Working Groups, the GNSO PDP Manual, while strongly recommending the use of Working Groups, provides the GNSO Council with the option of using other designated working methods. The alternative methods mentioned in the section are: "task force, committee of the whole or drafting team". The Manual, however, does not include information on why the Council may choose to use a non-Working Group

[11] The six official languages of the UN are Arabic, Chinese, English, French, Russian and Spanish.
[12] It is interesting to note that the GNSO website includes in its left hand navigation menu a section containing links to translation services by both Bing and Google. Translate with Bing enables readers to translate HTML web pages on the GNSO website, while the GNSO urges readers to use Google Translate to translate GNSO documents in PDF, DOC and other formats. The official Public Comment pages on the ICANN website, however, contain no such links to online translation tools.

method, or under what conditions it may be appropriate. Because of the possibility that a Working Group may not be the chosen working method, the Manual uses the umbrella term, "PDP Team", to describe the group formed to perform the PDP activities, regardless of its specific format.

Section 9 also describes some of the ways the PDP Team is to collect information that will inform the Final Report. In particular:

- The PDP Team may solicit the opinions of outside advisors, experts, or other members of the public
- The PDP Team should formally solicit statements from each GNSO Stakeholder Group and Constituency in the early stages of the PDP
- The PDP Team is also encouraged to formally seek the opinion of other ICANN Advisory Committees and Supporting Organizations, as appropriate that may have expertise, experience, or an interest in the PDP issue

Section 9 describes how the PDP Team is to work with ICANN Staff on the PDP work, including escalation procedures. Section 9 also provides an illustrative list of the types of recommendations (if any at all) that a PDP Team may make in the Final Report:

i. Consensus policies
ii. Other policies
iii. Best Practices
iv. Implementation Guidelines
v. Agreement terms and conditions
vi. Technical Specifications
vii. Research or Surveys to be conducted
viii. Advice to ICANN or to the Board
ix. Advice to other Supporting Organizations or Advisory Committee
x. Budget issues
xi. Requests for Proposals
xii. Recommendations on future policy development activities

Section 10, Publication of the Initial Report, provides more detail on what content must be developed during the Report process described in Section 6 of Annex A of the ICANN Bylaws. The specified elements of an Initial Report:

- Compilation of GNSO Stakeholder Group and Constituency Statements
- Compilation of any statements received from any ICANN Supporting Organization or Advisory Committee
- Recommendations for policies, guidelines, best practices or other proposals to address the issue
- Statement of level of consensus for the recommendations presented in the Initial Report
- Information regarding the members of the PDP Team, such as the attendance records, and Statements of Interest
- A statement on the PDP Team's discussion concerning impact of the proposed recommendations. Such impacts include areas such as economic, competition, operations, privacy and other rights, scalability and feasibility

Section 11, Preparation of the Final Report, describes how the PDP Team and ICANN Staff manager are to prepare the Final Report following the close of the Public Comment period for the Preliminary Report. There is a brief mention of this activity in the second and final sentence of Section 6 of Annex A of the ICANN Bylaws. Section 11 notes that while there is no requirement to publish the Final Report for Public Comment, for the sake of maximizing accountability and transparency goals, the

PDP Team should consider publishing the Final Report, marked as draft, for Public Comment, with translation of the Executive Summary by ICANN staff if possible. Any comments received in this optional Draft Final Report process should be taken into account and integrated into the Final Report that is forwarded to the GNSO Council.

The second last paragraph of Section 11 includes a reference to an optional process that, timeline-wise, can occur any time between the start of the PDP Team's work (Section 9 of the PDP Manual) and the publication of the Final Report (Section 11). This optional process is the seeking of Public Comment on any item that the PDP Team believes could benefit from further public input. It is not clear why this optional process is included in this section, rather than in Section 9, with the other descriptions of possible processes that a PDP Team can use.

Section 12, Council Deliberation, expands on the brief description given in Section 7 of Annex A of the ICANN Bylaws, providing guidance on the timing of discussions and how the GNSO Council should deal with any PDP recommendations that did not reach consensus within the PDP Team. It is suggested that if the Council has concerns about any PDP recommendations, or wishes to propose changes, it may be more appropriate to pass such concerns or proposed changes back to the PDP Team for input and follow-up.

Section 13, Preparation of the Board Report, expands on the brief description given in Section 8 of Annex A of the ICANN Bylaws, explaining how the GNSO should choose a group or individual to draft a Recommendations Report to the Board that will supplement any Staff Report to the ICANN Board. The Staff Report highlights any legal, implementability, financial or other operational concerns related to the PDP recommendations contained in the Final Report.

Section 14, GNSO Council Role in Implementation, expands on Annex A of the ICANN Bylaws, Section 10, Implementation of Approved Policies. It describes how the GNSO Council, if ICANN Staff are authorized or directed by the ICANN Board during its deliberations on the PDP recommendations to work with the Council to develop an implementation plan, may choose to create an Implementation Review Team to assist ICANN Staff develop the implementation plan. Section 14 also describes how the GNSO Council should report concerns about elements of a planned PDP implementation to the ICANN Board, with ICANN Staff refraining from further implementation activities until the Board has considered the GNSO Council's concerns.

The final four sections in the GNSO PDP Manual, sections 15 to 18, are concerned with issues of procedure related to terminating or suspending PDPs and revisiting or revising approved policies. Of particular interest is Section 16, Amendments or Modifications of Approved Policies, which describes how the GNSO Council may amend approved PDP recommendations at any time before the ICANN Board votes on the recommendations by a process of reconvening the PDP Team, or consulting with the Team if already disbanded, on the issues, followed by a Public Comment period. Amendments that follow this process and receive a Supermajority vote by the GNSO Council can then be forwarded to the ICANN Board. If the ICANN Board has already adopted the originally proposed PDP recommendations, however, a new PDP must be initiated to consider the proposed modifications.

3.4 Supplementary Documentation of the PDP

In addition to the legal requirements specified in the ICANN Bylaws and the details elaborated in the GNSO Operations Manual, there are also visual flowcharts produced by ICANN Staff to provide an overview of the PDP.

The GNSO PDP webpage,[13] last updated 20 August 2013, contains the following graphic at the top of the page:

Figure 1: PDP Flowchart Included the Top of the GNSO Webpage Describing the PDP [14]

Note the graphic's filename has a date of 4 June 2013, but the graphic itself contains a reference to the PDP being revised (present tense) during 2010. The summarized process contained in the graphic contains a slightly different set of key steps in the PDP to those included as main section headings in Annex A of the ICANN Bylaws and the GNSO Operations Manual. For example, the "Request for Stakeholder Group/Constituency Statements" step in the graphic is taken from one part of the description of the PDP, Section 9, PDP Outcomes and Processes, in the GNSO PDP Manual.

A further series of flowcharts on the same webpage provides an overview of a different series of PDP steps. Below is the flowchart depicting the top-level series of steps. The full set of detailed flowcharts are included as Annex B.

Figure 2: The First in a Series of Eight Flowcharts Describing the PDP [15]

[13] http://gnso.icann.org/en/node/31379/
[14] http://gnso.icann.org/files/gnso/images/pdp-1000x597-04jun13-en.png
[15] http://gnso.icann.org/files/gnso/images/general-overview-650x139-14may12.jpg

3.5 The Effect of Differing Descriptions of the PDP

Although the differences between and within the two formal descriptions of the PDP and the two main flowcharts may seem very minor, the variations of grouping of issues and different wording used to describe the main steps could have the following effects:

1. It could make the PDP seem more daunting than it is in practice.

   As described above, while longtime PDP participants have a body of experience in which to supplement the officially documented PDP, newcomers rely on documentation to gain an understanding of how the PDP works. If that documentation contains variations, it may make the PDP appear more complicated than it is in reality, potentially discouraging newcomers from wanting to engage in the process.

2. It could enable minor differences to emerge in the PDP as practiced and not be noticed.

   The PDP already contains a number of potential steps, depending on various decision points in the process. When these steps are not clearly and uniformly defined across different versions of the PDP documentation, or when the nature of optional, mandatory or alternative components of the process are not completely clear, it is possible that overworked participants who face time pressures and the challenges of widely varying views on subjects may, rather than try to detangle the variations of the PDP as documented, make assumptions about how the PDP should proceed at a certain point and inadvertently deviate from formally documented practice.

3. When embarking on processes to improve the PDP, it could obscure the clear picture of the overall PDP and make it difficult to identify precisely where the PDP could benefit from improvements

   As noted in point 2 above, the PDP already contains a number of steps. It is possible that those who are tasked with making improvements to the formal PDP may, due to a lack of a single, clear and comprehensive view of the existing PDP, lack a complete toolset with which they can thoroughly assess where the PDP could best be improved. While experienced members of the GNSO may have an encyclopedic knowledge of the PDP, newer members, who could offer fresh perspective on ways to improve the PDP, would be vulnerable to such an effect.

3.6 The 42 Key Steps of the GNSO PDP

Given the variations of definitions and boundaries of the key phases of the GNSO PDP described in the sections above, to fully understand how the PDP works, it is important to provide a comprehensive list of all the steps of the PDP. This has been achieved by combining the information from both the ICANN Bylaws and GNSO PDP Manual. The list of the 42 individual steps, or actions, of the GNSO PDP, as documented, are listed below:

1. (*If Issue Report request is being considered by GNSO. Optional*) Hold workshop on issue
2. Request Issue Report
3. Create preliminary Issue Report
4. Call for public comments on preliminary Issue Report
5. Comment on preliminary Issue Report
6. Summarize and analyze public comments
7. (*If comments received require Issue Report adjustments*) Write second, Final, Issue Report
8. (*If Issue Report was requested by ICANN Board*) Decide to initiate a formal PDP

9. (*If Issue Report was requested by GNSO Council or AC*) Decide to initiate a formal PDP
10. Develop PDP Charter
11. Approve PDP Charter
12. Form Working Group (*preferred*) or other designated working method
13. Formally solicit statements from each Stakeholder Group and Constituency
14. Submit formal statements to PDP Team
15. Solicit input from other SOs and ACs
16. Submit input to PDP Team
17. Establishes contact with ICANN departments outside the policy department
18. (*Optional*) Call for public comments on other PDP related documents such as surveys (not Issue Report or Initial Report)
19. (*If call for public comments on other PDP related documents is made*) Comment on PDP related documents
20. Develop recommendations on the issue that is the subject the PDP
21. Create Initial Report
22. Call for public comments on Initial Report
23. Comment on Initial Report
24. Summarize & analyze public comments
25. Prepare Final Report
26. (*Optional but recommended*) Publish Draft version of Final Report for public comment
27. (*If Draft Final Report published for public comment*) Comment on Draft Final Report
28. (*If Draft Final Report published for public comment*) Summarize & analyze public comments
29. Forward Final Report to GNSO Council
30. (*Optional but strongly recommended*) Stakeholder Groups and Constituencies review Final Report
31. Deliberate and vote on Final Report recommendations
32. (*If recommendations in Final Report have been approved by GNSO Council*) Prepare Recommendations Report for the ICANN Board
33. (*Optional?)* Write Staff Report
34. Forwards Board Report to the ICANN Board
35. Approve PDP recommendations
36. (*If some recommendations not adopted*) Explain non-adopted recommendations to Council
37. (*If some recommendations not adopted*) Discuss Board Statement
38. (*If some recommendations not adopted*) Forward Supplemental Recommendation to Board
39. (*If some recommendations not adopted*) Approves PDP Supplemental Recommendation
40. (*Optional*) Staff authorized to work with GNSO Council to create implementation plan
41. (*Optional*) Establish Implementation Review Team
42. Implement PDP recommendations

Annex C, Detailed Description of the Who, What, How and When of GNSO PDP Steps, contains a detailed table of the above 42 steps.

4 Environmental Analysis

4.1 The Changing Environment of the Internet

During ICANN's lifetime, the number of Internet users has expanded from 360 million (in 2000) to 2.4 billion now.[16] An early adopter of the Internet, North America had 30 percent of the world's Internet users in 2000, and the highest Internet penetration rate per capita (approximately 31 percent). By 2013, despite continuing to have the highest regional Internet penetration rate (78 percent), North America's share of global Internet users has reduced to 11.4 percent, compared with Asia (45 percent), Europe (22 percent) and Latin America (11 percent). Internet penetration rates remain comparatively low in Africa (16 percent), Asia (28 percent), Middle East (40 percent) and Latin America (43 percent), suggesting that these are the Internet growth markets for the coming decade. According to a 2012 Broadband Commission report, the number of Internet users accessing the web primarily in Chinese will overtake English-based Internet users by 2015.[17]

As the Internet has assumed greater importance as a driver of economic growth, and as more of our life is spent online, the public profile of Internet issues has increased. A decade ago, it was rare to see a mainstream news story about the Internet. In the past two years, however, there have been mass popular demonstrations against Internet-related legislative proposals such as the ACTA,[18] SOPA and PIPA[19] and widespread news coverage of allegations made by Edward Snowden about PRISM and related online surveillance programs.[20]

A decade ago, Internet policy discussions were primarily focused on basic access and the costs of interconnection charges, particularly for those in developing countries. Today, issues of content dominate, including the balance between national security and individuals' privacy, and complex cross-border, cross-cultural issues of freedom of expression. These may seem a million miles away from ICANN and its technical function. However, the management of the world's Internet addressing system has always been a divisive issue, and some countries have consistently called for the greater internationalization of decisions relating to management of the Internet root.

ICANN was first established as a mechanism to transition management of the root zone from the US Government to the private sector.[21] The centrality of the contracted parties (gTLD domain name registries and registrars) to the GNSO policy development process stems from that original goal.

4.2 Trends in Multi-stakeholder Models of Governance

The concept of multi-stakeholder governance is not unique to the Internet environment. For example, the 1992 Earth Summit in Rio prompted recognition of the need to involve multiple stakeholders if sustainable development goals were ever to be achieved. One of the outcomes of this recognition was the development of a project in 2000 and 2001, A Framework For Multi-stakeholder Processes, which developed "a common yet flexible framework for various types of multi-stakeholder

[16] http://www.internetworldstats.com/stats.htm
[17] Broadband Commission, 2012, *The State of Broadband 2012: Achieving Digital Inclusion for All*, http://www.broadbandcommission.org/documents/bb-annualreport2012.pdf
[18] http://www.ustr.gov/acta
[19] http://www.govtrack.us/congress/bills/112/s968
[20] http://www.theguardian.com/world/prism
[21] 1998, *US Government White Paper: Management of Internet Names and Addresses*, http://www.icann.org/en/about/agreements/white-paper

processes".[22] The project outcomes were published as a book, and included the following early definition of what multi-stakeholder models should aim to be:

> The term multi-stakeholder processes describes processes which aim to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision-making) on a particular issue. They are also based on recognition of the importance of achieving equity and accountability in communication between stakeholders, involving equitable representation of three or more stakeholder groups and their views. They are based on democratic principles of transparency and participation, and aim to develop partnerships and strengthened networks among stakeholders.[23]

The concept the Internet community prefers to call "multi-stakeholder governance" also has a number of alternative names. In the sphere of political science, the terms "public policy networks", "global public policy networks", "global governance" and "governing without government" are some of the terms that have been used to describe similar multi-actor governance models. The family of multi-stakeholder governance terms has received a lot of attention since the beginning of the century, as political scientists, civil society activists and others began to be aware of a need to develop new ways to manage increasingly multi-dimensional issues in an increasingly global world.[24] The world of Internet governance has, however, tended to isolate itself from this wider discussion, having fixed its gaze on the precise term, "multi-stakeholder governance". As a result, the Internet community has largely tended to overlook the developments and debates happening in the wider networked governance discussions and forge its own path towards developing effective governance mechanisms.

The use of the term "multi-stakeholder governance" in the Internet environment originated during the World Summit on the Information Society (WSIS), 2003-2005, and described the way that Internet organizations, such as the Internet Society, Internet Engineering Task Force[25] develop policy from the bottom up. It "just worked"—delivering "rough consensus and running code".[26] In response to a push from some governments to pull management of the domain name system into an intergovernmental framework, multi-stakeholder governance was offered up as an attractive alternative—supported by the US and a number of EU member states—associated with delivering openness, innovation and growth.

From the World Summit on the Information Society (WSIS) process emerged the Internet Governance Forum (IGF): a non-decision making, non-policy making forum for dialogue. The IGF was to embody multi-stakeholder principles, with government, business and civil society participating in the discussions and program development (through the Multi-stakeholder Advisory Group) on an equal footing.

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[22] http://www.earthsummit2002.org/msp/project.html

[23] Chapter 1, p. 2, M Hemmati, 2002, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict*, http://www.earthsummit2002.org/msp/book.html

[24] For a representative selection of articles on networked governance discussions, see: J Roloff, 2008, "A life cycle model of multi-stakeholder networks", *Business Ethics: A European Review*, 17(3): 311-325; D Stone, 2008, "Global Public Policy, Transnational Policy Communities, and Their Networks", *The Policy Studies Journal*, 36(1): 19-38; P Dobner, 2009, "On the Constitutionability of Global Public Policy Networks", *Indiana Journal of Global Legal Studies*, 16(2): 605-619

[25] For example, see LE Strickling, 2013, *Remarks by Assistant Secretary Strickling at 11th Transportation, Maritime Affairs and Communications Forum,* http://www.ntia.doc.gov/speechtestimony/2013/remarks-assistant-secretary-strickling-11th-transportation-maritime-affairs-and

[26] p. 19, D Clark, 1992, A cloudy crystal ball – visions of the future, http://groups.csail.mit.edu/ana/People/DDC/future_ietf_92.pdf

Soon, many Internet organizations, including ICANN, began to rebrand as multi-stakeholder. This term not only captured the fact that government, civil society and business all participated in the process, but also provided legitimacy for processes and organizations which had enormous effective power over Internet policy. Last year, even the International Telecommunication Union (ITU) claimed multi-stakeholder credentials.[27]

ICANN and its processes have been influential over other processes. For example, its real-time transcriptions of meetings, audio and webcasting, and remote participation facilities have been adopted within the IGF, and other processes, such as the Commission for Science and Technology for Development's Working Group on Internet Governance, and the ITU's World Conference in International Regulations and World Telecommunication/ICT Policy Forum.

Central to ICANN's policy making are volunteers. A review of the current work schedule at ICANN, including PDPs, is a tribute to the thousands of hours donated by many volunteers over extended periods. Within ICANN, the GNSO's Policy Development Process is emblematic of the organization's bottom-up, multi-stakeholder credentials and its continuing legitimacy as the coordinator for global domain name policies. The model of multi-stakeholder governance, despite having many advocates, has proved to be controversial, even in the context of the non-decision making IGF. As a method for policy-making, multi-stakeholder governance still has a number of unanswered questions, in particular:

- What are the "respective roles"[28] of each stakeholder when it comes to making decisions?
- How, if at all, should a multi-stakeholder process differentiate between those with a representative capacity, such as governments, and other organizations or individuals who participate on their own behalf?

The PDP should involve all stakeholders, whether "on an equal footing" or "in their respective roles", if it is to have legitimacy and credibility as a bottom-up multi-stakeholder governance process.

4.3 Trends in Ever-expanding Internet Governance Calendars

During the 2011 ICANN meeting in Singapore, there was a discussion about "volunteer fatigue". It is not that the number of processes has increased; it is that the intensity has increased. In terms of meetings, the growth and vibrancy of national and regional IGF meetings is a notable development since 2007. While it is highly unlikely that one organization or individual would attend each and every regional or national IGF, because the IGF discussions have historically focused on the management of Critical Internet Resources (CIRs)—ICANN, TLD registries, RIRs—governments, business representatives (such as ICC BASIS and other representative bodies) and civil society have played an active role as organizers of local and regional IGFs. This has led to a substantial increase in the Internet governance workload for these actors – many also travel and contribute to panel sessions in other local and regional IGFs.

[27] "I was pleased because ITU – which it is my privilege to lead – can truly be said to have invented the concept of multi-stakeholderism." (H Toure, 26 September 2012, *Opening Remarks to IPI Policy Forum* http://www.itu.int/en/osg/speeches/Pages/2012-09-26.aspx)

[28] The Tunis Agenda uses "all stakeholders in their respective roles", which suggests that some stakeholders have different roles to others. (*Tunis Agenda for the Information Society*, 2006, https://www.itu.int/wsis/docs2/tunis/off/6rev1.html)

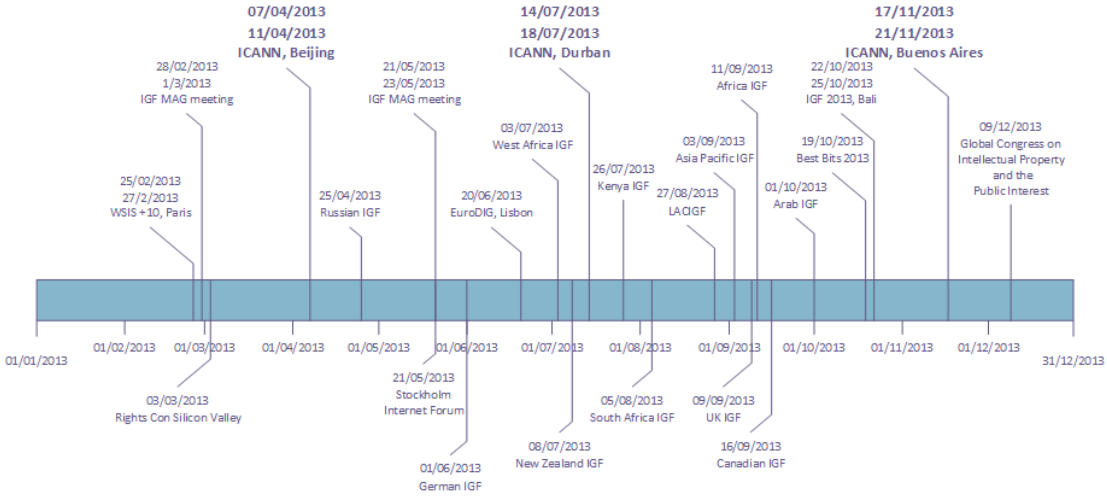


Figure 3: The 2013 Internet Governance Calendar

Since the first WSIS process in 2003, the number of external organizations which now have regular Internet Governance agendas has also increased. ITU Plenipotentiary, OECD Ministerial, WSIS + 10 all have substantial Internet governance agenda items. In many countries and organizations, the same people from government, civil society, the Internet technical community, academia and business are covering numerous processes, including ICANN.

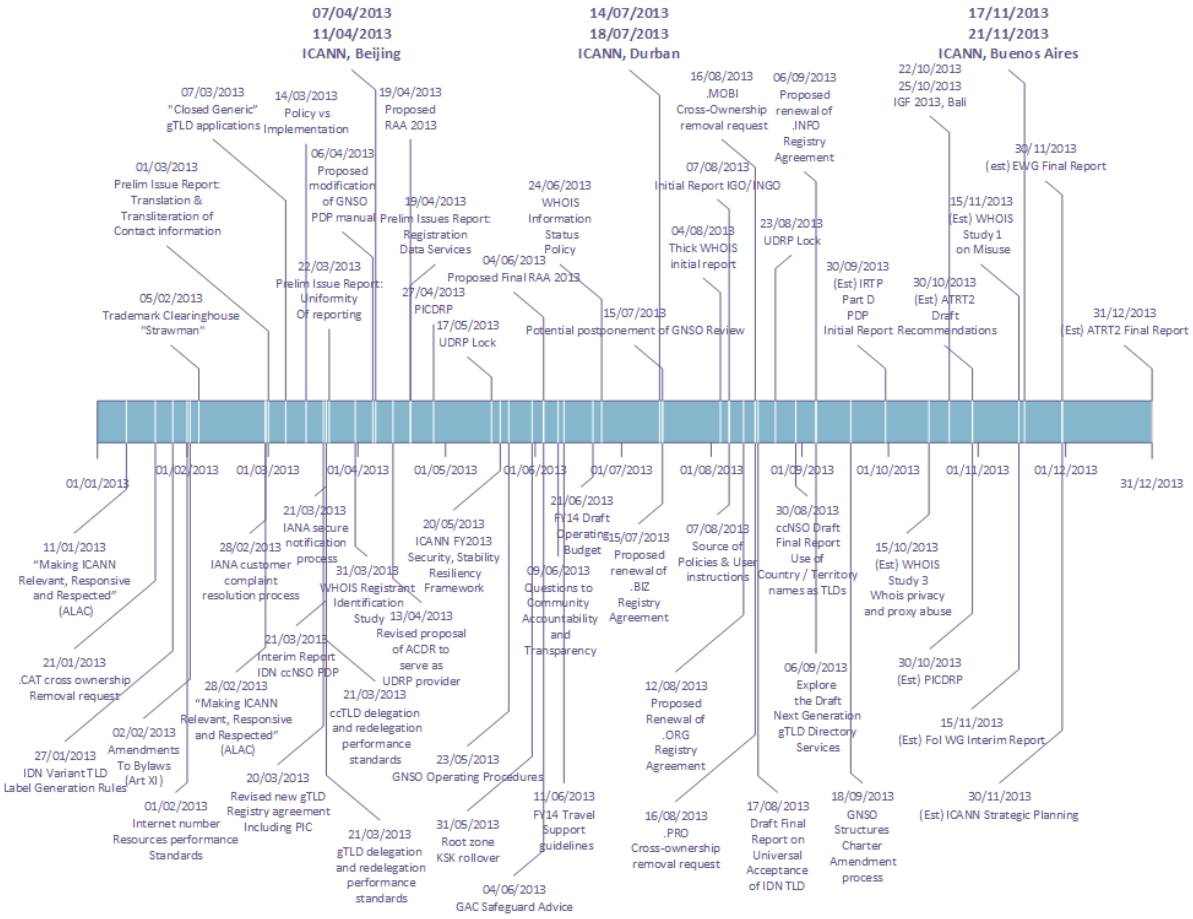


Figure 4: The 2013 ICANN Public Comment Schedule

Within ICANN itself, the level of activity is intense. For example, to September 2013, there have been 49 public comment periods, with a further 10 anticipated to be run before the end of the year. This rate of public comment periods seems fairly consistent since 2007, when ICANN's archives begin. Not all of those public comments relate to GNSO processes, or even to policy. The ICANN public site does not clearly label PDP-related public comments, but a number of non-PDP-specific public comments relate to key policy issues (such as new gTLDs).

Despite the increased level of activity, the number attending ICANN meetings and those actively involved in the process has remained steady for the past five years. n many organizations and governments, the same person is responsible for coordinating responses to public comments, in addition to their other Internet governance duties.

The increasing Internet governance activity, combined with cutbacks as a result of the financial crises, reduce the time available for key stakeholders to participate in bottom-up processes such as the GNSO PDP.

4.4 Trends in Participation

This report documents gaps in participation in recent GNSO PDPs. However, it is important to contextualize these gaps by first exploring participation concepts and trends in the wider world.

The problem of engaging people in decision-making is not new. It dates back to ancient Athens, in fact, where there were three types of citizens: "'the passive ones' who did not go to the assembly; the 'standing participants' who went to the assembly but listened and voted; and 'did not raise their voice in discussion'; and the 'wholly active citizens' (a 'small group of initiative-takers, who spoke and proposed motions')".[29] The last two types are both participants, but at differing levels of participation. Indeed, participation can take many forms, and many attempts have been made to model the many forms participation can take. The figure below is a simple model that shows participation as a spectrum.

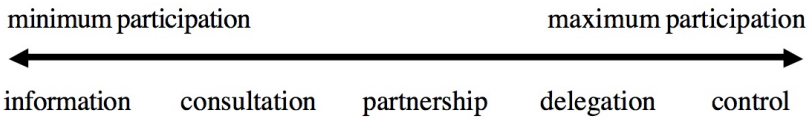


Figure 5: The Shand-Arnberg Participation Continuum[30]

On this continuum, participation as "information" is about providing information in the form of news updates, email, etc., but without any mechanism for "participants" to respond to the information. In terms of the GNSO PDP, an example of this form of participation would be the publication of PDP Team teleconference transcripts. The publication of this material informs stakeholders of what is happening, but there is no mechanism for stakeholders to respond to that material.

"Consultation" is deemed to be a more active form of participation, but those conducting the consultation remain in control of the decision-making. In the GNSO PDP, this form of participation is present in the form of Public Comment periods and in the surveys and calls for statements from Stakeholder Groups, SOs and ACs made by the PDP Team to prepare for the Initial Report.

"Partnership" is a form of "joint decision-making". Bishop Davis explain that partnership "is often achieved through advisory boards and representative committees designed to provide continuing expert and community input".[31] In the GNSO PDP, ongoing collaboration between the PDP Team and ACs such as RSSAC could be seen as an example of partnership. Note that control is still maintained by the operator of the PDP in "partnership". In the case of the GNSO PDP, this is the PDP Team.

"Delegation" gives "control over developing policy options […] to a board of community representatives, within a framework specified by [the parent body]".[32] In the case of the GNSO PDP, the PDP Team is an example of delegation: the GNSO Council develops a PDP Charter to which the Working Group responds.

"Control", the maximum form of participation, occurs when stakeholders have a direct role in making the policy decision. There is no direct correlation in the GNSO PDP. A theoretical example would be if the GNSO PDP contained a referendum function through which all ICANN community members could vote on policy decisions.

Another more detailed view of the characteristics of participation is shown in Figure 6 below.

[29] p. 762, N Urbinati, 2000, "Representation as Advocacy: A Study of Democratic Deliberation", *Political Theory,* 28(6): 758-786
[30] p. 20, P Bishop & G Davis, 2002, "Mapping Public Participation in Policy Choices", *Australian Journal of Public Administration*, 61(1):14–29
[31] Ibid, p. 20
[32] Ibid, p. 20

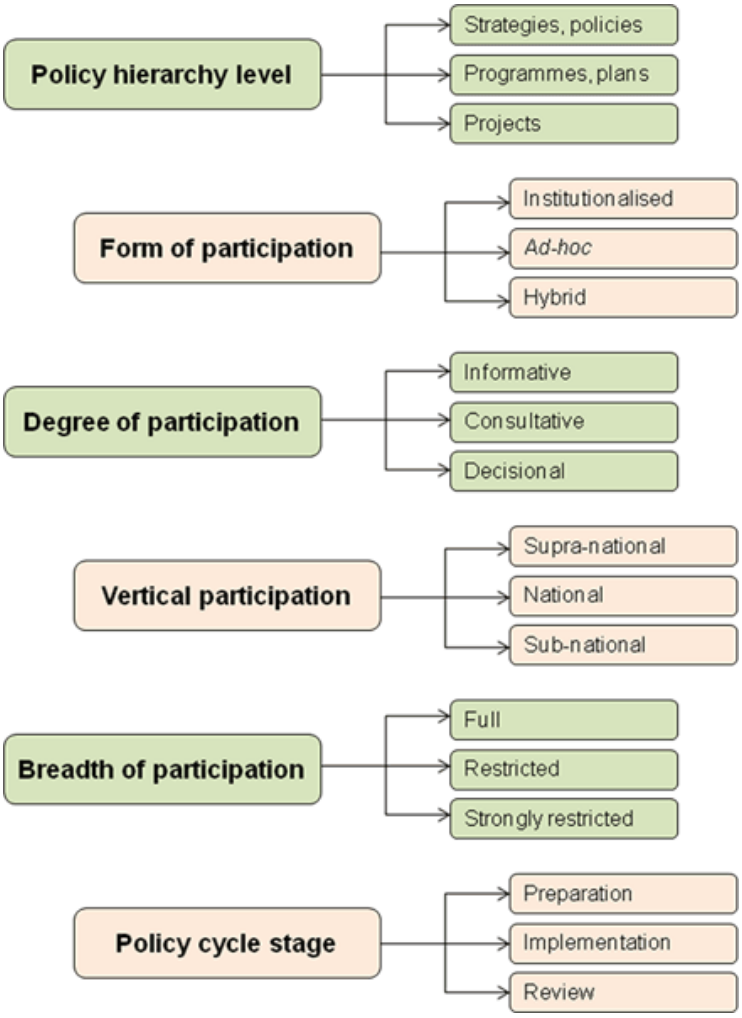


Figure 6: Characteristics and Application Practices of Participation in the Policy Process[33]

Issues of participation appear at all levels of scale, from local community development projects to national elections. National elections require a very minimal level of participation only every few years, yet, in the UK and USA, the most recent elections attracted voter turnouts of 65.1%[34] and 57.5%[35] respectively. In Australia, where it is illegal not to vote in an election, the 2010 national election could only manage a 93% turnout.[36]

There is a difference, however, between those who choose not to participate and those who would participate if they were encouraged and/or barriers to their participation were removed. As Ife and Tesoriero have stated:

[33] W Zwirner, G Berger & M Sedlacko 2008, *Participatory Mechanisms in the Development, Implementation and Review of National Sustainable Development Strategies*, http://www.sd-network.eu/?k=quarterly%20reports&report_id=10
[34] http://www.ukpolitical.info/Turnout45.htm
[35] http://bipartisanpolicy.org/library/report/2012-voter-turnout
[36] http://www.aec.gov.au/faqs/Elections.htm#turnout

> "A conscious decision not to participate is those people's right. This is very different from non-participation that results from a lack of opportunity or support to participate, which is a failure on the part of a system to realize the right to participate".[37]

Ife and Tesoriero have identified the five conditions that can help remove barriers and encourage greater participation. These are listed below, along with some discussion about their applicability to participation in the GNSO PDP:

1. People will participate if they feel the issue or activity is important.

   A number of the recent GNSO PDPs have been on issues that are very narrowly defined and technical in nature. For example, the division of IRTP policy issues into a number of smaller PDPs. While IRTP is an important issue, its niche topic may be responsible for its associated PDPs attracting relatively few participants. In contrast, an issue like the transliteration and translation of contact information may have a wider appeal to users of non-ASCII scripts.

2. People must feel their action will make a difference.

   It may be the case that a newcomer to ICANN may choose not to participate in a Public Comment period for an Initial Report because they think that commenting at that late stage of the PDP is unlikely to have an impact on the final outcome.

3. Different forms of participation must be acknowledged and valued to enable people to contribute in ways that best suit their needs (for example, online participation for those who can't travel).

   ICANN routinely provides for remote participation via a variety of models. A tool a simple as electronic mail makes it possible to "time-shift" work and allow those with limited bandwidth to participate.

4. People must be enabled to participate and be supported in their participation (for example, timing of online meetings and financial assistance to offset costs of participation).

   In terms of the GNSO PDP, scheduling varying times for teleconferences may enable those in diverse time zones to participate, where teleconferences scheduled at the same time of day may prevent some potential participants from being able to join because the teleconference is held at a time which is not convenient for people in their time zones.

5. Structures and processes must not be alienating (for example, real-time meetings favor those who think quickly and are native speakers of the language of the meeting).[38]

   The recommendation in the GNSO PDP Manual that ICANN translate the executive summaries of reports made available for Public Comment is a good example of a process aimed at reducing barriers of participation for non-English speakers.

Getting people "in the room" is not the only issue to consider regarding participation. In particular, different participants have different areas of expertise to contribute. Renn et al. have identified three different types of knowledge that participants can bring to a process:

[37] p. 156, J Ife & F Tesoriero, 2006, *Community Development: Community-based Alternatives in an Age of Globalisation*, 3rd edn, Pearson Education Australia, Frenchs Forest, NSW
[38] Ibid, pp. 157-158

1. Knowledge based on common sense and personal experience
2. Knowledge based on technical expertise
3. Knowledge derived from social interests and advocacy[39]

Renn et al. suggest that the role participants play in a process needs to take account of what type of knowledge the participant brings to the issue and, based on that type of knowledge, participants should be channeled towards particular roles.

In the context of the GNSO PDP, as discussed later in Section 5.1.4.3 of this report, over recent years, the trend has been for individuals to participate less in PDPs while representatives of organizations, Supporting Organizations, Advisory Committees and other groups have increased and now form the majority of participants. As will be seen in Section 6.2.1, participants who act as representatives of organizations are finding it very difficult to craft, discuss and get agreement and approval for submission of comments within the timeframes provided by the PDP. Recognizing that different participants bring different types of knowledge to the process, and therefore face different constraints, may be useful when looking for ways to encourage wider participation from the community and way to integrate those different types of knowledge into the process.

Finally, Vallejo and Hauselmann have put together an interesting analysis of the relationship between participation and the legitimacy and speed of the process in an effort to find the "sweet spot" where the three elements combine to produce a process that is both efficient and effective.[40]

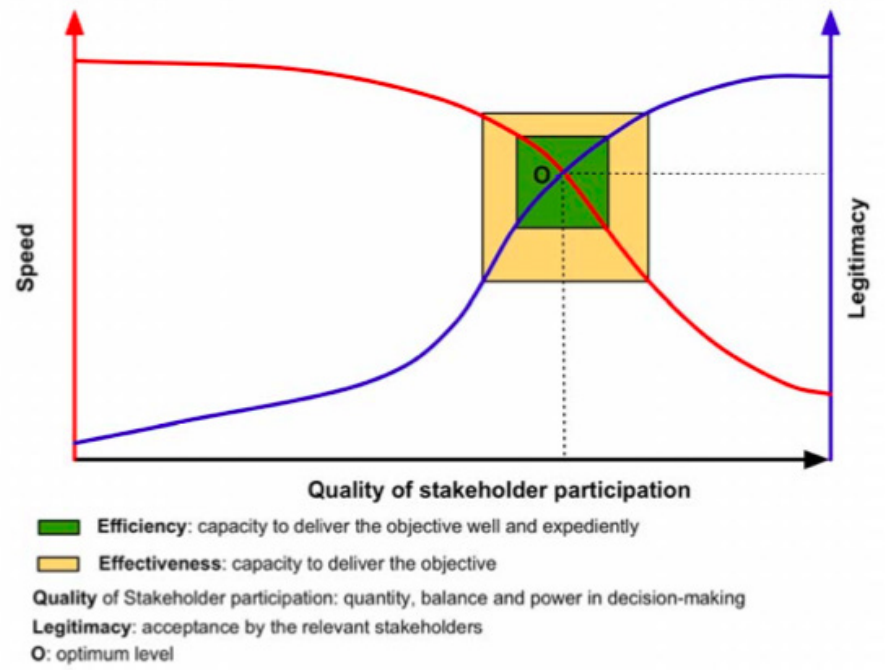


Figure 7: Relationship between Legitimacy and Efficiency[41]

In Figure 7 above, Vallejo and Hauselmann demonstrate a visual representation of their ideas. In summary, the figure is used to illustrate the following:

[39] p. 190, O Renn, T Webler, H Rakel, P Dienel & B Johnson, 1993,"Public participation in decision making: A three-step procedure", *Policy Sciences*, 26: 189-214
[40] N Vallejo & P Hauselmann, 2004, *Governance and Multi-stakeholder Processes*, http://www.iisd.org/pdf/2004/sci_governance.pdf
[41] Ibid, p. 6

- The fewer the number of participants, the less diversity of views there are, leading to a shorter timeframe for the process.

  A short timeframe with fewer participants will reduce the costs incurred by the participants. However, the legitimacy of the process suffers due to the lack of stakeholder diversity, leading to outcomes may meet the needs of the process's few participants, but overall, may be less effective in meeting the needs of the larger range of stakeholders not involved in the process.

- As more stakeholders enter the process, a greater diversity of views are possible, leading to a need for more time to enable all the stakeholders to contribute to the process, to negotiate and build consensus amongst themselves.

  As the timeframe lengthens, the costs for participants will increase. However, the legitimacy of the process can be strengthened by the greater quality and breadth of participation and lead to process outcomes that are more effective for a larger range of stakeholders.

- Resource constraints (time and money) mean that while, ideally, a long process with as many participants as possible would create the most legitimate and effective outcomes for the widest range of stakeholders, there is a need to find a "sweet spot" after which point, adding more people and time to the process provides negligible additional benefits to the legitimacy and effectiveness of the process outcomes.

  This tension between resource constraints on participants and need to produce effective and legitimate outcomes are visible in the examples of the GNSO PDP analyzed in this report.

4.5 Policy Development Models

As noted in Section 3, there are variations amongst both the two official documents that define the GNSO PDP—the ICANN Bylaws and the GNSO Policy Manual—and the two main flowcharts used to illustrate the main steps of the policy. This section presents some alternative ways others have used to model policy processes with the aim of assisting any future work to find a single common way to present the GNSO PDP.

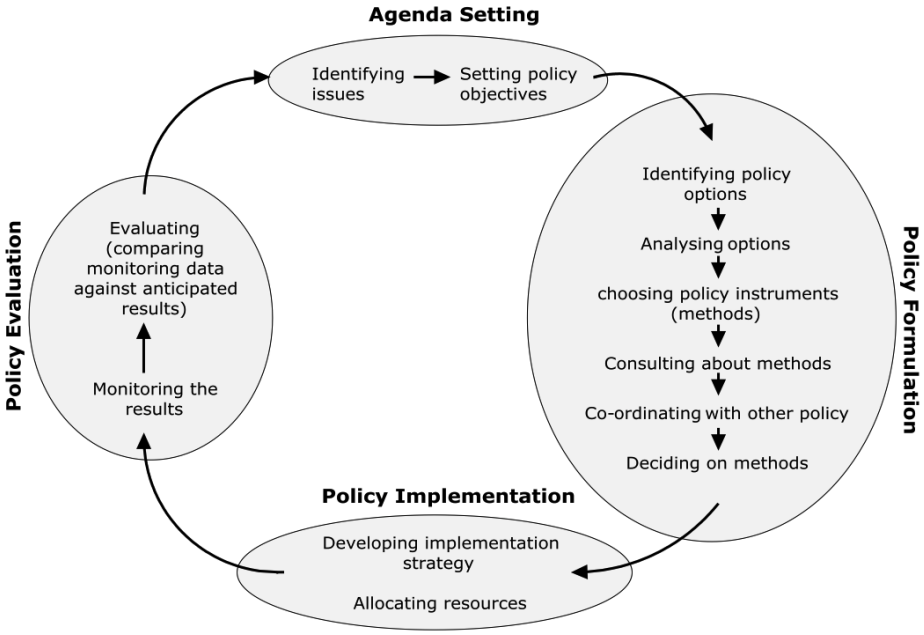


Figure 8: A Simple Four-Phase Cycle of Policy Development[42]

In the Figure 8 above, note there is only one reference to participation— consulting—which occurs in the "Policy Formation" phase. The simple grouping of more detailed steps of the policy process into four steps makes it easy to understand the lifecycle of the process at a glance.

Comparing this to the GNSO PDP stages, where the GNSO Council and ICANN Board decisions are, depending on the document, listed as distinct elements in the PDP, we see that decision making in Figure 8 is grouped under "Policy Formulation". For those less familiar with ICANN's structure and processes, the diagram above, which prioritizes process clarity over organizational responsibility for particular elements, might be a more appropriate framework for understanding the PDP.

[42] p. 13, A Fenton, 2010, *Creating Futures Regional Policy Development Processes – Opportunities for use of Creating Futures tools*, http://www.creatingfutures.org.nz/assets/CF-Uploads/Publications/Creating-Futures/Regional-Policy-Development-Processes-Opportunities-for-use-of-Creating-Futures-tools.pdf

Figure 9 below shows a conceptual model of policy development that places stakeholder participation in the center of the PDP lifecycle.

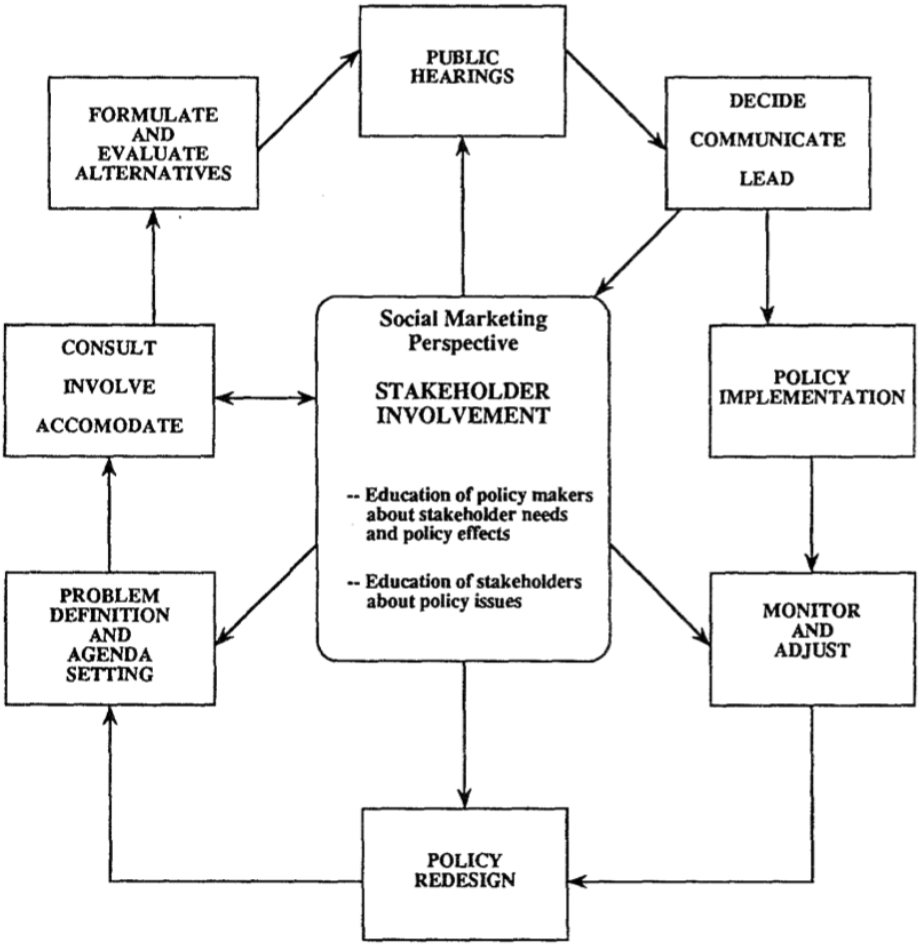


Figure 9: A Stakeholder-based Policy Process[43]

While the text in the boxes around the edge is not a particularly clear way to describe the elements of a policy cycle, the placement of stakeholders in the center of the model helps to both reinforce the importance of stakeholder participation to those managing the PDP as well as convey to potential participants in the process that their input is central to the process.

In terms of the GNSO PDP, as indicated later in this report, there are concerns by some about the transparency implications of the role of the GNSO Council and ICANN Board in modifying PDP recommendations. Figure 8 above offers a potential way for the ICANN community to re-conceptualize this role as it offers an explicit link between the "Decide, Communicate, Lead" stage of the policy cycle and "Stakeholder Involvement".

[43] p. 39, J A Altman, 1994, "Toward a stakeholder-based policy process: An application of the social marketing perspective to environmental policy development", *Policy Sciences*, 27: 37-51

Another view of participation in the policy cycle is shown in Figure 10 below. Although it is clearly designed with government-based policy making in mind, the "engagement" methods grouped by policy phase show similarities with many of the participation methods that have been used in GNSO policy processes.

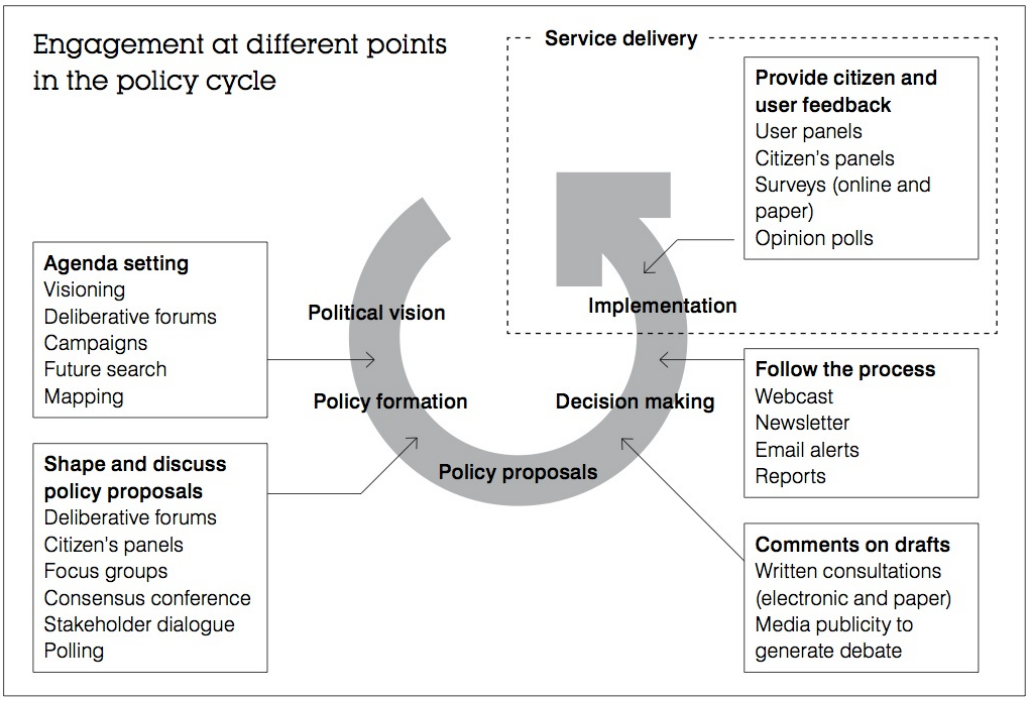


Figure 10: A UK Government Perspective on the Policy Cycle[44]

Note that Figure 10 includes a number of engagement methods that would fit closer to the "minimum participation" end of the spectrum illustrated in Figure 5, the Shand-Arnberg Participation Continuum, such as online polls and surveys.

What is interesting about this particular model in the ICANN GNSO context is the way it includes, as part of the policy cycle itself, the provision of one-way documentation, under "Follow the process", as a way to engage stakeholders.

In comparison, in Annex A of the ICANN Bylaws, the requirement to publish documents related to the GNSO PDP is described outside the sequential list of PDP steps. Instead, Section 11, Maintenance of Records, appears at the end of the Annex, after Implementation has been described (Section 10) and just before Additional Definitions (Section 12) and Applicability (Section 13) are documented, suggesting that public documentation of PDPs is considered to be more of an ICANN staff function than a component of participation in the PDP itself.

4.6 The ICANN PDP Compared to Other Relevant Multi-stakeholder Processes

Compared with other public policy processes, ICANN's PDP is remarkably open and transparent. Any person can participate, without paying a joining fee. Considerable resources are devoted to enabling remote participation whether through teleconferences, virtual meeting rooms, audio and video web

[44] p. 4, D Warburton, n.d., *Making a Difference: A guide to evaluating public participation in central government*, http://www.involve.org.uk/wp-content/uploads/2011/03/Making-a-Difference-.pdf

casting, and transcriptions of all meetings. In addition, the historical record of the PDPs we studied for this report is remarkably complete.

We compared the ICANN PDP to policy development processes in Regional Internet Registries and the standardization and policy development processes in the IETF and ITU. In general, the GNSO PDP would rank very high in any table where transparency and open participation was measured.

	ICANN	RIR	IETF	ITU
Participation open to all (without membership fee)	✓	× (mtg fees)	× (mtg fees)	×
Participation open to all countries or territories	✓	× (regional)	✓	✓
Participation open to any level of expertise (formally or informally)	✓	×	×	×
Participation for remote participants	✓	✓	✓	×
Issues can be suggested by anyone	✓	✓	✓	×
Working groups – open membership	✓	✓	✓	×
Consultation documents published	✓	✓	✓	×
Public comment	✓	✓	✓	×
Public comments published	✓	✓	✓	×
Public meetings transcribed	✓	×	×	×
All decision-making interactions recorded, transcribed	✓	×	×	×

Table 1: Comparison of GNSO PDP with Other Multi-stakeholder Processes

5 Quantitative and Qualitative Analysis of GNSO PDPs

This section provides an analysis of recent GNSO PDPs. The ICC Team undertook two forms of analysis: quantitative (based on the historical record published by ICANN) and qualitative. The qualitative analysis consisted of a structured interview of 30 stakeholders with firsthand experience of the GNSO PDP. The methodology is explained in detail in Annex A of this report. The responses to the structured questions in the interview lend themselves to ready comparisons and are woven into the reporting of the quantitative analysis in Section 5.1. A full record of the output of the interviews is included as Appendix D. The qualitative interview also asked a number of open questions. These are reported separately in Section 5.2. As described in the methodology, the ATRT2 hosted an email discussion amongst current and former Working Group chairs, which was made available to the ICC Team. This is reported on in Section 5.3.

5.1 Quantitative Analysis

5.1.1 Source Material

The PDPs are well documented. We focused on relatively recent PDPs where the process used was similar and the opportunities for participation could be compared across PDPs. A quantitative analysis was conducted on the following nine PDPs:

1. Fast Flux
2. Inter-Registrar Transfer – Part A
3. Post Expiration Domain Name Recovery
4. Inter-Registrar Transfer – Part B
5. Locking of a Domain Name Subject to UDRP Proceedings
6. Inter-Registrar Transfer – Part C
7. 'Thick' Whois
8. Protection of IGO and INGO Identifiers in All gTLDs
9. Inter-Registrar Transfer – Part D

Older PDPs were considered, but the history of the PDP and its mechanisms is such that it is difficult to compare older processes with more recent PDPs. Besides, the documentation of the PDPs have evolved over the years, with more recent ones having much more thorough and accessible documentation. All the PDPs considered in this study have portal websites where mailing lists, attendance lists, wikis, comment archives and analysis, descriptive and explanatory information are provided. Table 2 provides some basic metadata about where much of the source material for the quantitative analysis was found.

PDP	ICANN Website	PDP Initiation Date
IGO-INGO	http://gnso.icann.org/en/group-activities/active/igo-ingo	2012-10-17
Thick WHOIS	http://gnso.icann.org/en/group-activities/active/thick-whois	2012-03-14
IRTP Part D	http://gnso.icann.org/en/group-activities/active/irtp-d	2012-01-17
UDRP Lock	http://gnso.icann.org/en/group-activities/active/locking-domain-name	2011-12-15
IRTP Part C	http://gnso.icann.org/en/group-activities/active/irtp-c	2011-09-22
IRTP Part B	http://gnso.icann.org/en/group-activities/active/irtp-b	2009-06-24
PEDNR	http://gnso.icann.org/en/group-activities/inactive/2013/pednr	2009-05-07
IRTP Part A	http://gnso.icann.org/en/group-activities/inactive/2009/irtp-a	2008-06-25
Fast Flux	https://community.icann.org/display/gnsofastfluxpdp/Fast+Flux+PDP+Working+Group	2008-05-08

Table 2: Basic data about sources of material for quantitative analysis of the PDPs

Some of the PDPs examined have not yet been completed. The status of each PDP at the time of the research for this report as shown in Table 3 below.

PDP	PDP Initiation Date	Completed?	Implemented?	Initial Report Date	ICANN Board Resolution Date	Total length of PDP
Fast Flux	2008-05-08	YES	N/A	2009-01-26	N/A	546
IRTP Part A	2008-06-25	YES	N/A	2009-01-08	N/A	343
PEDNR	2009-05-07	YES	YES	2010-05-31	2011-10-28	1745
IRTP Part B	2009-06-24	YES	YES	2010-05-29	2011-08-25	1142
UDRP Lock	2011-12-15	NO	NO	2013-03-15	N/A	N/A
IRTP Part C	2011-09-22	YES	NO	2012-06-01	2012-12-20	547
Thick WHOIS	2012-03-14	NO	NO	N/A	N/A	N/A
IGO-INGO	2012-10-17	NO	NO	2012-06-14	N/A	N/A
IRTP Part D	2012-01-17	NO	NO	N/A	N/A	N/A

Table 3: Status of the Nine PDPs Studied for This Report[45]

Information about individuals was gathered from public websites, including the ICANN wiki, participant Statements of Interests, material submitted to ICANN from those individuals, and a variety of other public sources available via the Internet. Material prepared and submitted by individuals was considered to have primacy over source material discovered about individuals from secondary sources.

5.1.2 Issue Scoping

Section 3 of the GNSO PDP Manual encourages the GNSO Council to consider scheduling workshops on substantive issues prior to the initiation of a PDP.

A majority (79 percent) of those interviewed agreed scheduling workshops on substantive issues prior to the initiation of a PDP is a positive step in making PDPs more effective. However, a smaller number of interviewees (44 percent) agreed that the current practice of only requiring the name of the requestor and the definition of the issue in an Issues Report request is a positive step in making PDPs more effective. In contrast, 40 percent of respondents said they do not think such a requirement makes PDPs more effective.

5.1.3 Working Groups

Working Groups are a major driver for PDPs and their effectiveness is key to the success of PDPs. For this reason, the manner in which Working Groups are formed, and their membership composition are key issues in the evaluation of PDPs.

The study found that a large majority (79 percent) of interviewees agreed with the statement that the formation and make up of Working Groups is done fairly and transparently. This certainly will help increase the credibility of Working Groups, their work and findings.

[45] Status of PDPs data was current at 1 October 2013.

5.1.4 Participation

5.1.4.1 Who Participates in the Working Groups?

Individuals participate in Working Groups. Sometimes the individuals are representatives of larger communities of people with similar interests. These communities were often constituencies or stakeholder groups, and sometimes organizations outside of ICANN with an interest in the policy issue being considered in the PDP. Whatever the motivation or nature of Working Group participants, they have to be informed of PDPs, PDP phases, and opportunities to participate if they are to become involved. The questionnaire found that ICANN meetings and mailing lists were the most popular sources of information about PDPs (Figure 11), with 90 percent and 80 percent, respectively, of respondents saying they were their sources of information about PDPs. In contrast, other ICANN websites (for example, the GNSO, and other SO and AC websites) and external websites were the least popular sources of information about PDPs.

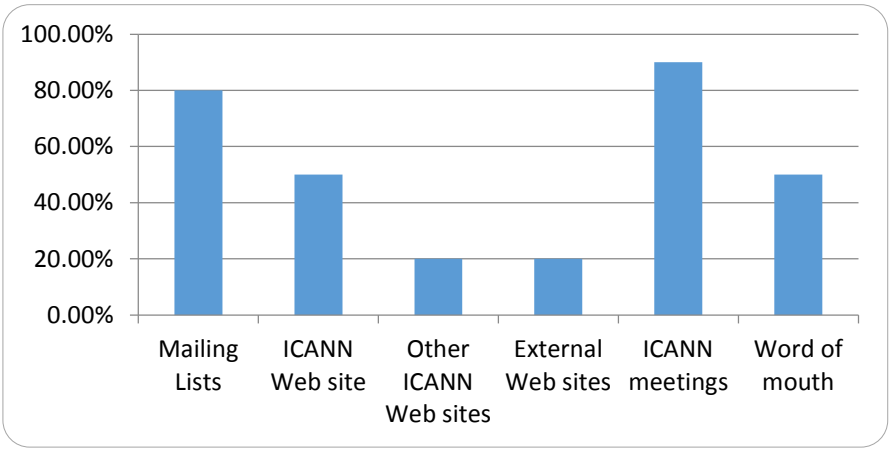


Figure 11: Sources of Information about PDPs

Looking at the variety of public policy issues under consideration, it would be natural to expect that there are widely varying patterns of participation.

Figure 12 below shows the variety in the sizes of the membership of the Working Groups studied in this report.[46] The PDPs are listed in rough chronological order of their work. The trend line would seem to indicate that the number of participants in Working Groups was growing slightly over time. However, this conclusion is skewed by the recent IGO-INGO Working Group. The IGO-INGO Working Group is by far the largest Working Group ever assembled under this version of the PDP and is quantitatively different than any Working Group before it.[47] In fact, if the IGO-INGO Working Group is removed from the trend analysis, the trend in Working Group size goes down slightly.

[46] Membership in a Working Group consists of being acknowledged in the final report *and* participation in at least one Working Group call or have one entry in the mail archive.
[47] The IGO-INGO Working Group is also quantitatively different from the IRTP Part D Working Group, which is the only Working Group to have been created since IGO-INGO.

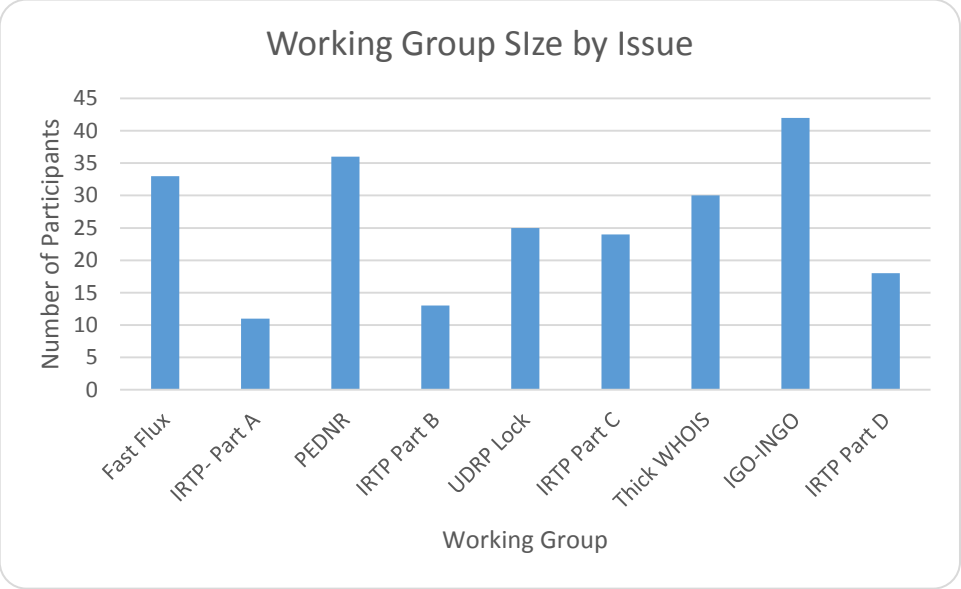


Figure 12: Working Group Size by Issue

When the Working Groups are examined for gender balance, two issues stand out immediately: first, participation in Working Groups is dominated by men; and second, participation by women is on the rise (Figure 13). The most recent Working Groups have a roughly 75/25 percent division of participation by men and women. However, in the last two years the number of women participating in Working Groups has grown and, even without the slightly exceptional case of the IGO-INGO Working Group, appears to be continuing to grow.

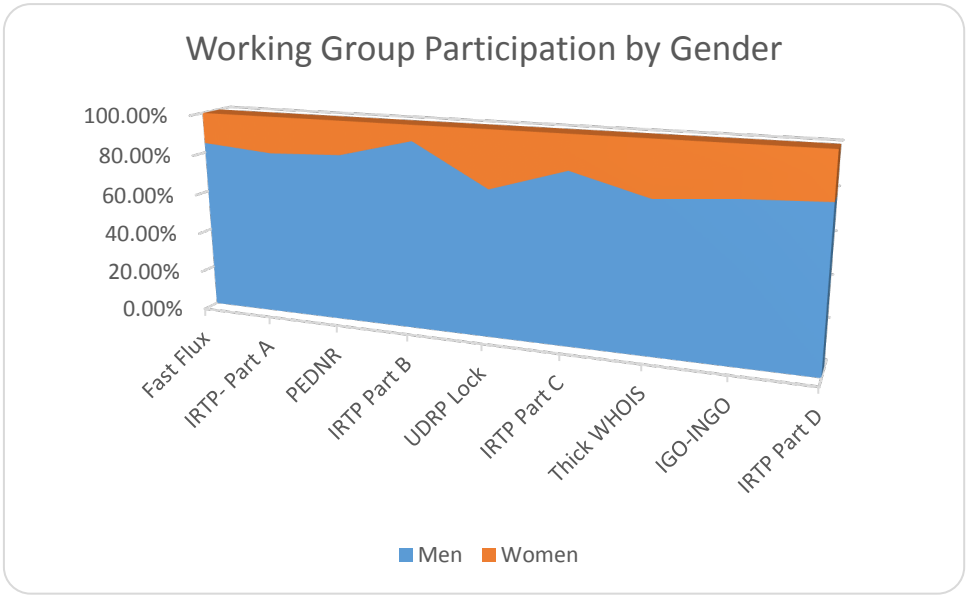


Figure 13: Working Group Participation by Gender

A quick analysis of recent PDPs shows that the dominant participation model is one where an interested individual becomes a member of a Working Group and then never joins another Working Group. There is evidence that some of this is based on people not wanting to participate in overlapping Working Groups, but the data is clear that the talent pool is reduced because individuals tend, in dramatic numbers, not to participate in their second Working Group. As shown in Figure 14, 100 Working Group participants have belonged to only one Working Group while less than 20 people have belonged to two Working Groups. Even fewer people belonged to three or more Working Groups.

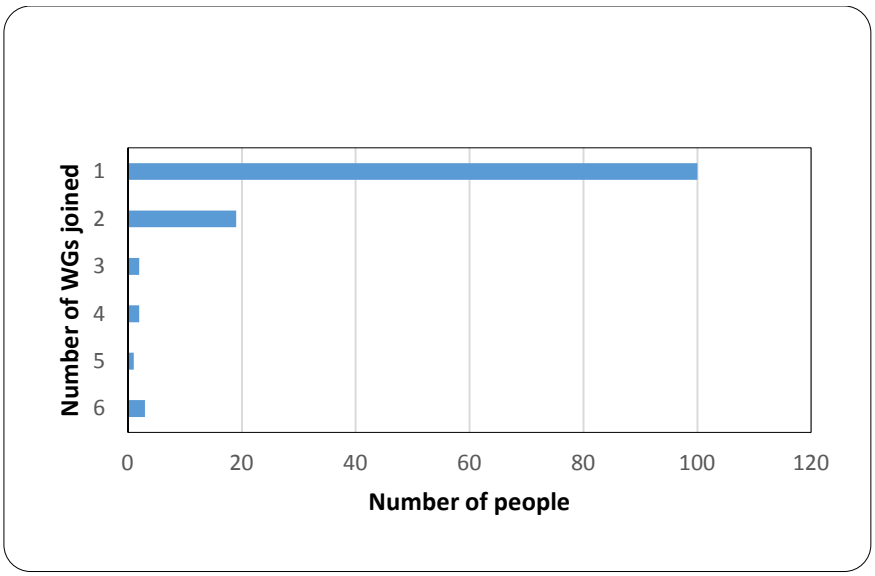


Figure 14: Number of Working Groups Joined by Participants

The results of the structured interviews show that the most common reason for not participating in Working Groups was:

- The interviewee is too busy (20 percent of responses)

It is also worth noting that some respondents said that the reason they did not participate in Working Groups was that they did not know enough about the issue. Others said they did not participate because someone they work with participated on their behalf. In all likelihood, educating and informing people about the issues before the PDP starts could increase the number of participants in Working Groups.

Although some people never participate in Working Groups, the interview results found that a significant majority (68 percent) of respondents said they closely monitored the work of Working Groups without being formal members of these groups. Interviewees said that they monitored the Working Groups in various ways, including:

- Reading transcripts of Working Group meetings
- Remote participation in Working Group meetings
- Commenting on draft reports
- Reading and commenting on documents published by Working Groups
- Talking to friends and colleagues about the Working Groups

The reasons given for monitoring Working Groups instead of participating directly included time constraints and lack of expertise.

5.1.4.2 Where are the Working Group Participants From?

ICANN is a global organization; therefore, it is important that it be able to draw from technical and policy experts from around the world. However, the membership of Working Groups—the foundation of the work in a PDP—is largely composed of representatives from only two of ICANN's five

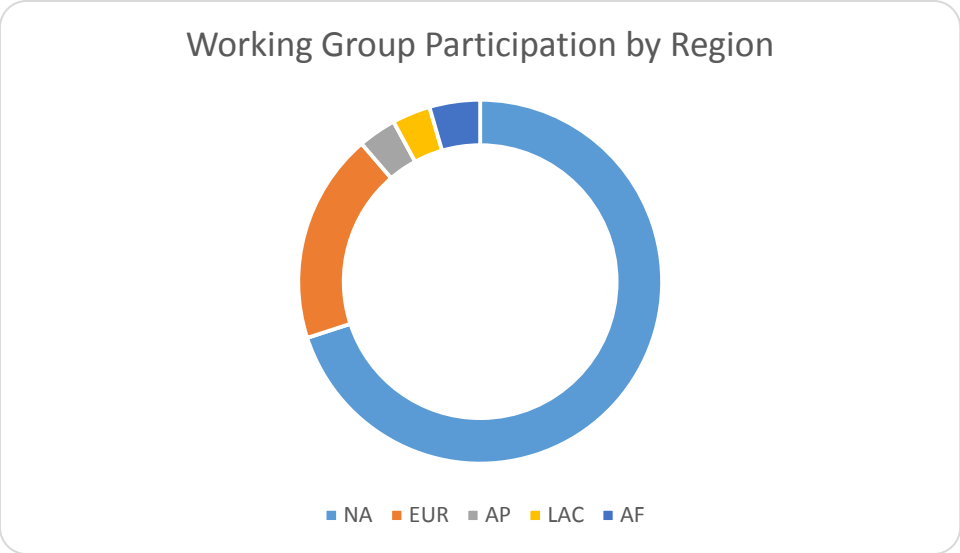


Figure 15: Working Group Participation by Region

geographic regions (Figure 15).[48]

The data for Figure 15 was extracted from the geographic location specified by Working Group participants in their answers to the ICANN Statement of Interest. North America accounts for 70 percent of participation in Working Groups. Europe provides 18.7 percent of Working Group members in recent PDPs. Together, Africa, Asia/Australia/Pacific and Latin America/Caribbean account for 13.3 percent of Working Group members. Such low participation Working Group numbers from three of ICANN's regions is a potential problem for global legitimacy.

Given the aggregate geographic imbalance, it was important to look at the data in more detail to examine if there is any trend that suggests an improvement in geographic diversity over time. The raw data appears to be promising; however, a closer examination shows that beside a real need for overall improvement in Working Group participation, the recent improvements might be the result of specific effects of certain topics in the PDPs (Figure 16). The recent IGO-INGO and Thick-WHOIS PDPs, in particular, show an unusual number of additional participants in the Working Groups. In the Thick-WHOIS Working Group, the additional participants were active and attended many teleconferences. This development was not repeated in the IGO-INGO Working Group.

[48] The five geographic regions recognized by ICANN are documented in Article IV, Section 5 ICANN Bylaws at http://www.icann.org/en/about/governance/bylaws#VI-5

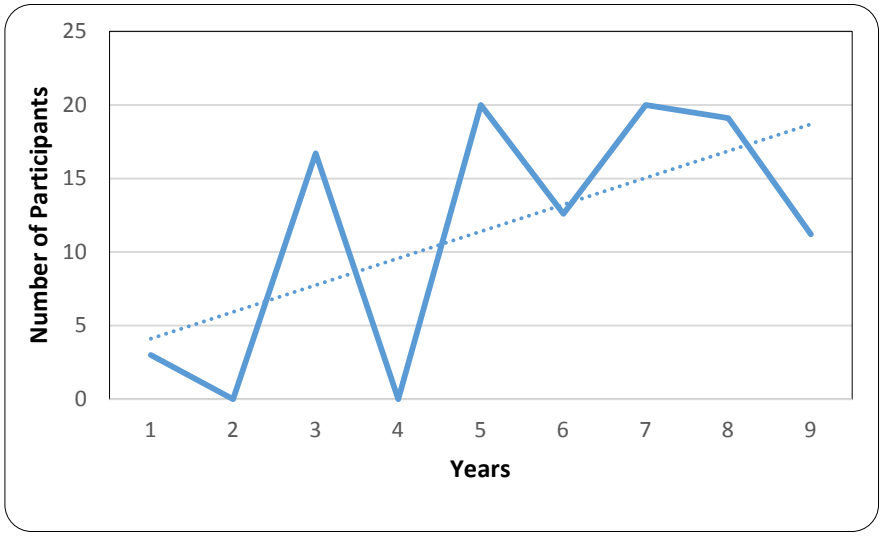


Figure 16: Number of Participants from AP/AF/LAC Regions in Working Groups over Time

While the signs are positive that Working Group participation is becoming more regionally diverse, the small number of new participants in two Working Groups has potentially painted a more optimistic projection of future regional diversity than may be the case in reality. Nevertheless, the current participation in the Africa, Asia/Australia/Pacific and Latin America/Caribbean regions is a potential problem for global legitimacy. As this report discusses below, this is not an issue isolated to the Working Groups.

5.1.4.3 Demographics of Working Group Comment and Participation

Direct participation in a Working Group is not the only means of participation. The PDP provides extensive opportunities for comment by people outside the Working Groups.[49] Initial and interim work products can be commented on by people or organizations outside the Working Group itself.

The comment process itself would seem to be a natural and easy way to seek input on the ongoing work of a Working Group. On the Shand-Arnberg Participation Continuum (see Figure 5 in Section 4.4), public comments would be a participation option that requires minimal effort by the participant. Nevertheless, public comment performs an essential function in reaffirming the legitimacy of the PDP and is one of the most challenging processes to get right.

The archives of comments on staff and Working Group products are open and available to all, enabling this study to examine in detail who is responding during PDP comment processes. Specifically, this report analyzed the data of two types comment periods that have been available throughout almost the entire recent history of PDPs:

1. Public comments on the Issue Report
2. Public comments on the Working Group's Initial Report

The public comment period is just that: public. Any individual and any organization can comment on a work product from the PDP. Indeed, interview results show that the Public Comment Period is a popular window for people to participate in the PDPs. 72 percent of interviewees reported they have

[49] The PDP, as defined in the GNSO PDP Manual, also provides other opportunities to participate, such as formal statements by GNSO Stakeholder Groups and Constituencies, other input by ACs and SOs, and responses to other calls for input into processes such as online surveys or workshops. Due to time constraints, this report has limited itself to analyzing the formally defined public comment input method.

contributed comments on draft reports and other documents. In addition, many of those interviewed said they have commented on more than one PDP, either as individuals or on behalf of organizations or a constituency.

An important trend is visible when looking at who is participating in public comment periods. Five years ago, it was very common to have individuals comment on PDP products. Today, that is rare. Instead, groups and organizations dominate the public comment activity in the PDP. Groups, such as GNSO Constituencies, Stakeholder Groups and some Advisory Committees, provide regular and extensive commentary on the products of a PDP. In addition, affected stakeholders, constituencies, and businesses are much more likely to comment than they were five years ago.

Figure 17 below shows who is commenting on staff-generated Issue Reports in recent years. The PDPs where the Issue Report was issued under the previous GNSO PDP[50] or where an Issue Report was not provided have been omitted.

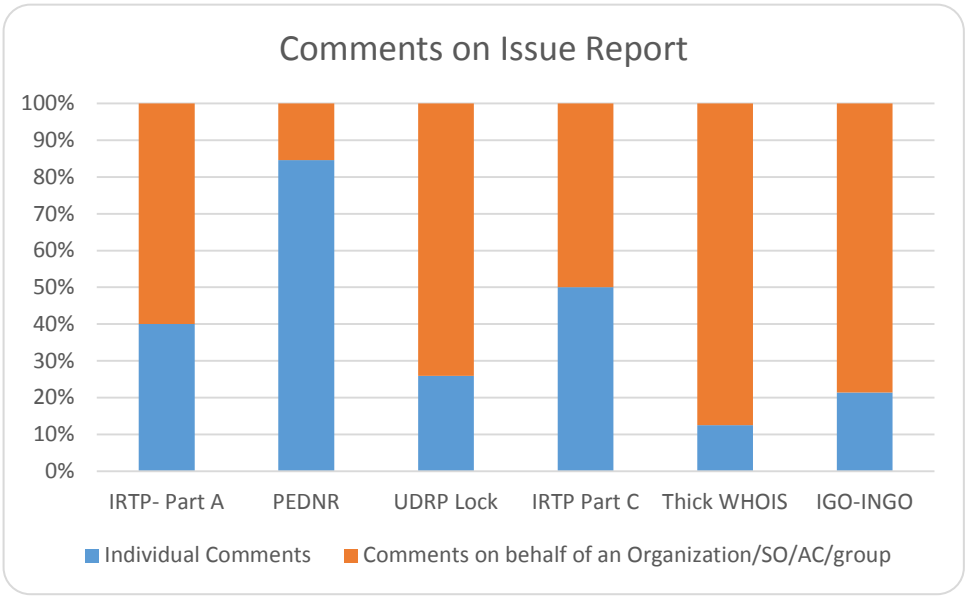


Figure 17: Comments on Issue Reports

[50] That is, before December 2011.

Notice that in the most recent public comment periods for Issue Reports, the number of individuals making comments on issue reports is dropping significantly, while the number of GNSO Constituencies, Stakeholder Groups, Advisory Committees and outside groups of interested stakeholders is growing quickly (Figure 18).

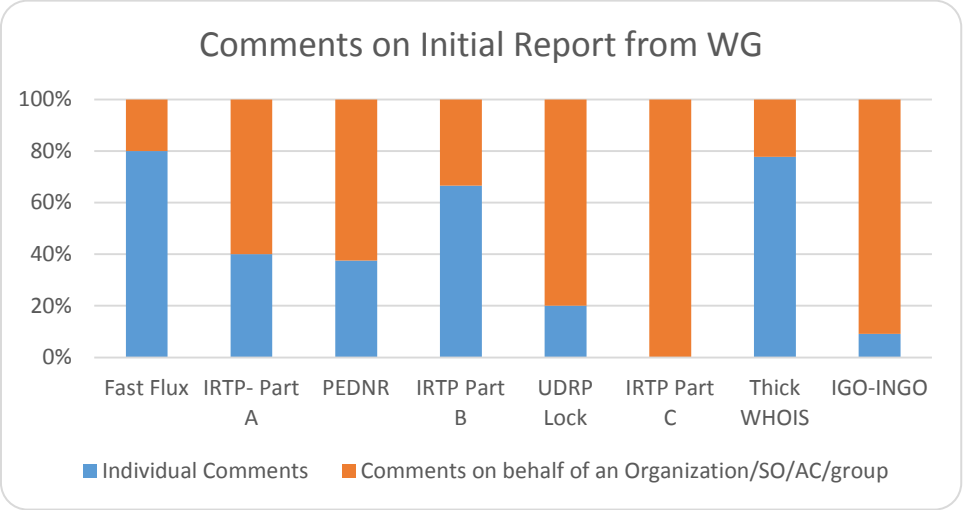


Figure 18: Comments on Initial Report from Working Group

It is important to evaluate whether this trend is the result of a small dataset and a few participants or an indication of a larger trend. Analysis of the public comment periods on Initial Reports by Working Groups indicates that precisely the same trend is taking place there as well. Further analysis shows that this is a trend affecting all public comment processes in the PDP. This may be because Constituencies and Stakeholder Groups are better organized to consider work products of the PDP and are better able to react to those work products in a group setting. There is also clear evidence that, for those Constituencies and Stakeholder Groups with direct interest in GNSO issues, the number of organizational units within the GNSO commenting on items in the PDP is also growing.

A less welcome finding is that, with the notable exception of the ALAC, there is almost no participation by Advisory Committees or other Supporting Organizations in the comment processes of the PDP.

As noted above in Section 5.1.4.2, there are trends toward regional imbalance in Working Group participation. These trends continue and, in fact, are amplified, in the comments processes. Starting with the comments on the Issue Report (Figure 19), it is possible to analyze where the comments are coming from geographically. The primary source of geographic location was the self-identified location provided by a person or an organization in their public comment. Web-based research provided a secondary source for identifying regional location. In the cases where primary and secondary sources were unable to uncover the regional location of a commenter, the comments made by those commenters were excluded from the analysis of regional statistics.

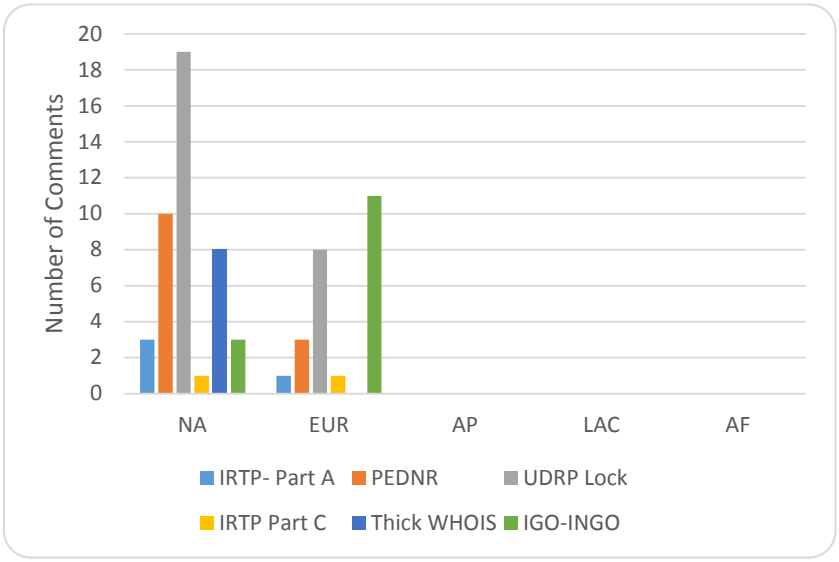


Figure 19: Regional distribution of PDP Issue Report Comments

The data shows that there are no individuals making public comments from the regions of Africa, Asia/Australia/Pacific and Latin America/Caribbean (Figure 20). In addition, stakeholder groups in those regions—such as trade associations, industry or advocacy groups, or regional interest groups—do not band together to make comments on Issue Reports. When people or organizations do show an interest in those regions, they do so through contributions to group comments submitted by other constituencies, stakeholder groups or external organizations (especially, for instance, the ALAC). An analysis of the public comments on the Initial Report shows a continuation of this same trend.

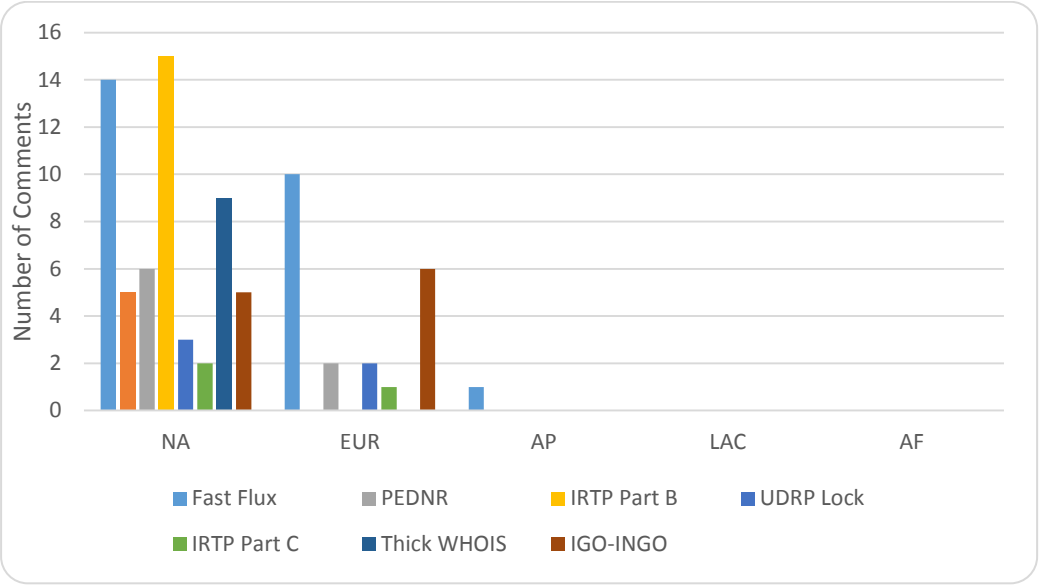


Figure 20: Regional Distribution of Public Comments on Initial Report

5.1.4.4 Accountability, Transparency and Effectiveness of Public Comments

The interview results show that the public comment process is seen as highly accountable and transparent. A large majority (60 percent) of those interviewed agreed with the statement that the public comments part of the PDP is accountable and transparent, compared to only 20 percent of respondents who disagreed with that statement (Figure 21). This appears to suggest a relatively high degree of trust in the comment process by the community.

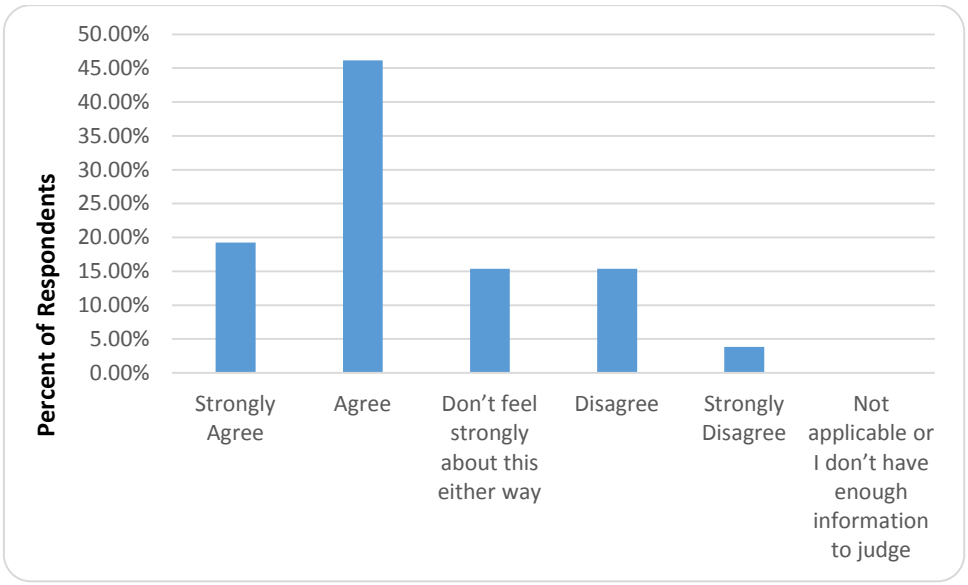


Figure 21: Accountability and Transparency of PDPs Public Comment Processes

It is worth noting that while many interviewees believed the public comment process is both transparent and accountability, they had a less positive assessment of the effectiveness of public comments process and its contribution of the final result of the PDP. Specifically, 47 percent of those interviewed disagreed or strongly disagreed with the statement that the public comment process was effective and meaningful to the final result of the PDP, while 33 percent agreed (Figure 22). While this may not indicate, in the short term, any significant threats to the motivation of volunteers to participate in PDPs, it could in the medium- to long-term contribute to volunteer fatigue, and, in turn, a degradation in the quality and speed of policy development.

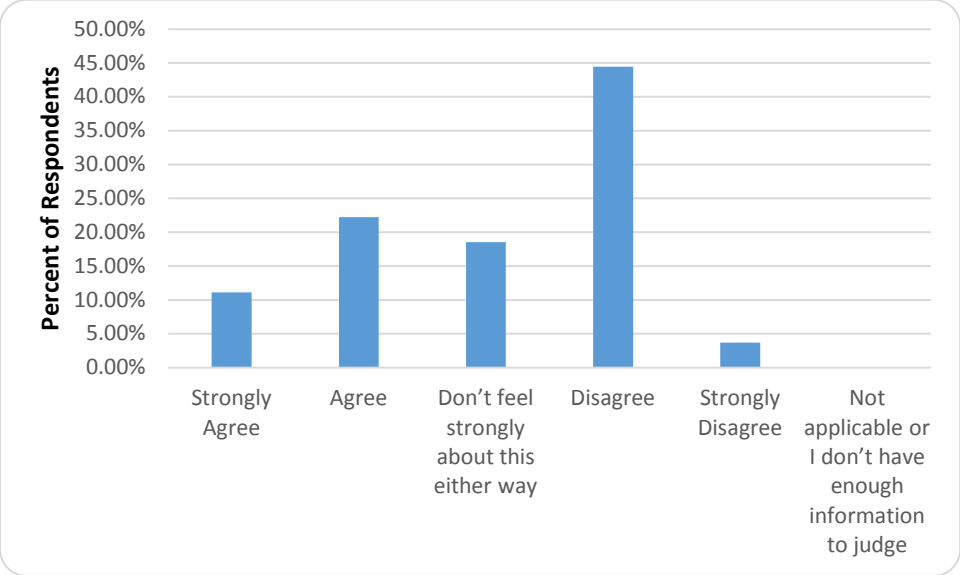


Figure 22: Effectiveness of the Public Comments Period and its Meaningfulness to the PDP Final Result

Interviewees were almost evenly divided on the question of whether the outcomes and decisions taken as a result of the PDPs reflect the public interest and ICANN's accountability to all stakeholders. 47 percent of respondents agreed with the statement that PDP outcomes and decisions reflect the public interest and ICANN's accountability while 46 percent disagreed (Figure 23). These numbers suggest that ICANN should redouble its efforts to ensure that the PDPs do and are seen to reflect the public interest, and enhance its accountability to all stakeholders.

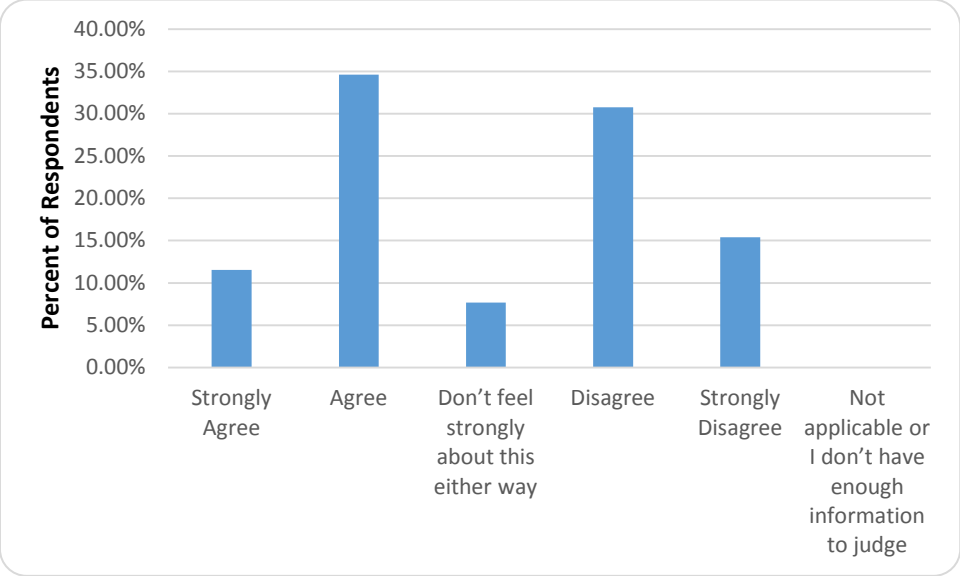


Figure 23: Reflection of the Public Interest and ICANN's Accountability in PDPs

5.1.5 PDP Timelines

5.1.5.1 Status

A common anecdotal complaint about GNSO policy development is that "it takes too long." From a purely quantative view of the recent PDPs, it is very difficult to determine what the "right time" would be for any issue where a PDP successfully passes each stage of the PDP, through to implementation. It is possible, however, to examine the recent PDPs to see if they provide can provide insight into the perception that the PDPs take too long to complete.

One interesting metric is the amount of elapsed time between the approval of a Working Group charter and the delivery of the Initial Report of the Working Group. To measure this, the formal meeting minutes of the GNSO Council and the public record available for each of the PDPs were consulted (see Figure 24).

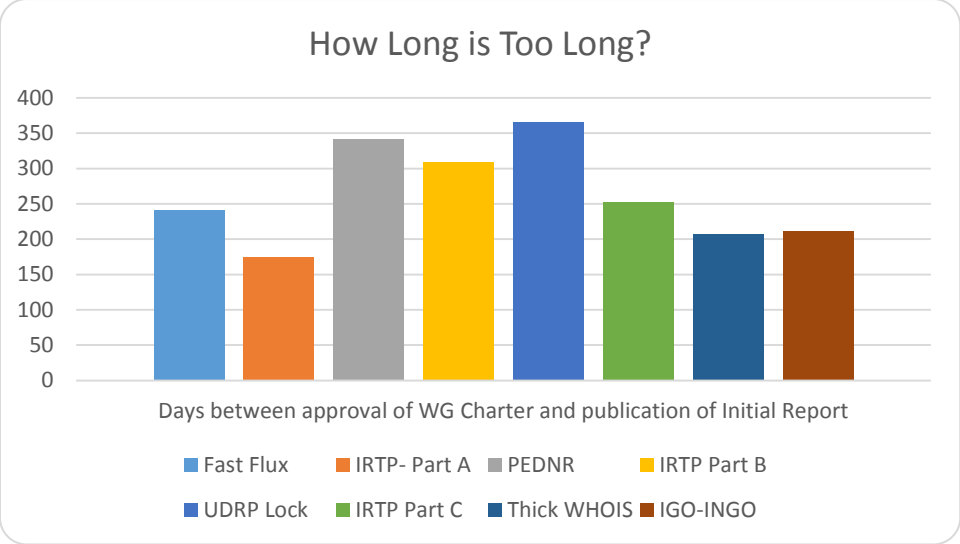


Figure 24: Length of PDP Timelines

The time that elapses between the publication of the Initial Report and the publication of a Final Report is another major contributor to the length of time it takes to complete a PDP (Figure 25).

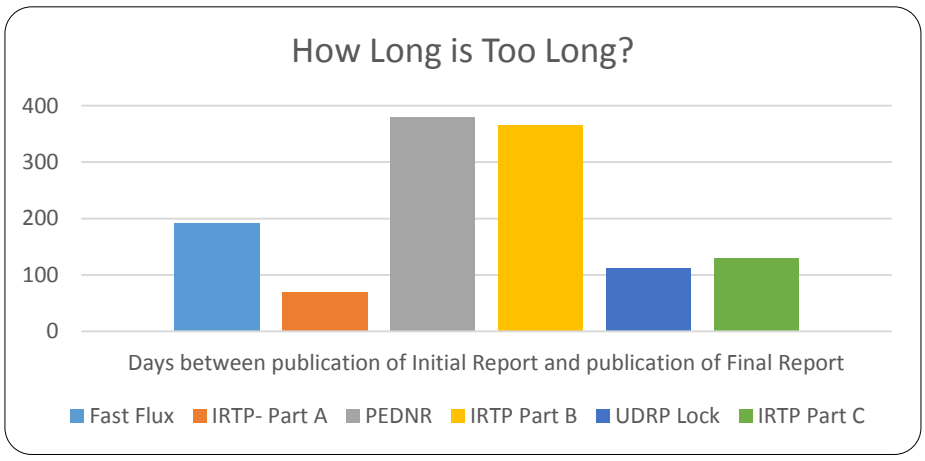


Figure 25: Number of Days between Publication of Initial and Final Reports

The data used to compile Figure 24 and Figure 25 can be combined get a feel for the level of commitment—in time, focus and energy—that it takes to contribute extensively to the activities of a PDP Working Group (see Figure 26).

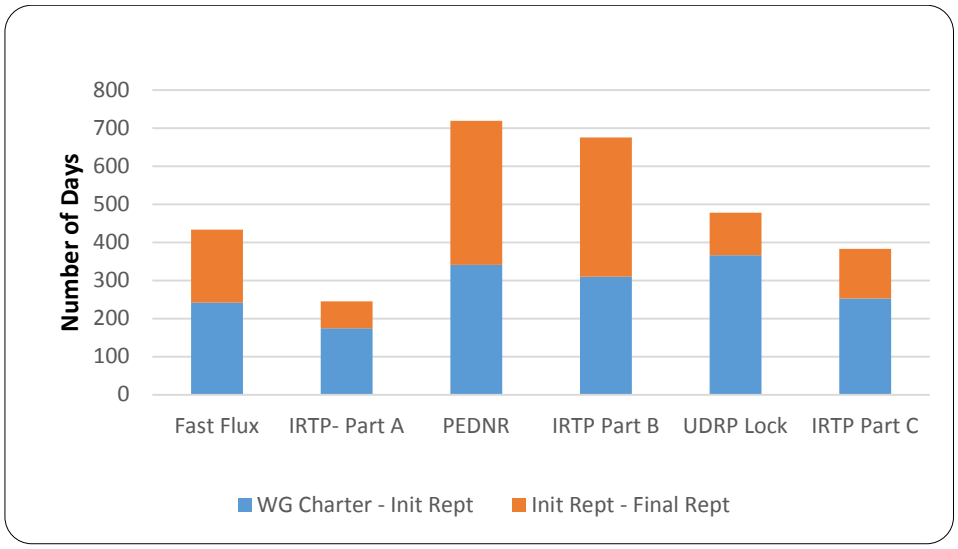


Figure 26: Total Number of Days between Major PDP Milestones

In PEDNR, for example, the elapsed time between the Working Group charter and the publication of the Working Group Final Report was 720 calendar days (ten days short of two years).

Interview results also show that Working Group participants have mixed opinions about the timelines of the PDPs. 40 percent agreed with the statement that the overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes, while 36 percent disagreed.

5.1.5.2 PDP Timelines Challenges

The PDPs face important challenges in terms of the timelines, as indicated by those interviewed. Among the challenges identified are the need to balance thoroughness and speed, as well as ensuring the policies produced have buy-in from various stakeholders. Therefore, it was suggested that the PDPs should focus on breadth of engagement, even if this has the effective of reducing the rate at which PDPs are completed. Given the low level of participation of regions other than Europe and North America in the PDPs, it is important that the engagement be broadened if the policies produced have the buy-in to ensure their effective implementation.

The results of the interviews also suggested that the implications of policy recommendations should be thoroughly analyzed and that significant policy issues should be deliberated on over a number of years. This is particularly important, it was suggested during interviews, given many PDPs never meet a 12-month deadline for their completion. For this reason, it was suggested that policy development should be in phases and be conducted over periods of at least 15 to 18 months.

Another important challenge in the PDPs are workshops. Some interviewees said that although the workshops are useful, there are problems – in particular, the demands they impose on volunteer communities. In addition, there often are delays between the PDP and its implementation. For example, the PEDNR PDP ended two years ago, but its implementation only started in August 2012.

Other important challenges are the public comment process and the way the public comments are summarized. Some of the people interviewed mentioned that the public comment process leaves a lot to be desired. For example, while a 21-day comment period might be sufficient for individuals, it is

not sufficient for organizations. Some of the interviewees also said that summaries of comments are sometimes "misleading, or omit some inputs altogether". It was pointed out that this creates the impression that ICANN does not want to receive the comments.

The people interviewed suggested various ways and means to overcome the challenges posed by the PDP timelines:

1. Fact-based white papers should be prepared to educate stakeholders and those engaged in the PDPs.
2. Reasonable and flexible time frames should be set. This is especially important given the multi-stakeholder model ICANN is based on.
3. ICANN should fund face-to-face meetings to facilitate the work of Working Groups.
4. Providing researchers
5. Provide staff as a secretariat to the PDP. It was pointed out, however, that this might be present its own set of challenges.

5.1.6 Other Statistical Data Related to PDPs

The people interviewed for this report use various mechanisms to participate in Working Groups and associated PDPs. Among these are teleconferences (TC), mailing lists (ML), face-to-face (F2F) meetings and remote participation (RP). Interview results show that teleconferences, mailing lists, and face-to-face meetings were reported to be the most useful means of participating in PDPs, with 60 percent of those interviewed saying they found them useful (Figure 27). Remote participation is by far the least popular, with only 24 percent saying they used them to participate in PDPs.

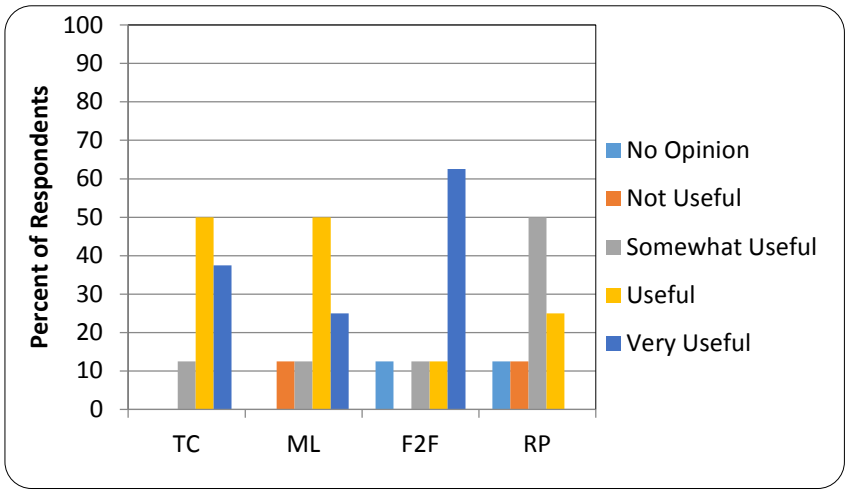


Figure 27: Use of Various Mechanisms to Participate in PDP Working Groups

5.2 Qualitative Research: Report of Open Comments Made by Participants

The qualitative research undertaken by ICC consisted of a series of open questions. Stakeholders were asked to identify the most important issues to address in terms of participation and process and to make practical suggestions for how those issues could be addressed. While the questions asked for responses in three separate categories (general, participation, process), the answers tended to blend these issues and similar issues were highlighted across these three categories.

Techniques used during group brainstorming were used to analyze these open comments. The participants' concerns were recorded as close to verbatim as possible. The content was then analyzed and clustered where appropriate. The numbers of comments in each cluster were then tallied.

The five most popular clusters are highlighted below, together with two quotes to give a flavor of the kind of comments made. The quotations are not comprehensive.

Cluster 1: Time commitment, bandwidth of participants, too great a workload for participants

- "The breadth and depth of the commitment creates volunteer fatigue"
- "Returns are extremely low and speculative, and the investment is huge, especially if you have a job"

Cluster 2: Lack of support by GAC/Staff (the policy process outside the policy process)

- "The GAC needs to participate. It's concerning that we have fought so hard for the multi-stakeholder model in WCIT. When it comes to participate in this model, governments are absent"
- "Now we have brilliant capture of the PDP process. IP issues are put forward as registrant/public interest. If not successful, they go to the GAC or staff. It perverts the PDP process, rendering it ineffective"

Cluster 3: Participation levels, need for early engagement, participation costs

- "If you look at PDPs conducted by ICANN, a very small number participate."
- "Participants on calls who are from developing countries have to deal with 3-5 drops in an hour long conference call"

Cluster 4: Length of duration of PDPs

- "If you want to have an impact on the PDP you have to do weekly calls for 6-12 months, most of which are useless / not effective. The whole thing is extremely off-putting"
- "There's no way I'd allow a member of my staff to participate – it would be 18 months"

Cluster 5: Implementation – lack of transparency, staff driven

- "Once it gets to implementation, then it goes cockeyed"
- "Everything after PDP is a question of implementation. Much too much staff driven, politicized"

Non-clustered: Other issues raised

- Complexity of the process
- System favors English language speakers
- Working groups are being loaded up with advocates (due to abolition of mandatory constituency participation)

- Structure of constituencies – does not reflect the arrangements in developing countries, is anachronistic
- Quality and timing of public comment
- Interaction with other constituencies
- Suggested Improvements from Interviewees

Interviewees offered suggestions for overcoming some of the issues they identified. A wide range of improvements was suggested. Table 4 below highlights the most popular suggestions made during interviews with stakeholders of the PDP:

Suggested improvement	How to achieve
Management of the process	Training, facilitation, management training for Working Group chairs, a more structured approach from the outset with timeframes and deliverables. Don't take too long.
Facilitate engagement by those without English as a first language	Publish consultation documents in other languages.
Break PDPs down into manageable chunks	Example of IRTP was given as a successful model.
More face to face meetings	Especially when issues get log-jammed.
Better communications, summaries	"Uber technical language" alienates people. "It's very transparent, open, but the question is, how many people actually do understand?" One interviewee suggested an "informal blog" to update people on the progress of PDPs.
Restructure the constituencies	Constituencies, as currently structured, are very developed-country orientated. Interviewees pointed out that there are experts in developing countries, but no ready match with GNSO constituencies in which they can participate.
Devise PDP charters more inclusively to balance stakeholder interests	Involve more stakeholders in drafting PDP charters.
Classify issues more effectively in the Issue Report	For example, "merits a PDP" and "faster track, simpler issue – no PDP required".
Change the outreach strategy, to make use of community leaders in the regions	Open PDPs to more stakeholder groups / mandate participation from stakeholder groups

Table 4: Most Popular Suggestions for Ways to Improve the PDP

In addition, other suggestions made included the following:

- Outside intervention to break logjams
- More flexible timelines
- ICANN should fund participants from developing countries
- Staff as independent secretariat
- Reduce time commitment for participants
- Specific place in ICANN meetings to get public comments on PDPs
- Assign experts to PDPs – to answer questions, do research (all published)
- Better/longer comment processes
- Capacity building for new participants
- Ensure comments are reflected in the output
- Fact-based white papers
- All policy should pass a public interest test, like RFC 1591
- Be AGILE – aim for the simplest, working solution

5.3 Analysis of Working Group Chairs' Email Thread

The ATRT2 invited current and former Working Group chairs to engage in a call in early August 2013. The ICC Team was given the opportunity to listen in on that call. In preparation for the call, an email discussion[51] was held by seven current and former Working Group chairs, four of whom were from North America, and three from Europe. All the current and former chairs were male.

Five of the Working Group chairs gave comments in the email discussion. The length of intervention varied, and several covered multiple issues. The level of participation in the email discussion varied. One individual gave eight comments, and two on the list did not make any comment. The discussions were facilitated by a member of the ATRT2. On occasion, the ATRT2 Chair also made interventions.

In order of popularity, the following issues were raised in the Working Group Chair's email discussion:

1. Certain stakeholders have not been able to adequately participate / Orderly way to bring in new blood
    - People graduate up to constituency leadership, but there is no "on ramp for new participants" in Working Groups
    - Chairs asked for analysis of composition of Working Groups, to highlight whether certain stakeholder groups were under- or over- represented.
2. How to break deadlock
    - In complex Working Groups, resources are necessary. A face-to-face meeting can be very useful to break deadlock, giving opportunities to read body language, for quieter participants to gain confidence to speak up. "People tend to overreact a bit less than on email".
3. Board ultimatums are not the best way to motivate Working Groups
    - "Board intervened with a really short deadline on Vertical Integration, and then took the decision upon itself."
4. How far do other ICANN community members understand and appreciate Working Group process?
    - "Difficult to get a reasonable appreciation if you haven't participated in one".
    - Suggest all board members and executive staff should participate in at least one Working Group (list and 25% of meetings).
    - …and GAC members

Other issues raised during the list, in no particular order, were:

- Share experiences among Working Group Chairs about "lessons learned" from each process
- Keep the layers clear – Role of Board, Council and GAC
- There's a culture problem – people don't understand the expected level of effort for PDPs
- Change behavior, not structure or process
- Outreach and policy efforts are not joined up – New people from outreach are not joining in policy
- The PDP process has improved and so have the outcomes
- What can we learn from failures "Complicated Working Groups"?

[51] See http://mm.icann.org/pipermail/atrt2/2013/000680.html and subsequent messages on the thread "PDP – Discussion with ATRT2 01-29

- A number of suggestions were made about how to learn from experience.

- What do you do when it's not possible to reach consensus?
- Need to improve cross-organizational communication/working in silos.
  - "We could have been more effective and probably saved time if we involved people from other silos sooner".
- Is it too easy to start a PDP?
  - Some felt that consensus was difficult to reach in cases where there was little cross community support for starting a PDP.
- Formal PDP is not the only way to develop policy in the GNSO

6 The Current State of the GNSO PDP

6.1 Strengths

6.1.1 Transparency

The GNSO PDP achieves world-class standards of transparency. Much of this is due to the provision of structured tools and processes by ICANN, including audio and video webcasting, transcripts, published email lists, publication of all public comments and virtual meeting rooms for remote working where silent observers are welcome. The full archive is published, even for PDPs that finished many years ago. In this way, an important historical record is being nurtured and maintained. The research for this report benefitted from the availability of a rich variety of primary source materials across different media, and made the analysis in this report—and that of future researchers—possible.

There is an inevitable conflict between transparency through publication of exhaustive records and clarity. It is certainly difficult to track down some materials, or to understand quite what is happening (for example, the conflicts between the different versions of the formal PDP documentation are discussed in Section 3). However, in the opinion of this report's authors and that of interviewees, the transparency of the policy development process (up to the point where implementation begins) and the provision of resources by ICANN shone through very strongly. For example, interviewees who choose to monitor rather than participate directly in certain Working Groups cited a wide variety of tools (including transcripts, webcasts, email archives and public comments) that they use to keep up to date with developments.

6.1.2 Flexibility

The varying length of time taken to complete the PDPs included in this study is testament to the flexibility of the PDP. Feedback from Working Group chairs and others who have participated in the PDP indicates that proper consideration of the issues is a hallmark of a bottom-up policy process, and that a process taking a long time is not a sign of failure. Interviewees were all asked their opinions on the statement, "The overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes". While 24 percent disagreed, there was a general acceptance that flexibility is necessary in a rigorous policy development process.

6.1.3 Policy Staff Support

Interviewees went out of their way to say how impressed they were with the quality of ICANN's policy staff.

The only consistent area for improvement cited was in the summarizing of public comments. Many interviewees noted that there had been steady improvement in recent years, but also cited individual examples where they felt that comments had not been fairly summarized, or had been omitted, and some speculated that such actions had been taken because the ICANN secretariat wanted a particular outcome. This highlights how easily trust can be lost, and how long the people retain vivid memories about things which may be no more than clerical errors or omissions, but which are of great importance to participants.

6.2 Weaknesses

6.2.1 Demands on Participants

Working groups

The research conducted for this report shows that fully engaged participation in PDP Working Groups requires an extraordinary set of demands on participants (individuals, organizations, businesses and governments). In the last five years:

- The vast majority of people who participate in Working Groups participate only once.
- A small number of participants who have economic and other support for their ongoing engagement have dominated Working Group attendance records.

This has a set of clear implications for policy development. Having such a small pool of regular participants poses accountability, credibility, and resource risks for the policy development process. At the same time, that small pool of regular participants are carrying the load of the PDPs. Of particular concern is the fact that there is a very small pool of potential participants who have the experience to lead, moderate and bring to completion the difficult work of guiding participants and policy through the PDP.

Comment periods

The comment process, while a less active and more episodic form of participation, is also seen as problematic. A large majority of stakeholders with connections to businesses, constituencies or stakeholder groups report that it is very difficult to craft, discuss, get agreement and approval for submission of comments within the timeframes provided by the PDP. Many expressed concerns about the transparency of the summary process (while noting improvements in recent years), expressing the view that their comments are not given sufficient weight or are omitted in summaries. While the results of the interviews show strong support for holding workshops on substantive issues prior to the initiation of a PDP, many interviewees commented that they were unaware of such workshops being held.

If stakeholders feel that they cannot commit to the demands of full Working Group participation, have difficulty responding to comment periods, and are unaware of other outreach efforts such as workshops, they are effectively alienated from the PDP itself.

Calls for expert advice, surveys and other methods used by Working Groups during preparation of the Preliminary Report

Systematic analysis of the working methods chosen by Working Groups was outside the scope of this report, but anecdotal evidence suggested that members of the ICANN community seem more willing to participate in PDPs through targeted one-off processes such as surveys. For example, the IRTP-C Working Group received 100 responses to a survey on IRTP-C Charter question B, time-limiting Forms Of Authorization (FOAs).[52]

Ways forward

1. Outreach efforts need to be more closely tied with fostering involvement in PDPs, making use of PDP veterans to bring new people into the process.

[52] p. 31, Final Report on the Inter-Registrar Transfer Policy - Part C Policy Development Process, http://gnso.icann.org/en/issues/irtp-c-final-report-09oct12-en.pdf

2. The ICANN community needs to examine the potential for alternative participation models in the PDP.
3. The current PDP also needs to be examined to find ways to break up the enormous commitment associated with Working Groups into component parts. For example, it may be possible to further modularize the PDP and make it possible for participation in ways other than full participation in a Working Group or discrete inputs during the public comment periods and Working Group calls for input.

6.2.2 Global Stakeholder Participation

There is clear statistical evidence that three of ICANN's regions play no meaningful part in the PDP. The GNSO risks global legitimacy—a core value of the policy that comes out of the PDPs—when it does not include viewpoints from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

Language issues

There is some statistical support for the view that language is a genuine barrier to participation in PDPs. For example, 97% of comments submitted in any PDP public comment period are in English. None of these comments are translated for the benefit of non-English speaking members of the ICANN community. One interviewee pointed out that it was impossible to gain widespread input from their region, as the documents were not translated in their language.[53]

Cultural issues

There is qualitative evidence that, apart from matters of operational practice (time difference, resource availability, support for diverse languages, etc.), the collaboration and discourse model built into the current PDP has a distinctly Western approach and does not take into account other cultural approaches to developing and building consensus policies. Failure to recruit, involve and support more globally representative participants potentially risks the global legitimacy of the policies built using the PDP.

Ways forward

1. ICANN should consider reforming its outreach activities to nurture and support Working Group participants from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions. Several interviewees mentioned that it would be helpful if outreach efforts tied more closely into recruitment for Working Groups or made use of community leaders in the regions.
2. Greater use could also be made of ICANN's contacts and partnerships with organizations in Africa, Asia/Pacific and the Latin American/Caribbean/South American regions to help address language barriers.
3. The ICANN community should reconsider the underlying collaboration and discourse model of the PDP and identify adjustments that could support participants who are not used to working collaboratively under the current model.

Suggestions for future research

Those who responded to requests for an interview for this report spoke perfect English (even if it was not their mother tongue) and participate actively in the process. Further research is required into understanding the reasons why stakeholders from outside of North America and Europe do not participate.

[53] The language involved was one of the six official UN languages.

6.2.3 The PDP, Staff and the Board

The life of PDP recommendations after the Final Report

In isolation, the PDP is a multi-stakeholder, consensus-driven, public policy development process. However, the PDP in the GNSO does not work in isolation from other parts of ICANN. The interviews conducted for this report demonstrate that many people are concerned about the interactions between the work products of the PDP and other parts of the organization. Specifically, there have been a significant number of responses that expose concern about policy built through long collaboration and negotiation, being changed or challenged by other parts of ICANN "after the fact". In particular, concern was raised that the Board could—and has—changed proposed policy, or accepted alternative implementation of policy, thus overruling the work of the PDP Working Group. Other interviewees have expressed concern that some members of the community lobby the GAC, GNSO Council, or ICANN Board for changes in substance or implementation after a Working Group's Final Report has been completed.

Differing interpretations of how potential problems with PDP recommendations should be resolved

Although not clearly articulated by any of the interviewees, the general belief seems to be that if the GNSO Council or ICANN Board have concerns with the PDP recommendations, they should flow back down to the PDP chain to the Working Group to reconsider or, better still, there should not be any concerns left at the point of the GNSO Council or ICANN Board votes, since all issues should have been raised by stakeholders during the Working Group's original processes. The GNSO Council and ICANN Board, however, appear to believe that they have a role to play in directly modifying policy recommendations to address concerns that they have, or that have been brought to their attention by others. This difference in views may come from differing interpretations of the GNSO PDP as defined in the ICANN Bylaws and GNSO PDP Manual. In the ICANN Bylaws, Section 9 of Annex A contains four sub-sections that define two scenarios:

1. The ICANN Board approves the PDP recommendations (described in Section 9 (a)).
2. The ICANN Board does not approve the PDP recommendations, that is it decides the policy is "not in the best interests of the ICANN community or ICANN" (described in Section 9 (b-(d)).

Those who believe the Board does not have the right to modify GNSO PDP recommendations appear to believe that this text in the Bylaws describes the complete set of actions that a Board may take. Those who believe the Board may make modifications to PDP recommendations, however, appear to interpret the text as describing two actions in a non-limited set of possible actions that legitimately includes modification.

Similarly, in regard to GNSO Council modification of PDP recommendations, those who believe that such modifications subvert the policy process, may be assuming that, in the spirit of bottom-up multi-stakeholder policy development, the Council will always believe that it is best to pass concerns or proposed changes to recommendations back to the Working Group for further work. However, the last sentence of Section 12 of the GNSO PDP Manual states:

> "In the event the GNSO Council expresses concerns or proposes changes to the PDP recommendations, it *may* be more appropriate to pass these concerns or recommendations for changes back to the respective PDP Team for input and follow-up." (Emphasis added)

An additional challenge is the fact that implementation is a formal part of the PDP, and as such, there may be implementation-related decisions made by the relevant GNSO Council implementation task force that are viewed as being top-down policy making decisions that can subvert the bottom-up,

multi-stakeholder process that preceded the implementation phase. This report was not tasked with reviewing the "policy versus implementation" debate, so this challenge is only mentioned in passing to give more context to the broader issue of addressing perceived needs to modify PDP recommendations in the final phases of the PDP.

How processes outside the GNSO affect GNSO PDP Working Group dynamics

There are also important transparency and trust issues at stake when the GAC or Board are seen to influence or change PDP recommendations that have achieved community consensus. A change made by the Board to a consensus-driven policy created by committed, often volunteer, participants in bottom-up stakeholder engagement process is always open to questions about why and how those changes were made. This has become such a prevalent concern that, in one very recent Working Group, participants challenged others in the Working Group on the issue of whether they were truly committed to the process – or, if they simply intended to wait the process out and then "lobby" for the results they wanted in other parts of the organization. Some of the interviewees indicated that cynicism about other participant's commitment to the PDP was a barrier to their own participation.

Ways forward

It is important to stress that the issue identified in this section is not the result of a structural problem with the GNSO PDP. Instead, the issue is the result of slight differences between different parts of the ICANN structure and differing interpretations of the official PDP documentation.

1. This report suggests that there needs to be process and procedure applied to ensure that other parts of the organization do not inadvertently subvert the accountability and transparency of the PDP.
2. It would be useful to revisit the official documentation describing the decision-making processes of the GNSO Council and ICANN Board to clarify exactly how these bodies' desire to modify PDP recommendations should be handled.
3. Given some PDP participants seem to be unhappy with the weight their contributions have received during Working Group processes, it may be worth examining how consensus is reached and whether the unhappiness of some participants could be reduced if there were better documentation of why specific contributions or ideas were not included as PDP recommendations.

6.3 The Role of the GAC in GNSO Policy Development

The GAC represents an important set of stakeholders—governments—in any policy development process related to domain names and has a history of successful collaboration in other areas of ICANN, for example, in ccNSO Working Groups and participation in AOC reviews. However, for reasons documented below, the GAC rarely participates in GNSO PDPs. First, it is important to give some context on the role of the GAC within ICANN.

6.3.1 The GAC and ICANN

The GAC has been part of ICANN's system since the beginning. The first GAC communiqué, dated 2 March 1999, notes the attendance of 23 of its 25 members, which consisted of governments, multilateral governmental organizations and treaty organizations. The GAC committed itself to "implement efficient procedures in support of ICANN […] by providing thorough and timely advice and

analysis on relevant matters of concern to governments".[54] GAC membership and participation in meetings has steadily grown, to 44 members attending in 2004,[55] 58 members in 2009,[56] and now 61 members and 8 observers attending in 2013.[57] Over time, the GAC meetings become multi-day events that include scheduled interactions with other ICANN stakeholder groups. In recent years, the GAC has become more proactive in its policy advice.[58] Its inter-sessional meetings with the ICANN Board in 2011 resulted in the incorporation of governmental advice into the new gTLD process through Early Warnings, GAC advice, and amendments to the application form. The GAC remains active in ICANN policy making processes, with over 30 pieces of GAC advice being produced so far in 2013.

6.3.2 Powers given to the GAC by the ICANN Bylaws to participate in GNSO policy development

Article XI of the ICANN Bylaws are very specific regarding the foundation of the Governmental Advisory Committee. In regard to the GAC's role in the GNSO PDP, the following four observations can be made:

1. The GAC a clear mandate to "consider and provide advice" in the development of policy within ICANN:

   "The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."[59]

2. The GAC is empowered to provide advice to the Board on new or existing policies:

   "i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies."[60]

3. The GAC has the option to place one representative of the GAC as a non-voting member on the GNSO Council:

[54] GAC 1 Meeting, Singapore, 2 March 1999, 28(6): 758-786. https://gacweb.icann.org/download/attachments/27131924/GAC_01_Singapore_Communique.pdf?version=1&modificationDate=1312231461000&api=v2
[55] GAC 19 Meeting, Rome 29 February – 3 March 2004 https://gacweb.icann.org/download/attachments/27131950/GAC_19_Rome_Communique.pdf?version=1&modificationDate=1312229551000&api=v2
[56] GAC36 Meeting Seoul, South Korea, 25-30 October 2009 https://gacweb.icann.org/download/attachments/27131984/GAC_36_Seoul_Communique.pdf?version=1&modificationDate=1312227059000&api=v2
[57] GAC Communique, Beijing April 2013 https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2
[58] See GAC register of advice https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2, and note the increase in GAC advice relating to gTLDs from 2010.
[59] Article XI, Section 2 Paragraph 1 of the ICANN Bylaws
[60] Article XI, Section 2, Paragraph 1.i of the ICANN Bylaws

"g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so."[61]

4. The Bylaws make the Board of Directors responsible for notifying the GAC of any public comment periods on policy issues and must do so in a timely manner

   "h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action."[62]

6.3.3 Implications of GAC Advice to the Board on Policy Matters

In interviews conducted for this report, there was a wide range of views on whether the GAC's interventions in GNSO PDPs have been helpful, effective or even necessary to the policy process. However, as one of the stakeholder groups in the multi-stakeholder Internet governance ecosystem, governments, via the GAC, are an important group of participants in all policy discussions related to the DNS. Through the GAC, governments bring expertise and experience that is not available from elsewhere, particularly with regard to identifying issues of public policy and serving the public interest. Interviews conducted for this report have identified, however, concerns that the provision of GAC advice can provide a structural opportunity for the GAC to be used by other players in the community as an alternative vehicle for policy changes. Specifically, there is concern that when parties feel certain policy issues have not been advanced in their favor via the formal PDP mechanisms—public comments, Working Groups, etcetera—they attempt to work with the GAC to convince governments to intervene on their behalf on policy issues. If people use such an out-of-band mechanism, it has two consequences:

1. It subverts the legitimacy of the PDP.

   The ICANN community has developed the formal GNSO PDP as a mutually agreed framework to enable many different stakeholders with different perspectives to work together over time to reach consensus via negotiation and compromise. If parties are unhappy with outcomes of this policy process and use other structural opportunities, such as advice from the GAC, to propose, create and revise that policy, the legitimacy of the PDP, and its outcomes, can be called into question.

2. It makes the Working Group process more difficult.

   In some recent PDPs, Working Group members have called other volunteers' motives into question. Specifically, some members expressed doubt that others in the group sincerely supported the PDP and would be active and engaged participants in the PDP. Given there is already difficulty in recruiting Working Group members for the long and intense commitment of a PDP, the injection of suspicion between Working Group members not only affects the for those Working Groups to interact in an environment of mutual trust and respect, but it also has the effect of potentially limiting interest in participating in future Working Groups.

[61] Article XI, Section 2, Paragraph 1.g. of the ICANN Bylaws
[62] Article XI, Section 2, Paragraph 1.h of the ICANN Bylaws

6.3.4 Enabling Greater GAC Participation in the PDP: Solutions Proposed to Date

The timing of GAC advice to the ICANN Board on GNSO-related policy has an effect on GNSO PDP outcomes. In particular, there is no mechanism in the GNSO Operations Manual or ICANN Bylaws for re-opening the activities of the Working Group if the timing of the GAC advice comes after the GNSO Working Group has already drafted its final report and the public comment process is complete. There is evidence that when GAC advice is provided late in the policy development process, it becomes separated from the bottom-up, multi-stakeholder driven model that underpins the GNSO PDP. Instead, potentially improvised processes involving the GNSO Council, the GAC, the ICANN Board, ICANN staff and other interested parties attempt to find ways to integrate the GAC advice with the existing outputs of the bottom-up PDP.

Many stakeholders cannot understand why the GAC cannot—or chooses not to—participate earlier in the PDP given there are clear opportunities for the GAC to do so. Table 5 below, supplied by ICANN staff, on some possible points of GAC engagement with the PDP, including the drafting and comment processes and the Working Group model:

Phase of the PDP	Opportunity for input	Method for seeking input from GAC
Request for Issue Report	An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council	N/A
Preliminary Issue Report	Public comment period on Preliminary Issue Report to encourage additional data / information as well as views on whether PDP should be initiated	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution
Rejection of PDP requested by Advisory Committee	If GNSO Council rejects initiation of a PDP requested by an AC, then option to meet with AC reps to discuss rationale followed by possible request for reconsideration	N/A
Developing charter for the PDP Working Group	Drafting team to develop charter for PDP WG open to anyone interested	Announcement posted to GNSO web-site Announcement sent to GAC Secretariat for distribution
Working Group	PDP Working Group is open to anyone interested to participate, either as an individual or as a representative of group / organization	Announcement posted to the GNSO web-site and, if timely, included in Monthly Policy Update Announcement sent to the GAC Secretariat for distribution
Working Group	PDP WG is required to reach out at an early stage to obtain input from other SO / AC	PDP WG will send email request for input to SO/AC Chair and secretariat Request will typically include questions / input that input is sought on as well as a deadline for input (noting that additional time may be requested if needed)
Working Group	Initial Report published for public comment	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution
Council Deliberations	Council Recommendations Report to the Board which also includes an overview of consultations undertaken and input received	N/A
Board Vote	Public comment forum prior to Board consideration of recommendations	Announcement posted to ICANN & GNSO web-site and public comment forum opened

Phase of the PDP	Opportunity for input	Method for seeking input from GAC
		Announcement sent to the GAC Secretariat for distribution
Board Vote	Requirement for the ICANN Board to inform the GAC if policy recommendations affect public policy concerns	Board will notify GAC
Implementation	Council has the option to form Implementation Review Team to assist Staff in developing the implementation details (in principle open to all)	Call for volunteers will be circulated to PDP WG
Implementation	Implementation plans may be posted for public comment or additional consultations held depending on nature of policy recommendations	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution

Table 5: ICANN Staff-developed Table of Possible Points of Engagement between GAC and GNSO PDP

However, the GAC faces a set of structural and operational problems if it were to attempt to engage in the PDP at earlier points in the process:

1. As a separate, logical entity inside of ICANN, the GAC usually attempts to communicate with other parts of ICANN with a single, unified voice.

   Having a GAC representative participate in Working Groups could prove cumbersome for both the representative and the Working Group. This is due to the fact that the representative would find it difficult to speak on behalf of the GAC, or even on behalf of their own government, during real-time discussions and, instead, would need time to liaise with others to develop officially endorsed positions on issues under discussion.

2. The GAC would find it difficult to identify and nominate a person of the right skills and background for many of the policy discussions that take place in PDPs.

   Given the highly specialized nature of the issues under discussion in recent GNSO PDPs, it is already a challenge to find suitably skilled people amongst the wider ICANN community willing to participate in PDPs. The GAC, with its limited number of members, most of whom are, by definition, policy rather than technical experts, faces even more of a challenge finding appropriately skilled representatives to participate in a GNSO PDP Working Group.

3. Members of the GAC face resource constraints

   The people who represent their governments on the GAC would especially find it difficult to commit the time to a Working Group. As demonstrated in Section 4.3, there is a very busy Internet governance calendar: government representatives in particular have heavy time commitments to a number of Internet governance-related processes happening in the intergovernmental sphere that limits the time available to commit to ongoing Working Group activities.

An alternative to GAC participation in PDP Working Groups is GAC engagement in public comment periods. However, the GAC would find it very difficult, if not impossible, to work within the current timescales for public comment processes. Again, the combination of resource limitations and the ability to coordinate the GAC on short notice for public comment would make it very difficult for the GAC to be able to consult with their internal governments, coordinate and negotiate between governments, and then come to agreement on a mutual position.

In summary, then, the timescales associated with the GNSO PDP are simply not set with the operational abilities of the GAC in mind.

6.3.5 A Need for New Ways to View the GAC's interaction with the PDP

As described above, active participation by the GAC in PDP Working Groups is very unlikely and more limited participation during public comment periods are operationally unworkable. Outside these two mechanisms, the current PDP contains no formal alternative processes for the GAC to participate in GNSO PDPs. There is evidence, however, that the GNSO Council and the GAC are working on informal engagement mechanisms to enhance communications between these critical parts of ICANN.

It is worth recalling that some stakeholder groups now view the GAC as a backstop. As a way to prevent the implementation of flawed policy, the GAC is a very imprecise tool to make specific policy changes. However, several groups have recently used the GAC as an audience for expressing the view that policy developed elsewhere in the organization, has poor public policy features. In our interviews there were strong feelings that the GAC should not be involved in after-the-fact policy evaluation of work done in PDPs. However there was also a strong feeling that the GAC was a needed protection against the development and implementation of poor policy.

While we believe there are no structural issues in the Bylaws that prevent the GAC from interacting directly with the GNSO through the PDP, perhaps a better way to approach the GAC is through small requests for information and advice rather than full comments on Initial Reports or PDP Drafts.

This report suggests that the GNSO PDP will need adjustment if there cannot be successful engagement by the GAC until the PDP is completed. Two possible approaches might be to:

1. Adjust the mechanics of the PDP input process to be more flexible so it becomes easier for the GAC to respond.

   This could a joint GAC/GNSO initiative that had as its goal a redefinition of the modes of participation for the GAC in the context of the PDP.

2. Add to the PDP, perhaps at the Initial Report, a task that specifically requires input (or a statement that they are not going to give input) from the GAC.

   Section 9 of the GNSO Manual currently states, "the PDP Team should seek input from other SOs and ACs"; however, it may be more effective if requests for input from the GAC, and possibly other SOs and ACs, is placed on the same level as requests for statements from GNSO Stakeholder Groups and Constituencies.[63]

[63] Earlier in Section 9 of the GNSO PDP Manual, it states, "The PDP Team should *formally solicit statements* from each Stakeholder Group and Constituency in the early stages of the PDP". (Emphasis added.)

7 Does the GNSO PDP Satisfy the Mission of ICANN in Regard to Policy Development?

7.1 The mission of ICANN

The mission of ICANN is stated in Section 1 of Article 1 of the ICANN Bylaws. In particular:

> The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.

The role of policy development is, therefore, to create policies that enable ICANN to perform the function of global coordination of Internet's systems of unique identifiers, while ensuring the stable and secure operation of the Internet's unique identifier systems.

In the specific context of the GNSO PDP, its role in satisfying ICANN's mission is to ensure ICANN can coordinate the gTLD system, with particular attention paid to the stability and security of the gTLD system. Given the ICANN mission refers to the domain name system in general, it may also be appropriate to assume that gTLD policy development should also consider the wider stability and security of the entire domain name system.

Associated with ICANN's mission are a number of core values specified in Section 2 of Article 1 of the ICANN Bylaws. Of particular interest to this review of the GNSO PDP are the following core values:

> 4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
> 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
> 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
> 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

The GNSO PDP's ability to reflect these core values is discussed below.

7.1.1 Core Value 4

Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making

As documented in the ICANN Bylaws and the GNSO PDP Manual, the GNSO PDP provides multiple opportunities for affected stakeholders to document their needs and wants, and contribute their perspectives, to active PDPs. Stakeholders can participate as members of the Working Group or contribute during the public comment periods. Working groups are also required to seek input from each Stakeholder Group and Constituency and are strongly recommended to solicit input from other SOs and ACs. In addition, although not required by the Bylaws or the GNSO PDP Manual, Working Groups solicit input through other ways, such as online surveys. The variety of opportunities available to provide input should, in theory, enable instances of the GNSO PDP to amass a broad diversity of materials with which recommendations can be strongly founded.

Given the overwhelming majority of participants in GNSO PDPs are from North America and Europe (see Section 5), it is not completely clear that the GNSO PDP, *as practiced*, is sufficiently able to support diverse levels of geographic and linguistic participation. As stated in Section 5.4, balanced participation in terms of geography, stakeholder interest group and gender is difficult to achieve. The fact that the majority of GNSO Council members come from developed countries means that it can be easy for the Council to overlook imbalances in representation within individual PDPs. Imbalances in participation are also able to affect the decision-making processes of input received by Working Groups. For example, if only one short not-easy-to-understand public comment in English was received from a Somali (whose first language is not English and who struggled to express her thoughts in English), but 15 long and highly structured public comments were received from native English speakers from the USA, a Working Group that has a majority composition of US and European members may inadvertently give the Somali's comment less weight than the more detailed comments from the US.

7.1.2 Core Value 6

Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

Given the dominance of North American and European participants in the GNSO PDPs examined, there is a significant risk that policy development favors the particular environment in which US and European businesses are operating, potentially to the detriment of those operating in less deregulated environments or in developing countries where the markets are not yet able to compete with US and European markets on an equal basis. Given domain name registrations are not bounded by national borders, the demonstrable lack of active participation from regions outside North America and Europe creates the risk that GNSO PDPs may produce recommendations that favor business environments in North America and Europe, instead of encouraging a level playing field for all potential participants in the domain name market.

7.1.3 Core Value 7

Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

The stages of the GNSO PDP are publicly available to all and contain multiple mechanisms that enable public input into the process by any person or entity wishing to participate. Publication of all material associated with each instance of the PDP, including Working Group deliberations—email archives, transcripts of meetings, etc.—add significant transparency to each PDP undertaken.

However, at a more abstract level, the slightly differing grouping of steps in the PDP documented in the ICANN Bylaws and the GNSO PDP Manual (See Section 3.3) does affect the transparency of the process. In fact, it might be more appropriate to describe the policy development mechanisms as "slightly foggy". The fact that the GNSO Policy Development Process web page[64] contains nine flowcharts—eight of them form a series of stepped events in the PDP—to illustrate the process suggests that the GNSO Council and ICANN staff are aware of this lack of complete clarity. Given the complexity of the PDP, the slightly different grouping of PDP steps in the Bylaws, GNSO PDP Manual and flowcharts on the GNSO website, and general time constraints on all ICANN stakeholders, the GNSO PDP, as currently documented, could contribute to the lack of diversity in active participation

[64] http://gnso.icann.org/en/node/31379/

during PDPs. This is due to the risk that members of the community may not be aware how important particular phases of public input are to the development of recommendations by the Working Group. Instead, only those with an encyclopedic knowledge of the process fully understand when to devote their time to following or actively contributing to the PDP. Less well-informed stakeholders may feel out of their depth given the overall complexity of the process and, due to existing constraints on their time, choose not to spend the time engaging in PDPs.

The current GNSO PDP as practiced does not require, at either the Issues Report or Working Group stages, specific identification of entities that may be most affected by the PDP or experts that may assist the PDP. The Issue Report must describe the impact of the issue proposed for a PDP on the requesting party (Board, GNSO Council, or AC) but does not have to identify the impacts of the issue on other parties. Although it is clear that the Issue Report is meant to be limited in scope, clearly identifying affected parties—not just by constituency or AC, but as needed, perhaps on a more fine-grained basis—could help the GNSO Council, and later the Working Group, identify specific groups to actively encourage participation in the process.[65]

7.1.4 Core Value 11

While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

Section 6.3 has demonstrated that there is a significant challenge to ICANN in this area. As documented previously in this report, the PDP has many opportunities for participation and government and public authorities' recommendations are welcome at all those opportunities. Specifically, when governments have significant self-interest in the result, public authorities are very willing to contribute extensively within the confines of the PDP. The recent PDP on IGO-INGO is a good example of that process working as it was designed.

Public policy requires specific knowledge and ICANN's best resource for public policy expertise is in the GAC. Section 6.3 documented the challenge of getting GAC advice early into the PDP. However, interviews with GAC members have showcased the fact that they are very sensitive to the intersection between DNS operational, market and infrastructure policy and public policy. It is at this intersection where the GAC has intervened and where the ICANN Board has carefully considered those interventions.

While this framework of GAC intervention does work, not all are happy with the impact it has on the stakeholder-driven PDP. The relationship between the timing of governments' and public authorities' recommendations and the ongoing work of policy development in the GNSO is one of the thorniest issues for the future of the PDP.

[65] For example, *Final Issue Report: Translation and Transliteration of Contact Information*, states that the issue "affects a high percentage of generic TLD (gTLD) registrants (individuals and organizations), registrars, and registries". However, it does not explicitly state that the issue is particularly relevant to stakeholders who use non-ASCII text – stakeholders very much associated with emerging Internet economies and whom, to date, have not been significant contributors to GNSO policy.

Annex A: Detailed Methodology

A.1 Approach and Data Sources

The RFP formulated by the ATRT2 sets out the scope of work for this study to achieve a critical analysis of the effectiveness of the GNSO Policy Development Process as an instrument of bottom-up, multi-stakeholder policy making.

Part of the required analysis of the PDP process is to identify differences between defined process and actual practice, and a range of participation-based metrics. The RFP foresees that part of the research will be focused on the published archive. A quantitative approach is appropriate to provide metrics on actual participation by region, stakeholder group including the GAC, and identify through examination of the evidence the extent to which all stakeholders participate in PDP.

The RFP also requires this study to identify strengths and weaknesses in the process, the extent to which the process incorporates the views advice and needs of all stakeholders, and evaluate the extent to which the PDP produces sound policy in support of the public interest. The ICC Team took the view that participants in the process would be an invaluable source of opinion and insight into the effectiveness of the PDP, as well as potential areas for improvement.

Therefore, our research had both quantitative and qualitative elements.

A.2 Written Documentation: A Quantitative Analysis

The ICC Team identified the following data sources:

- Published documents defining the PDP as a process, including the ICANN Bylaws, GNSO PDP Manual, GNSO PDP tutorial materials and public records of the discussion for potential changes to the PDP.
- Published records relating to specific PDPs. Such records include but are not limited to the PDPs portal web sites where mailing lists, attendance lists, wikis, comment archives and analysis, descriptive and explanatory information are provided. The table at Section 5 details the web pages where much of the source material for the quantitative analysis was found.
- ICANN staff were made available to the ICC Team, in order to provide clarification on publicly available materials and to help identify records of interest to the ICC Team.
- General GNSO materials including transcripts, MP3 recordings and the records of GNSO Council meetings were also consulted.

The available primary sources are extensive and comprehensive. To assist in a critical analysis of the process, the ICC Team developed objective and measurable criteria through which to evaluate the effectiveness of the PDP.

The PDP provides two key methods for participation: Working Groups and public comment. For the PDP to be capable of fulfilling the promise of bottom-up, multi-stakeholder policy making, and ICANN's public interest goals, the diversity of stakeholders (by type of stakeholder, geographic region) is relevant, as is gender balance, and any changes over time. To be effective in a fast-changing environment, the PDP should also balance timeliness with rigorous examination of the issues.

The metrics derived from the quantitative analysis include:

1. Working groups:
    a. Working group size by issue

b. Working group participation by gender
c. Number of many Working Groups participants join
d. Working group participation by geographic region, and any changes over time

2. Public comments:

   a. Individual comments versus organization comments

      i. On issues reports

      ii. On initial reports

   b. Regional distribution of comments

      i. On issues reports

      ii. On initial reports

3. Elapsed time taken for PDPs

   a. To initial report

   b. To final report

   c. Charter to final report

The data was collected through an analysis of mailing lists, the archives of public comments and through an analysis of the data against other sources of information (Statements of Interest, written comments or sources on external websites). Where possible, each public comment and the demographics of the Working Groups was categorized via information provided (directly or indirectly) by the participants themselves.

A.3 Opinions of Participants: A Qualitative Approach

There were two sources of opinion data:

1. A structured qualitative questionnaire undertaken by the ICC Team
2. An online email thread created for the ATRT2 project, and participated in by seven current and former Working Group chairs

A.3.1 Qualitative Questionnaire

To supplement the ICC Team's understanding, and as anticipated in the RFP, the ICC Team undertook a series of interviews with participants in PDPs.

The number of interviews undertaken was 30, or more than 28 percent of the total number of participants in PDPs. This is a statistically significant sample.

The interviewees were from a reasonably diverse geographical base.

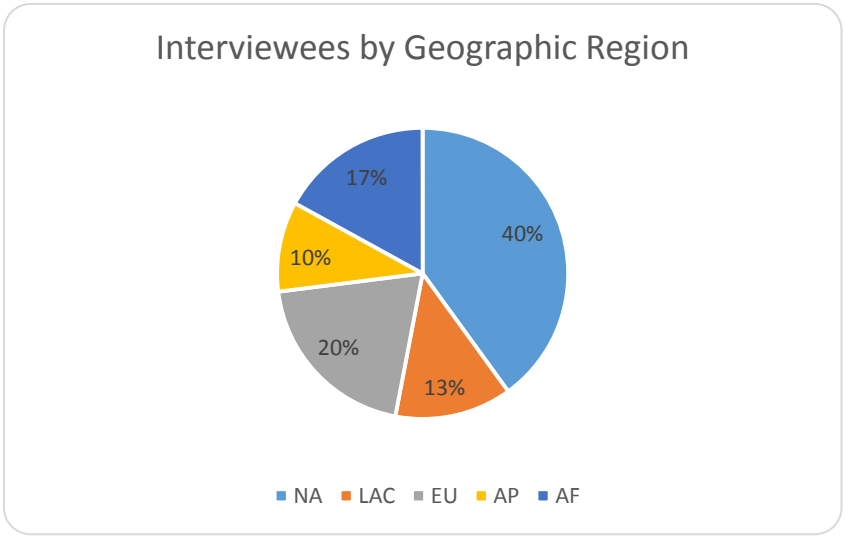


Figure 28: Interviewees by Geographic Region

The interviewees were from a diverse stakeholder background, including GNSO constituencies and others (for example, ALAC). GAC members did not participate in the qualitative questionnaire (see below).

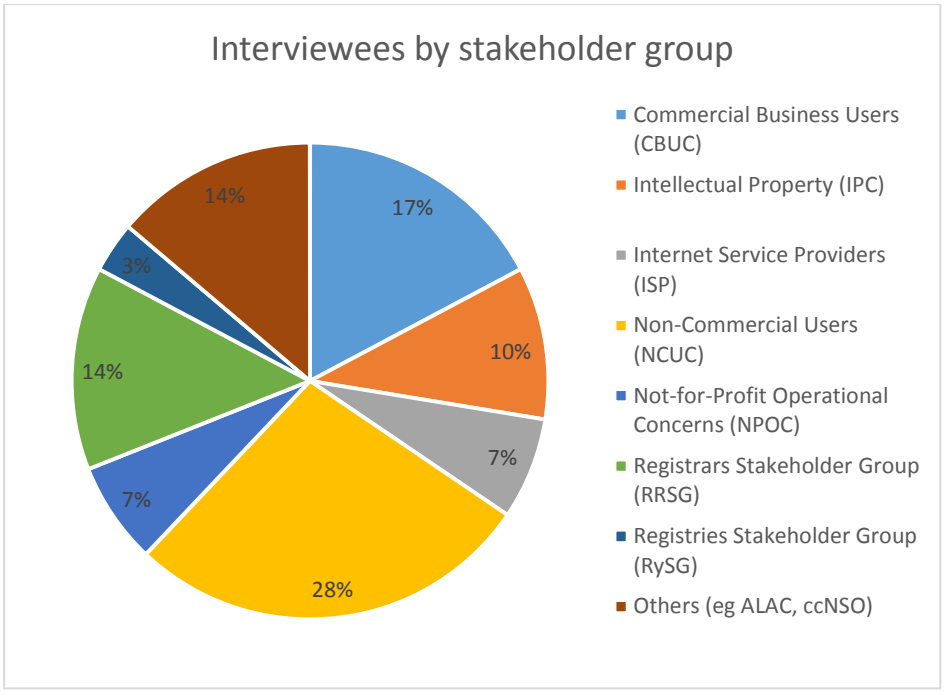


Figure 29: Interviewees by Stakeholder Group

A standardized question set

Although it was important to capture individuals' views, it was also necessary to make meaningful comparisons across the data sample. A standardized questionnaire was developed which asked for opinions on a range of issues highlighted in the RFP, aiming to capture views on the effectiveness of the PDP as a bottom-up multi-stakeholder instrument of policy making.

The ICC Team worked together to draft a question set, to ensure no single view prevailed in drafting the questions.

Rather than Yes/No answers to opinion questions, a respected methodology for qualitative, opinion-based surveys (the Likert Scale) was used. This offered interviewees a range of potential answers from Strongly agree, Agree, Don't feel strongly either way, Disagree, Strongly disagree, and Not applicable/I don't have enough information to judge.

To avoid potential bias in the data sample, the ICC Team compiled a list of potential interviewees ensuring geographic and stakeholder diversity, and gender balance.

Challenges and mitigations

There were a number of challenges in this project. First, the ICC Team was appointed during the holiday season in the Northern Hemisphere. Many of the potential interviewees were either on holiday or had just returned from holiday during that period. It was not until early September that interviews began. Despite several reminders, only 35 interviews were scheduled and 30 interviews took place. The strict deadline for production of the ATRT2 draft final report and the time needed for translation imposed a hard stop-date on data collection, analysis and reporting. This effectively reduced the active window to little over three weeks.

The ATRT2 requirements for an evidence-based approach to understanding the PDP's effectiveness in all its phases necessitated a long questionnaire. While the ICC Team worked to reduce the number of questions, the overall length of interviews (depending on length of responses) was between 30 to 100 minutes.

The length of the questionnaire and complexity of the subject matter gave rise to another potential challenge: for non-native English speakers, to conduct such a questionnaire by telephone, without sight of the questions, could present challenges in understanding the questions and formulating answers. To overcome this, the questionnaire used for the interviews was made available online and interviewees were invited to participate via the online form if it would be more convenient for them.

Another potential cause of low uptake may have been "volunteer fatigue" identified in other parts of the ICANN community, which can happen when a relatively small group of individuals is targeted for many interventions, including research interviews.

The questions

Time constraints meant that the question set for the questionnaire needed to be devised quickly and it was not possible to run extensive tests or consult with the ATRT2 team on the question set. However, despite the constraints, the majority of the questions appeared to work well in practice. A few were identified by participants or the ICC Team as potentially ambiguous, asking a single opinion on two or more factors, potentially leading the interviewee or otherwise problematic. These include questions 3.9, 3.11, and 3.24. To mitigate these issues, the answers to those questions are treated with caution, and not relied on in any of the key findings.

A.3.2 Working Group Chairs

This qualitative analysis consisted of a review of an email thread involving seven former and current Working Group chairs. The email thread was initiated by the ATRT2 and is published on the ATRT2 email archive[66].

The thread was analyzed for demographics and number of responses per participant. Issues highlighted were identified and clustered under broad headings.

This thread was also used as a way to identify issues of interest to participants who, by their chairing a Working Group, were especially knowledgeable and interested in the PDP.

A.3.3 Governmental Advisory Committee

The qualitative analysis was supplemented by interviews with four current GAC members, including the GAC Chair. Our guidance from the ATRT2 was not to ask the GAC to complete the questionnaire. Instead, we used an open ended set of questions to structure the interviews. These conversations consisted of four teleconferences conducted over a period of three days, and the results of those conversations have informed the findings in section 5 of the report.

A.4 Managing Conflicts of Interest

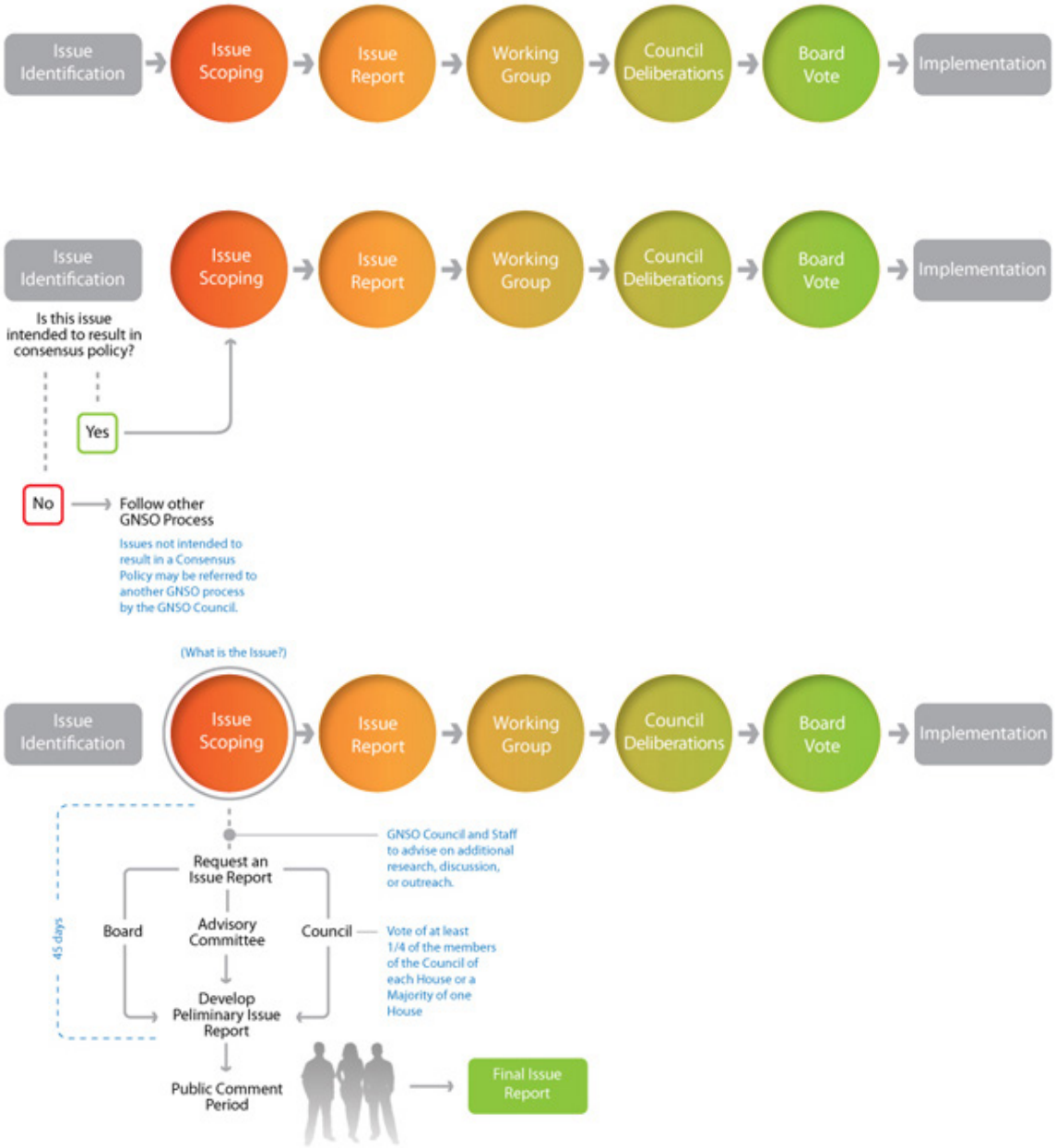
The ICC Team is comprised of "insiders" to the ICANN process. This brings numerous advantages particularly on a project with tight timeframes. The ICC Team put in place a robust system for the management of any conflicts of interest. Conflicts of interest were proactively declared by team members, and details were reported the Chair of the ATRT. Where conflicts were identified for a particular individual, that individual stepped out of the relevant work and passed it on to colleagues.

One of the ICC Team also serves as Chair of a GNSO Constituency. Having declared the interest, that individual took no part in the interview process on the qualitative side of the project.

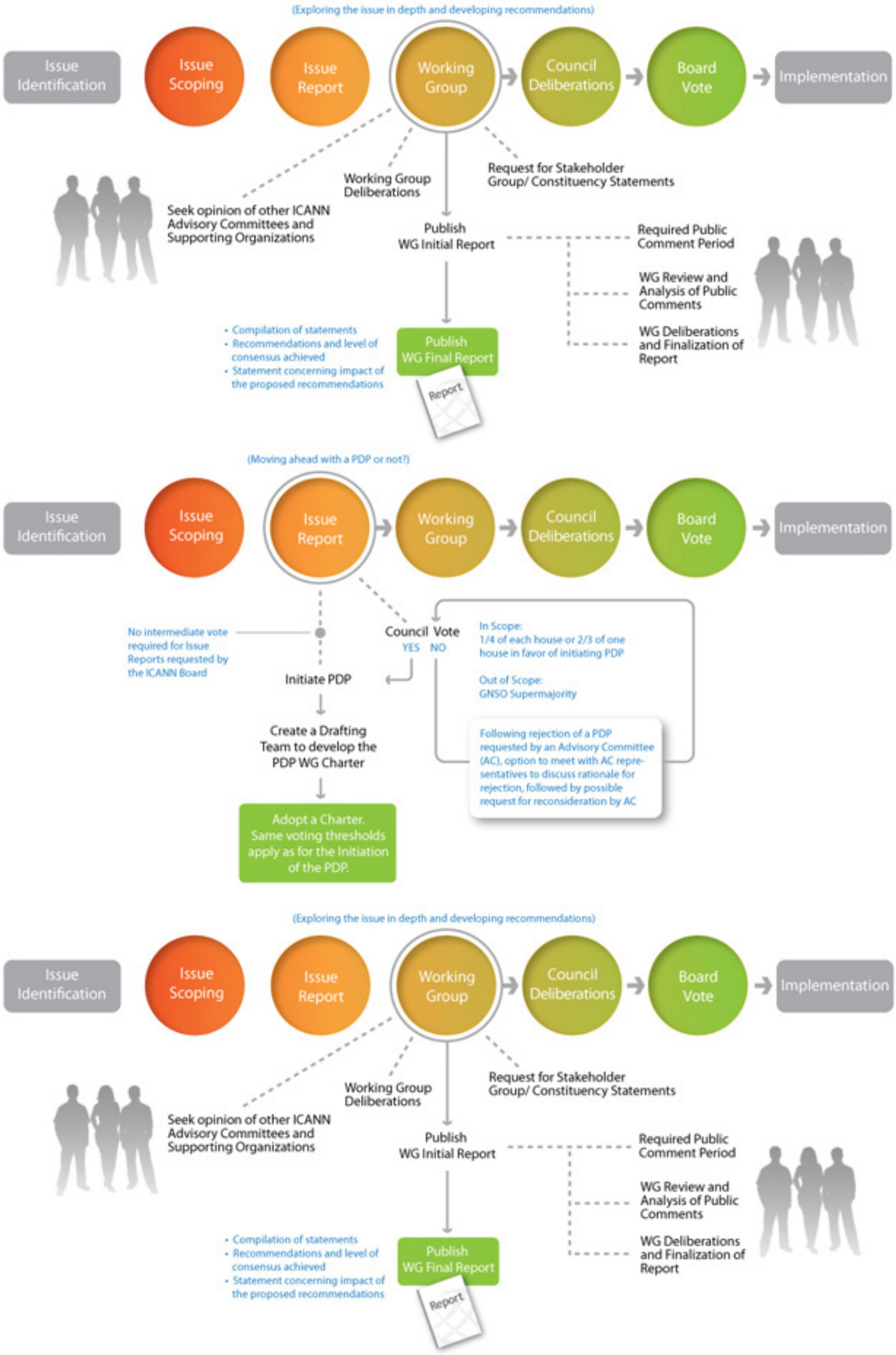
[66] See http://mm.icann.org/pipermail/atrt2/2013/000680.html and subsequent messages on the thread "PDP – Discussion with ATRT2 01-29

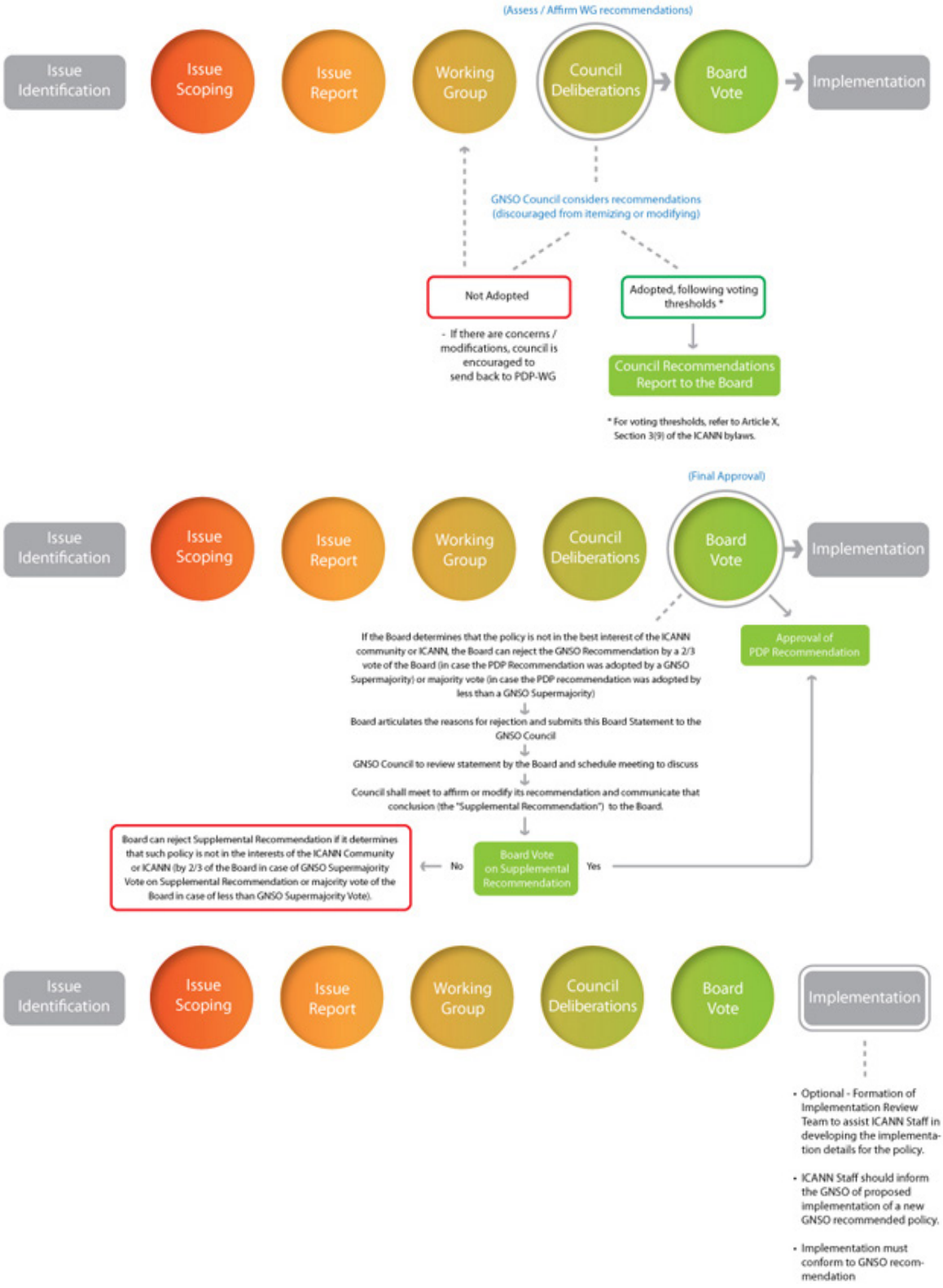
Annex B: Series of Eight Flowcharts Illustrating the Current GNSO PDP

Below are the eight flowcharts developed by ICANN staff and published on the GNSO web page, "GNSO Policy Development Process (PDP)".[67]



[67] http://gnso.icann.org/en/node/31379/


(Exploring the issue in depth and developing recommendations)
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
Working Group Deliberations
Request for Stakeholder Group/ Constituency Statements
Seek opinion of other ICANN Advisory Committees and Supporting Organizations
Publish WG Initial Report
Required Public Comment Period
WG Review and Analysis of Public Comments
WG Deliberations and Finalization of Report
• Compilation of statements
• Recommendations and level of consensus achieved
• Statement concerning impact of the proposed recommendations
Publish WG Final Report
Report
(Moving ahead with a PDP or not?)
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
No intermediate vote required for Issue Reports requested by the ICANN Board
Council Vote
YES NO
In Scope:
1/4 of each house or 2/3 of one house in favor of initiating PDP
Out of Scope:
GNSO Supermajority
Initiate PDP
Create a Drafting Team to develop the PDP WG Charter
Following rejection of a PDP requested by an Advisory Committee (AC), option to meet with AC representatives to discuss rationale for rejection, followed by possible request for reconsideration by AC
Adopt a Charter. Same voting thresholds apply as for the Initiation of the PDP.
(Exploring the issue in depth and developing recommendations)
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
Working Group Deliberations
Request for Stakeholder Group/ Constituency Statements
Seek opinion of other ICANN Advisory Committees and Supporting Organizations
Publish WG Initial Report
Required Public Comment Period
WG Review and Analysis of Public Comments
WG Deliberations and Finalization of Report
• Compilation of statements
• Recommendations and level of consensus achieved
• Statement concerning impact of the proposed recommendations
Publish WG Final Report
Report


(Assess / Affirm WG recommendations)
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
GNSO Council considers recommendations (discouraged from itemizing or modifying)
Not Adopted
- If there are concerns / modifications, council is encouraged to send back to PDP-WG
Adopted, following voting thresholds *
Council Recommendations Report to the Board
* For voting thresholds, refer to Article X, Section 3(9) of the ICANN bylaws.
(Final Approval)
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
If the Board determines that the policy is not in the best interest of the ICANN community or ICANN, the Board can reject the GNSO Recommendation by a 2/3 vote of the Board (in case the PDP Recommendation was adopted by a GNSO Supermajority) or majority vote (in case the PDP recommendation was adopted by less than a GNSO Supermajority)
Approval of PDP Recommendation
Board articulates the reasons for rejection and submits this Board Statement to the GNSO Council
GNSO Council to review statement by the Board and schedule meeting to discuss
Council shall meet to affirm or modify its recommendation and communicate that conclusion (the "Supplemental Recommendation") to the Board.
Board can reject Supplemental Recommendation if it determines that such policy is not in the interests of the ICANN Community or ICANN (by 2/3 of the Board in case of GNSO Supermajority Vote on Supplemental Recommendation or majority vote of the Board in case of less than GNSO Supermajority Vote).
No
Board Vote on Supplemental Recommendation
Yes
Issue Identification
Issue Scoping
Issue Report
Working Group
Council Deliberations
Board Vote
Implementation
• Optional - Formation of Implementation Review Team to assist ICANN Staff in developing the implementation details for the policy.
• ICANN Staff should inform the GNSO of proposed implementation of a new GNSO recommended policy.
• Implementation must conform to GNSO recommendation

Annex C: Detailed Description of the Who, What, How and When of GNSO PDP Steps

What	Who	How	When	Outcome
1. (*If Issue Report request is being considered by GNSO*) Hold workshop on issue	GNSO Council	Not specified	Before Issue Report request is submitted	▪ Clearer understanding of the issue ▪ Wider support for requesting Issue Report
2. Request Issue Report	ICANN Board, GNSO Council or AC	Complete request template	As needed	Issue Report request sent to ICANN staff, & if request was issued by Board or an AC, also to GNSO Council
3. Create preliminary Issue Report	ICANN Staff Manager	Write report based on elements a)-f) listed in Section 4 of Bylaws Annex A	Publish within 45 days of receipt of Issue Report Request (*extension may be requested)*	Issue Report written
4. Call for public comments on preliminary Issue Report	ICANN Staff Manager	Publish report on ICANN website	Within 45 days of receipt of Issue Report Request (*extension may be requested*)	Report published.[68] Call for public comments announced.
5. Comment on preliminary Issue Report	ICANN community	Post comments on ICANN public comment forum	Open for no less than 30 days after call for comments is posted	All public comments published on ICANN website
6. Summarize & analyze public comments	ICANN Staff manager	Write report. (*No officially specified format for report*)	Within 30 days of the closing of the public comment forum (*extension may be requested*)	Report of public comments forwarded to Chair of GNSO Council
7. (*If comments received require Issue Report adjustments*) Write second, "Final" version of Issue Report	ICANN Staff manager	Write report based on elements a)-f) listed in Section 4 of Bylaws Annex A & feedback received during public comment period	Within 30 days of the closing of the public comment forum (*extension may be requested*)	Final Issue Report forwarded to Chair of GNSO Council

[68] ICANN Staff are encouraged to translate Executive Summary of Preliminary Issue Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
8. (*If Issue Report was requested by ICANN Board*) Decide to initiate a formal PDP	GNSO Council	Note receipt of Final Issue Report and formally initiate PDP	If Final Issue Report was received: ▪ At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission ▪ Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting (*Discussion may be postponed by no more than one Council meeting*)	PDP is formally initiated
9. (*If Issue Report was requested by GNSO Council or AC*) Decide to initiate a formal PDP	GNSO Council	A vote of the GNSO Council based on the Council's consideration of the Final Issue Report ▪ To initiate a PDP within Scope requires an affirmative vote of: o more than 1/3 of each House, OR o more than 2/3 of one House ▪ To initiate a PDP Not Within Scope requires an affirmative vote of GNSO Supermajority. That is: o 2/3 of the Council members of each House, OR o 3/4 of one House and a majority of the other House	If Final Issue Report was received: ▪ At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission ▪ Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting (*Discussion may be postponed by no more than one Council meeting*)	PDP is formally initiated
10. Develop PDP Charter	A group formed at the direction of the GNSO Council	Write Charter based on elements specified in GNSO Working Group Guidelines: Working Group Identification Mission Purpose & Deliverables Formation Staffing & Organization Rules of Engagement	GNSO Council to indicate expected timeframe.	Proposed Charter is presented to Chair of the GNSO Council

What	Who	How	When	Outcome
11. Approve PDP Charter	GNSO Council	A vote of the GNSO Council based on the Council's consideration of the Final Issue Report ▪ To initiate a PDP within Scope requires an affirmative vote of: o more than 1/3 of each House, OR o more than 2/3 of one House ▪ To initiate a PDP Not Within Scope requires an affirmative vote of GNSO Supermajority. That is: o 2/3 of the Council members of each House, OR o 3/4 of one House and a majority of the other House	If proposed Charter was received: ▪ At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission ▪ Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting	PDP Charter is approved
12. Form Working Group (*preferred*) or other designated working method	GNSO Council	▪ Form Working Group using designated rules & procedures available in GNSO Operating Rules & Procedures OR ▪ Decide on other working method after first identifying specific rules & procedures in ICANN Bylaws or PDP Manual	Not specified	A "PDP Team", consisting of either a Working Group or other working method, is created.
13. PDP Team formally solicits statements from each Stakeholder Group and Constituency	PDP Team	No specified method.	The formal solicitation should occur early in the PDP (*exact timeframe not specified*)[69]	Stakeholder Groups and Constituencies receive formal communication from PDP Team
14. Stakeholders submit formal statements to PDP Team	Stakeholder Groups and Constituencies	No specified methods	Window for submitting statements is at least 35 days from the moment the PDP Team sends the request	Copies of stakeholder statements sent to PDP Team

[69] The PDP Team can formally solicit statements from Stakeholder Groups and Constituencies more than once during the PDP.

What	Who	How	When	Outcome
15. PDP Team solicits input from other SOs & ACs	PDP Team	The PDP Team is to decide how best to contact other SOs and ACs to request their input.	Early in the PDP (*exact timeframe not specified*)	The method chosen by the PDP Team for soliciting input from other ACs and SOs is included in the Team's Report. Any input sent by other SOs & ACs in response to this call receive a response from the PDP Team in the form of: ▪ Direct reference in applicable report OR ▪ Embedded reference in other "responsive documentation" ▪ Direct response to SO or AC
16. SOs & ACs submit input to PDP Team	SOs & ACs	Depends on PDP Team's decision in previous step.	Not specified	PDP Team receives input from SOs & ACs, which is to be treated with same due diligence as other input & comment processes
17. PDP Team establishes contact with ICANN departments outside the policy department	PDP Team	Optional, but encouraged step. PDP Team contacts ICANN departments that may have an interest, expertise, or information regarding the implementability of the PDP issue.	Early in the PDP (*exact timeframe not specified*)	PDP Team establishes communication channels with ICANN departments
18. (*Optional*) Call for public comments on other PDP related documents such as surveys (not Issue Report or Initial Report)	PDP Team/ICANN Staff Manager	▪ PDP Team to decide on items as they feel it necessary. ▪ No approval from the GNSO Council is needed to initiate such additional calls for public comment.	At any time between the creation of the PDP Team and the publication of the Final Report	PDP-related document other than Initial or Final Report published. Call for public comments announced.
19. (*If call for public comments on other PDP related documents is made*) Comment on PDP related documents	ICANN community	Post comments on ICANN public comment forum	Open for no less than 21 days after call for comments is posted	All public comments published on ICANN website

What	Who	How	When	Outcome
20. PDP Team develops recommendations on the issue that is the subject the PDP	PDP Team	▪ Dependent on PDP Charter and working method chosen for PDP Team (Working Group or other method). ▪ ICANN Staff Manager to coordinate with Chair(s) of PDP Team to enable the Team to carry out its work.	Not specified	The PDP Team can either: ▪ Reach the conclusion that no recommendation is necessary, OR ▪ Make recommendations on one or more of the following: i. Consensus policies ii. Other policies iii. Best Practices iv. Implementation Guidelines v. Agreement terms and conditions vi. Technical Specifications vii. Research or Surveys to be Conducted viii. Advice to ICANN or to the Board ix. Advice to other SOs or ACs x. Budget issues xi. Requests for Proposals xii. Recommendations on future policy development activities

What	Who	How	When	Outcome
21. Create Initial Report	PDP Team & ICANN Staff	Write Initial Report that includes the following elements: ▪ Compilation of Stakeholder Group & Constituency Statements ▪ Compilation of SOs & ACs statements ▪ Recommendations on the issue that is the subject of the PDP ▪ Statement of level of consensus regarding the recommendations ▪ Information regarding members of PDP Team (attendance records, Statements of Interest, etc.) ▪ Statement on PDP Team's discussion on impact of proposed recommendations (such as economic, competition, operations, privacy & other rights, scalability & feasibility)	Not specified	Initial Report written
22. Call for public comments on Initial Report	ICANN Staff Manager	Publish report on ICANN website	Not specified	Report published.[70] Call for public comments announced.
23. Comment on Initial Report	ICANN community	Post comments on ICANN public comment forum	▪ Open for no less than 30 days after call for comments is posted ▪ If the public comment period coincides with an ICANN Public meeting, extend the period by 7 days to be a minimum of 37 days	All public comments published on ICANN website
24. Summarize & analyze public comments	ICANN Staff manager	Write report (No officially specified format for report)	Within 30 days of the closing of the public comment forum (*extension may be requested*)	Report of public comments forwarded to PDP Team

[70] ICANN Staff are encouraged to translate Executive Summary of Initial Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
25. Prepare Final Report	PDP Team & ICANN Staff Manager	▪ Identify & add comments from the public comment period that are appropriate for inclusion in the updated Report ▪ Document how the PDP Team has evaluated & addressed the issues raised during public comment period ▪ If appropriate, update recommendations from Initial Report to respond to feedback received during public comment period	Not specified	Final Report written
26. (*Optional but recommended*) Publish Draft version of Final Report for public comment	ICANN Staff Manager	Following PDP Team's deliberation on whether publishing a draft Final Report can help maximize transparency & accountability, publish report on ICANN website	Not specified	Report published.[71] Call for public comments announced.
27. (*If Draft Final Report published for public comment*) Comment on Draft Final Report	ICANN community	Post comments on ICANN public comment forum	Not specified	All public comments published on ICANN website
28. (*If Draft Final Report published for public comment*) Summarize & analyze public comments	ICANN Staff manager	Write report (*No officially specified format for report*)	Not specified	Report of public comments forwarded to PDP Team
29. Forward Final Report to GNSO Council	Not specified	If a Draft Final Report has been published for public comment, ensure issues raised in comments that comment period are addressed in the Final Report.	Not specified	Final Issue Report forwarded to Chair of GNSO Council
30. (*Optional but strongly recommended*) Review Final Report	Stakeholder Groups, Constituencies & GNSO Councillors	Not specified	Allow "sufficient time" to review between publication of Final Report & GNSO Council meeting that will formally make a motion to adopt the Final Report	Transparency & accountability goals enhanced

[71] ICANN Staff are encouraged to translate Executive Summary of Draft Final Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
31. Deliberate & vote on Final Report recommendations	GNSO Council	▪ Vote on recommendations in the Final Report ▪ Decide if recommendations that did not achieve consensus should be adopted or remanded for further analysis & work ▪ GNSO Council strongly recommended to consider interdependent recommendations as a block ▪ If GNSO Council considers making changes to Report recommendations, it may be more appropriate to return these issues to the PDP Team for further input & follow-up	No later than the second GNSO Council meeting after the Final Report has been presented to the GNSO Council. (*Deliberation may be postponed for no more than 1 GNSO Council meeting*)	Final Report recommendations voted on
32. (*If recommendations in Final Report have been approved by GNSO Council*) Prepare Recommendations Report for the ICANN Board	An individual or group designated by GNSO Council	ICANN Staff to advise report writers of the format requested by the Board	If feasible, Recommendations Report to submitted to the Board before the GNSO Council meeting that follows the Council's adoption of the Final Report	Recommendations Report written
33. (*Optional?)* Write Staff Report	ICANN Staff	Write report on legal, implementability, financial or other operational concerns related to the PDP recommendations in the Final Report	Not specified	Staff Report written
34. Forward Board Report to the ICANN Board	ICANN Staff manager	The Board Report consists of the Recommendations Report and the Staff Report	Not specified	Board Report forwarded to ICANN Board
35. Approve PDP recommendations	ICANN Board	▪ Board to adopt PDP recommendations approved by a GNSO Council supermajority, unless a 2/3 vote of Board determines that such policy is not in best interests of ICANN community or ICANN ▪ A majority vote of the Board is used to adopt PDP recommendations approved by less than GNSO Council supermajority	Preferably not later than the second Board meeting after the Board receives the Board Report	PDP recommendations adopted

What	Who	How	When	Outcome
36. (*If some recommendations not adopted*) Explain non-adopted recommendations to GNSO Council	ICANN Board	If Board determines recommendation(s) are not in best interest of ICANN community or ICANN, Board must explain its reasons in report submitted to GNSO Council	Not specified	Board Statement forwarded to GNSO Council
37. (*If some recommendations not adopted*) Discuss Board Statement	ICANN Board & GNSO Council	▪ Board to determine how the discussion will take place ▪ Council to review Board Statement as soon as feasible after its receipt	Not specified	ICANN Board & GNSO Council meet to discuss reasons for non-adopted PDP recommendations
38. (*If some recommendations not adopted*) Forward Supplemental Recommendation to ICANN Board	GNSO Council	Supplemental Recommendation will report whether Council discussion on Board Statement has resulted in Council affirming or modifying its recommendation to the Board	Not specified	Supplemental Recommendations forwarded to ICANN Board (by ICANN Staff manager, presumably)
39. (*If some recommendations not adopted*) Approve PDP Supplemental Recommendation	ICANN Board	▪ Board to adopt Supplemental Recommendation approved by a GNSO Council supermajority, unless a 2/3 vote of Board determines that such policy is not in best interests of ICANN community or ICANN ▪ A majority vote of the Board is used to adopt Supplemental Recommendation approved by less than GNSO Council supermajority	Not specified	Supplemental Recommendations adopted
40. (*Optional*) Staff authorized to work with GNSO Council to create implementation plan	ICANN Board	Not specified	Upon the final decision of the Board adopting the PDP recommendations	GNSO Implementation Review Team established to assist with implementation
41. (*Optional*) Establish Implementation Review Team	GNSO Council	Implementation Review Team to be established according to recommendations included in Final Report	After ICANN Board has authorized/directed ICANN Staff to liaise with GNSO Council on implementation plan	Implementation Review Team established

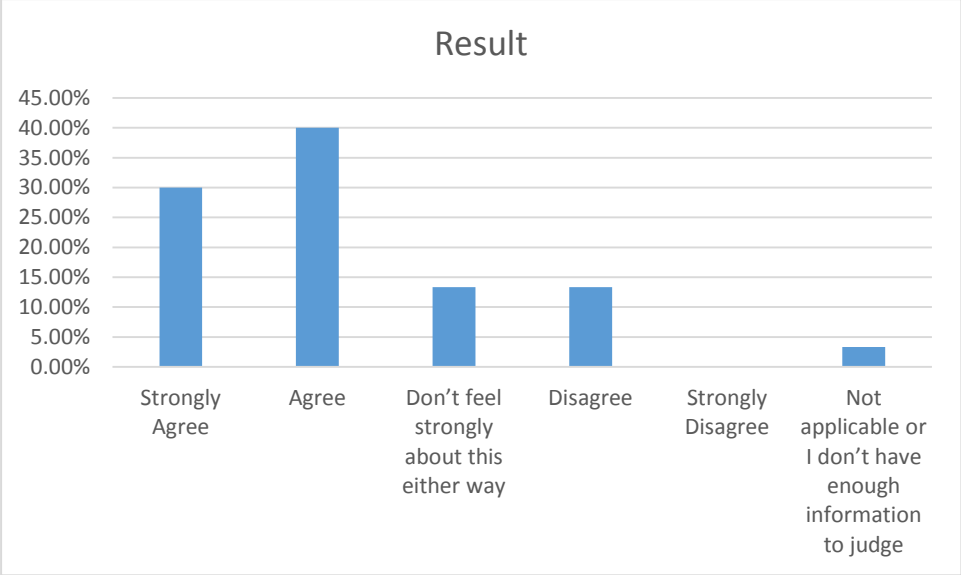
What	Who	How	When	Outcome
42. Implement PDP recommendations	ICANN Staff	Work with GNSO Council to create an implementation plan based upon the implementation recommendations identified in Final Report	Not specified	PDP recommendations implemented

Annex D: Interview Results by Question

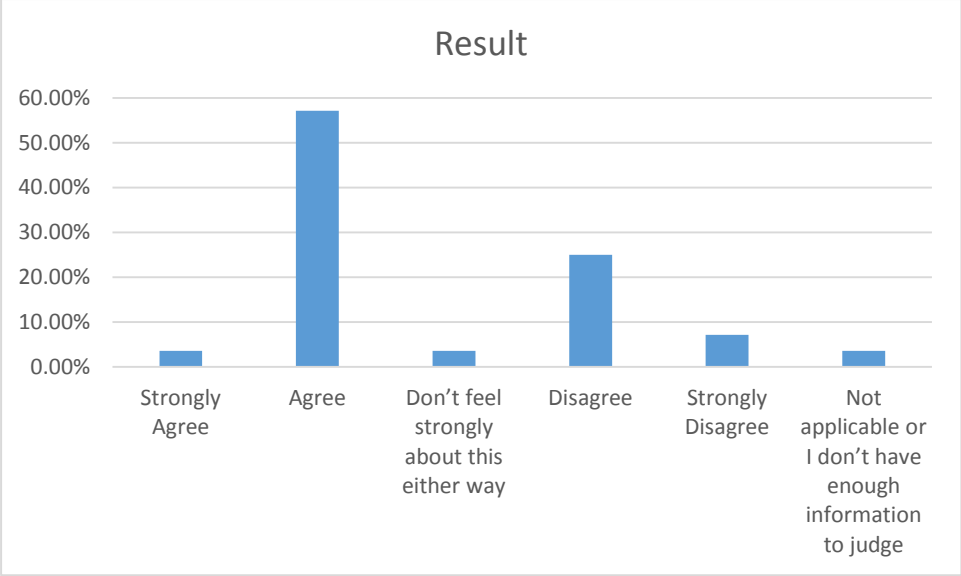
What follows is a complete presentation of the standardized data collected during the interviews conducted for the ATRT GNSO PDP research. The methodology for the survey is presented in Annex 4: Detailed Methodology. No correlations appear here, instead these are the raw tabulations for each of the standardized questions.

The interview results begin on the following page.

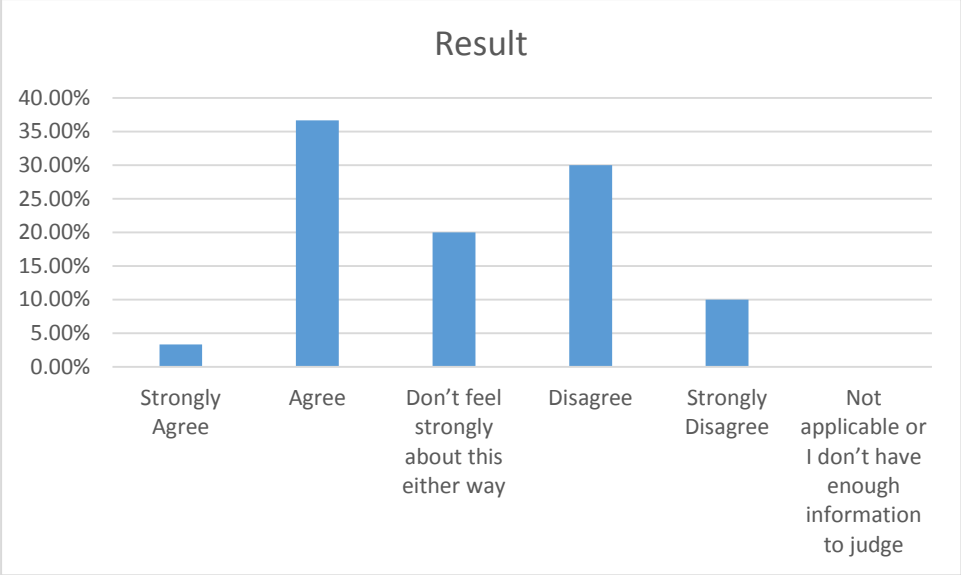
Question 1: The PDP, as currently defined, meets the transparency goals and requirements of ICANN processes.



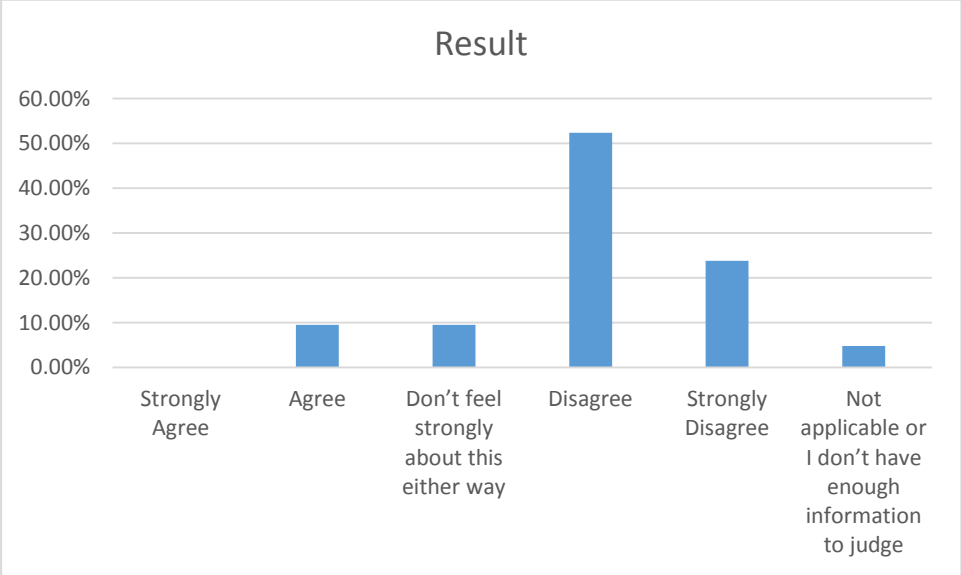
Question 2: The PDP, as currently defined, develops public policy that has legitimacy in the eyes of all stakeholders for that policy



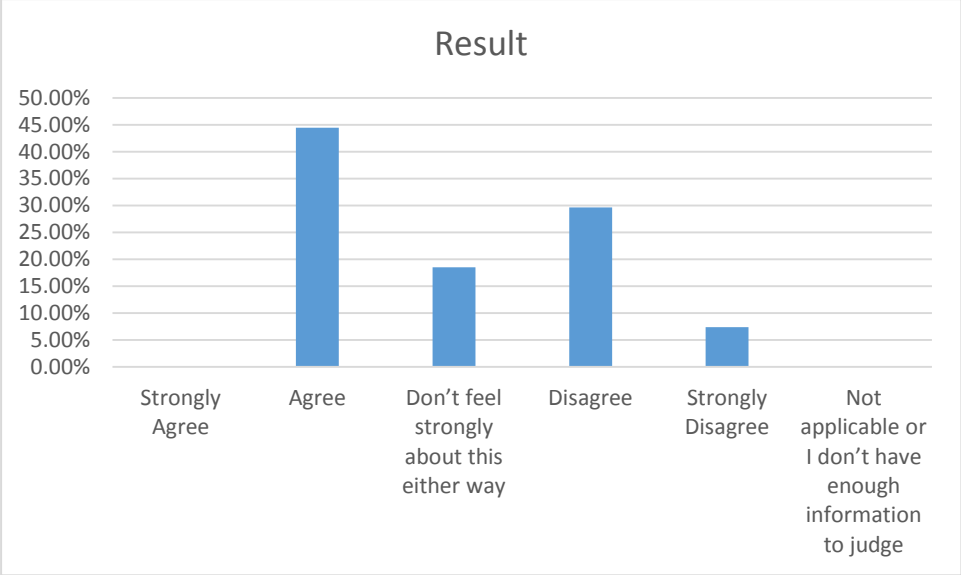
Question 3: In general, the current process ensures a balanced outcome that will take account of the interests and views of all applicable stakeholders including end users.



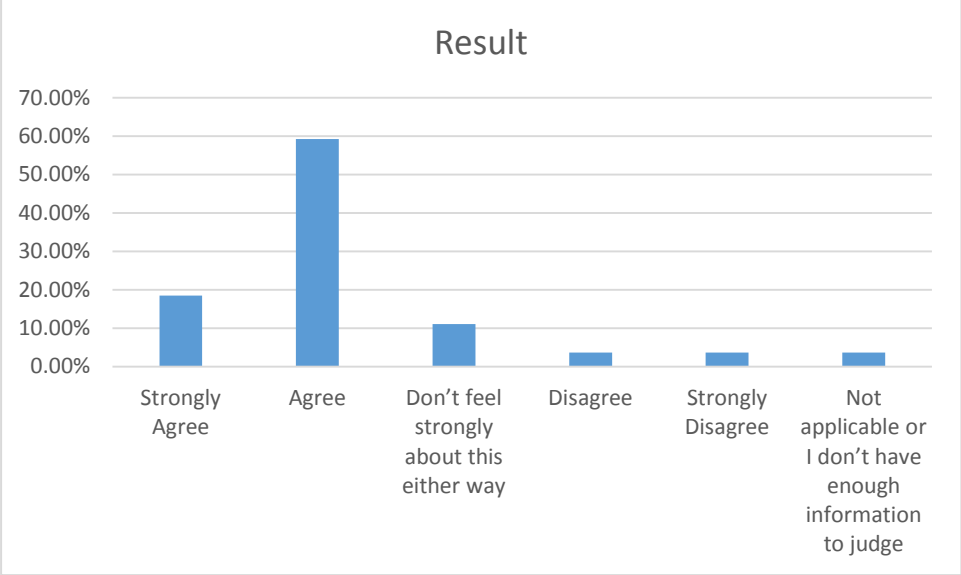
Question 4: The role and timing of GAC engagement in the PDP is adequate and effective.



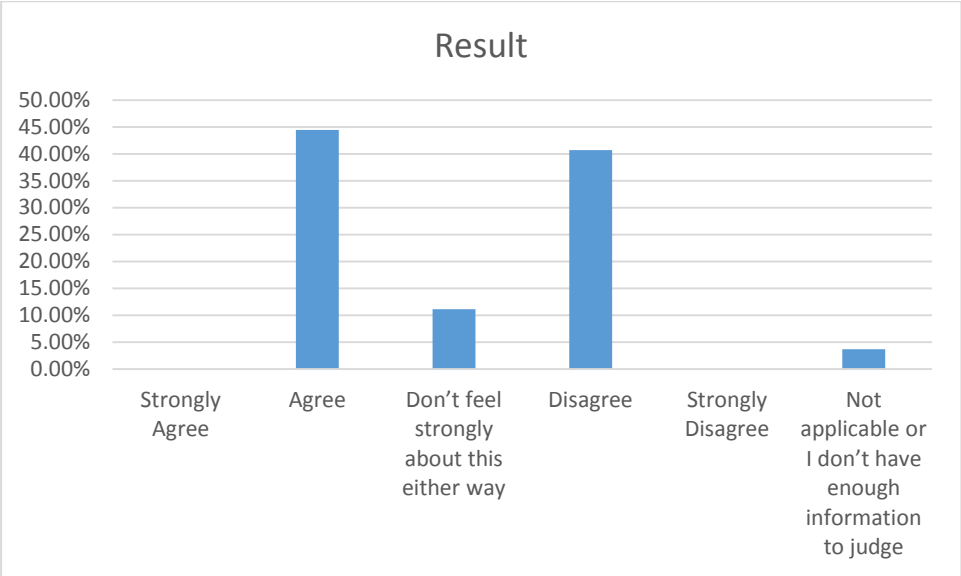
Question 5: The overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes.



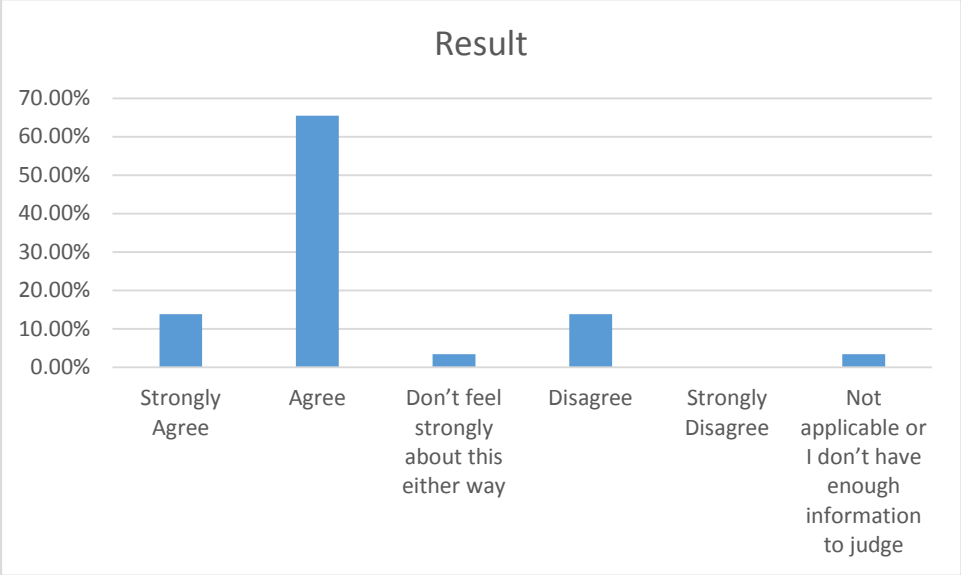
Question 6: The GNSO is encouraged to consider scheduling workshops on substantive issues prior to the initiation of a PDP. I believe this is a positive step in making PDPs more effective.



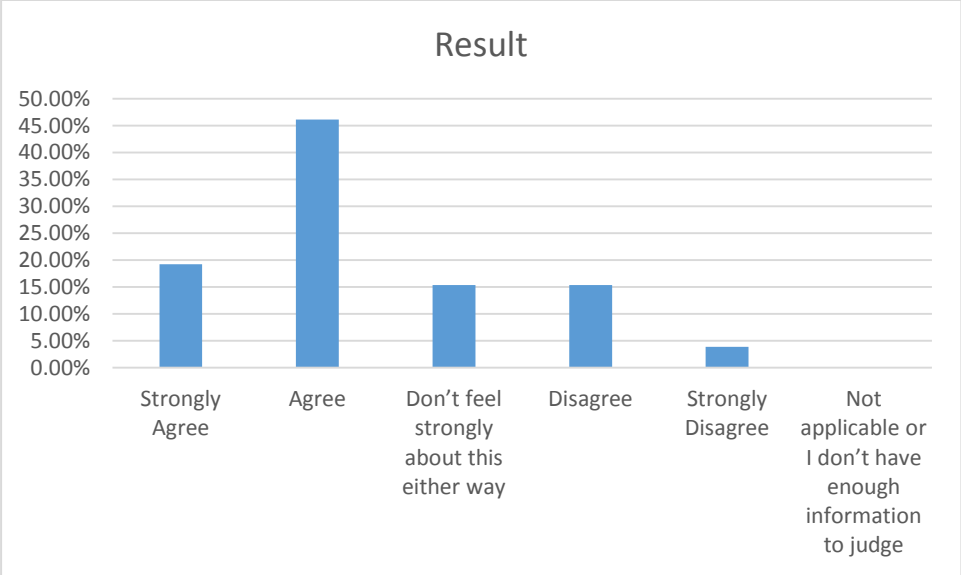
Question 7: Currently the request for an issues report prior to the initiation of a PDP only requires the name of the requestor and the definition of the issue. I believe this is enough for the initiation of an issues report.



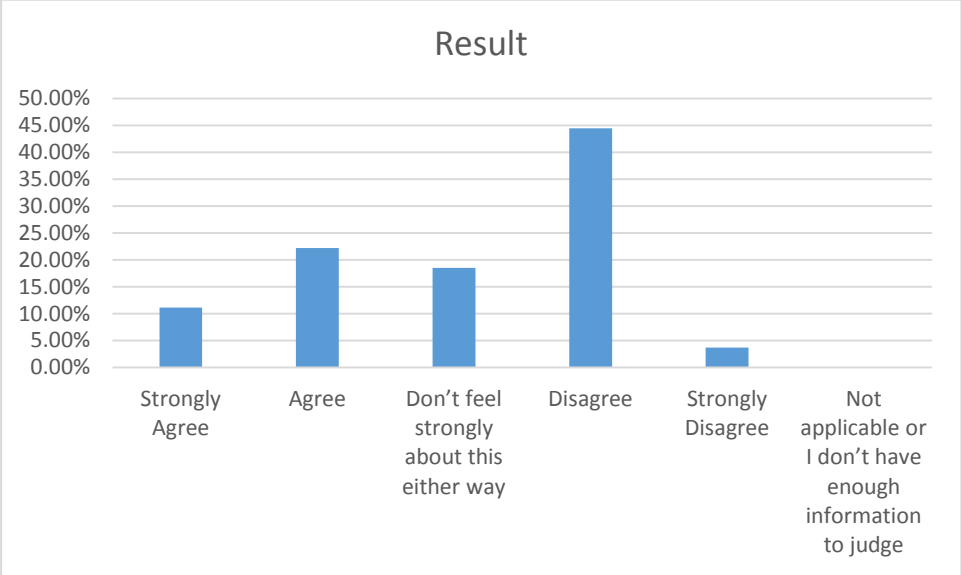
Question 8: The formation and make-up of Working Groups is done fairly and transparently.



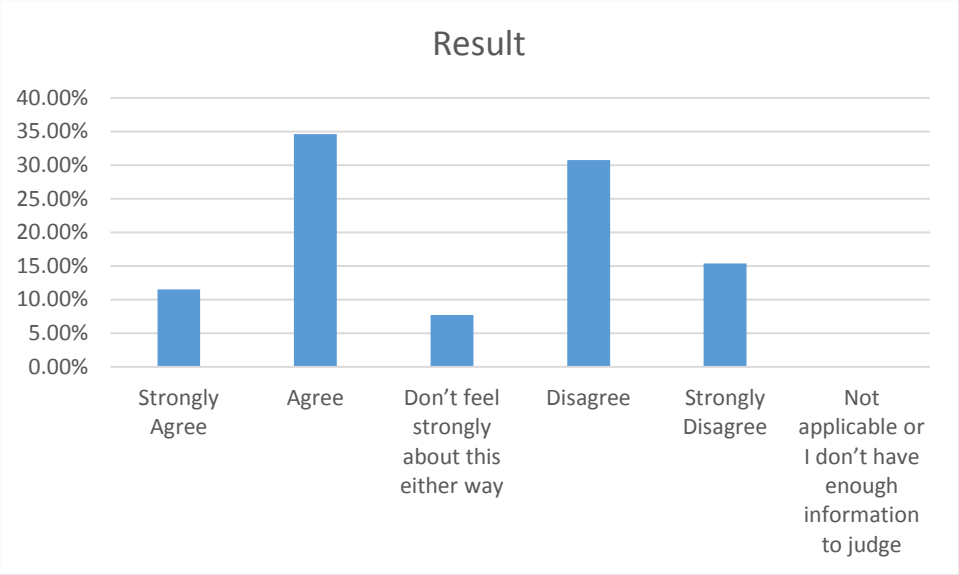
Question 9: The public comments part of the PDP is accountable and transparent.



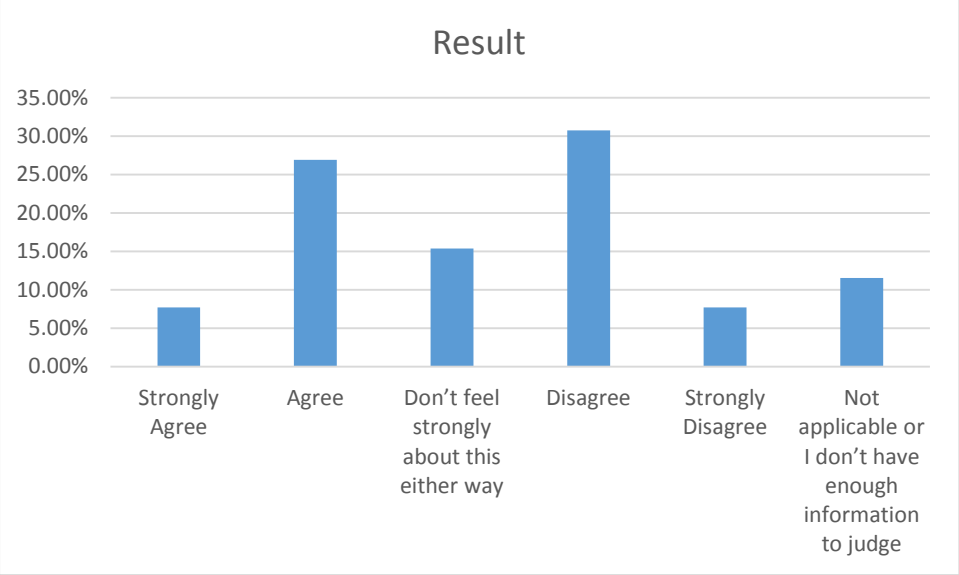
Question 10: In the PDPs I participated in, the public comment process was effective and meaningful to the final result.



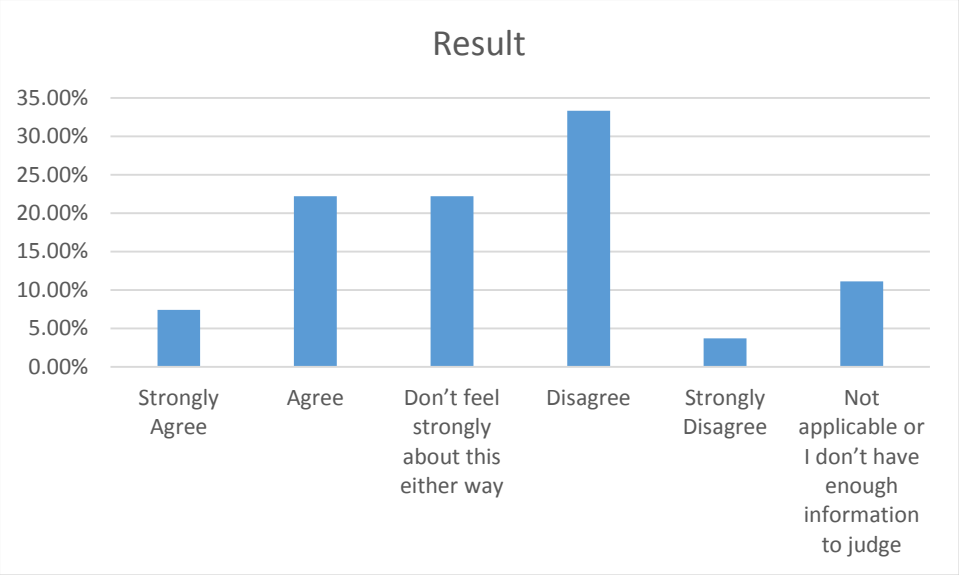
Question 11: In general, the outcomes and decisions taken as a result of the PDPs reflect the public interest and ICANN's accountability to all stakeholders.



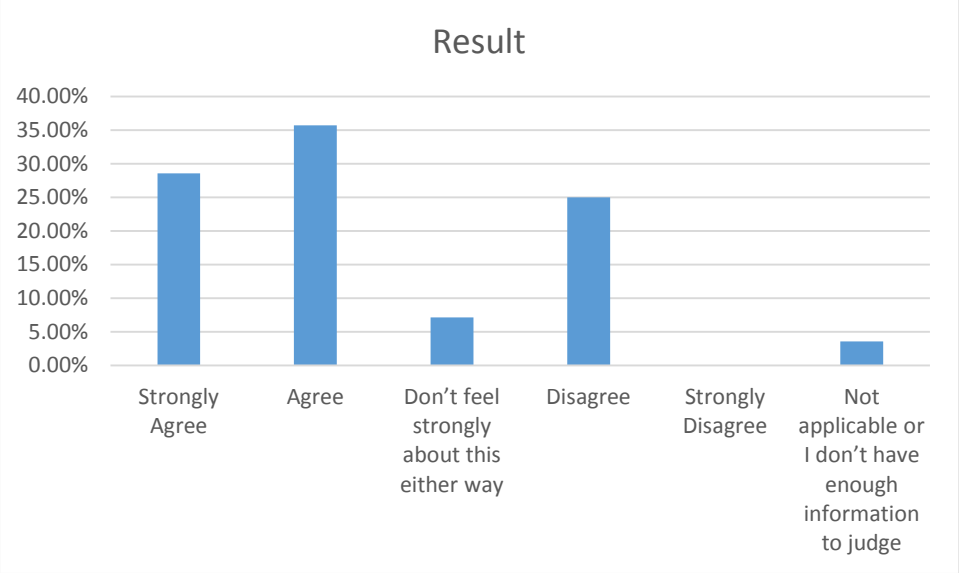
Question 12: The implementation phase of the PDP provides appropriate and effective opportunities for stakeholder comment and consultation.



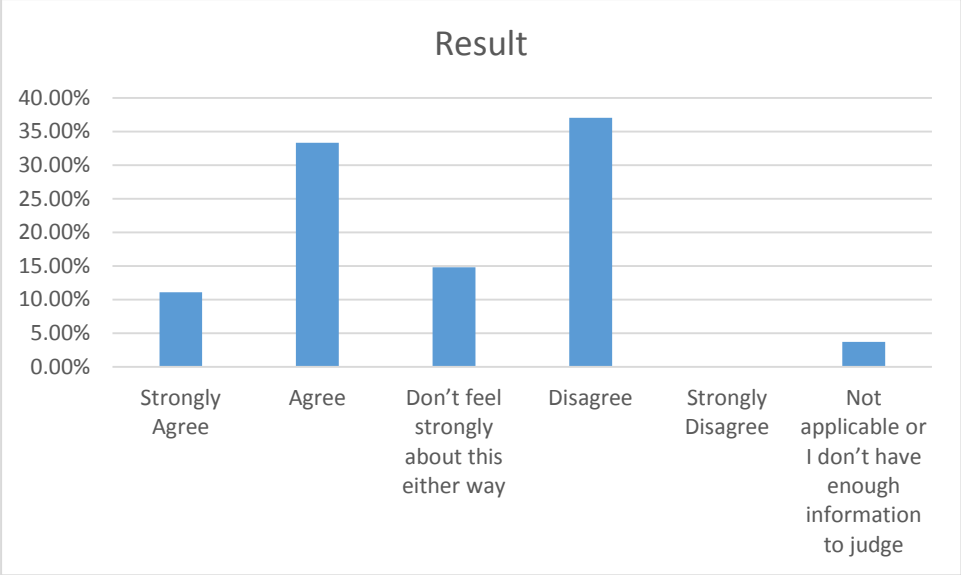
Question 13: Any differences between the PDP as it is defined and the PDP as executed in actual practice are necessary to ensure the public interest.



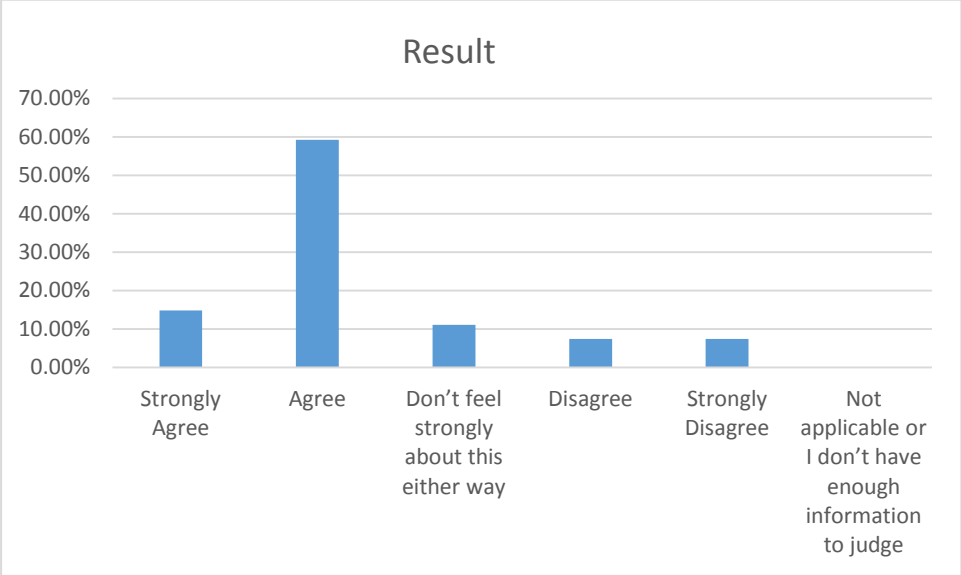
Question 14: The PDPs have been accessible to every stakeholder who wanted to participate.



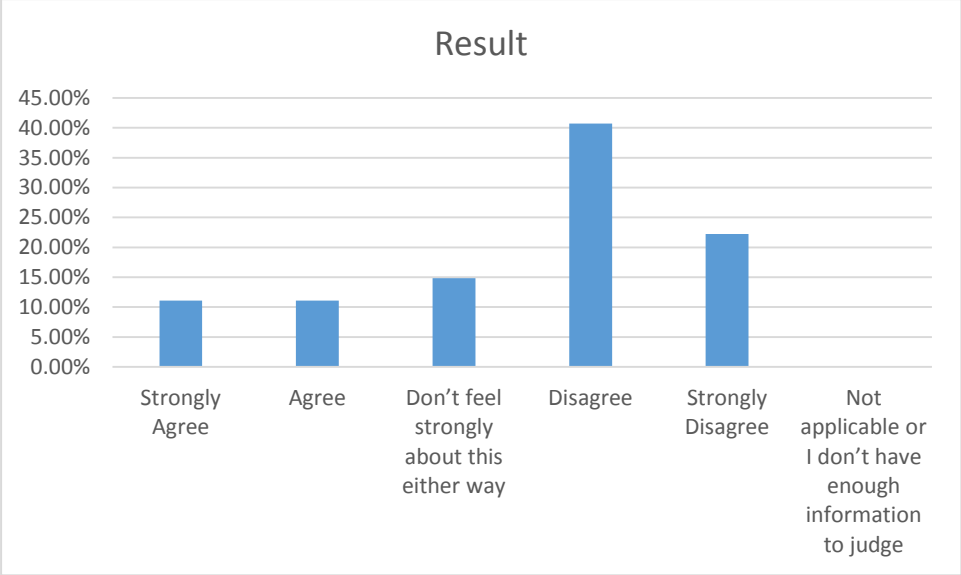
Question 15: The legitimate needs and interests of a diverse set of stakeholders have been reflected in the policy outcomes of the PDPs.



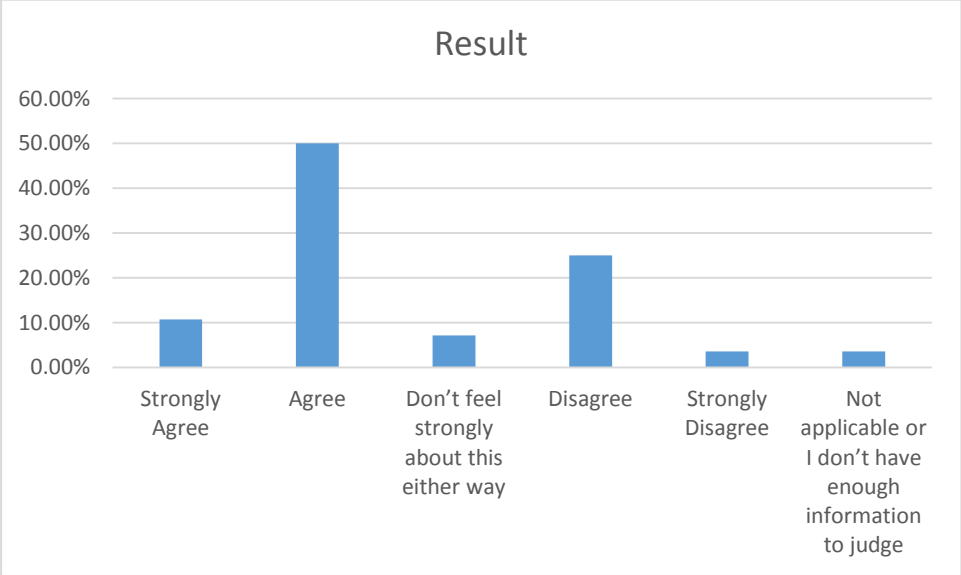
Question 16: I feel my input can influence the final outcome of the PDP.



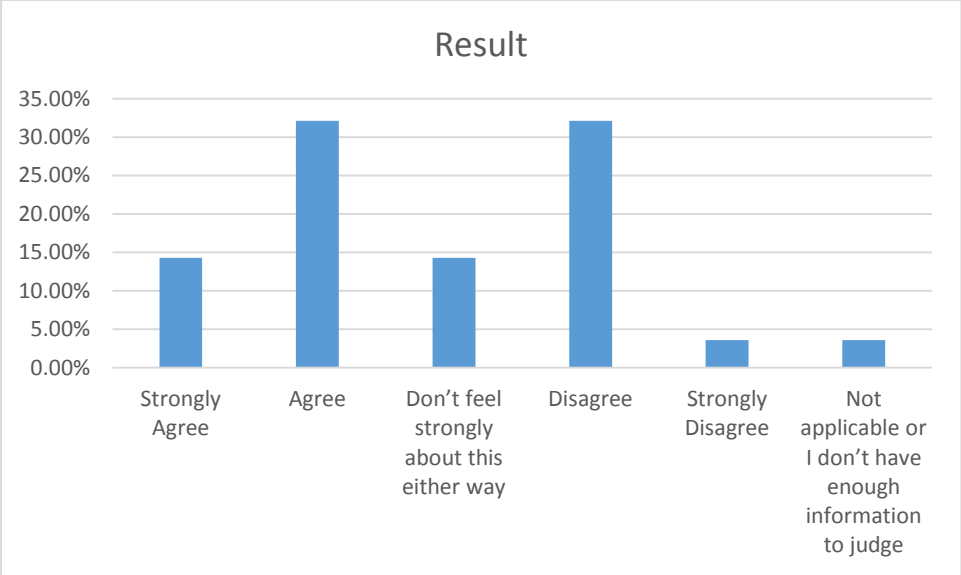
Question 17: There is effective interaction with other SO and ACs to ensure that effective policy outcomes from the PDP process.



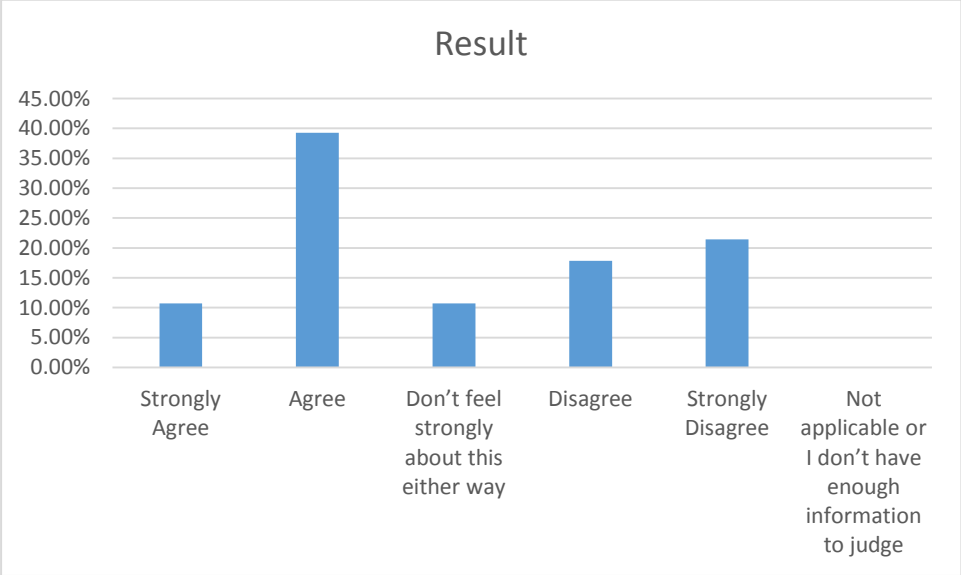
Question 18: The role of staff in the PDP was clear and transparent.



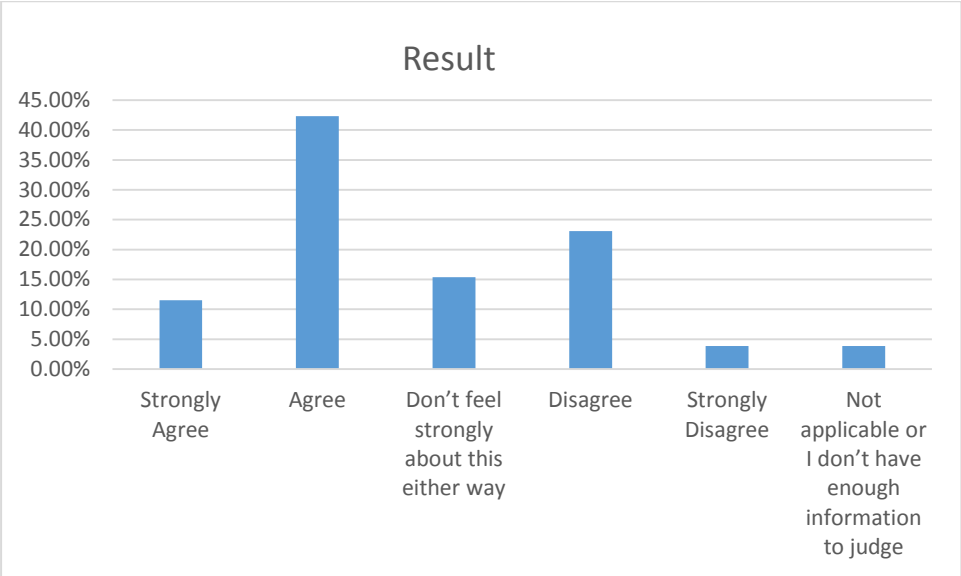
Question 19: The resources provided by ICANN to support the PDP were sufficient and timely.



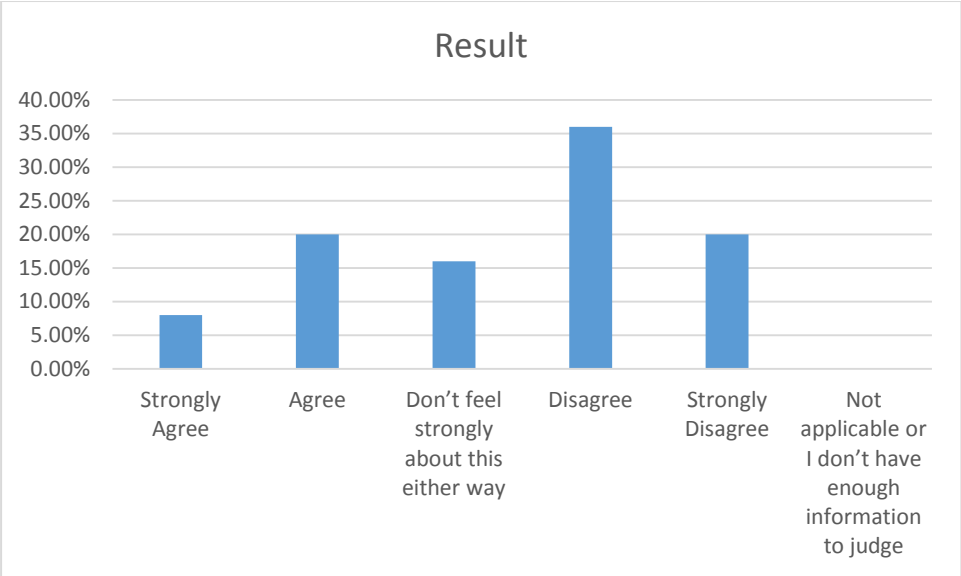
Question 20: Language barriers were not a problem in getting work done or in conducting the discussions.



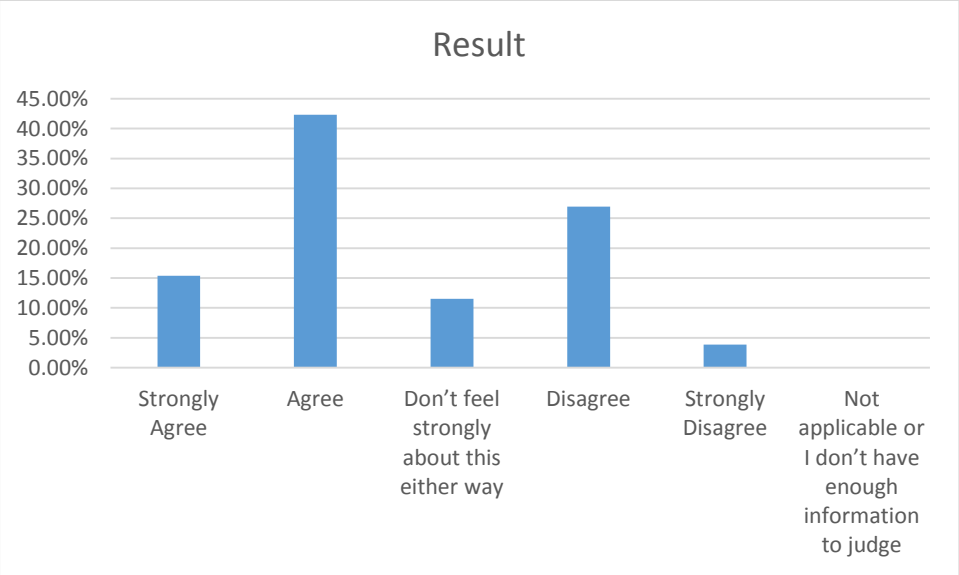
Question 21: The PDP Team is encouraged to establish communications, in the very early stages of a PDP, with people that may have an interest, expertise or helpful information. This worked effectively in the PDPs I participated in.



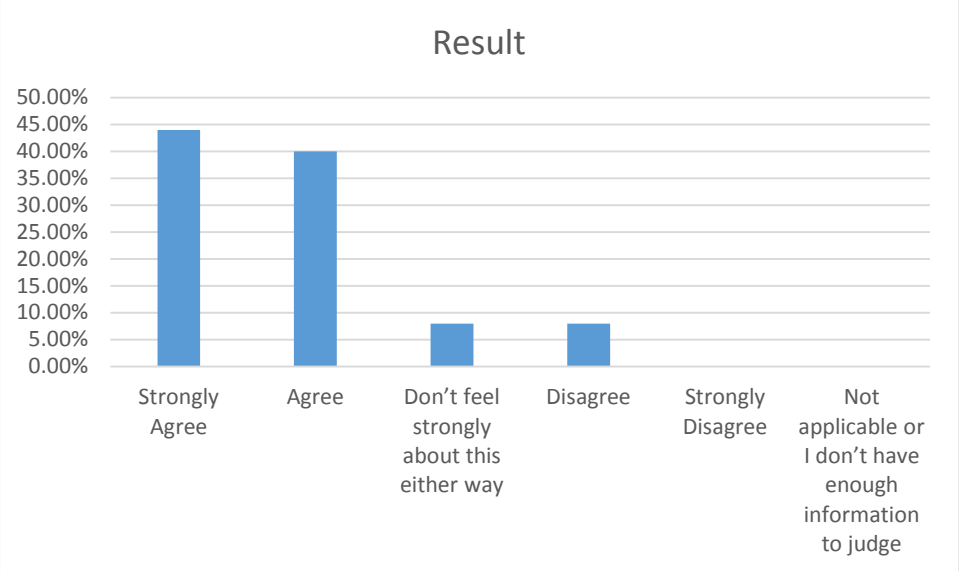
Question 22: There was effective participation from other Supporting Organizations or Advisory Councils.



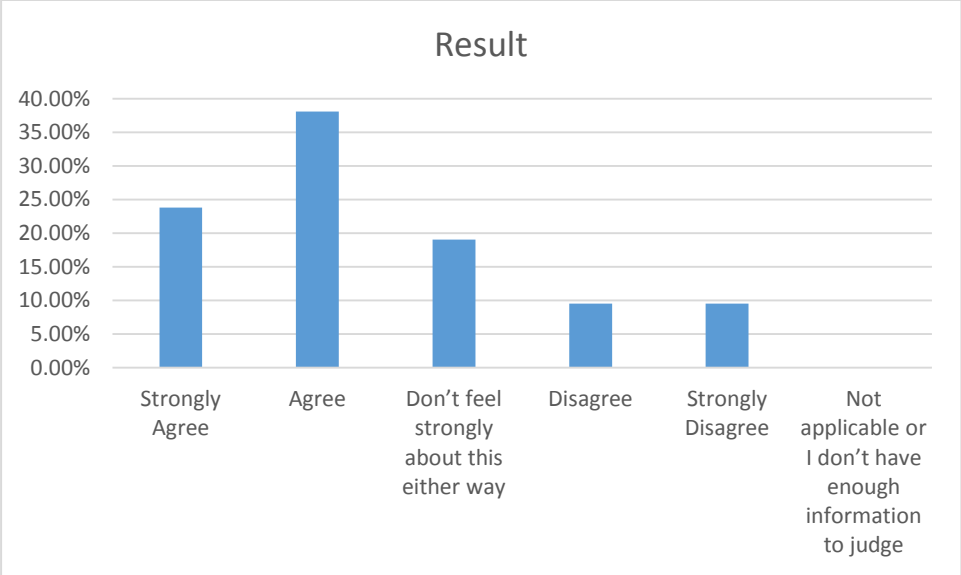
Question 23: Participation from all parties was valued and encouraged.



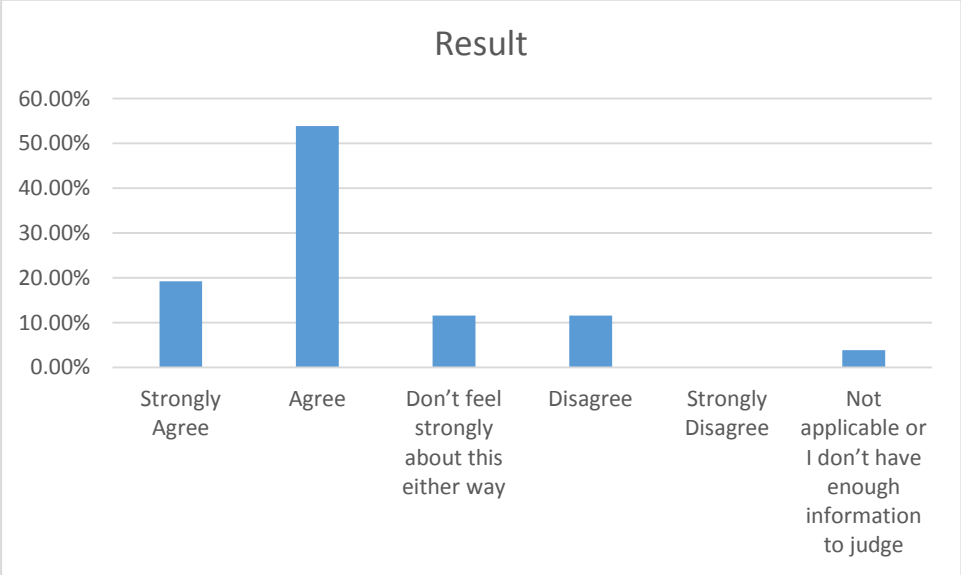
Question 24: "Insiders" have a particular advantage in the PDP.



Question 25: Working group dynamics helped us get good results in the PDP I participated in.



Question 26: We managed to build consensus even with diverse points of views and stakeholder needs in the PDPs I participated.



Appendix B – WHOIS Review Implementation

Recommendation	Summary of ICANN's assessment of implementation including actions taken, implementability and effectiveness	Summary of community input on implementation, including effectiveness	ATRT2 analysis of recommendation implementation (e.g. complete, incomplete or ongoing)
Board Adoption of RT Recommendations	Staff believes that the Board clearly accepted the RT recommendations (subject to some modification of implementation), and that the Expert Working Group on Directory Services (EWG) was clearly a parallel and long-term process.	Many in the community and particularly many members of the WHOIS Review Team believed that the Board had put little importance in the RT recommendations and chartered the EWG as a means to avoid following the advice of the RT, or perhaps had charged the EWG with dealing with the RT recommendations. [Citations: ATRT2 meeting with WHOIS RT members in Beijing, PC by Nominet, Maria Farrell, Internet Service and Connection Providers Constituency (ISPCP)]	Although a detailed review of the wording of the Board action indicates that they did indeed approve implementation of the bulk of the WHOIS RT recommendations, it is very easy to understand why that was not the impression left on many community members. The wording of the Board motion specifically identified three areas to be addressed (communications, outreach and compliance) but did not explicitly approve the recommendations that fell outside of those areas, and the details of the proposed implementation were embedded in a staff briefing paper. Moreover, the creation of the EWG based on the recommendation of the SSAC, which used terminology such as *do the [EWG] work before anything else*, and doing this as the first action of the Board before addressing the RT report reinforced this prioritization. The ATRT2 does, however, note that the there is work being undertaken on virtually all aspects of the set of WHOIS RT recommendations.

Appendix B – WHOIS Review Implementation

Recommendation	Summary of ICANN's assessment of implementation including actions taken, implementability and effectiveness	Summary of community input on implementation, including effectiveness	ATRT2 analysis of recommendation implementation (e.g. complete, incomplete or ongoing)
Strategic Priority			
1. It is recommended that WHOIS, in all its aspects, should be a strategic priority for ICANN the organization. It should form the basis of staff incentivization and published organizational objectives. To support WHOIS as a strategic priority, the ICANN board should create a committee that includes the CEO. The committee should be responsible for advancing the strategic priorities required to ensure the following: • Implementation of this report's recommendations; • Fulfillment of data accuracy objectives over time; • Follow up on relevant reports (e.g. NORC data accuracy study); • Reporting on progress on all aspects of WHOIS (policy development, compliance, and advances in the protocol / liaison with SSAC and IETF); • Monitoring effectiveness of senior staff performance and the extent to which the ICANN Compliance function is effective in delivering WHOIS outcomes, and taking appropriate action to remedy any gaps (see Recommendation 4 for more discussion of compliance). Advancement of the WHOIS strategic priority objectives should be a major factor in staff	WHOIS is deemed to be a strategic focus. Compliance restructured and reports to CEO. ICANN reported that in August, implementation was almost complete.	There were a number of Public Comments and during face-to-face discussions on the importance of the WHOIS efforts, but relatively few that targeted specific RT Recommendations. Advocates for At-Large have not been satisfied that the compliance changes are effective and not merely show, supported by the lack of replies to specific queries. [Citation: PC by Garth Bruen, Paper on regulation and compliance submitted by Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly Raiche, Carlton Samuels, Jean-Jacques Subrenat]	There is clearly a focus on long term WHOIS replacement as well as significant ongoing work on addressing the WHOIS-RT's other recommendations. The provisions in the new RAA along with the registry agreement changes which will accelerate the move to this RAA provides a far more robust mechanism to enforce WHOIS policy than was available at the time the WHOIS RT filed their report and this is a significant improvement and a strong indication of the importance given to Whois-related issues. There have been regular public updates on WHOIS-related issues, but these updates, as those initially provided to the ATRT2, have made it difficult to clearly assess this progress. The ATRT2 notes that the reports received later in process have been very helpful. How effective all of this will be remains to be seen, but it is encouraging that the WHOIS issue is now receiving significant focus.

Appendix B – WHOIS Review Implementation

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incentivization programs for ICANN staff participating in the committee, including the CEO. Regular (at least annual) updates on progress against targets should be given to the Community within ICANN's regular reporting channels, and should cover all aspects of WHOIS including protocol, policy development, studies and their follow up.			
Single WHOIS Policy			
2. ICANN's WHOIS policy is poorly defined and decentralized The ICANN Board should oversee the creation of a single WHOIS policy document, and reference it in subsequent versions of agreements with Contracted Parties. In doing so, ICANN should clearly document the current gTLD WHOIS policy as set out in the gTLD Registry and Registrar contracts and GNSO Consensus Policies and Procedure.	The Board Briefing Document noted the lack of a single policy (the WHOIS RT's conclusion) and said "These presently available conditions and policies should be publicly available from one source." The result, which is deemed to completely satisfy the recommendation, can be viewed at http://www.icann.org/en/resources/registrars/whois-policies-provisions, entitled "Single Webpage for ICANN Whois-Related Policies and Provisions" but is largely a vast set of pointers to various policy documents and contractual terms. While saying that the implementation is complete, Staff acknowledges that the end result does not meet the desired target of having the WHOIS requirements in an understandable form, and says that the forthcoming various WHOIS portals will serve the purpose.	There was no community input other than from the WHOIS RT which considered the result to not meet their original intent.	The ATRT concurs with the WHOIS RT assessment and disagrees with the staff assessment that the single policy page completely satisfies the. The WHOIS RT and the ATRT2 acknowledges that the task was difficult, but that difficulty for staff is multiplied many times for less knowledgeable users who are attempting to understand WHOIS policy. The ATRT2 also notes that the requirement to "clearly document" the current policy in a form that could be understandable to users and at the same time have sufficient specificity and detail to be usable as a contract amendment may not be achievable in a single document. The future WHOIS portals should go a long way to addressing the user aspect of the recommendation, but the delay in meeting this need, although

Appendix B – WHOIS Review Implementation

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			perhaps understandable in light of the major changes associated with the new RAA, has been excessive.
Outreach			
3. ICANN should ensure that WHOIS policy issues are accompanied by cross community outreach, including outreach to the communities outside of ICANN with a specific interest in the issues, and an ongoing program for consumer awareness.	Planning is complete and the recommendation was implemented by creation of a detailed communications plan to raise awareness about WHOIS policy issues beyond the ICANN community and to raise consumer awareness related to WHOIS. The plan leverages the regional and industry connections of ICANN staff and regional vice presidents to promote WHOIS awareness through speaking engagements, events, newsletters and blogs. Tools including slide decks, talking points and fact sheets have been developed for their use. A key component of the communications plan is leverage program milestones to generate news media attention and social media chatter. An example of how this works has to do with Communications' work on the recommendations of the Expert Working Group on 25 June. A news release was distributed to ICANN's media list and resulted in more than 25 news articles in publications including IT Avisen,	There was no community input.	The new RAA has triggered much discussion and education related to the improved WHOIS terms in the agreement. It is less clear to what extent communications has improved outside of contracted parties and ICANN meeting participants.

Appendix B – WHOIS Review Implementation

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	ComputerWorld, TechEye, DomainIncite. Articles appeared in Dutch, English, French, Italian, Norwegian and Russian. Roughly 190 tweets appeared related to the ComputerWorld article alone. Similar efforts are planned for upcoming milestones such as the launch of the portal. A number of additional activities related to implementation for new WHOIS obligations under the 2013 RAA was implemented, as well as additional Registrar outreach activities (August 2013, Los Angeles and Xiamen), etc. The Communications team is following the Communications Plan to generate news media attention whenever other WHOIS related milestones are reached. For example, the launch of the various WHOIS portals (educational and Search) will be accompanied by outreach as detailed in the Communications Plan. This recommendation was also implemented through the work to create the information portal to become the single source of information and data on WHOIS and the development of a blueprint for a new model of delivery		

Appendix B – WHOIS Review Implementation

Recommendation	Summary of ICANN's assessment of implementation including actions taken, implementability and effectiveness	Summary of community input on implementation, including effectiveness	ATRT2 analysis of recommendation implementation (e.g. complete, incomplete or ongoing)
	data directory services that will be sent to GNSO Council for further policy development.		
Compliance			
4. ICANN should act to ensure that its compliance function is managed in accordance with best practice principles, including that: a. There should be full transparency regarding the resourcing and structure of its compliance function. To help achieve this ICANN should, at a minimum, publish annual reports that detail the following relevant to ICANN's compliance activities: staffing levels; budgeted funds; actual expenditure; performance against published targets; and organizational structure (including the full lines of reporting and accountability). b. There should be clear and appropriate lines of reporting and accountability, to allow compliance activities to be pursued pro-actively and independently of other interests. To help achieve this, ICANN should appoint a senior executive whose sole responsibility would be to oversee and manage ICANN's compliance function. This senior executive should report directly and solely to a sub-committee of the ICANN Board. This sub-committee should include Board members with a range of relevant skills, and should include the CEO. The sub-committee should not include any	1) People - grow staff in skills and expertise and number; Increase staff to 15 FTEs and contractors based on projects; Compliance led by VP reporting to CEO (100% complete) 2)Processes - build, communicate, implement and publish operational processes (100%) 3) Systems - consolidate and automate the fragmented tools (100% for WHOIS; 50% for the full consolidation of other systems) 4) Communication (100%) -Annual Report redesigned and published in 6 UN languages to provide data on budget and across all areas -Monthly Updates published in 6 UN languages 5) Performance Measurement - Metrics published on MyICANN (100%) 6) Audit Program launched (Year one 80% complete)	Relatively little explicit community input was received. Representatives of At-Large expressed concern over the ability of Compliance to address the Whois issue effectively. [Paper on regulation and compliance submitted by Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly Raiche, Carlton Samuels, Jean-Jacques Subrenat, PC by Rinalia Abdul Rahim, and supported by Evan Leibovitch and Carlton Samuels] However, there is a pervasive concern within much of the ICANN community that there are still	The designation of the head of Compliance as a Vice-President reporting to the CEO, although not as strong as what the RT recommended is a step in the right direction. Full transparency on resourcing and structure has not been achieved. Although the ATRT2 has recently been provided with information on current and projected staffing levels, the publicly available information is limited. Monthly Contractual Compliance reports and annual report provide a lot of data but are not sufficiently clear as to create a clear understanding. Usage of such terms as "Prevention Complaint Volume" to describe the number of complaints received is at best confusing. However, the ATRT2 notes that these reports are evolving based on

Appendix B – WHOIS Review Implementation

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representatives from the regulated industry, or any other Board members who could have conflicts of interest in this area. c. ICANN should provide all necessary resources to ensure that the compliance team has the processes and technological tools it needs to efficiently and pro-actively manage and scale its compliance activities. The Review Team notes that this will be particularly important in light of the new gTLD program, and all relevant compliance processes and tools should be reviewed and improved, and new tools developed where necessary, in advance of any new gTLDs becoming operational.		significant problems with Contractual Compliance, and in particular, they may not be in a position to effectively enforce contracts with relation to the New gTLD Program.	community feedback and there does appear to be improvement in the quantity and quality of information being made available by Contractual Compliance.
Data Accuracy			
5. ICANN should ensure that the requirements for accurate WHOIS data are widely and pro-actively communicated, including to current and prospective Registrants, and should use all means available to progress WHOIS accuracy, including any internationalized WHOIS data, as an organizational objective. As part of this effort, ICANN should ensure that its Registrant Rights and Responsibilities document is pro-actively and prominently circulated to all new and renewing registrants.	Staff is developing **a WHOIS Information Portal** to • Provide historical record of WHOIS • Consolidate WHOIS policy documentation • Provide mechanisms to teach people how to use WHOIS • Provide mechanisms for people to submit complaints as they relate to WHOIS data • Direct people to the appropriate channels to become engaged in the community on WHOIS related	There was no community input.	Although staff reports much work being done, little has been seen by the community, so it is hard to evaluate just how effective it is. Classing the EWG work as complete based on a draft report that is in the midst of a comment period and has been subject to much community discussion, not all positive, is far too optimistic. The Registrant Rights and Responsibilities document referred to as being complete is the one that is

Appendix B – WHOIS Review Implementation

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	topics • Educate registrants on WHOIS, their rights and responsibilities • Provide a Knowledge Center where key WHOIS related documents can be located The Expert Working Group has developed a blueprint for a new model for delivery data directory services that will be sent to the GNSO Council for further policy development. (100% complete).		now called Registrant *Benefits* and Responsibilities, terminology that has caused some user representatives to significantly downgrade its importance. The planned WHOIS Portal, once online (scheduled for October 2013) should address many of the communications needs. An early glimpse of the Portal was provided to the ATRT2 and it was quite impressive both in its scope and in its accessability. There are not yet any standards or specifications with respect to internationalized WHOIS data, and thus little communication or progress in this respect.
6. ICANN should take appropriate measures to reduce the number of WHOIS registrations that fall into the accuracy groups Substantial Failure and Full Failure (as defined by the NORC Data Accuracy Study, 2009/10) by 50% within 12 months and by 50% again over the following 12 months.	To address this recommendation, the Board directed the CEO to: 1) proactively identify potentially inaccurate gTLD data registration information in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action; and 2) publicly report on the resulting actions to encourage improved accuracy.	No community input other than At-Large expressing doubt that there is any movement in this area [Comment by Garth Bruen, Paper on regulation and compliance submitted by Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly	It would appear that there is progress being made, although extracting that information has been difficult. Despite initial reports to the ATRT2 that the NORC methodology might not be implemented due to the cost of phone validation, current reports indicate that it will be (perhaps with some modification). Automated tools are also being developed to aid in uncovering non-compliant WHOIS

Appendix B – WHOIS Review Implementation

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7. ICANN shall produce and publish an accuracy report focused on measured reduction in WHOIS registrations that fall into the accuracy groups "Substantial Failure and Full Failure" on an annual basis.	On further probing, the ATRT2 was told: ICANN has completed (but not fully documented) a preliminary assessment of implementing a statistical analysis program following the methodology used in the NORC study. As previously discussed the study calls for phone validation, which is costly to operationalize and we are looking at competitive analysis to find the best rate for this option. In parallel, we are looking at alternative means of verifying and validating WHOIS sample data. To accomplish this we are discussing the issue with businesses and experts in identity verification, but have yet to identify a methodology that will yield acceptable results. Staff is developing a WHOIS Accuracy Sampling and Reporting System using the methodology of the NORC Study To accomplish the requested analysis, Staff's work is focusing on: 1. Statistical methodology 2. Access to WHOIS records 3. Parser to automate contact data extraction 4. Automated address verification 5. Call center to call all sampled records.	Raiche, Carlton Samuels, Jean-Jacques Subrenat]	data. There is also some question as to whether the annual 50% reduction target is achievable. It is unclear when all of this work will culminate in starting to look at and improve WHOIS accuracy, but it appears that instead of a reduction of 50% in 12 months, we may have the ability to set a baseline some time into the second year after Board action on the WHOIS RT recommendations. Any discussion about annual reports is premature at this point.

Appendix B – WHOIS Review Implementation

Recommendation	Summary of ICANN's assessment of implementation including actions taken, implementability and effectiveness	Summary of community input on implementation, including effectiveness	ATRT2 analysis of recommendation implementation (e.g. complete, incomplete or ongoing)
8. ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreements with registries, registrars, and registrants to require the provision and maintenance of accurate WHOIS data. As part of these agreements, ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its WHOIS policies. These sanctions should include de-registration and/or de-accreditation as appropriate in cases of serious or serial non-compliance.	Staff went through an extensive internal process to identify areas to improve the registry and registrar agreements. The outcome of this effort led to the additional negotiation topics for the RAA negotiations and the new gTLD Registry Agreements. ICANN received resistance from the contracted parties during negotiations resulted in language that differed from original proposals. Added in August, 2013: New 2013 RAA includes additional enforcement provisions and sanctions applicable to registrars, registrants, and resellers with regards to WHOIS. New gTLD Registry Agreements include enhanced WHOIS obligations Renewals of existing GTLDs to include enhanced WHOIS obligations.	There was little direct input to the ATRT on this. However there has been widespread agreement that the new RAA gives ICANN a far better ability to enforce WHOIS policy than has previously been available.	With respect to WHOIS enforceability, the terms in the new RAA are orders of magnitude better than those in previous RAAs, and the RAA combined with terms in new and renewed gTLD agreements, will hopefully move most or all registrars to the 2013 RAA within a year or two. That being said, it is unfortunate that ICANN had to lower its goals in such a critical area (ICANN had wanted verification of both phone numbers and e-mail addresses, but the RAA required only one of the two to be verified, due to perceived costs and implementation difficulties on the part of registrars). It should be noted that in many cases, WHOIS inaccuracy is associated with transient domain names and the solution under the current regime is to simply delete the name, a situation that will not be alleviated until sufficient WHOIS validation is done at or immediately after registration time.
9. The ICANN Board should ensure that the Compliance Team develop, in consultation	The issue was understood as WHOIS RT believed that there was a need to	There was no community input.	The Board's Resolution addressing the WHOIS Review Team

Appendix B – WHOIS Review Implementation

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with relevant contracted parties, metrics to track the impact of the annual WHOIS Data Reminder Policy (WDRP) notices to registrants. Such metrics should be used to develop and publish performance targets, to improve data accuracy over time. If this is unfeasible with the current system, the Board should ensure that an alternative, effective policy is developed (in accordance with ICANN's existing processes) and implemented in consultation with registrars that achieves the objective of improving data quality, in a measurable way.	establish a baseline in order to track whether Staff's implementation of the WHOIS RT recommendations will lead to the desired improvement in WHOIS accuracy. In addition, there is a need for ICANN to collect and provide visibility into whether accuracy rates are improving over time. ICANN considered that no further action required here per board direction as it relates to the impact of the annual WHOIS Data Reminder Policy. The WRT recommendation as stated is not feasible. (The policy only requires registrars to send the reminder in a specific form including specific information. The policy does not require registrars to track changes directly resulting from the reminder. ICANN incorporated the WHOIS Data Reminder Policy (WHOIS accuracy) in the Audit Program. As in the past, Registrars must, at least once a year, send a reminder to Registered Name Holders reminding them to verify/update WHOIS data – ICANN to validate that the reminder notices sent and stating consequences for inaccurate WHOIS data. Implementation of this recommendation		Recommendations questioned whether this recommendation was actually implementable, a possibility that the WHOIS RT foresaw, and the ATRT2 concurs. Alternative approaches to achieving the intended result of this recommendation are being pursued. The ATRT agrees that the EWG strategic initiative is a reasonable path forward in addressing the intent of the Recommendation.

Appendix B – WHOIS Review Implementation

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	involved (1) Staff seeking amendments to the RAA and the Registry Agreements to enhance the contractual framework for WHOIS, (2) the creation of the Expert Working Group to create a new policy framework to better address the inadequacies of the current contractual framework; (3) Staff to initiate a process to create an accreditation program for privacy/proxy providers, and work with the GNSO to develop a policy framework for these services, and (2) establishment of the online portal and proactive monitoring to be able to establish some metrics on accuracy over time.		
Data Access – Privacy and Proxy Services			
10. The Review Team recommends that ICANN should initiate processes to regulate and oversee privacy and proxy service providers. ICANN should develop these processes in consultation with all interested stakeholders. This work should take note of the studies of existing practices used by proxy/privacy service providers now taking place within the GNSO. The Review Team considers that one possible approach to achieving this would be to establish, through the appropriate means,	As reported by the Staff in August 2013: • Adopted 2013 Registrar Accreditation Agreement includes many new obligations related to privacy/proxy providers, and commits ICANN to create a privacy/proxy accreditation program • GNSO PDP to be commenced shortly to examine policy issues related to privacy/proxy services • Staff Implementation work to	There was no community input.	The process of regulating and overseeing privacy and proxy services after being ignored for many years is a complex and lengthy one. The new RAA addresses some issues and a forthcoming GNSO PDP should complete the process. That PDP may have a difficult time in bridging the privacy needs of end-users with the needs of both law enforcement and trademark owners, but the fact that the discussions will be starting is promising. New policies are not likely to be in place before 2015.

Appendix B – WHOIS Review Implementation

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an accreditation system for all proxy/privacy service providers. As part of this process, ICANN should consider the merits (if any) of establishing or maintaining a distinction between privacy and proxy services. The goal of this process should be to provide clear, consistent and enforceable requirements for the operation of these services consistent with national laws, and to strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum, this would include privacy, data protection, law enforcement, the industry around law enforcement and the human rights community. ICANN could, for example, use a mix of incentives and graduated sanctions to encourage proxy/privacy service providers to become accredited, and to ensure that registrars do not knowingly accept registrations from unaccredited providers. ICANN could develop a graduated and enforceable series of penalties for proxy/privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial or otherwise serious breaches. In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to the	develop the operational aspects of the Privacy/Proxy Accreditation Program to be conducted in parallel with GNSO PDP. Most of deliverables are expected by end 2013 – first half of 2014.		The ultimate result of the EWG and its follow-on PDP may reduce the need for privacy and proxy services, but they will not disappear completely.

Appendix B – WHOIS Review Implementation

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following objectives: • Clearly labeling WHOIS entries to indicate that registrations have been made by a privacy or proxy service; • Providing full WHOIS contact details for the privacy/proxy service provider, which are contactable and responsive; • Adopting agreed standardized relay and reveal processes and timeframes; (these should be clearly published, and pro-actively advised to potential users of these services so they can make informed choices based on their individual circumstances); • Registrars should disclose their relationship with any proxy/privacy service provider; • Maintaining dedicated abuse points of contact for each provider; • Conducting periodic due diligence checks on customer contact information; • Maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider. • Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment.			
Data Access – Common Interface			
11. It is recommended that the Internic Service is overhauled to provide enhanced usability for consumers, including the display	WHOIS Inaccuracy complaints migrated by the Compliance Dept. and automated	There was no community input.	There has been significant progress in replacing the Internic interface with

Appendix B – WHOIS Review Implementation

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of full registrant data for all gTLD domain names (whether those gTLDs operate thin or thick WHOIS services) in order to create a one stop shop, from a trusted provider, for consumers and other users of WHOIS services. In making this finding and recommendation, we are not proposing a change in the location where data is held, ownership of the data, nor do we see a policy development process as necessary or desirable. We are proposing an operational improvement to an existing service, the Internic. This should include enhanced promotion of the service, to increase user awareness.	ICANN is currently working on a comprehensive WHOIS Portal, with development to occur in two phases to overhaul the Internic service: Phase 1- Launch of WHOIS Informational Portal Phase 2- Launch of WHOIS Online Search Portal to offer a place where people could initiate a search of global WHOIS records Communications Plan to be coordinated with launch of each phase		native function on the ICANN web site. The new functionality will includes all aspects of the interface between users and ICANN with respect to Contractual Compliance, and will also include a domain name search capability as part of the forthcoming WHOIS Portal.
Internationalized Domain Names			
12. ICANN should task a working group within six months of publication of this report, to determine appropriate internationalized domain name registration data requirements and evaluate available solutions (including solutions being implemented by ccTLDs). At a minimum, the data requirements should apply to all new gTLDs, and the working group should consider ways to encourage consistency of approach across the gTLD and (on a voluntary basis) ccTLD space. The working group should report within a year of being tasked.	IETF WEIRDS Working Group currently evaluating technical protocols. Once adopted by the IETF, new gTLD Registry Agreement and New 2013 RAA include commitments to adopt new protocols. ICANN is also in the process of tasking a team to work on the Internationalized Registration Data (IRD) requirements, the final product will be dependent upon the conclusion of the GNSO PDP on translation/transliteration described in #13 below.	No direct input was received by the ATRT2, however there was a general concern, particularly among those who monitor WHOIS accuracy and in those communities using internationalized domain registration.	The planned implementation of the recommendation is taking far more time than was initially recommended by the RT. The current estimate for the IRD to submit its report is June 2014, which the ATRT2 views as reasonable or perhaps optimistic, given the complexity of the issue, the fact that there is a required linkage to the translation and transliteration PDP (see Recommendation 13) and given that the IRD was just convened in September 2013.

Appendix B – WHOIS Review Implementation

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	ICANN is commissioning a Study to Evaluate Available Solutions for the Submission and Display of Internationalized Contact Data		Moreover, it is also unfortunate that ICANN has not proposed any interim implementations or best practices for internationalized registration data, leaving registrar and registries to have to develop these on their own in order to meet contractual requirements to populate WHOIS records with valid ASCII data.
13. The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in the relevant Registrar and Registry agreements within 6 months of adoption of the working group's recommendations by the ICANN Board. If these recommendations are not finalized in time for the next revision of such agreements, explicit placeholders for this purpose should be put in place in the agreements for the new gTLD program at this time, and in the existing agreements when they come up for renewal.	Issue of Translation/Transliteration is being explored as a policy matter within the GNSO Council . Consensus policy, if produced out of the PDP would become binding upon contracted parties, when adopted by Board This output of this PDP work is required to inform the rest of the IRD related implementation work being supervised by Staff (# 12 – 14). Conclusion of this aspect of the implementation is dependent upon the speed in which the PDP can be completed once the working group is formed. The current completion estimate is 2015.	See Recommendation 12.	The Issue Report leading to a PDP on translation and transliteration was delivered at the end of January 2013 and the GNSO initiated the PDP in June. The current expectation is that the PDP work will begin in before the end of 2013. Given this, the staff prediction of completion in 2015 is reasonable, but the implication is that IDN TLDs will be in full operation well before there are rules as to how to deal with the associated IDN WHOIS information.
14. In addition, metrics should be developed to maintain and measure the accuracy of the internationalized registration data and	IDN WHOIS Records to be proactively identified once the work referenced in #12 and #13 is complete. The current	See Recommendation 12.	Since this recommendation is largely contingent on the two previous ones, it is not surprising that it as yet

Appendix B – WHOIS Review Implementation

Recommendation	Summary of ICANN's assessment of implementation including actions taken, implementability and effectiveness	Summary of community input on implementation, including effectiveness	ATRT2 analysis of recommendation implementation (e.g. complete, incomplete or ongoing)
corresponding data in ASCII, with clearly defined compliance methods and targets, as per the details in Recommendations 5-9 in this document.	estimate is 2015.		untouched. The end result, however, is that this recommendation will arguably not even be started when the next WHOIS RT begins (or finishes its work).
Detailed and Comprehensive Plan			
15. ICANN should provide a detailed and comprehensive plan within 3 months after the submission of the Final WHOIS Review Team report that outlines how ICANN will move forward in implementing these recommendations.	ICANN Staff developed and published its proposed plan, which was adopted by the ICANN Board.	No substantial input from the Community, except for the criticism on how the WHOIS RT final report was perceived and evaluated by the Board .	The ATRT acknowledges that ICANN is in the process of implementing the WHOIS RT recommendations and there has been much discussion of specific implementations. However, the appendix of a staff briefing paper linked to in a Board resolution is not an optimal ways to make bring such a plan to the community's attention.
Annual Status Reports			
16. ICANN should provide at least annual written status reports on its progress towards implementing the recommendations of this WHOIS Review Team. The first of these reports should be published one year, at the latest, after ICANN publishes the implementation plan mentioned in recommendation 15, above. Each of these reports should contain all relevant information, including all underlying facts, figures and analyses.	ICANN plans to publish first Annual Report one year after the Board's approval of the WHOIS Review Team Final Report recommendations (Nov.2013).	N/A	Deadline not yet reached at the time of writing.

Review and Analysis of the Implementation of the First Security, Stability, and Resiliency Review Team Recommendations

Overall Observations

Summary of assessment of implementation

Rec	Status	Comment
1	Completed	
2	Implemented	Has a recurrent component so will never be completed
3	In process	Will require application to all future materials
4	In process	
5	In process	
6a	In process	
6b	In process	
6c	Completed	Whether resources provided is “appropriate” is subjective
7a	In process	
7b	Not yet started	Depends on 7a
8	In process	
9a	In process	Deferred until the CIO/CTO role has been filled
9b	Not yet started	Depends on 9a
10a	In process	Efforts to step up compliance enforcement continue
10b	Implemented	Whether resources provided is “adequate” is subjective
10c	Completed	
11	In process	
12a	In process	
12b	In process	
13	In process	
14	In process	Continuous evolution implies it will never complete
15	Completed	
16a	Implemented	As outreach efforts will continue, this will never complete
16b	In process	
17a	In process	
17b	In process	
18	Completed	
19	In process	

20	In process	
21	In process	
22	In process	
23a	Implemented	Whether the resources provided is "appropriate" is subjective
23b	In process	Unclear whether this is implementable
24a	Completed	Some question whether the approach taken is most effective
24b	Completed	
24c	Completed	
25a	In process	
25b	Completed	
26	In process	
27	In process	
28	Implemented	As engagement will continue, this will never complete

Actions taken

A majority of the 28 recommendations (and their subtasks) is as yet incomplete; however implementation has at least begun on all recommendations. The 28 recommendations translated to 41 subtasks and of the 41 subtasks; 27 subtasks are as yet incomplete, representing 66%.

Implementability

In nearly all cases, recommendations appear to be or, in the cases where implementation has completed, have been implementable. In the vast majority of recommendations, staff has indicated they did not anticipate or experience any issues when implementing the recommendations.

It should, however, be kept in mind that the implementation of a large number of recommendations has not been completed and, in some cases, have not even started. It may be that implementation difficulties will be encountered at some future point.

One notable exception to this general Implementability is related to recommendation 23 in which ICANN it is recommended that ICANN "must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure." While objectivity in reaching decisions is a worthwhile goal, it is difficult to imagine a decision that is "free from external or internal pressure."

Effectiveness

For those recommendations that have been implemented, the overall impression has been that they have been reasonably effective in addressing at least the letter of the recommendation. Unfortunately, many of the recommendations used subjective qualifiers and few specified concrete metrics by which effectiveness could be

measured. As such, objective measurement of the recommendations effectiveness is challenging.

Summary of community input on implementation

A total of 3 public comments were received on the final report of the SSR Review team. A summary of those comments can be found at:

http://www.icann.org/en/news/public-comment/summary-comments-ssr-rt-final-report-30aug12-en.pdf

Recommendation 1

"ICANN should publish a single, clear and consistent statement of its SSR remit and limited technical mission. ICANN should elicit and gain public feedback in order to reach a consensus-based statement."

Analysis of Previous Review Team Recommendation

This recommendation aimed to publicly document ICANN's role in relation to related to security, stability, and resiliency in a clear and concise way and to obtain consensus within the community regarding that role.

Summary of ICANN's assessment of implementation

Completed.

Actions taken

Staff (specifically, the ICANN Security Team) published a draft statement for public comment in May 2012 and conducted extensive outreach with the community to facilitate feedback. A report of the public comments received was published, and a revised draft statement was published for the ICANN meeting in Toronto (http://toronto45.icann.org/meetings/toronto2012/presentation-draft-ssr-role-remit-04oct12-en.pdf). Following an open session in Toronto and additional community engagement, a new version of the statement was incorporated into the FY 14 SSR Framework, published for public comment on 6 March 2013. This document was open for public comment through 20 May 2013.

Implementability

Implemented.

Effectiveness

Input received on the statement has been very positive. Internal to ICANN the statement has given the new Senior Management Team language for ICANN's role and remit in SSR. Externally, the community participants who have contributed to the review of the text have noticed the improvement in language over time and have been supportive of the text.

Summary of community input on implementation

ICANN received 20 comments on the draft statement during the public comment period between 17 May and 31 August 2012 (see http://forum.icann.org/lists/draft-ssr-role-remit/). A summary of these comments prepared by ICANN is available at http://forum.icann.org/lists/draft-ssr-role-remit/pdflijnRXQ1v1.pdf.

Summary of other relevant information

None.

ATRT2 analysis of recommendation implementation

This recommendation can be partitioned into two sub-tasks:

a. ICANN should publish a single, clear and consistent statement of its SSR remit and limited technical mission; and
b. ICANN should elicit and gain public feedback in order to reach a consensus-based statement.

ICANN did publish a statement regarding its SSR remit and limited technical mission. Whether that statement was singular, clear, and consistent is, of course, a matter of opinion, however based on public input, it would seem the statement is viewed by the commenters to be "clear and concise". As such, this component of the recommendation would appear to have been followed.

With regards to the second component of this recommendation, while staff undertook significant efforts at outreach that appear to have been effective within the Community, it is unclear whether ICANN's role in the context of SSR is well understood outside of the ICANN community, particularly in the non-security related communities.

ATRT2 assessment of recommendation effectiveness

Providing a clear statement of ICANN's SSR role and gaining consensus within at least some portion of the community regarding that role has been effective in helping people within the community understand ICANN's role and limitations. Continued efforts at outreach and education on ICANN's role relating to SSR would likely improve the effectiveness of the implementation of this recommendation.

Recommendation 2

"ICANN's definition and implementation of its SSR remit and limited technical mission should be reviewed in order to maintain consensus and elicit feedback from the Community. The process should be repeated on a regular basis, perhaps in conjunction with the cycle of future SSR reviews."

Appendix C – SSR Review Implementation

Analysis of Previous Review Team Recommendation

The SSR-RT thought it important to ensure ICANN's definitions of its SSR remit and limited technical mission and the implementation of that remit and mission were reviewed with input from the Community in a repeatable, regular basis.

Summary of ICANN's Assessment of Implementation

Implemented, albeit this recommendation has a recurrent component and thus will never be completed.

Actions Taken

Staff (specifically, the Security Team) incorporated a tracking page in the Annual SSR Framework showing how the previous year's activities were implemented.

ICANN published a draft of the FY14 SSR Framework that includes ICANN's current definition of its SSR remit and limited technical mission on 6 March 2013. The public was able to comment on that Framework until 20 May 2013. The final version of the FY14 SSR Framework was published on .

The next opportunity to review would be in publication of the FY 15 Framework in 2014, and as part of the SSR RT2 kicking off in 2015.

Implementability

Staff does not believe this recommendation has been or can be fully implemented due to the need to periodically review definitions and implementation. However efforts are underway and they do not foresee any problems during implementation.

Effectiveness

Based on improvements that were made between the FY12 and FY13 versions of the Framework that are now reflected in the FY14 version, this recommendation was effective.

Summary of Community Input on Implementation

In total 19 public comments were received during the public comment period associated with the publication of the draft FY 14 SSR Framework document. Summarizing those comments:

- There were multiple expressions of concern regarding resource allocations and potentially overwhelming the Security team as a result of an increased workload if the FY 14 SSR Framework is fully implemented;
- Several comments suggested that intra-ICANN and inter-organization engagement efforts by the Security team should be strengthened;
- Broadening the Framework's perspective from ICANN the organization to ICANN the Community would be beneficial;
- Activities and initiatives should be organized according to the identified categories;

- Suggestions related to improving the Framework document, e.g., adding text to graphics, providing more detail on roles and responsibilities, etc.

However, the majority of commenters indicated they believed the information provided regarding ICANN's SSR remit and limited technical mission provided for a "good basis for future developments."

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be viewed as being comprised of three parts:

a. The definition of ICANN's SSR remit and limited technical mission, with community review and gaining of consensus;
b. The implementation of that definition; and
c. Repetition of that definition/implementation process.

Taking each of these parts in turn:

Definition, Soliciting Feedback and Gaining Consensus

The FY14 Framework has been published after a public comment period. Based on public input and subsequent revisions to the FY14 Framework prior to final publication, it would seem consensus (at least as far as ICANN normally measures consensus) was reached.

Implementation

As noted by Staff, this recommendation is not yet implemented. However, ATRT2 notes that reasonable efforts towards implementation are underway and given the recommended cycle of definition/implementation/review, this recommendation will never be fully implemented.

Definition/Implementation Repetition

The annual Framework-driven review of SSR remit and limited technical mission definition/implementation seems appropriate albeit this is a matter of opinion.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has been effective in providing a framework in which ICANN's SSR and limited technical mission can be defined and modified over time.

Recommendation 3

"Once ICANN issues a consensus-based statement of its SSR remit and limited technical mission, ICANN should utilize consistent terminology and descriptions of this statement in all materials."

Analysis of Previous Review Team Recommendation

The definitions of security, stability, and resiliency are often inconsistent and can vary depending on industry, venue, and publication/speaker. This can make clarity in understanding proposals and implementation decisions challenging. In order to minimize the chances of misunderstanding, the SSR-RT recommended ICANN publish and use consistent terminology and descriptions of security, stability, and resiliency within all their materials.

Summary of ICANN's Assessment of Implementation

Implemented.

Actions Taken

On 8 July 2013, Patrick Jones, Senior Director of Security, posted the definitions ICANN uses for the set of terms surrounding the concepts of security, stability, and resiliency and their context at http://blog.icann.org/2013/07/icanns-security-terminology/.

Implementability

Staff does not believe this recommendation has been fully implemented, however efforts are underway and they do not foresee any problems during implementation.

Effectiveness

Staff believes the implementation of this recommendation will help all parts of the organization have a common understanding of ICANN's SSR role and remit and use consistent terminology in its materials and discussions.

Summary of Community Input on Implementation

To date, no comments were received on the blog posting.

Summary of Other Relevant Information

Staff has stated that they plan on performing internal webinars, staff instruction, and publication of the statements prior to the ICANN Buenos Aires meeting in November 2013.

ATRT2 Analysis of Recommendation Implementation

The definitions ICANN uses for security, stability, and resiliency has been published by the Security Team and efforts are underway to inform the rest of staff of those definitions.

ATRT2 Assessment of Recommendation Effectiveness

Within the context of the Security Team, the exercise of making a statement about ICANN's use of the terms "security", "stability", and "resiliency" has been effective in providing clarity regarding those concepts.

There has been insufficient time to evaluate the effectiveness of this recommendation on wider ICANN efforts.

Recommendation 4

"ICANN should document and clearly define the nature of the SSR relationships it has within the ICANN Community in order to provide a single focal point for understanding the interdependencies between organizations."

Analysis of Previous Review Team Recommendation

ICANN's SSR relationships take many forms, and other than the ICANN website sections showing its MOUs, agreements and partnerships, there is no central location at ICANN for easily seeing (internally or externally) ICANN's SSR relationships.

The SSR-RT felt it would be helpful for ICANN to document and define the nature of the SSR relationships that exist for the organization (to parties in the community, the Supporting Organizations and Advisory Committees, but also to non-contracted parties and partners), and place this information in a location where ICANN and the community can see the description of the relationships and consider interdependencies.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

Internally, staff has identified four types of SSR-related relationships if has within the ICANN community:

- Collaboration on threat awareness;
- Coordination;
- Technical engagement; and
- Organizational risk management.

From this categorization, which includes relationships either through partnerships, MOUs, or contracts, staff is in the process of documenting the relationships that fit into these categories.

Publicly, the first step has been the development of an infographic depicting the SSR functions at ICANN, showing the organizational risk management function, threat awareness, coordination function and subject matter expertise function. Within each of these areas will be a mapping to show the associated relationships. Version 1.0 of the infographic was included in the FY 14 SSR Framework.

Implementability

This recommendation is not yet fully implemented.

Effectiveness

The exercise to develop the functional graphic has helped sharpen the language on ICANN's security related technical engagement and staff has made improvements to their material for the community.

Summary of Community Input on Implementation

Several commenters during the public comment period of the FY14 SSR Framework document suggested that while the infographics where helpful, "the cartoon graphics do not stand on their own" and that additional text describing the relationships would be helpful.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

While not yet fully implemented, staff has taken concrete steps to implement this recommendation.

ATRT2 Assessment of Recommendation Effectiveness

As the implementation of this recommendation is not yet complete, its effectiveness cannot be fully assessed.

Recommendation 5

"ICANN should use the definition of its SSR relationships to maintain effective working arrangements and to demonstrate how these relationships are utilized to achieve each SSR goal."

Analysis of Previous Review Team Recommendation

ICANN's SSR relationships are not well documented. Changing this and making it apparent both for the organization and community to see how ICANN has extensive relationships in SSR, should enable effective working arrangements and show how these relationships support ICANN's SSR goals.

Easy to find documentation of SSR functions and relationships so that the organization and community can see the functions and relationships and have an understanding of their connection to ICANN's SSR goals is desirable.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

As described in the assessment of the implementation of recommendation 4, staff is in the process of documenting and categorizing SSR-related relationships, including the identification of existing MOUs, Agreements, contracts, partnerships, and informal relationships.

This recommendation has resulted in better coordination between departments, e.g., regular calls and interaction between the Global Stakeholder Engagement group and Security and regular discussion between Policy and Security.

Implementability

Once relationships are documented and categorized, staff believes it should be possible to implement this recommendation.

Effectiveness

As this recommendation has not been implemented, it is not yet possible to fully determine effectiveness. However, this recommendation does highlight areas for better coordination and collaboration internally between departments so that there is recognition of existing relationships and how these contribute to effective working arrangements.

Summary of Community Input on Implementation

This recommendation has not yet reached a stage in which there would be input on implementation.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

The implementation of this recommendation has not yet reached a stage at which an analysis of implementation can be performed.

ATRT2 Assessment of Recommendation Effectiveness

As the implementation of this recommendation is not yet complete, its effectiveness cannot be fully assessed.

Recommendation 6

"ICANN should publish a document clearly outlining the roles and responsibilities for both the SSAC and RSSAC in order to clearly delineate the activities of the two groups. ICANN should seek consensus for this across both groups, recognizing the history and circumstances of the formation of each. ICANN should consider appropriate resourcing for both groups, consistent with the demands placed upon them."

Analysis of Previous Review Team Recommendation

The ICANN Bylaws contain provisions for SSAC and RSSAC, specifically Article XI section 2.2 and section 2.3 respectively. SSAC has published its Operating Procedures at http://www.icann.org/en/groups/ssac/operational-procedures-18jan13-en.pdf, per implementation of the SSAC Review. The ICANN Board recently approved a bylaws change for RSSAC on 11 April 2013.

In order to provide some clarity to the roles and responsibilities of each Advisory Committee and to avoid confusion and conflict, text supported by both committees should be published that describes the respective roles and responsibilities for SSAC and RSSAC.

Further, both Advisory Committees should have appropriate resourcing (staff and budget).

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The roles and responsibilities for SSAC are already defined in its Operating Procedures however there has not yet been an effort to seek consensus from RSSAC on those roles and responsibilities. In November 2012, SSAC members were presented with the proposed implementation path and were supportive of the approach at that time.

The roles and responsibilities for RSSAC are being examined and revised during a reorganization of that Advisory Committee after the Board's adoption of the bylaws change for RSSAC.

Implementability

There has been a delay while waiting for RSSAC bylaw changes. This is a recommendation that will involve community-staff collaboration to be implemented so implementation is not fully within staff's control.

Effectiveness

As this recommendation has yet to be fully implemented, it is not possible to provide an analysis of its effectiveness.

Summary of Community Input on Implementation

There was no comment period or other mechanism for community input associated with the publication of the SSAC Operating Procedures or the RSSAC reorganization.

This recommendation has not yet reached a stage in which there would be input on implementation.

Summary of Other Relevant Information

RSSAC is in the process of significant reorganization. Full implementation of this recommendation is impossible until that reorganization is complete.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into 3 separate tasks:

a. Publish a document clearly outlining the roles and responsibilities of SSAC;
b. Publish a document clearly outlining the roles and responsibilities of RSSAC; and

c. Resourcing each Advisory Committee appropriately.

Taking each of these tasks in turn:

Documenting SSAC Roles and Responsibilities

Within its Operating Procedures, SSAC has self-defined its roles and responsibilities. No efforts have yet been made to gain input or consensus from RSSAC or the larger community as to whether those roles and responsibilities are appropriate.

Documenting RSSAC Roles and Responsibilities

RSSAC is in the process of reorganizing itself. No efforts have yet been made to gain input from the ICANN community on that reorganization.

Resourcing

ICANN has established a budget and provided staff resources for both SSAC and RSSAC.

ICANN provides staff and other resources within core departmental budgets for both the SSAC and the RSSAC activities.

The SSAC is supported by 3 staff members and 2 Research Fellows (a share staff resource equal to 2.0 FTE) who provide subject matter expertise and secretariat services. Other resources are provided to support intersessional meetings (strategic planning workshop and executive committee meetings) and travel support for certain SSAC members to attend ICANN meetings.

The RSSAC is supported by 2 staff members (a share staff resource equal to 1.25 FTE) who provide subject matter expertise and secretariat services. Other resources are provided to support intercessional meetings of the executive committee and travel support for certain SSAC members to attend ICANN meetings.

ATRT2 Assessment of Recommendation Effectiveness

As the documentation of SSAC and RSSAC roles and responsibilities is not yet complete, its effectiveness cannot be fully assessed.

Whether the resource allocations for SSAC and RSSAC are sufficient to meet the demands placed on each Advisory Committee is, of course, a subject of opinion.

Recommendation 7

"ICANN should build on its current SSR Framework by establishing a clear set of objectives and prioritizing its initiatives and activities in accordance with these objectives. This process should be informed by a pragmatic cost-benefit and risk analysis."

Appendix C – SSR Review Implementation

Analysis of Previous Review Team Recommendation

The SSR-RT felt the SSR-related objectives in the ICANN Strategic Plan were not clearly mapped or prioritized, and this was reflected in the earlier versions of the SSR Framework prior to FY 13's version. In order to address this, the SSR-RT felt ICANN should build from improvements in the FY 13 SSR Framework to establish a clear set of objectives and priorities related to SSR.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

Improvements have been made towards the recommended clarity in the FY12, FY13 and FY14 Frameworks. Further improvement will be made with the mapping of priorities to the Management delivery system and the "At Task" system[1] used internally by staff to keep track of their projects.

Technical engagement is one of the priorities for ICANN's Security Team.

Implementability

Implementation of this recommendation was dependent upon completion of the FY 14 operating plan. It also depends on the use of the "At Task" system, the development of next Strategic Plan, and will involve internal discussions with other departments and the Executive team. However staff believes this recommendation to be implementable.

Effectiveness

Staff believes implementation of this recommendation will lead to general agreement across the organization of the SSR objectives and priorities and will help show a better connection between the published strategic objectives and the SSR initiatives.

However, as this recommendation has not yet been implemented its effectiveness cannot be established.

Summary of Community Input on Implementation

At the ICANN meeting in Beijing, the ccNSO was supportive of continued priority for technical engagement and training. ICANN executives have recognized SSR as one of the pillars in the regional strategies being developed for Africa, Asia-Pacific, Middle East and Latin America & Caribbean.

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[1] The "At Task" system is a Project Management Reporting tool. The system has been deployed and staff is in the process of refining how much of the information placed into the system is available for public view.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into two separate tasks, both informed by cost-benefit and risk analyses. These tasks would be:

a. ICANN should establish a clear set of SSR-related objectives; and
b. ICANN should prioritize its initiatives and activities in accordance with these objectives.

With regards to the first task, a clear set of SSR-related objectives has yet to be established. Despite this, staff has prioritized initiatives and activities that are supported by at least some portion of the community (e.g., the ccNSO).

Since the second task depends on the completion of the first task, the second task has not yet been started.

ATRT2 Assessment of Recommendation Effectiveness

As this recommendation has yet to be fully implemented, it is not possible to provide an analysis of its effectiveness.

Recommendation 8

"ICANN should continue to refine its Strategic Plan objectives, particularly the goal of maintaining and driving DNS availability. The Strategic Plan and SSR Framework should reflect consistent priorities and objectives to ensure clear alignment."

Analysis of Previous Review Team Recommendation

The Review Team felt the SSR objectives in the 2012-2015 Strategic Plan were not well refined and aligned with the SSR Framework. This recommendation called for improvement of the Strategic Plan objectives related to SSR.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The Security team has been contributing to the Strategic Visioning effort for a new ICANN Strategic Plan, and encouraging the use of materials developed for the FY 14 SSR Framework which describe ICANN's SSR functions into 4 main areas (organizational risk management, technical engagement & thought leadership, coordination, threat awareness).

Implementability

Completion of this recommendation depends upon development of the next Strategic Plan. While staff did not see additional costs related to implementation,

organizational discussions for the next Strategic Plan will be involved, followed by the alignment of the SSR Framework to the Strategic Plan.

Effectiveness

As this recommendation is not yet fully implemented, its effectiveness cannot be determined.

Summary of Community Input on Implementation

None.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation strongly depends on the development of Strategic Plan objectives. Staff has been providing input related to SSR for the Strategic Plan.

ATRT2 Assessment of Recommendation Effectiveness

The implementation of this recommendation has yet to reach a stage at which its effectiveness can be assessed.

Recommendation 9

"ICANN should assess certification options with commonly accepted international standards (e.g. ITIL, ISO and SAS-70) for its operational responsibilities. ICANN should publish a clear roadmap towards certification."

Analysis of Previous Review Team Recommendation

The SSR-RT spent some time discussing international standards and recommended ICANN assess its certification options against commonly accepted international standards for its operational responsibilities, make a determination on whether to pursue certification, and if so, publish a clear roadmap for certification.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

ICANN has achieved SysTrust certification for the DNSSEC Key Signing Key Management infrastructure, and is exploring SysTrust certification for IANA (which would include ICANN's IT department) and is pursuing EFQM certification.

Assessment is currently underway for certification of other aspects of ICANN's operational responsibilities.

Implementability

Staff has not yet found insurmountable issues related to implementation but has noted that assessment can be costly and implementation of all controls necessary

for certification (depending on the certification selected) may require additional time and budget.

Effectiveness

As implementation of this recommendation has not yet been completed, assessment of effectiveness cannot be performed. However, staff believes implementation of this recommendation will show that ICANN carefully considered certification and will have demonstrated operational excellence in its operational responsibilities.

In addition, staff believes implementation of this recommendation will institutionalize the best practices needed to sustain certification (depending on certification or standard chosen) and will demonstrate ICANN's improvement toward operational excellence.

Summary of Community Input on Implementation

In comments provided during the public comment period associated with the final report of the SSR Review Team, Andrew Sullivan of Dyn, Inc. suggested certification should focus only on areas where the functions ICANN performs are "substantially the same as functions already well- understood."

Summary of Other Relevant Information

In-person discussions with the outside consultant brought in for EQFM certification has indicated that the first round of assessments are typically used to identify the areas in which additional work is needed. As such, a poor showing in that assessment should not be taken as a negative.

ATRT2 Analysis of Recommendation Implementation

While not fully implemented, staff has taken significant steps towards assessing the value of certification for ICANN's operational responsibilities, including either initiating or completing certification for the most critical of those responsibilities (DNSSEC Key Signing Key Management, IANA, and IT).

More specifically, this recommendation can be partitioned into two tasks:

a. ICANN should assess operational certification options; and
b. ICANN should publish a clear roadmap towards certification.

With regards to the first task, Executive staff has assigned this responsibility to the CIO/CTO role for which it has an open job requirement posted. Further efforts on implementing this part of the recommendation have been deferred until that role is filled.

Initiating the second task associated with this requirement depends on the completion of the first task. As such, the second task has not yet been implemented.

ATRT2 Assessment of Recommendation Effectiveness

While not a function of ATRT recommendations, the SysTrust certification for DNSSEC Key Signing Key Management has been effective in increasing the level of trust in ICANN's efforts related to root KSK handling.

Similarly, IANA certification, while also not a function of this ATRT recommendation (it is required by the IANA Functions contract), should provide an increased level of trust throughout that portion of the community that makes use of IANA's functions.

As certification for other parts of ICANN's operational responsibilities has not yet been determined much less completed, its effectiveness cannot be assessed.

Recommendation 10

"ICANN should continue its efforts to step up contract compliance enforcement and provide adequate resources for this function. ICANN also should develop and implement a more structured process for monitoring compliance issues and investigations."

Analysis of Previous Review Team Recommendation

When the Review Team had started its work, Compliance was a smaller team and the community strongly felt that ICANN needed to step up efforts in this area, provide adequate resources, and develop and implement a more structured process for monitoring compliance.

The desired outcome was for adequate resourcing of ICANN's contractual compliance enforcement and improvement in ICANN's ability to enforce contractual compliance.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

Improvements, which continue to be undertaken, were made by and to the Compliance team throughout FY 13. Compliance has grown in size and published a number of tools to enable better contract compliance enforcement.

Implementability

This recommendation depends strongly on the resources available to the Compliance team. To date, resources have been made available and the recommendation is being implemented.

Effectiveness

Compliance, while improved, still needs work. This recommendation improved Executive team focus and from that perspective, has been effective.

Summary of Community Input on Implementation

While comments from individual community members suggest Compliance may have improved in their ability to enforce contracts, some comments suggested that far more is needed. In particular, questions were raised about sufficient staffing and resources being made available today, with concerns expressed about the Compliance department being able to meet the significantly increased demands that will result from implementation of the new Registrar Accreditation Agreements and Registry Agreements.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into three sub-tasks:

a. ICANN should continue its efforts to step up contract compliance enforcement;
b. ICANN should provide adequate resources for this function; and
c. ICANN should develop and implement a more structured process for monitoring compliance issues and investigations.

Each of these sub-tasks will be examined in turn:

Step up enforcement

Given the wording of this recommendation and data suggesting increased enforcement efforts, it is difficult to argue the recommendation has not been followed.

Provide adequate resources

Similarly, given the increase in budget and staffing for the Compliance department, it is difficult to argue resources haven't been provided. Whether those resources are adequate is, of course, a subjective evaluation.

More structured monitoring/investigations

As with the other two sub-tasks associated with this recommendation, it is difficult to argue a more structured process for monitoring compliance issues and investigations has not been implemented.

ATRT2 Assessment of Recommendation Effectiveness

As the wording in the section associated with implementation status might suggest, assessment of this recommendation is rather subjective. While data suggest the Compliance department has improved enforcement, has additional resources, and has implemented a more structured monitoring and investigation regime, the effectiveness of these efforts are somewhat in doubt. In particular, concerns have been expressed about whether efforts to date to improve compliance will be

sufficient to deal with the increased requirements that arise as a result of the new RAA and RA.

However, as this recommendation has yet to be fully implemented, it is not possible to provide a complete assessment of its effectiveness.

Recommendation 11

"ICANN should finalize and implement measures of success for new gTLDs and IDN fast track that expressly relate to its SSR-related program objectives, including measurements for the effectiveness of mechanisms to mitigate domain name abuse."

Analysis of Previous Review Team Recommendation

The SSR-RT noted that the administration of the new gTLD program and IDN Fast Track were significant SSR issues that should be prioritized and implemented with a more detailed set of objectives and activities. They noted that ICANN should develop and implement measures of effectiveness for these areas.

More specifically, the SSR-RT recommended the development and implementation of specific measurements will help strengthen ICANN's focus and effectiveness, improve the ability of the community to gauge ICANN's progress, and measure success of the new gTLDs and IDN Fast Track programs relating to ICANN's SSR objectives, including measurements of effectiveness of mechanisms to mitigate domain name abuse.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

This recommendation is as yet unimplemented.

Implementability

This will be a community-staff collaborative recommendation, and will also depend on terms of reference for the Affirmation of Commitments Review on Competition & Consumer Choice.

Effectiveness

As this recommendation is as yet unimplemented, it is not possible to assess its effectiveness.

Summary of Community Input on Implementation

This recommendation has yet to reach a point at which the community can provide input.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

As this recommendation is as yet unimplemented, it is not possible to assess its implementation.

ATRT2 Assessment of Recommendation Effectiveness

As this recommendation is as yet unimplemented, it is not possible to assess its effectiveness.

Recommendation 12

"ICANN should work with the Community to identify SSR-related best practices and support the implementation of such practices through contracts, agreements and MOUs and other mechanisms."

Analysis of Previous Review Team Recommendation

The underlying issue was that there should be clearer identification of SSR-related best practices for the community and encouragement for putting those best practices into contracts, agreements, MOUs and other mechanisms as best as possible.

The desired outcome was for a staff-community dialogue on SSR-related best practices, with the incorporation of best practices into contractual mechanisms as much as practical and possible.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

This recommendation has not yet been fully implemented and will involve community-staff dialogue. Staff believes the Law Enforcement recommendations on the RAA and inputs into the new gTLD registry agreement have brought the implementation of this recommendation closer.

Staff plans on producing a list of SSR-related best practices and identifying where those best practices are incorporated in contracts, MOUs, and other agreements for tracking purposes.

Implementability

This recommendation will involve community-staff dialogue for full implementation.

Effectiveness

As this recommendation has yet to be fully implemented, it is not possible to assess its full effectiveness.

Summary of Community Input on Implementation

In comments received during the public comment period for the final report of the SSR Review Team, the Registries Stakeholder Group questioned whether the implementation of best practices could be "supported through contracts".

Summary of Other Relevant Information

While not a direct outcome of this recommendation, the new RAA and RA provide require the implementation of SSR-related best practices.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into two separate tasks, namely:

a. Working with the Community to identify SSR-related best practices; and
b. Supporting the implementation of such practices through contracts, agreements and MoUs, and other mechanisms;

To date, SSR-related best practices have not yet been identified in a formal way either by staff or the Community and as such, this task remains unimplemented.

The addition of SSR-related best practices to the RAA is a concrete step towards implementation of this recommendation, however how well that aspect of this recommendation translates into practice is as yet unknown.

ATRT2 Assessment of Recommendation Effectiveness

As this recommendation is as yet unimplemented, it is not possible to assess its effectiveness.

Recommendation 13

"ICANN should encourage all Supporting Organizations to develop and publish SSR-related best practices for their members."

Analysis of Previous Review Team Recommendation

Individual participants in ICANN Supporting Organizations may follow best practices, but there has not been an effort to encourage all SOs to develop and publish SSR-related best practices. Some activity is occurring within stakeholder groups in the GNSO and the ccNSO does have a Tech Working Group that is looking at Security practices for ccTLDs, however more comprehensive efforts should be undertaken to encourage all Supporting Organizations to develop and publish SSR-related best practices for their members.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

Staff is in the early stages of this recommendation and implementation is still underway. Initial efforts have involved participating in the ccNSO Tech Working

Group, which is looking at publishing a form of guidance for TLD operators (best practices is a sensitive term for ccTLD operators), and reaching out to the stakeholder groups within the GNSO and the ASO.

Staff has contacted the Supporting Organizations, Advisory Committees and Stakeholder Groups, asking for feedback on approaches to implementation. To date, informal feedback has been received from the Registrar Stakeholders Group and an initial response from the ISP Constituency.

Implementability

This recommendation will involve community-staff dialogue for full implementation.

Effectiveness

At this early stage, it is not yet possible to evaluate this recommendation's effectiveness.

Summary of Community Input on Implementation

In comments received during the public comment period for the final report of the SSR Review Team, the Registries Stakeholder Group questioned whether it was realistic for the GNSO to develop and publish SSR-related best practices due to the diversity of the GNSO.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

As this recommendation is as yet unimplemented, it is not possible to assess its implementation.

ATRT2 Assessment of Recommendation Effectiveness

As this recommendation is as yet unimplemented, it is not possible to assess its effectiveness.

Recommendation 14

"ICANN should ensure that its SSR-related outreach activities continuously evolve to remain relevant, timely and appropriate. Feedback from the Community should provide a mechanism to review and increase this relevance."

Analysis of Previous Review Team Recommendation

ICANN's SSR-related outreach has centered on technical training and participation by ICANN staff in community activities (IETF, Network Operator Group meetings, RIR meetings such as RIPE NCC, regional IGFs and at the Internet Governance Forum).

The recommendation was supportive of existing outreach activities and recommended ICANN ensure these activities continuously evolve to remain relevant, timely and appropriate. There should also be a feedback mechanism to review and increase this relevance.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The Security team has increased its targeted approach to receiving feedback from ccTLD community, regional operators, the Business Constituency, registries and registrars, but also to make sure other parts of the community are involved in these discussions (governments & law enforcement, non-commercial stakeholders, academia & civil society, operational security community).

As this recommendation will never be fully completed (due to the need for activities to "continuously evolve"), continued efforts on this recommendation has been addressed in FY 14 budgeting, and staff is now in the process of delivering on requested trainings and engagement.

Implementability

Staff believes this recommendation has been met with the annual SSR Frameworks and their approach to engaging with TLD operators, law enforcement and community groups. However, this recommendation is very open-ended and will never be "done".

Effectiveness

Staff has received broad community support for the types of technical engagement performed by ICANN Security and we do think this outreach is evolving to meet the needs of the community.

Staff believes ICANN has improved its support for meeting community SSR-related outreach needs over the last 2 years.

Summary of Community Input on Implementation

Feedback provided directly to staff has been largely positive of the SSR-related outreach and engagement.

Summary of Other Relevant Information

There are an increased number of requests from to the Security Team from the Global Stakeholder Engagement team for SSR-related outreach and engagement at Internet Governance events (ITU, WSIS Forum, IGF, OECD, etc) and there has been an increase in speaking requests with the implementation of the Speakers Bureau tool.

ATRT2 Analysis of Recommendation Implementation

The Security Team has been active in outreach, particularly in the context of DNS-related technologies albeit there is little evidence of outreach activities that address other aspects related to ICANN's limited SSR remit, e.g., IP address-related SSR concerns.

ATRT2 Assessment of Recommendation Effectiveness

Based on the increased number of requests for speaking engagement, training, and other outreach-related activities ICANN has been receiving, it would appear this recommendation has been effective.

Recommendation 15

"ICANN should act as facilitator in the responsible disclosure and dissemination of DNS security threats and mitigation techniques."

Analysis of Previous Review Team Recommendation

This recommendation aimed to encourage ICANN facilitate responsible disclosure and dissemination of DNS security threats and mitigation techniques and to provide a standard process for those in the community who may have information of potential DNS security threats to share them in a manner in which they can be acted upon.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

ICANN published responsible disclosure guidelines on 11 March 2013 at http://www.icann.org/en/about/staff/security/vulnerability-disclosure-11mar13-en.pdf , a blog post describing those guidelines (at http://blog.icann.org/2013/03/icann-coordinated-disclosure-guidelines/), and presented those guidelines at the ICANN meeting in Beijing. An update was published on 5 August 2013 and is available at https://www.icann.org/en/about/staff/security/vulnerability-disclosure-05aug13-en.pdf

Implementability

This recommendation was (and is being) implemented with no unforeseen issues.

Effectiveness

The implementation of this recommendation has helped streamline ICANN processes and channels for directing information on DNS threats and mitigations.

Summary of Community Input on Implementation

Anecdotally, some concern was expressed that the disclosure/dissemination processes do not fully account for escalation of issues where impact occurs outside

of ICANN and those directly involved, e.g., notifying appropriate bodies when an issue might impact critical national or global infrastructures.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

With the publication of the Coordinated Vulnerability Disclosure guidelines, ICANN has documented a process by which it can facilitate the responsible disclosure and dissemination of DNS security threats and mitigation techniques.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation appears to have been effective in providing the groundwork for ICANN to act in a facilitator role. Whether or not the community makes use of ICANN in that role has yet to be fully established.

Recommendation 16

"ICANN should continue its outreach efforts to expand Community participation and input into the SSR Framework development process. ICANN also should establish a process for obtaining more systematic input from other ecosystem participants."

Analysis of Previous Review Team Recommendation

The recommendation supported the Security team's outreach activities and noted that this work should continue in order to expand community participation in the SSR Framework development.

The underlying issue was to support the continued outreach with the community to encourage review and feedback on the SSR Framework, but that ICANN needed a process for obtaining input from other ecosystem participants.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The Security team conducts regular briefing with SSAC before the completion of the annual SSR Framework to ensure SSAC members have an opportunity to provide feedback on the draft approach. After publication, the Security team conducts targeted outreach to all SOs, ACs, and stakeholder groups. The Security team also reached out broadly to other groups in Civil Society/freedom of expression community, law enforcement, the academic community, standards organizations, and regional organizations to encourage review and feedback.

Implementability

Outreach is more than one-way and as such, staff sees a need for feedback from stakeholder groups that the interaction to date is in line with community expectations. While private or off the record feedback has been very positive, much

of this feedback has not yet translated in significant public comments on the annual SSR Frameworks. This is somewhat reflective of community priorities on competing public comment periods, but staff is aware that the community places a high value on security (from the regional strategies and from discussion of security in other contexts such as at WTPF, WSIS Forum, etc).

As such, staff believes this recommendation has been met with the annual SSR Frameworks and their approach to engaging with TLD operators, law enforcement and community groups. However, this recommendation is very open-ended and will never be "done".

Effectiveness

This effort has helped identify new groups to engage on outreach, and helped refine the description of ICANN's SSR functions.

Outside of ICANN, the explanation of ICANN's SSR functions and role has helped increase the awareness of ICANN's role and remit and involvement in the support of DNS capability building. This work provides ICANN (and the community) with a key service and substantial goodwill.

Summary of Community Input on Implementation

No formal community input has been publicly provided, however informal and/or private feedback to staff directly has been positive.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be broken down into two sub-tasks:

a. ICANN should continue its outreach efforts
b. ICANN should establish a process for obtaining more systematic input from other ecosystem participants.

As discussed in the analysis of the implementation of recommendation 14, ICANN's Security Team has continued its outreach efforts and has expanded Community participation and input into the SSR framework development process. While a recommendation of this nature will never be complete, significant efforts have been made towards implementing this component of the recommendation.

With regards to establishing a process for obtaining more systematic input from other ecosystem participants, this sub-task of this recommendation has not yet been implemented.

ATRT2 Assessment of Recommendation Effectiveness

Outreach efforts appear to have been effective and are ongoing.

Establishing a process for obtaining more systematic input from other ecosystem participants has not yet been implemented so its effectiveness cannot be assessed.

Recommendation 17

"ICANN should establish a more structured internal process for showing how activities and initiatives relate to specific strategic goals, objectives and priorities in the SSR Framework. It also should establish metrics and milestones for implementation."

Analysis of Previous Review Team Recommendation

ICANN has an internal process for mapping activities and initiatives for Strategic goals, objectives and priorities in the SSR Framework. The process used for showing how activities relate to strategic goals and objectives was not as clear as it could be when the SSR RT began its work. The Review Team thought it important to ensure ICANN had a process for connecting activities and initiatives to specific goals.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The Security team is contributing to the next Strategic Plan development and will also be using the "At Task" system and the Management delivery system to align strategic goals to specific initiatives and activities. As such, this recommendation is being addressed with the development of the next Strategic Plan, and the implementation of the "At Task" system with FY 14.

Implementability

Discussions are continuing with the development of the next Strategic Plan.

Effectiveness

Staff believes this effort will help improve the awareness of ICANN's role and remit in Security and how the Strategic goals are aligned with ICANN's SSR functions, however as this recommendation has yet to be implemented, its effectiveness cannot be assessed.

Summary of Community Input on Implementation

This recommendation has yet to reach a point where community input can be provided.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into two sub-tasks:

a. Establish a more structured internal process for showing how activities and initiatives relate to specific strategic goals, objectives, and priorities in the SSR framework; and

b. Establish metrics and milestones for implementation of the goals, objectives, and priorities in the SSR framework.

To date, neither of these sub-tasks has reached a point where their implementation can be analyzed.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has yet to reach a point where its effectiveness can be assessed.

Recommendation 18

"ICANN should conduct an annual operational review of its progress in implementing the SSR Framework and include this assessment as a component of the following year's SSR Framework."

Analysis of Previous Review Team Recommendation

This recommendation aimed to provide more information to show how the previous year's SSR-related activities as documented in the SSR Framework had been addressed in a clear and transparent manner for the community.

The desired outcome was to include a status report for the previous year's activities as an additional section in the annual SSR Framework in order for readers to be able to easily see the progress in completing the activities that had been projected in the previous Fiscal Year's Framework.

Summary of ICANN's Assessment of Implementation

Implemented.

Actions Taken

In the FY 13 SSR Framework, a status report showing FY 12's activities and results was incorporated, completing this recommendation. In the FY 14 SSR Framework, the status report for FY 13 appears as Appendix B.

Implementability

There were no unforeseen problems with implementation of this recommendation and it was implemented with the FY 13 SSR Framework and refined with the publication of the FY 14 Framework in March 2013.

Effectiveness

This work has provided an example for other departments on how to track and report progress on initiatives annually.

Summary of Community Input on Implementation

In comments received during the public comment period for the final report of the SSR Review Team, the Registries Stakeholder Group strongly supported this recommendation.

Staff received positive comments from the community on the FY 13 Framework for incorporating the status report, and the SSR Review Team noted this was also a positive development in its Final Report.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation has been implemented.

ATRT2 Assessment of Recommendation Effectiveness

Based on community input, this recommendation appears to have been effective in providing a status report of the previous years progress in implementing the SSR framework.

Recommendation 19

"ICANN should establish a process that allows the Community to track the implementation of the SSR Framework. Information should be provided with enough clarity that the Community can track ICANN's execution of its SSR responsibilities, while not harming ICANN's ability to operate effectively. The dashboard process being used to track implementation of the ATRT recommendations serves as a good model."

Analysis of Previous Review Team Recommendation

At the time the SSR RT report was developed, the Review Team thought the Security team could do a better job explaining how activities were being tracked from the previous Framework.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

With the FY 13 to FY 14 Framework, the Security team has made improvements in reporting progress on prior year activities. This will continue to improve as the work the Security team performs becomes tracked in "At Task" system for the community to see.

Implementability

Staff believes this recommendation will be implementable through the "At Task" system.

Effectiveness

As this recommendation is in the process of being implemented, its effectiveness has yet to be established.

Summary of Community Input on Implementation

In comments received during the public comment period for the final report of the SSR Review Team, the Registries Stakeholder Group strongly supported this recommendation.

Summary of Other Relevant Information

According to staff, the SSR RT did not document progress between the FY 12 and FY 13 Frameworks in their report.

ATRT2 Analysis of Recommendation Implementation

Staff's implementation of this recommendation depends on the deployment of the "At Task" system. As that system is yet to be fully deployed, implementation of this recommendation cannot be analyzed.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has yet to reach point where its effectiveness can be analyzed.

Recommendation 20

"ICANN should increase the transparency of information about organization and budget related to implementing the SSR Framework and performing SSR-related functions. Information should be provided with enough clarity that the Community can track ICANN's execution of its SSR responsibilities, while not impeding ICANN's ability to operate effectively."

Analysis of Previous Review Team Recommendation

The ccNSO and other stakeholders provided comments on the FY 12 SSR Framework that ICANN needed to provide more information and increase transparency of the organization and budget for SSR. The Review Team picked up on this.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

This recommendation is being addressed with the implementation of the FY 14 budget and operating plan and use of the "At Task" system for providing more transparency on the budget sections related to SSR.

Implementability

Implementation of this recommendation is well underway with the development of the FY 14 budget, pending the adoption of the budget and operating plan and updating of related projects and initiatives in the "At Task" system.

Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Summary of Community Input on Implementation

In comments received during the public comment period for the final report of the SSR Review Team, the Registries Stakeholder Group strongly supported this recommendation. Andrew Sullivan of Dyn, Inc. felt that the recommendation should be "self-evident" and that "[t]ransparency requires that interested parties can understand the information."

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation has not yet reached a point where its implementation can be analyzed.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Recommendation 21

"ICANN should establish a more structured internal process for showing how organization and budget decisions relate to the SSR Framework, including the underlying cost-benefit analysis."

Analysis of Previous Review Team Recommendation

As with recommendation 20, the ccNSO and other stakeholders provided comments on the FY 12 SSR Framework that ICANN needed to provide more information and increase transparency of the organization and budget for SSR. The Review Team picked up on this.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

This recommendation is being addressed with the implementation of the FY 14 budget and operating plan and use of the "At Task" system for providing more transparency on the budget sections related to SSR.

Implementability

Implementation of this recommendation is well underway with the development of the FY 14 budget, pending the adoption of the budget and operating plan and updating of related projects and initiatives in the "At Task" system.

Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Summary of Community Input on Implementation

This recommendation has not yet reached a point where the community can provide input on its implementation.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation has not yet reached a point where its implementation can be analyzed.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Recommendation 22

"ICANN should publish, monitor and update documentation on the organization and budget resources needed to manage SSR issues in conjunction with introduction of new gTLDs."

Analysis of Previous Review Team Recommendation

Organization and budget for SSR issues is provided in via the Security team, but also reflected in the new gTLD program (e.g., DNS Stability Panel, EBERO, other process steps, etc). The desired outcome of the implementation of this recommendation was to improve the amount and clarity of information on the organization and budget for implementing the SSR Framework and performing SSR-related functions.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

Implementation of this recommendation is well underway with the development of the FY 14 budget, pending the adoption of the budget and operating plan and updating of related projects and initiatives in the "At Task" system.

Implementability

The implementation of this recommendation is related to the completion of the FY 14 budget and operating plan process. No implementation issues are anticipated.

Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Summary of Community Input on Implementation

This recommendation has not yet reached a point where the community can provide input on its implementation.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation has not yet reached a point where its implementation can be analyzed.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has not yet reached a point where its effectiveness can be assessed.

Recommendation 23

"ICANN must provide appropriate resources for SSR-related Working Groups and Advisory Committees, consistent with the demands placed upon them. ICANN also must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure."

Analysis of Previous Review Team Recommendation

Security-related activities with the Supporting Organizations and Advisory Committees are currently done in a number of working groups (for example, the cross-community DNS Security & Stability Analysis Working Group), but these are not currently tracked across all SO & ACs specifically for SSR. This work is also done through SSAC and RSSAC.

The emphasis of this recommendation from the Review Team was to ensure RSSAC (as well as SSAC, but primarily RSSAC) was sufficiently staffed and resourced to meet the demands placed upon it. In addition, the recommendation grew from an analysis of the root scaling work by SSAC and RSSAC, and SSR-related working groups should be able to do their work free from external and internal pressure.

Per the Review Team's discussions, they stated that input had been received that SSAC felt pressure to deliver an answer to a specific problem within a limited timeframe. As such, SSAC and RSSAC should have sufficient resources to provide high-quality work in a reasonable time frame.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The approach taken to implement this recommendation has been to divide the recommendation into:

a. Conducting an inventory of the existing SSR-related working groups and Advisory Committees;
b. Creating a description or documentation of the budget process for SO/AC input); and
c. Describing the standard operating processes to show how SO/AC/working group decisions are reached in an objective manner.

Implementation of the three sub-tasks of this recommendation is still in progress.

Implementability

Implementation of this recommendation is still in progress.

Effectiveness

As this recommendation is not yet fully implemented, its effectiveness cannot be assessed.

Summary of Community Input on Implementation

Discussion with the chairs of SSAC and RSSAC suggests a common view that ICANN has not declined requests for budget for either Advisory Committee, however staff resources may be spread a bit thin for providing the most effective support.

Summary of Other Relevant Information

RSSAC is in the process of reorganizing itself. As a result, it is possible that RSSAC resource requirements may change.

The third part of this recommendation, specifically that ICANN "must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure" is laudable, however while objectivity is a worthwhile goal, it is challenging to imagine any decision that is free from both external and internal pressure.

ATRT2 Analysis of Recommendation Implementation

Taking a slightly different view of the implementation of this recommendation than staff, this recommendation can be partitioned into two sub-tasks:

a. ICANN must provide appropriate resources; and
b. ICANN also must ensure decisions reached by Working Groups and Advisory Committees are reached in an objective manner that is free from external or internal pressure.

Both RSSAC and SSAC have had budget and staff resources allocated to them so from that perspective this recommendation has been implemented.

ICANN provides staff and other resources within core departmental budgets for both the SSAC and the RSSAC activities.

The SSAC is supported by 3 staff members and 2 Research Fellows (a share staff resource equal to 2.0 FTE) who provide subject matter expertise and secretariat services. Other resources are provided to support intersessional meetings (strategic planning workshop and executive committee meetings) and travel support for certain SSAC members to attend ICANN meetings.

The RSSAC is supported by 2 staff members (a share staff resource equal to 1.25 FTE) who provide subject matter expertise and secretariat services. Other resources are provided to support intercessional meetings of the executive committee and travel support for certain SSAC members to attend ICANN meetings.

With regards to ensuring decisions reached objectively and are free from pressure, this component of the recommendation has yet to be implemented.

ATRT2 Assessment of Recommendation Effectiveness

Whether the budget and staff resources are consistent with the demands placed upon those Advisory Committees is, of course, a matter of opinion.

Recommendation 24

"ICANN must clearly define the charter, roles and responsibilities of the Chief Security Office[r] Team."

Analysis of Previous Review Team Recommendation

While the Security team has maintained a webpage (https://www.icann.org/security) and published an annual Security, Stability and Resiliency Framework, since 2009, the Review Team felt greater clarity on the roles and responsibilities of the ICANN Security team vs. other Security-related functions within ICANN and its Supporting Organizations would be helpful.

Summary of ICANN's Assessment of Implementation

Implemented.

Actions Taken

This recommendation was implemented largely with the FY 13 SSR Framework (improved in the FY 14 version) and with the publication of an updated section of the Security team page on the ICANN website.

Implementability

Staff believes this recommendation has been implemented.

Effectiveness

The outcome so far has been increased recognition of the role and remit for ICANN in Security and a better understanding of the structure of the Security team.

Summary of Community Input on Implementation

The feedback so far has been very positive.

Some commenters during the public comment period associated with the publication of the draft FY14 SSR Framework document recommended that in addition to the infographic describing the Security Team's charter, text should be provided. In addition, some commenters indicated more detail should be provided regarding the roles and responsibilities of staff.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into three sub-tasks:

a. ICANN must clearly define the charter of the Chief Security Officer Team;
b. ICANN must clearly define the roles of the team members; and
c. ICANN must clearly define the responsibilities of the team members.

Despite page 16 and 17 of the FY14 SSR Framework discussing informally how SSR fits into ICANN's functional areas, it may be argued this does not "clearly define" the Security Office's principles, functions, and organization. However, taking the view that the charter of the Security team will need to be somewhat dynamic in order to deal with the changing SSR-related environment likely to occur in the future, the informal approach the Security team has taken in documenting their charter is likely appropriate.

The roles and responsibilities of the team members are reasonably well defined on page 17 of the FY 14 SSR Framework.

ATRT2 Assessment of Recommendation Effectiveness

As the specification of the Security team charter and staff roles and responsibilities has been done, this recommendation has proven to be effective.

Recommendation 25

"ICANN should put in place mechanisms for identifying both near and longer-term risks and strategic factors in its Risk Management Framework. This process should be informed by insights from research, business partnerships, ICANN Supporting Organizations and other sources. ICANN should publish information about risks, recognizing the sensitive nature of some of these factors."

Appendix C – SSR Review Implementation

Analysis of Previous Review Team Recommendation

ICANN has had a Board Risk Committee for several years and ICANN staff has conducted enterprise risk assessments over the past few years. The SSR RT Final Report described the need for a more structured process for identifying near and longer-term risks, and that ICANN should publish information about risks, with the understanding that risk-related information may be sensitive.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

ICANN retained Westlake Governance to develop a DNS Risk Management Framework. A draft framework was presented in Beijing and was published for comment for Durban.

Staff is currently working on implementation and will be incorporating the work of the DSSA Working Group into its efforts.

Implementability

This recommendation is being implemented with no unforeseen issues.

Effectiveness

The public comments from the open sessions with the DNS RMF have been positive and in support of a stronger risk management function at ICANN.

Summary of Community Input on Implementation

The publication of the Westlake-authored DNS Risk Framework was followed by a public comment period (still ongoing as of this writing) as documented at http://www.icann.org/en/news/public-comment/dns-rmf-final-23aug13-en.htm. Summarizing the comments received to date:

- The Westlake-authored DNS Risks Framework has a number of gaps and does not integrate with other SSR-related activities undertaken by ICANN;
- There is significant disappointment that the work of the DNS Security and Stability Analysis working group was not incorporated more fully into the DNS Risks Framework;
- The choice of framework architecture (ISO31000 over NIST 800-30) may have been sub-optimal;
- The DNS Risks Framework is quite limited and may not incorporate a sufficiently broad focus to address ICANN's overarching SSR-related responsibilities.

In addition, participants in the DSSA working group expressed displeasure of the DNS Risk Framework effort as it appeared to be discounting/dismissing the efforts undertaken by the DSSA working group.

Summary of Other Relevant Information

ICANN has had a Board Risk Committee for a number of years. ICANN staff has conducted enterprise risk assessments in 2009 and 2011 and is undergoing a reassessment at the time of this writing.

Staff has indicated to the DNS RMF that the work of the DSSA will be incorporated into the implementation of the Risk Management Framework and not lost. Staff views the DSSA work as having been valuable and believes it has helped jump-start the review of DNS risk areas.

ATRT2 Analysis of Recommendation Implementation

This recommendation can be partitioned into two sub-tasks:

a. ICANN should put in place mechanisms for identifying both near and longer-term risks and strategic factors in its Risk Management Framework; and
b. ICANN should publish information about risks, being aware of that information's sensitive nature.

As suggested by the hiring of Westlake Governance to produce a DNS Risks Framework, ICANN is in the process of implementing the first sub-task of this recommendation. The mechanisms in place to date include:

- Regular reporting by staff to the Board Risk Committee;
- Reporting to the CEO and the Executive team on risks as they arise/are identified;
- Providing input into the ICANN Strategic Plan to identify strengths, weaknesses, and risks; and
- The Finance Department associating budget towards risk-related activities (identification, outreach, mitigation, etc).

The publication of the Westlake DNS Risk Management Framework can be viewed as completing the second sub-task associated with this recommendation.

ATRT2 Assessment of Recommendation Effectiveness

While efforts are underway to create a Risk Management Framework, those efforts are not yet complete and may have been hampered by the Westlake DNS Risk Framework vs. DSSA Working Group controversy. As such, it is not possible to fully assess the effectiveness of this recommendation.

Recommendation 26

"ICANN should prioritize the timely completion of a Risk-Management Framework. This work should follow high standards of participation and transparency."

Analysis of Previous Review Team Recommendation

The SSR RT placed an emphasis on developing a risk management framework as early as possible. The desired outcome is for the completion of a risk management framework developed through community participation and transparency.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

The Board-level DNS Risk Management Framework Working Group is prioritizing the implementation of this recommendation. There has been participation by community members in open public sessions at the ICANN Costa Rica, Prague, Toronto, and Beijing meetings. With the publication of the Westlake Governance DNS Risk Management Framework, a public comment opportunity was made available.

Implementability

This is being addressed with Westlake Governance, we think the work to date has been open and inclusive, and participation has been welcomed.

Effectiveness

The feedback from the community during public sessions on the Risk Management Framework has been positive.

Summary of Community Input on Implementation

As discussed in the summary of Community input on recommendation 25, there is some unhappiness related to the perceived similarity of efforts between Westlake Governance and the DSSA Working group.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

Based on documented efforts to create a DNS Risk Framework, it would appear ICANN has prioritized the completion of that framework. However, implementation may have been hampered by a lack of clarity between the role filled by the Westlake Governance effort and the efforts of the DSSA Working Group.

ATRT2 Assessment of Recommendation Effectiveness

Completion of the Risk Management Framework has been prioritized and provides for participation and transparency, albeit whether the standards of participation is high or not is a matter of opinion.

Recommendation 27

"ICANN's Risk-Management Framework should be comprehensive within the scope of its SSR remit and limited missions."

Analysis of Previous Review Team Recommendation

The goal of this recommendation was to constrain ICANN's Risk-Management Framework to be within ICANN's SSR remit and limited missions but within those

constraints, the Risk-Management Framework was to be comprehensive. However, the lack of objective criteria associated with being "comprehensive" limited the value of this recommendation.

Summary of ICANN's Assessment of Implementation

Implementation underway.

Actions Taken

ICANN hired Westlake Governance to develop the DNS Risk-Management Framework. This Framework was introduced at the ICANN meeting in Beijing and a draft was published at the ICANN meeting in Durban for public comment.

Implementability

This recommendation is being implemented and staff has not run into any unforeseen problems or issues.

Effectiveness

The feedback on Westlake's approach has been positive.

Summary of Community Input on Implementation

Comments provided during the public comment period associated with the publication of the Westlake Governance DNS Risk Framework document suggests some members of the community do not believe the framework to be comprehensive. Some examples of indicative comments:

- "[Westlake's view that Availability, Consistency, or Integrity of the DNS is outside of the scope of the Risk Management Framework] is a very limited view of risk management focused only on whether the DNS is at risk – not whether everything in the Internet that relies on the DNS is." – Comment from Verisign (http://forum.icann.org/lists/comments-dns-rmf-final-23aug13/pdfEXbAYduQ3s.pdf)

- "The ALAC deplores that at this point in time, the proposed Framework is far from being detailed at a more granular level" – Comment from ALAC (http://forum.icann.org/lists/comments-dns-rmf-final-23aug13/pdfEiMIkBXExM.pdf)

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

As discussed in recommendations 25 and 26, there has been some controversy regarding the implementation of the DNS Risk Framework related to the role of the DSSA Working Group. When looking specifically at the efforts related to Westlake

Governance's preparation and publication of the DNS Risk Framework, some questions exist regarding the comprehensiveness of that framework.

ATRT2 Assessment of Recommendation Effectiveness

Based on the comments referenced above and similar comments both in other public comments and relayed during the ICANN Durban meeting, there is some question as to whether the Westlake Governance DNS Risk Framework is "comprehensive within the scope of ICANN's SSR remit and limited missions". However, comprehensiveness is a matter of opinion and those opinions vary significantly, which is cause for concern.

Recommendation 28

"ICANN should continue to actively engage in threat detection and mitigation, and participate in efforts to distribute threat and incident information."

Analysis of Previous Review Team Recommendation

This recommendation aimed at ensuring ICANN remain active in efforts relating to threat detection and mitigation as well as distributing threat and incident information. Implicit in this recommendation is a focus on threats and incidents related to ICANN's role in the management of the Internet's unique identifiers and responsible distribution of information related to those threats and incidents.

Summary of ICANN's Assessment of Implementation

ICANN staff believes this recommendation has been met with the understanding that threat/incident detection, mitigation, and information disclosure are an ongoing task that will never be completed as long as ICANN is in the role of coordinating the Internet's system of unique identifiers.

Actions Taken

ICANN staff, in particular (but not limited to) the Security Team, participate in a number of security-related conferences and meetings and is involved in activities such as Computer Emergency Response Teams.

In addition, the ICANN Security Team published *"Coordinated Vulnerability Disclosure Reporting at ICANN"* at http://www.icann.org/en/about/staff/security/vulnerability-disclosure-05aug13-en.pdf (to facilitate responsible distribution of information related to threats and incidents.

Implementability

Implemented, albeit with the caveat that threat/incident detection, mitigation, and disclosure are an ongoing area of involvement.

Effectiveness

ICANN participates in trusted security circles and this will continue.

Summary of Community Input on Implementation

No community input was received on this recommendation, however anecdotal input from the parts of the security community suggest ICANN efforts in this area are helpful.

Summary of Other Relevant Information

None.

ATRT2 Analysis of Recommendation Implementation

The Security Team has been quite engaged in the ongoing implementation of this recommendation.

ATRT2 Assessment of Recommendation Effectiveness

This recommendation has been reasonably effective in facilitating ICANN's involvement in venues in which threats and incidents are revealed, mitigations discussed, and disclosures made. Continued and increased involvement will be critical to ensuring ongoing effectiveness.

Appendix D – ICANN Board Resolutions Review

ICANN Board Resolutions Review

During the years 2011 to 2013, the ICANN Board of Directors held a total of 40 meetings of the full Board (not including individual committees, etc.) and passed 158 substantive resolutions. In an attempt to complete this review in the most effective and methodical manner, this review concentrates on the more substantive resolutions, excluding Committee or Board employment assignments and resolutions relating to property leasing and locations of meetings.

This review of the ICANN Board Resolutions focuses on three (3) overarching criteria in order to determine the quality, readability, and transparency of such decisions and whether they can be easily understood by those unfamiliar with the ICANN process:

1. Does the Board provide a clear explanation of its decision? Are there substantive actions to be taken to further improve the ICANN process?
2. Does the Board provide a clear and reasonable rationale for its decision?
3. Does the Board provide an explanation of how it took into consideration public comments (if any)?

Summary

	2011	2012	2013	Total
Number of resolutions	**71**	**59**	**28**	**158**
Clear Decisions	56	55	27	**138**
	79%	*93%*	*96%*	*87%*
Clear Rationales	62	54	25	**141**
	87%	*92%*	*89%*	*89%*
Clear Indication of Comments	40	38	25	**103**
	56%	*64%*	*89%*	*65%*

A review of the ICANN Board resolutions and rationales for 2011-2013 shows marked progress, while further steps could be taken to improve the clarity, readability, and transparency of the Board's decisions.

In the early stages of the reporting process, resolutions are at times overly detailed, technical, and difficult for someone unfamiliar with the ICANN process to understand. For the 2011, 2012, and to some extent 2013 resolutions, the full name of the ICANN body/organization is written out each time the name is used—as opposed to using the full name of the body/organization only the first time and then referring to the acronym thereafter—making the document much more cumbersome to read.

Appendix D – ICANN Board Resolutions Review

Throughout the Board's reporting of decisions and rationales, the usage of bullet points, numbered series, and Q&A formatting vastly improves the readability of the document.

In early 2012, the Board begins indicating when Board members or other personnel have been excused from meetings due to a potential conflict of interest regarding the gTLD Program. This is an important marker in the transparency of the ICANN Board meetings in that while previously, Board members would simply indicate whether they had any conflicts of interest regarding the Program, the reporting process never explicitly stated until early 2012 what actions had been taken to address those conflicts.

Beginning with the 3 October 2012 Board meeting, the rationale section of each resolution indicates clearly in its own line whether or not public comments were required and/or sought in the decision-making process. This practice improves readability and transparency as the reader is quickly able to glance at this line to see how public comments were accounted for in the decision. However toward the middle of 2013, this practice appears inconsistently, appearing in some resolutions but not others.

Suggestions:

1. In each resolution, only provide the full name of the body/organization the first time it is used, then refer to the acronym thereafter.
2. Consistently report in a separate line of the rationale how public comments are considered in the decision-making process.

Appendix D – ICANN Board Resolutions Review

2011

25 January 2011 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1d. Approval of Revised Charter of the Finance Committee

- Clear decision, no action necessary
- Clear, succinct rationale provided that indicates the positive benefit of the decision
- No indication of public comments

1i. Approval to Track Global Policy Process for IPv4 (Internet Protocol version 4) Post-Exhaustion

- Slightly convoluted though eventually becomes clear, beginning explanation too wordy, too many acronyms, actionable steps to be taken
- Clear, succinct rationale addressing financial and budgetary impacts of the decision
- No indication of public comments

1j. Approval of the RSSAC Review Implementation Plan

- Clear decision, actionable steps to be taken
- Clear, succinct rationale indicating financial impact
- Final Report was posted for public comment, no comments received

1k. Approval of Proposed Bylaws Amendment to Create a Non-Voting Chair-Elect to the Nominating Committee

- Convoluted decision that relies on intimate understanding of the ICANN process, actionable steps to be taken
- Rationale language unclear, slightly confusing
- Posted for public comments, no comments received

1m – 1s. Approval of Redelegation of the .BF, .CD, .SY, "Hanguk," "Singapore," "Sourya," several Indian ccTLDs

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out
- Public comments to be posted

Main Agenda

2. Approval of Proposed Bylaws Amendments Changing Term Ending Dates for Supporting Organization and At-Large Selected Board Members

- Slightly confusing decision requiring knowledge of ICANN, no action necessary
- Clear, succinct rationale assessing the financial impacts of the decision and how the decision will improve the efficacy of the ICANN Board
- 1 public comment received supporting the decision

3. Approval of TELNIC RSEP (Registry Services Evaluation Policy) request for release of numeric-only strings except for single-character labels

- Clear, succinct decision, appropriate actions necessary for decision's implementation
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out, assessment of financial impacts
- Several comments posted by relevant stakeholders and issues were addressed in order to approve the decision

4. Rationale Documents

4a. Economic Studies – adopting rationale

- Clear decision addressing adoption of Economic Studies document, decision requires no further action
- Rationale to be provided in Minutes of the meeting
- No indication of public comments

4b. Cross-ownership – adopting rationale

- Very short, vague decision, no action necessary
- Rationale to be provided in Minutes of the meeting
- No indication of public comments

5. Board/GAC Consultations

5a. New gTLDs

- Clear list of issues to be addressed at upcoming meeting, Resolved explanations are somewhat convoluted requiring intimate understanding of ICANN process
- Clear, succinct rationale that addresses necessity of the decision and substantial financial impacts
- No indication of public comments

5b. ICM

- Clear decision, clear actionable steps to be taken by stated date
- Convoluted rationale involving ICANN bylaws, requiring intimate knowledge of ICANN process
- No indication of public comments

6. Report on AOC (Affirmation of Commitments) Reviews including ATRT Recommendations – Next Steps

- Clear decision to adopt resolution, clear actionable steps to be taken
- Clear, succinct rationale explaining the necessity of continued transparency and substantial financial impacts of the decision
- Public commenting in process, to be taken into consideration

18 March 2011 | Regular Meeting of the ICANN Board of Directors – Silicon Valley

1. Consent Agenda

1.3 ccNSO (Country Code Names Supporting Organization) Review – Receipt of Board WG (Working Group) Final Report and Dissolution of the WG (Working Group)

- Clear, succinct explanation of the decision, proposed action for next steps
- Clear, succinct rationale for immediate action
- No indication of public comments

1.4 Approval of Revision of Bylaws re: Implementation of SSAC (Security and Stability Advisory Committee) Review Working Group

- Somewhat convoluted decision requiring intimate knowledge of ICANN process and relevant bylaws
- Succinct rationale though still a bit confusing, again requiring better understanding of ICANN process
- No public comments received

2. Approval of the 2011-2014 Strategic Plan

- Clear explanation of the decision and adoption of the Strategic Plan
- Clear rationale explaining need to adopt the resolution and how the public will benefit from stated action
- No indication of public comments

3. Process for Completion of the Applicant Guidebook for New gTLDs
- Mostly clear, though becomes confusing with the ICANN bylaws, explains decision of new gTLD Guidebook
- Rationale to be posted in Minutes
- No indication of public comments

4. AOC (Affirmation of Commitments) Reviews, Including ATRT Recommendations
- Clear decision, actions to appoint relevant staff and develop appropriate metrics
- Clear, succinct rationale for continued improvement of ATRT process
- Public comments accepted from various stakeholders and reviewed to influence the decision-making process

5. Approval of ICM Registry Application for .XXX
- Somewhat clear explanation of the decision, at times unnecessarily detailed (describing email chains), action steps to be taken
- Rationale posted in separate PDF, excessively long (20 pages) though the Executive Summary of the rationale is clear enough
- Public commenting process utilized throughout the decision-making process

6. Approval of Expenses Related to Board-Directed Activities
- Clear, succinct explanation of the decision, clear action steps indicating exact dollar amounts for budgetary issues
- Clear, succinct rationale, no financial impact on ICANN
- No public comment indicated

7. TLG Review – Actions Based on Independent Reviewer's Final Report
- Mostly clear, at times opaque in the description of the process, clear action steps
- Short, succinct rationale explaining the decision
- Posted for public comments and addressed issues in decision-making process

8. IDN ccTLD (Country Code Top Level Domain) Fast Track Review
- Clear decision, actionable steps unclear
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out, assessment of overall impact of the decision
- Public comments received for several months and addressed in decision-making process

9. Approval of Verisign RSEP (Registry Services Evaluation Policy) Request for Release of Numeric-Only Strings for .NAME
- Clear, succinct explanation of the decision
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out, assessment of overall impact of the decision
- Several public comments posted and specifically addressed in the rationale explanation

21 April 2011 | Special Meeting of ICANN Board of Directors

2. Consent Agenda

2.4 From the BGC – Input on Academia Representation on NomCom
- Clear decision, no action steps
- Though clear enough, rationale does not make practical sense (removing a bylaw because the Board has been unsuccessful in achieving its previously stated goal)
- Decision posted for public comments

2.6 From the SIC (Structural Improvement Committee) – Approval of ccNSO (Country Code Names Supporting Organization) Review Implementation Actions

- Unclear description of the decision, requires intimate knowledge of the ICANN bodies and process
- Succinct, clear rationale explaining need for immediate action
- No public comment indicated

2.7 From the BFC – Formalization of Planning Committee for existing employee retirement savings accounts (401K)

- Clear, succinct decision, no action necessary
- Clear, succinct rationale
- No indication of public comment

2.8 Approval of Redelegation of .KP (Korea, Democratic People's Republic)

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out
- Public comments to be posted

2.9 Approval of Tracking of Global Policy Process for IPv4 (Internet Protocol version 4) Post-Exhaustion Allocation Mechanisms by IANA (Internet Assigned Numbers Authority)

- Slightly convoluted though eventually becomes clear, beginning explanation too wordy, too many acronyms, actionable steps to be taken
- Clear, succinct rationale addressing financial and budgetary impacts of the decision
- No indication of public comments

Main Agenda

3. From the BFC – Approval of Increase of the Registrar Accreditation Application Fee

- Clear decision, action necessary to implement
- Clear rationale presented in Q&A format, very effective in explaining reasoning behind the decision, easily readable
- Public comments posted and taken into consideration in the decision-making process

4. From the SIC (Structural Improvement Committee) – Approval of Charter for Board Technical Relations Working Group

- Decision somewhat clear, requires knowledge of different working bodies in ICANN
- Clear, succinct rationale
- No public comments necessary, comments to be taken in upcoming decision-making process

5. Review of Vertical Integration for Existing gTLD (generic Top Level Domain) Registry Operators

- Clear, succinct decision, action steps necessary
- Clear rationale for immediate action given upcoming gTLD process, presented in helpful Q&A format
- No indication of public comments

6. ATRT

6.1 Board Management of ATRT Recommendations

- Clear, succinct decision to follow ATRT recommendations, action necessary
- Clear, succinct rationale
- No indication of public comments

6.2 Estimated Budget Implications of ATRT Recommendations for FY2012 Budget

- Clear, succinct decision involving detailed dollar amounts involving the budget
- Clear, succinct rationale allocating stated amount of funding for decision
- No indication of public comments

7. IDN ccTLD (Country Code Top Level Domain) Delegations

7.1-7.3 Delegation of "Al Jazair," "al-Maghrib," "srb"

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format, though somewhat long and drawn out
- Public comments to be posted

20 June 2011 | Regular Meeting of the ICANN Board – Singapore

1. Approval of the New gTLD (generic Top Level Domain) Program

- Entire meeting focused on approval of gTLD Program so the decision explanation is long, though relatively clear
- Rationale provided in separate PDF, pending final approval (at the time), incredibly long (121 pages) though somewhat understandably since the gTLD Program is a major initiative
- Public comments involved in various stages throughout the development of gTLD process

24 June 2011 | Regular Meeting of the ICANN Board – Singapore

1. Consent Agenda

1.2 Approval of ALAC-Related Bylaw Amendments

- Decision regarding amendments unclear, requires deeper knowledge of ICANN bylaws
- Clear, succinct rationale indicating impacts on financials and DNS
- Posted for public comments for 30 days, no relevant comments received

1.3 Approval of ccNSO (Country Code Names Supporting Organization) Review Implementation Plan

- Clear decision, actionable steps to be taken by Staff
- Clear, succinct rationale indicating importance of immediate action, no impact on security of DNS
- No indication of public comments

1.4 Approval of Permanent Charter for GNSO (Generic Names Supporting Organization)'s Commercial Stakeholders Group

- Clear decision regarding CSG
- Somewhat convoluted rationale, no budget implications
- CSG will post charter for public comments

1.5 Proposal for a Not-for-Profit Operational Concerns Constituency in the GNSO (Generic Names Supporting Organization)

- Clear decision, no action necessary
- Clear, succinct rationale explaining financial and DNS impacts
- Public comments accepted and favorable toward proposal

1.6 Approval of Permanent Charter for GNSO (Generic Names Supporting Organization)'s Non-Commercial Stakeholders Group

- Long, though relatively clear decision, actionable steps to be taken
- Clear rationale explaining significance of this decision in the larger ICANN context
- Posted and any future amendments will continue to be posted for public comments

1.7 Approval of New GNSO (Generic Names Supporting Organization) Constituency Recognition Process

- Clear decision, easily spelled out in numeric format
- Clear rationale, easily spelled out in numeric format, describes financial and DNS impacts
- Posted for public comment and comments considered in decision-making process

1.10 Academia Representation on NomCom

- Clear decision
- Clear rationale, though seemingly non-sensible (removing a bylaw because no process has been formally established yet)
- Posted for public comments and comments taken into consideration

2. ATRT Recommendations

- Long though clearly spelled out decision addressing ATRT, clear actionable steps to be taken
- Long though clearly explained rationale addressing important aspects of the decision, addresses financial and DNS impacts
- Posted for public comments and comments duly considered in decision-making process

3. Whois Review Team Budget for Consumer Research Study

- Clear, succinct decision regarding budgetary needs and approval, actionable steps needed
- Clear, succinct rationale
- No indication of public comments

4. Renewal of .NET Agreement

- Clear decision, actionable steps to be taken as necessary
- Clear rationale presented in Q&A format
- Public comments accepted with much feedback that was then considered in the decision-making process

5. Internet Number Certification (RPKI) Program

- Decision heavily couched in ICANN standards bodies, requires knowledge of different bodies and their functions in ICANN process, confusing
- Short rationale, yet still requires knowledge of ICANN bodies to make full sense of the reasoning
- No indication of public comments

6. FY12 Operating Plan & Budget

- Clear and straightforward decision, no action necessary
- Clear rationale explaining process of budget approval
- Public comments and consultations considered in decision-making process

25 June 2011 | Special Meeting of the ICANN Board of Directors – Singapore

1. At-Risk Component of President and CEO Compensation

- Clear, succinct decision, no action necessary
- No rationale provided
- No indication of public comments

28 July 2011 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1.5. Approval of Redelegation of .om Domain Representing Oman

- Clear, succinct decision, no action necessary
- Clear rationale presented in Q&A format
- No indication of public comment

2. Receipt of Security, Stability & Resiliency Framework for FY12

- Clear, succinct decision, no action necessary
- Clear, useful rationale explaining importance of decision
- Public comments were overall in support of the decision

Appendix D – ICANN Board Resolutions Review

25 August 2011 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1.2 Approval of Recommendation of GNSO (Generic Names Supporting Organization) Council on IRTP (Inter-Registrar Transfer Policy) Part B

- Confusing decision, requires knowledge of various ICANN bodies and bylaws, CEO directed to take actionable steps
- Rationale quite long, very technical and somewhat confusing, presented in Q&A format, addresses financial and DNS impacts
- Public comments taken into consideration in decision-making process

1.3 Approval of Receipt of Report from TR-WG

- Clear, succinct decision of approval
- Clear, succinct rationale explaining need for immediate decision on this issue, addresses financial impact
- No indication of public comments

3. Approval of BGC Recommendation re Reconsideration Request 11-1

- Clear, succinct decision, no action necessary
- Clear and straightforward rationale
- No indication of public comments

4. Process Steps for Consideration of Board Remuneration

- Long, in-depth yet clear decision, clear action steps to be taken
- Clear rationale for Board compensation, assesses financial and DNS impacts
- Decision will be posted for public comments

5. Single Character IDN Update

- Long, technical explanation of decision requiring working knowledge of ICANN bodies and processes
- Long, technical rationale requiring knowledge of ICANN bodies and processes, assesses financial and DNS impacts
- Posted for public comments

17 September 2011 | Special Meeting of the ICANN Board of Directors

1. Approval of Investment Manager Selection

- Clear decision, clear actionable steps to be taken
- Clear, succinct rationale, assesses financial and DNS impacts
- No indication of public comments

2. Approval of International Banking Relationship

- Clear, succinct decision, actionable steps to be taken
- Clear, succinct rationale, no financial or DNS impacts
- No indication of public comments

11 October 2011 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

Approval of Delegation of .CW (Curacao), Transitional Arrangements for Netherlands Antilles (.AN)

- Clear, succinct decision, no action necessary

- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

22 October 2011 | Special Meeting of the ICANN Board of Directors

1. Membership of Board – Governmental Advisory Committee Working Group

- Clear, succinct decision, actionable steps to be taken
- Clear, succinct rationale assessing financial and DNS impacts
- No indication of public comments

8 December 2011 | Special Meeting of the ICANN Board of Directors

1. New gTLDs

1.1 Applicant Support

- Clear decision, specific dollar amounts, actionable steps to be taken
- Clear, detailed rationale, including specific dollar amounts and reasoning
- No indication of public comments

1.2 Batching

- Clear decision , clear actionable steps to be taken
- Clear legal rationale regarding the decision
- No indication of public comments

2. Consent Agenda

2.4 ccNSO (Country Code Names Supporting Organization) Amendment to the Fast Track Implementation Plan

- Mostly clear decision, requires familiarity with past Board actions, actionable steps to be taken
- Clear but technical rationale, assesses financial and DNS impacts
- Public session held in March 2011

2.5 New Annex A/GNSO Policy Development Process

- Unclear what the decision was, opaque, requires extensive knowledge of ICANN bodies and past decisions, too many hyperlinks that make reading cumbersome
- Rationale opaque and confusing, overly long and requiring extensive knowledge of past ICANN decisions
- Public comments received and considered

3. ATRT Recommendation 5: Board Compensation

- Clear decision indicating specific dollar amounts and details of the decision, albeit a long explanation
- Clear but long rationale describing the process that it has taken to arrive at current decision, significant financial impact but no DNS impact
- Public commenting throughout the process

4. Board Member Rules on Conflicts of Interest for New gTLDs

- Clear decision, specific guidelines, easily readable bullet points
- Clear rationale, no financial or DNS impacts
- No indication of public comments

Appendix D – ICANN Board Resolutions Review

2012

7 February 2012 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1.2 Redelegation of the .BY domain representing Belarus to Reliable Software Inc.

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

2. Delegation of the "kaz" domain representing Kazakhstan in Cyrillic

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

3. Public Comment Posting: Further Bylaws Changes for Revised PDP (Policy Development Process)

- Clear, succinct decision regarding further action on PDP, actionable steps necessary
- Clear, succinct rationale, no financial or DNS impacts
- To be posted for public comments

4. Reaffirmation of second round of applications in New gTLD (generic Top Level Domain) Program

- Clear decision and actionable steps; any Board members and other liaisons identified to have a conflict of interest were not in attendance at the meeting
- Clear, succinct rationale, no financial or DNS impacts
- No indication of public comments

14 March 2012 | Special Meeting of the ICANN Board of Directors

1. Board Member Conflicts of Interest – New gTLD (generic Top Level Domain) Program

- Confidential materials, decision appears out of context without access to confidential documents
- Short, yet still vague and uninformative rationale given the confidential nature of the resolution
- No indication of public comments

14 March 2012 | Special Meeting of the ICANN Board of Directors

1. Approval of New gTLD (generic Top Level Domain) Service Providers

- Clear, succinct decision; indicates that Board members with conflicts of interest have been excused from the meeting
- Clear rationale explaining need for expediency, financial but no DNS impacts
- No indication of public comments

16 March 2012 | Regular Meeting of the ICANN Board of Directors – San Jose, Costa Rica

1. Consent Agenda

1.2 Approval of IRTP (Inter-Registrar Transfer Policy) Part B Recommendation #9, Part 2

- Long, technical, unclear decision requiring in-depth knowledge of ICANN process and past decisions
- Long, technical and drawn out rationale that does not make sense to outside observer
- Public comments received and considered in decision-making process

1.3 Bylaws Changes for New GNSO (Generic Names Supporting Organization) Policy Development Process

- Clear though technical decision, no action necessary
- Clear, succinct rationale assessing financial and DNS impacts
- Posted for public comments

1.4 Engagement of Independent Auditor

- Clear, succinct decision, action steps to be taken
- Clear, succinct rationale, financial but no DNS impact
- No indication of public comments

1.5 Approval of Contracting & Disbursement Policy

- Clear, succinct decision, no action necessary
- Clear, succinct rationale no financial or DNS impacts
- No indication of public comments

1.6 Approval of the DNS (Domain Name System) Risk Management Framework WG (Working Group) Charter

- Clear, succinct decision and explanation, no action necessary
- Clear, succinct rationale, no financial or DNS impacts
- No indication of public comments

1.7 Approval of Redelegation of .BH

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

28 March 2012 | Special Meeting of the ICANN Board of Directors

1. Batching of New gTLD (generic Top Level Domain) Applications: Secondary Timestamp

- Clear, succinct decision and explanation, actionable steps to be taken
- Clear, detailed rationale and explanation of decision, presented in numbered format making it easy to read and understand
- To be posted for public comments

10 April 2012 | Special Meeting of the ICANN Board of Directors

1. Establishment of New gTLD (generic Top Level Domain) Program Committee

- Clear, succinct decision, actionable steps to be taken
- Clear rationale, no financial or DNS impacts
- No indication of public comments

6 May 2012 | Special Meeting of the Board of Directors

1. Consent Agenda

1.1 Ratification of Global Policy Proposal from ASO (Address Supporting Organization) for Post Exhaustion IPv4 Allocation Mechanisms by the IANA (Internet Assigned Numbers Authority)

- Clear decision albeit confusing title, no action necessary
- Clear, succinct rationale expressing need for expediency
- Published for comments, no comments submitted

1.2 .CAT RSEP (Registry Services Evaluation Policy) Request to Allow Whois Changes

- Clear decision, actionable steps to be taken
- Clear rationale describing the decision-making process
- Public comments received and taken into consideration

1.3 Compensation Committee Charter

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, no financial or DNS impacts
- No indication of public comments

1.4 Overall Compensation Framework

- Clear, succinct decision, actionable steps to be taken
- Clear, easy to read rationale, financial but no DNS impact
- No indication of public comments

1.5 IRTP (Inter-Registrar Transfer Policy) Part B, Recommendation 8

- Clear, though lengthy explanation of decision, actionable steps to be taken
- Long, technical and drawn-out rationale requiring in-depth understanding of ICANN bodies and bylaws
- Public comments received and taken into consideration

1.6 Approval of Strategic Plan

- Clear, succinct decision, action steps to be taken
- Clear, easy to read rationale, no financial or DNS impacts
- Public comments received and taken into consideration

1.7 Conflict of Interest Review

- Clear decision, no action necessary
- Clear, easy to read rationale, recognizing need for less legalistic language, no financial or DNS impacts
- Public comments received and taken into consideration in decision-making process

2. Main Agenda

2.1 Ratification of Decisions of Conflicts & Ethics Subcommittee

- Clear decision, no action necessary
- Clear and simple rationale, no financial or DNS impacts
- No indication of public comments

2.2 Update of New gTLD Program Committee Membership

- Clear, succinct decision, no action necessary
- Clear rationale, no financial or DNS impacts
- No indication of public comments

31 May 2012 | Special Meeting of the Board of Directors

1. Election of Fadi Chehadé as ICANN (Internet Corporation for Assigned Names and Numbers)'s President and CEO

- Long but clear decision with detailed explanation, actionable steps to be taken
- No rationale provided (though could be understood in explanation of the decision)
- No indication of public comments

Appendix D – ICANN Board Resolutions Review

23 June 2012 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1.2 Delegation of "Oman"

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

1.3 SSAC (Security and Stability Advisory Committee) Report on Dotless Domains

- Clear decision and explanation , actionable steps to be taken
- Clear rationale regarding implementation of TLDs, no financial impact, but positive DNS impact
- No indication of public comments

1.4 Ombudsman Regular Meetings with Board

- Clear decision, actionable steps to be taken
- Clear, succinct rationale, no financial or DNS impacts
- No indication of public comments

1.5 GNSO (Generic Names Supporting Organization) Improvements Program Wrap-Up/June 2012

- Clear decision, no action necessary
- Clear albeit long rationale, sub-headers make for easy reading
- No indication of public comments

1.6 NomCom Transparency Guidelines

- Clear, succinct decision, actionable steps to be taken
- Clear, succinct rationale expected to improve ICANN community
- No indication of public comments

1.7 .POST RSEP (Registry Services Evaluation Policy) Request

- Unclear decision involving technical details, actionable steps to be taken
- Clear rationale, no financial or DNS impacts
- Public comments addressed in decision-making process

2. .COM Renewal

- Clear decision, actionable steps to be taken
- Clear rationale in Q&A format, no financial, but positive DNS impacts
- Large number of comments received and taken into consideration in decision-making process

3. Adoption of the FY13 Operating Plan and Budget

- Clear decision, actionable steps to address public comments
- Clear rationale with clear financial impact, no DNS impact
- Public comments received but not all responded to at time of writing

5. WHOIS Policy Review Team Final Report

- Clear decision, actionable steps necessary
- Clear, succinct rationale
- Public comments considered throughout the reporting process

28 August 2012 | Special Meeting of the ICANN Board

1. Consent Agenda

1c. Request for Delegation of "Maleesya" domain representing Malaysia in Arabic

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

1d. Redelegation of .RW

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

2. Main Agenda

2a. BGC Recommendation on Reconsideration Request 12-2

- Clear, succinct decision, clear actionable steps to be taken
- Relatively clear rationale though a bit muddled toward the end
- No indication of public comments

3. Executive Session

- Minimal information regarding confidential session of the Board

13 September 2012 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1b. Security, Stability & Resiliency of the DNS (Domain Name System) Review Team Final Report

- Clear decision accepting the Final Report, several actionable steps to be taken
- Clear, succinct rationale
- Public comments received and considered in decision-making process

1c. Response to SSAC (Security and Stability Advisory Committee) Letter of 2 July 2012

- Clear decision with detailed bullet points and clear actionable steps to be taken
- Clear, succinct rationale, financial impacts and positive DNS impacts
- No indication of public comments

1d. Alignment of Board Terms

- Clear decision with clear actionable steps to be taken
- Clear, succinct rationale, positive financial impact, no DNS impact
- Decision to be posted for public comments

2. Main Agenda

2a. Criteria for Determining Chair Compensation for Non-Standing Board Committees

- Clear decision including specific dollar amounts for compensation, presented with bullet points allows for clarity of decision
- Clear rationale, nominal financial impact, no DNS impact
- No indication of public comment

2b. Redelegation of the .MO domain representing Macao to the Bureau of Telecommunications Regulation (DSRT)

- Clear, succinct decision, no action necessary
- Clear rationale, methodically spelled out reasoning in Q&A format
- Public comments to be posted

2c. Election of Fadi Chehadé as President and Chief Executive Office, effective 14 September 2012

- Clear decision regarding election of ICANN CEO, no action necessary
- Clear rationale, positive effect on ICANN community, financial impact, no DNS impact
- No indication of public comments

3. Executive Session

3a. Officer Compensation

- Clear decision, clear actionable steps necessary
- Clear rationale, no financial or DNS impacts

- No indication of public comments

3 October 2012 | Special Meeting of the ICANN Board

1. Consent Agenda

1b. Registry Stakeholder Group Charter Amendments for Posting

- Clear, succinct decision, clear actionable steps to be taken
- Clear, succinct rationale
- Clearly indicated that no public comments sought

1d. Contracting and Disbursement Authority for Audit Program Service Provider

- Vague explanation of decision, includes redactions that contribute to the lack of clarity
- Technical and legal rationale that is difficult to understand
- No public comment required

13 October 2012 | Regular Meeting of the ICANN Board of Directors – Toronto

1. Consent Agenda

1c. Revisions to Board Governance Committee Charter

- Clear succinct decision, no action necessary
- Clear, succinct rationale, no financial or DNS impacts
- No public comment required

2. Main Agenda

2a. Approval of Proposed .NAME Renewal Registry Agreement

- Clear, succinct decision, appropriate actions to be taken
- Clear rationale presented in Q&A format, no financial or DNS impacts
- Requires public comment, comments received and addressed

18 October 2012 | Regular Meeting of the ICANN Board of Directors – Toronto

1. Main Agenda

1a. Approval of Revised Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs

- Short yet unclear decision, no action necessary
- Clear, potentially overly detailed rationale, no financial or DNS impacts
- Public comment sought

1b. Approval of ICANN (Internet Corporation for Assigned Names and Numbers) Language Services Policy and Procedures

- Clear, succinct decision, appropriate actions to follow
- Clear, succinct rationale, financial impacts to be considered during FY2014 budget discussions or DNS impacts
- Public comment required

1c. Revised Governance Guidelines

- Clear, succinct decision, continued action necessary
- Clear rationale, no financial or DNS impacts
- Public comments not required

1e. Security, Stability & Resiliency of the DNS (Domain Name System) Review Team Final Report

- Clear, succinct decision, clear action steps to follow
- Clear rationale presented in Q&A format, minimal financial impact and no DNS impacts
- Public comments required

8 November 2012 | Special Meeting of the ICANN Board of Directors

1. Main Agenda

1a. WHOIS Policy Review Team Report

- Clear, succinct decision, actionable steps to follow
- Exceedingly clear though long rationale, easily understandable
- Public comments received

20 December 2012 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1d. Root Server System Advisory Committee (RSSAC) Bylaws Amendments Posting for Public Comment

- Clear, succinct decision, clear actionable steps to be taken
- Clear succinct rationale, no financial impact
- No public comments required

2. Main Agenda

2a. GNSO (Generic Names Supporting Organization) Council Recommendations IRTP (Inter-Registrar Transfer Policy) Part C

- Somewhat clear decision, actionable steps as necessary
- Rationale clear and presented in bullet points and Q&A format, no financial or DNS impacts
- Public comments received and considered

2b. Board Term Alignment

- Clear, succinct decision, actionable steps as necessary
- Clear succinct rationale, no financial or DNS impacts
- Public comments received and addressed in decision-making process

2c. Accountability Structures Expert Panel Recommendations

- Clear decision, clearly spelled out actionable steps
- Mostly clear decision, financial impact, no DNS impact
- Public comments received

2e. New gTLD (generic Top Level Domain) Funds Investment Policy

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, financial impact, no DNS impact
- No public comments required

3. Executive Session

3a. Approval of Compensation Supplement for Akram Atllah's Service as ICANN (Internet Corporation for Assigned Names and Numbers)'s President and CEO

- Clearly spelled out decision with relevant regulations
- Clear, succinct rationale, financial but no DNS impact
- No indication of public comments

Appendix D – ICANN Board Resolutions Review

2013

2 February 2013 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1b. Registry Stakeholder Group Charter Amendments

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, minimal financial impact, no DNS impact
- Public comments received

1d. Engagement of Independent Auditor

- Clear, succinct decision, action steps to be taken
- Clear, succinct rationale, financial but no DNS impact
- No public comments required

2. Main Agenda

2a. Multi-Stakeholder Meeting Strategy Working Group

- Clear decision, actionable steps as necessary
- Clear, succinct rationale, minimal financial impact, no DNS impact
- No public comments required

28 February 2013 | Special Meeting of the ICANN Board of Directors

2. Main Agenda

2b. Redelegation of the .ML domain representing Mali

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, marked change from past when redelegation of ccTLDs included long Q&A rationale
- No public comments required

2c. Delegation of the domain representing Ukraine

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, marked change from past when redelegation of ccTLDs included long Q&A rationale
- No public comments required

11 April 2013 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1b. RSSAC Bylaws Amendments

- Clear decision, action steps taken as necessary
- Clear rationale, no significant financial or DNS impacts
- Public comments received

1d. Accountability Structures Bylaws Effective Date

- Somewhat confusing decision regarding ICANN bylaws, actions to be taken as necessary
- Somewhat confusing and long rationale
- Public comments received

1e. .CAT Cross-Ownership Removal Request

- Clear, succinct decision, actionable steps as necessary
- Clear rationale in Q&A format

- Public comments received

1f. Confirm Process Followed Regarding Redelegation of the .GA (General Assembly Mailing List) domain representing Gabon

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, much shorter than previous domain name delegations
- No public comments required

1g. Change to Public Participation Committee Name

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, no financial or DNS impacts
- No public comments required

1h. SO/AC Fast-Track Budget Request

- Clear, succinct decision, actionable steps as necessary
- Clear, succinct rationale, no financial or DNS impacts
- Community input received

2. Main Agenda

2a. IDN Variant TLD (Top Level Domain) Root LGR (Label Generation Rules) Procedure and User Experience Study Recommendations

- Clear, succinct decision, clear action steps to be taken by specific deadline
- Clear rationale in Q&A format, no financial or DNS impacts
- No public comments required

2b. PIA-CC Application to Form New Constituency

- Clear decision, actionable steps as necessary
- Clear, succinct rationale, no financial or DNS impacts
- Public comments received

18 May 2013 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1b. FY2014 Budget Approval Timing

- Clear, succinct decision, actionable steps as necessary
- Clear rationale, no financial or DNS impacts
- No public comments required

1d. ACDR Proposal to be a UDRP (Uniform Domain-Name Dispute Resolution Policy) Provider

- Clear decision, clear actionable steps to be taken
- Complex and confusing explanation of rationale, minimal financial impact, no DNS impact
- Public comments received

2. Main Agenda

2a. SSAC (Security and Stability Advisory Committee) Advisory on Internal Name Certificates

- Clear decision, clear actionable steps to be taken
- Clear rationale in Q&A format, no financial or DNS impacts
- No public comments required

2b. SSAC (Security and Stability Advisory Committee) Budget Request

- Clear, succinct decision, actionable steps as necessary
- Clear, succinct rationale, financial but no DNS impact
- Community input received

3. Executive Session

3a. CEO At-Risk Compensation

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, significant financial impact, no DNS impact
- No public comments required

27 June 2013 | Special Meeting of the ICANN Board of Directors

1. Consent Agenda

1c. Approval of AROS Contract Agreement

- Clear, succinct decision including exact dollar amount of funding, action steps as necessary
- Clear rationale including exact dollar amount, significant financial impact, no DNS impact
- No indication of public comments

2. Main Agenda

2a. Update to IDN ccTLD (Country Code Top Level Domain) Fast Track Implementation

- Clear decision, clear actionable steps necessary
- Technical and lengthy rationale, confusing, financial impacts, no DNS impacts
- No indication of public comments

2b. Approval of 2013 RAA (Registrar Accreditation Agreement)

- Clear, succinct decision, action steps as necessary
- Clear, but incredibly long rationale and explanation, presented in bullet points and Q&A format
- Public comments received

17 July 2013 | Regular Meeting of the ICANN Board of Directors

1. Consent Agenda

1a – 1c. Redelegation of .ID, .EE, .MOH

- Clear, succinct decision, action steps as necessary
- Clear rationale in Q&A format
- No public comments required

1d. CRM Implementation Project

- Clear, succinct decision, actionable steps as necessary
- Clear rationale, no financial or DNS impacts
- No indication of public comments

1e. Approval of President & CEO FY13 T3 At-Risk Compensation

- Clear, succinct decision, no action necessary
- Clear, succinct rationale, significant financial impact, no DNS impact
- No public comments required

18 July 2013 | Regular Meeting of the ICANN Board of Directors

2. Consent Agenda

2b. Competition, Consumer Trust and Consumer Choice Metrics for the New gTLD (generic Top Level Domain) Program per AoC Review

- Clear decision, clear action steps to be taken
- Clear rationale
- No public comments required

2e. Budget Approval Timing

- Clear, succinct decision, actionable steps as necessary
- Clear rationale, no financial or DNS impacts
- No public comments required

Appendix E - Observations Concerning The ATRT Process

Scope of ATRT2's work

Unlike ATRT1 whose work was a "greenfield" effort to make Recommendations to ICANN to improve its accountability and transparency under Section 9.1 of the Affirmation of Commitments (AoC), ATRT2's scope of work required an assessment of ICANN's implementation of the ATRT1 Recommendations as well as the WHOIS Review Team (WHOIS-RT) and the Security, Stability and Resiliency Review Team (SSR-RT) Recommendations. These 3 Review Teams presented a total of 71Recommendations to the ICANN Board that represented a significant amount of work for ATRT2. At an early stage of its work, ATRT2 recognized the value of not only assessing implementation of prior Review Team Recommendations but also presenting "new" Recommendations in areas under paragraph 9.1 of the AoC where ICANN could improve accountability and transparency. ATRT2 recognized that the level of effort required to assess all prior Recommendations would affect ATRT2's ability to develop focused, "new" Recommendations for the Board.

In keeping with the AoC, ATRT2 determined that it would assess ICANN's implementation of ATRT1 Recommendations and could, if it deemed necessary, offer "new" Recommendations arising from the original ATRT1 Recommendations. It also determined that it would assess ICANN's implementation of the WHOIS RT and SSR-RT Recommendations but "new" Recommendations arising from the original WHOIS-RT and SSR-RT Recommendations should be left to the discretion of WHOIS-RT2 and SSR-RT2.

ATRT2 notes that a full assessment of ICANN's implementation of prior Review Team recommendations is critical to continuous improvement at ICANN and in creating a culture of accountability and transparency. At the same time, the methodologies of the review and assessments could be improved in a number of ways that are addressed below.

Timeline for the Review

ATRT2 commenced its work with an initial conference call on 22 February 2013 and held its first face-to-face meeting on 14-15 March 2013. Given the 3 year cycle of AoC Reviews, and taking into account the role of ATRT in assessing implementation of other Review Team Recommendations that have their own AoC life cycle, ATRT2 determined it would submit its review and Recommendations to the ICANN Board no later than 31 December 2013. Since ATRT2's substantive review and assessment did not commence until its first face-to-face meeting in mid-March, ATRT2 had effectively 9.5 months to complete its work. ATRT1 observed in its Final Report that it had less than 9 months to complete its work and that this created unnecessary pressure on ATRT1's work. Given the experience of both ATRT1 and ATRT2, it is clear that providing the ATRT with a full 12 months to complete its work is critical to the quality of the process. ICANN should adjust its internal processes to prepare for the next ATRT to ensure that ATRT3 is able to commence its substantive work in earnest in January so as to provide a full 12-month calendar to conduct its review. While suggestions have been made that the ATRT could

chose to complete its work in a time frame greater than 12 months (as another Review Team did), ATRT2 does not see the need for a period greater than 12 months nor does it see barriers to ICANN in setting the ATRT2 work in motion in a more timely fashion.

Budget

ATRT2 was not provided the full budget for its work at the outset of the review process. An understanding of the Review Team budget is critical for a number of reasons:

1) ATRT work entails significant amount of hours, conference calls, face-to-face meetings; engagement of an independent expert, if needed etc. The ATRT should be fully informed of the budget for its activities so that it can, in coordination with ICANN staff, responsibly manage its process and the necessary resource in coordination.
2) Lack of clarity concerning the ATRT budget injects unnecessary issues into the work. For example, a lack of clarity around the total budget for an independent expert raised concern in ATRT2 about ICANN potentially imposing constraints or otherwise attempting to control an important aspect of ARTR2's work. While that may not have been ICANN's intent, the lack of clarity can unnecessarily lead to inferences that ICANN is not acting transparently or being accountable to the review process.
3) Lack of clarity around the ATRT budget suggests, rightly or wrongly, that ICANN is not taking the planning process for these critical reviews seriously. After 3 full Review Team exercises over the course of 3 years, it should be expected that proper budgetary planning (including communication of the budget) would be *de rigueur.*

Data gathering and analysis

In keeping with its obligations to assess ICANN's implementation of the ATRT1, WHOIS-RT and SSR-RT Recommendations and to provide any "new" Recommendations to ICANN, ATRT2's work involves review of a significant amount of documentation as well as interviews with ICANN staff and Board and interaction with the Community. Data gathering takes many forms but it flows from primarily two sources: 1) documentation provided by ICANN staff that reflects implementation efforts; and 2) data provided by the Community either through Public Comment or through face-to-face interactions with the ATRT2. In the first phase of its work, ATRT2 spent a great deal of time developing requests for documentation to the ICANN staff and developing a questionnaire/survey for the Community to be put out for Public Comment.

With respect to the Public Comment process, ATRT2's questionnaire attempted to capture input that spoke to the Community's view of implementation of all 3 prior Review Teams' Recommendations and any new areas for potential Recommendations. In retrospect, and as reflected in feedback from the Community, the questionnaire was voluminous and unclear in certain sections. ATRT2 also published a "draft" Report and Recommendations in mid-October seeking Public Comment to consider in its Final Report.

ICANN staff did provide presentations in the first face-to-face meeting on implementation efforts in the form of power point slides and individual interviews with Staff members who were responsible for implementation efforts. These presentations were informative and helpful to

ATRT2 in understanding Staff's assessment of ICANN's implementation efforts. That being said, ATRT2 understood that it was responsible to review other documentation to assess and validate the Staff's assessment of implementation efforts. What ensued over the course of the ATRT2's work was a series on ongoing request for data and documentation from the Staff so that ATRT2 could conduct its own assessment of implementation efforts and so it could analyze areas where "new" Recommendations appeared to be needed.

Meetings and conference calls

ATRT2 conducted 20 conference calls and 7 face-to-face meetings. Additionally, once the team was organized into 4 distinct work streams, those work streams entailed 16 conference calls to develop their respective areas of the Report. ATRT2 found that the face-to-face meetings were critical to advancing analysis and consensus on conclusions and in making significant strides in developing the Report. ATRT2 found "mixed" value in the conference calls and noted that conference calls for work streams were not necessarily effective in substantively advancing that work. ATRT2 also notes the importance of face-to-face interaction with ICANN Community members to receive input and hear oral presentation that allows for dialogue and add context to a given AC or SO's input to the ATRT process.

Managing work streams and drafting the Report

ATRT2 decided to organize the work into discrete work streams. It did so to manage a sizeable workload and because the work lent itself to four discrete areas, the assessment of 3 prior Review Team Recommendations and "new" Recommendations. ATRT2 had 4 volunteers who Chaired and directed the work of the 4 respective work streams. The ATRT2 Chair and Vice Chairs provided guidance to the work stream Chairs.

While this organization of the work had a logical appeal, ATRT2 members found that the number of conference calls generated by the individual work streams and the fact that some ATRT2 members were participating in multiple work streams to be cumbersome and not necessarily efficient.

IMPROVING FUTURE REVIEWS

Timeline

ATRT3 should be selected and organized in a timely fashion to allow at least a 12-month period for its work. ATRT3 should take into account the life cycle of the 4 reviews it must assess (ATRT2, WHOIS-RT, SSR-RT and Competition, Consumer Trust and Consumer Choice (CCTCC-RT)) and assess the efficacy of the review processes life cycle as a whole.

Budget

A full and clear budget for ATRT3 (taking into account that the ATRT3 process "straddles" 2 fiscal years) should be presented to ATRT3 at the initiation of its work for proper planning and management by ATRT3, in coordination with ICANN staff.

Data gathering and Analysis

ATRT3 should be presented at the initiation of its work with a full report from ICANN staff that:

1) Demonstrates implementation of prior Review Team Recommendations
2) Identifies with specificity the effects of implementation on ICANN from an organizational view; on processes; on interaction with the Community and on outcomes
3) Provides extensive citations and references to documentation that supports points 1 and 2.
4) Reflects clear metrics and demonstrates measurable progress and improvement against prior benchmarks on implementation efforts.
5) Reflects the costs of implementation and the resources needed for implementation efforts.
6) Provides ATRT3 with a range of tools (including metrics, criteria etc.) to assess implementation efforts.

ATRT3 should also consider methodologies for effectively managing the work load to allow for substantive and efficient review of implementation of the prior 4 Review Teams' Recommendations and, importantly, to allow for sufficient focus on new areas for potential Recommendations. Methodologies that add efficiencies to the data gathering (i.e. more effective questionnaire/survey for the Community) and to the assessments (i.e. approaches to analysis and work stream management) should be considered.

Metrics and Criteria for measuring progress

One learning for ATRT2 is that since ICANN, to a large degree, did not adopt metrics for its implementation efforts, the Review Team's ability to measure progress was affected. At the first face-to-face meeting in mid-March, Fadi Chehade committed to developing metrics for implementation of Recommendations from AoC Review Teams. Following Fadi's commitment, ICANN staff engaged One World Trust to develop metrics to be applied to Review Team Recommendation implementation efforts going forward. ATRT2 requested that it be able to interact with One World Trust directly so that ATRT2 could reflect the need for metrics in its Final Report in a coordinated way. Staff provided a confidential copy of the One World Trust report to ATRT2 on December 17, 2013. The copy was provided on a confidential basis because it was a work in progress and because One World Trust and ICANN Staff were working out details with respect to the Report. Given the timing of the submission, the One World Trust report was not discussed in detail by ATRT2 and did not figure into the Final Report and Recommendations of ATRT2. As part of One World Trust's data gathering at the outset of its work, the Chair of ATRT2 was interviewed along with other members of the Community. Also, a public session was held at the ICANN Buenos Aires meeting where One World Trust discussed certain aspects of its report in progress and engaged in Q&A with the Community. ATRT2 expects that ICANN Staff will make the One World Trust report available to the Community and that action to adopt metrics will be communicated and will serve as a basis for future review teams to measure ICANN's progress on implementation of Recommendations.

Meetings and conference calls

Taking into account that ATRT2 found that the face-to-face full Review Team meetings provided the best vehicle for driving substantive discussion and for identifying consensus, ATRT3 should be open to other/additional forms of interaction and other methods for "pulling" information from the Staff and Community.

Managing work streams and drafting the Report

ATRT3 will be in the best position to organize its work. That being said, alternatives to works streams should be explored particularly if efficiencies and new tools can be used to conduct assessments of prior Review Team Recommendations. ATRT2 also observes that publishing the Draft Report should take place no later than 3 months prior to issuance of the Final Report. This allows a full Public Comment period and the ability of the ATRT to manage an important amount of data that comes into the process in the final phase. It is important that the ATRT have the ability and time to substantively modify the Final Report based on Community and ICANN input.

Consideration of work of ICANN Structural Improvements Committee

In discussing how to improve the AoC Review process going forward, ATRT2 also considered the work of the ICANN Structural Improvements Committee on Institutional Reviews. The ATRT2 notes that the AoC Reviews are distinct and different from the ICANN Institutional Reviews. At the same time, AoC Review Teams and the Board should consider the ATRT2's Observations and a range of techniques to improve the AoC Review processes. The following document contains a number of techniques considered by the Structural Improvement Committee for consideration.

ORGANIZATIONAL AUDIT PROGRAM

INTRODUCTION

As a part of its responsibility to ensure the accountability and transparency of its organizations and their processes, the ICANN Board of Directors must, from time to time, by the means of audit activities, assess the effectiveness of the processes of its Supporting Organizations, Advisory Committees, and other groups that it deems necessary; the outcomes of those processes; and the capability of the ICANN structures to support the processes. In the past organization reviews mandated by the bylaws to a certain extent assessed the process elements and certain aspects of the capability of the structures to support the processes. There was no real assessment of process outcomes and no assessment of the processes themselves. There also did not exist a manner or means in which the results of these assessments were routinely integrated into strategic or operational planning. Hence there is a need for an improved review regimen. This improved regimen is a comprehensive Organizational Audit Program. This paper describes a concept for the board to discharge its responsibility and provides the principles to guide the development of the Organizational Audit Program.

TERMS

Process

A plan or predetermined method is for producing an outcome or product. It is composed of elements that define standards, requirements or resources needed to accomplish the activity.

Process Audit

An examination that measures whether people know how to perform a process and whether controls are used to produce an outcome.

A process audit looks for performance indicators such as waiting, redoing, deviating or rejecting. It does not measure the quality of the outcome nor does it measure the compliance to standards, requirements, or the provision of resources needed. It can identify the lack of or inadequacy of the elements. By its nature, a process audit analyzes work flow identifying efficiencies or deviations by verifying conformance to the required sequential steps from input to output using models and tools such as simple flowcharts, process maps or process flow diagrams. A process audit provides added value by evaluating how processes flow, their controls and risks and the achievement of outcomes. While objective criteria can be used to evaluate process flows, there may also be subjective evaluations based upon interviews regarding how well the process is or is not working.

Process Element Audit

An examination that verifies compliance or conformance to standards and requirements both as they pertain to the process and also to the manner of provisioning of resources.

A process element audit ensures all aspects of a process are being evaluated. Standards and requirements may be based upon statutes, organizational bylaws, or organizational policies and are used to support key elements or controls of a process or support the provisioning of supporting resources. A process element audit is the direct link to these statutes, bylaws, and policies. A process element audit verifies key elements or critical controls and identifies compliance or deviation from them. This includes but is not limited to such things as written procedures and record keeping. Lastly, a process element audit ensures that the people managing and using the process are aware of the standards and requirements and are adhering to them. Objective criteria can be used throughout to evaluate process elements to the extent that a checklist style of approach can be used.

Outcome Audit

An examination that focuses on quality and effectiveness of the product of a process.

An outcome audit is the most common informal unstructured evaluation, but it can also be the most difficult to define standards and requirements and is the most prone to ambiguity in evaluation. An outcome audit is best conducted as part of the feedback and assessment phase of a process.

Structural Audit

An examination that evaluates the capacity of an organization to effectively and efficiently perform its processes and achieve quality outcomes.

A structural audit looks at the organization and allocation of resources that provide the capacity for the organization perform effectively. The Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of a strategic planning process is an effective method to conduct this audit.

Principles

1. An audit measures against a standard and it should identify the cause of any deviation. All audits start with compliance against a standard whether it is a process flow, a process element, a process outcome, or the capability of a structure.

2. An audit must be focused on feedback. Feedback is needed so that organizations can take actions that will improve the organization. The results of the audit are provided in a written report that identifies strengths and weaknesses, identifies root causes of deviations, and provides recommendations for corrective actions and improvement. This report serves as a record of results that can be used to correct deviations, provide input into strategic and operational planning, and can benefit other organizations in the ICANN community.

3. An audit examines whether the deviations reported from the previous audit have been corrected and whether the results were incorporated into the strategic and operational planning.

4. An audit consists of five elements:

    a. Measurement against a standard.

    b. Determination of the magnitude of compliance or deviation.

    c. Identification of the root cause of the deviation.

    d. Identification of a solution or set of solutions.

    e. Formulation of recommendations.

Concept

All audits – Process Audits, Process Element Audits, Outcome Audits, or Structural Audits will be conducted in a phased or cyclical approach. A specific plan and process will be developed for each audit. Not all phases described below will be totally applicable for each of the audits. Each of the audits is an independent activity and are not usually conducted simultaneously. The phases of an audit are:

1. Pre-Audit Activities.

a. Identify standards and requirements. Standards and requirements appropriate to the audit are identified and prepared or developed by the staff and coordinated with the community.

b. Identification of the auditor. The auditor may be an individual or a team of individuals. Some audits will be conducted by independent firms selected thorough a contracting process while others can be conducted by teams of individual identified from the ICANN communities. These community based teams will be supported by ICANN provided resources and staff.

2. The audit.

a. Conduct of the Audit

1) The process audit will be conducted using either a contracted consulting firm or by a team of individuals identified from the ICANN communities.

2) The process element audit will be conducted using a contracted auditing firm.

3) The outcome audit will be conducted using either a contracted consulting firm or by a team of individual identified from the ICANN communities.

4). The structural audit will conducted as part of strategic planning. It will utilize the results of the other audits as input to this audit.

b. Preparation of the report.

1) Draft prepared and presented by the auditor to the audited organization.

2) Consultation and cross check between the audited organization and the auditor. If necessary the identification of differences and any resolutions of those differences will be placed into the final report.

3) Presentation of the final report to the board oversight committee and posting for public comment.

4) Analysis of the public comments by the board oversight committee and preparation of recommendations to the board.

5). Board acceptance of the report and issuance of implementation guidance and instructions.

3. Implementation of recommendations.

a. Immediate corrective action.

b. Integration into strategic and operations plans.

c. Publishing the report so that others can benefit from the results of the audit.

d. Follow up assessment of implementation progress.

4. Operational Experience. The audited Supporting Organization, Advisory Committee, and other group operates for a period of time after the audit recommendations have been implemented.

5. Assessment of effectiveness of recommendations. After the period of operation the Supporting Organization, Advisory Committee, and other group conducts a self-assessment of the effectiveness of the recommendations and prepares a report. This report will be sent to the CEO and will be used as an input into the next audit.