

Dear members of the Accountability and Transparency Review Team (2),

The GNSO Council thanks you for the outcome-oriented analysis and recommendations in the ATRT2 Draft Recommendations of 15 October, 2013.

We particularly appreciated the thorough assessment of ICANN's implementation of the Recommendations of the three prior AoC Review Teams: this process of self assessment, as defined by the AoC, is essential to continuously improve mechanisms for public input, accountability, and transparency and to ensure that ICANN's decision-making is accountable to all stakeholders.

We also appreciate the time and care that went into the recommendations, the commissioning of useful research and, especially, the efforts made by the ATRT2 and its leadership to promote awareness and dialogue about the recommendations at the Buenos Aires meeting.

The Council's input focuses on recommendations regarding the GNSO PDP. Broadly, we strongly support the call for broader and more active working group participation and earlier involvement of the GAC, and will work hard to implement your final recommendations on these issues.

### **New recommendations arising from issues not addressed by ATRT1 Recommendations**

#### **13.1 on developing funded options for professional facilitators to help GNSO PDP Working Groups**

While some Councilors supported this suggestion, others were concerned that facilitators may not always be appropriate in the multi-stakeholder model. Broadly, we believe this is an option that could be considered in the context of the ATRT2's recommendation to develop explicit guidelines for when to use facilitators. We support the ATRT2's recommendation that professional facilitation be a funded option for future PDPs, subject – as the ATRT2 suggests – to better understanding and agreement on when and how to use facilitators.

One approach to addressing the “inappropriate facilitator” concern would be to elicit agreement by Working Group participants to use facilitators on a case by case basis, allowing working group participants to interact with facilitators prior to making that agreement and allowing working group participants to contribute to establishing a clear understanding of facilitators' roles.

### **13.1 on face to face meetings during GNSO PDPs**

We support this recommendation and the development of guidelines for when F2F meetings may be required and justified. However, we do note that the ability amongst Working Group participants to travel to F2F meetings varies. Many volunteers cannot leave work or family to do so, for example. We suggest that if intercessional F2F meetings are used more often then the GNSO may want to consider adopting the IETF approach that agreements reached during F2F meetings are then subject to consideration and ratification by mailing list members following the session.

We additionally suggest that remote participation capability be of the highest priority during these sessions.

We additionally suggest that to facilitate participation in these inter-sessional meetings, each ICANN engagement center should have facilities to support video-conferencing and be able to support WG-sized teams. For example, it would be more feasible – and possibly more cost-effective - for a WG member in, say Australia, to participate via the hub office in Singapore rather than to travel to Los Angeles for a meeting.

### **13.1 on GNSO and the wider ICANN community developing ways to make the GNSO PDP process more time-effective**

The future of the bottom-up multi-stakeholder model depends on a PDP that is timely —and– results in quality outcomes. PDP performance should be judged not only on time elapsed, but on participation, rigour and agreement.

However, right now, a main challenge is that the average time to complete a PDP can be a barrier to participation and can undermine the ICANN model. Committing to participating in a PDP Working Group for a year or more is something individuals often can't afford and commercial organizations cannot justify. The anticipated time also makes the PDP an unattractive mechanism for addressing urgent matters, and creates incentives for parties to escalate these immediately to other structures, such as the Board or GAC. "So while we believe the PDP should be judged on several criteria, we recognize that time-effectiveness [needs to be addressed.](#)"

At the same time, as with our comments on item 13.4 below, we are concerned that speed not be the main metric used to determine the performance of the GNSO.

We suggest this recommendation stress more that 'time-effective' encompasses efficient use of participants' time – including work-planning, preparation for and chairing of calls and follow-up activities between WG meetings. We have made good progress on some of these activities – for example, 'mind-mapping' each WG's PDP Charter to better plan its work sequence and dependencies – but we need to do more and better on how WG's produce their work and, particularly, come to

agreements on it. We appreciate the ATRT2's focus on this issue and will do our best to implement its recommendations and continually improve.

Additionally we suggest that while a priority concern is time-effectiveness and the fact that, in some cases, the PDP simply takes too long, reference might be also made in your recommendations to other, more qualitative measures of the effectiveness of policy-making; such as the extent of deliberation, participation and support.

### **13.2 on the GAC, with the GNSO, developing ways to input to PDP Working Groups**

We strongly support this recommendation and have recently launched a joint initiative with the GAC to work on ways to implement it.

### **13.3 on the Board and GNSO chartering a strategic initiative to broaden participation in GNSO PDPs**

We broadly support this recommendation and welcomed the detailed quantitative analysis provided in support of the need to broaden participation. We do also note staff's observation that in some cases input to public comments may appear to be from, for example, the US but has been submitted by a US-based individual on behalf of a peak organization that consulted more widely.

Nonetheless, there is clearly a need to both broaden and deepen participation. The table on page 35 of the ICC report shows how few participants join more than one or two working groups during their "career" at ICANN. Some of our councilors suggest that as well as outreach to increase participation from outside of ICANN, we should also do 'in reach' to deepen participation by individuals already involved in ICANN but who have either never participated in a Working Group or have become discouraged after participating in only one or two. We ask that the ATRT2 may consider this suggestion.

### **13.4 on the Board stating a process for setting gTLD policies when the GNSO 'cannot come to closure on a specific issue within a specified time-frame'.**

We share the concerns stated by others that the couching of this recommendation may unwittingly undermine the multi-stakeholder model in ICANN. Policy-making can take longer than is predictable or desirable, but nonetheless be effective in its deliberativeness, the rigor and refinement of its output and degree of support across diverse stakeholders.

This recommendation seems to perpetuate a belief that the GNSO – the engine of gTLD policy development and the only part of ICANN driven by carefully balanced stakeholder decision-making – is too slow and argumentative. That belief can drive some ICANN participants to bypass the GNSO and straight to the Board, undermining the multi-stakeholder process and ICANN's *raison d'être*. While Board-

imposed deadlines can sometimes help overcome intractable differences, it's not clear that this is an effective way to ensure constructive negotiation within the PDP without later recourse to the Board or GAC.

This recommendation also seems to contradict the ICC research report finding on page 25 that there is both a conflict but ultimately a 'sweet spot' to be found between policy-making being sufficiently participatory/rigorous and speedy. We suggest that this recommendation be modified to help the GNSO put processes in place that will help WGs find that sweet spot. This is a definition that will change from one issue to the next and is not a 'one size fits all' amount of pre-specified time for every working group.

For example, the recommendation could be changed to suggest the Board interact formally or informally with the GNSO to understand the root causes of delay in cases where PDPs seem to be going too slowly; to make consistent and informed determinations as to whether the delay is justified, and to constructively offer advice or resources to help.

Recommendation 10.4 also says the Board should note under what conditions it believes it may alter PDP recommendations after formal Board acceptance. We support this part of the recommendation. But we would like to see it strengthened to encourage the Board to refer suggested alterations back to the PDP working group for review and refinement prior to enacting them.

Recommendation 10.4 also says there should be an additional step in the PDP Comment Process that allows those whose comments have been synthesized improperly to request changes. We support this recommendation, while noting it will add some time to the process. Perhaps it could be implemented on an 'if/then' basis, i.e. inserting an opportunity for commenters to raise their initial concerns to trigger taking the additional step of requesting changes to the summary. However, we also suggest replacing the term 'improperly' with 'incorrectly' or 'wrongly', as the word 'improper' has connotations of wrongdoing rather than simple inaccuracy.