Dear ATRT2,

Please find below my input on some of the questions which you have posed.

Thank you.

Sincerely,

Rinalia Abdul Rahim

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1. The ATRT2 is seeking to engage an Independent Expert to assess whether the GNSO PDP process is effective for developing gTLD policy within ICANN's multi-stakeholder environment. In your view, is the GNSO PDP working well, and if not, what needs to be done?

The GNSO PDP allows for At-Large participation where the At-Large is usually the sole voice representing the interests of Internet users against those with vested interests and financial stakes in PDP outcomes. At-Large representatives face difficulty competing with those with vested interests, who are typically more than well represented in ICANN's policy development processes and better resourced in terms of policy research/analysis/impact in their own respective capacities and organizations.

Two examples of PDPs where contracted parties over-powered user representatives:

a) Post-Expiration Domain Name Recovery (PEDNR); and

b) Consumer Trust, Choice and Competition New gTLD Metrics.

Extract from the ALAC Correspondence on New gTLD Metrics to Chair of the ICANN Board's New gTLD Program Committee, with a copy to Chair of the ICANN Board:

 "As the entity chartered within ICANN to represent the viewpoint of Internet end-users, the ALAC has an acute interest in this issue. It is important to us that the metrics address the evaluation needs of the global Internet end users and not be biased towards those of the domain industry. Towards that end, a number of At-Large members participated in the GNSO Consumer Trust, Consumer Choice, and Competition Working Group and made valuable contributions to the process. During the course of the work a number of metrics-related issues that were important to the At-Large were deemed by other members of the Working Group to be out of scope, too difficult to scope, or potentially embarrassing to new gTLD operators**.** Despite the objections of the At-Large members, a last minute change demanded by domain industry representatives was asserted as consensus. While we acknowledge that the final report of the Working Group provides metrics that are useful to a number of ICANN constituencies, we believe it to be significantly incomplete. Implemented alone, we foresee that such efforts would not serve the needs of global Internet end users and could easily be dismissed as a mere public relations stunt on the part of ICANN."

What needs to be done?

This problem is intertwined with the problem identified in question 2.

To address the problems, a 3-pronged approach is recommended:

i) Address the structural problems of representation in GNSO PDPs (i.e., ensure balanced community composition in charter-development and Working Group membership when the policy to be developed has public interest and user implications);

ii) Address the volunteer constraints as identified in the response to Question 2 to enable the participation of capable volunteers who have no financial stakes and represent the interests of Internet users in GNSO PDPs; and

iii) Invest in neutral facilitation services in the GNSO to support cross-community collaboration in policy-development.

2. The multi-stakeholder model presumes we can get substantive involvement from all stakeholders, including those who do not have financial interests at stake. Is that being achieved effectively, and if not, what does ICANN need to change to be able to do it effectively?

Substantive involvement from stakeholders without financial interest at stake is NOT being achieved effectively despite the "openness" of the process.

At-Large Volunteer Constraints

(i) High demand for input
- There are numerous policy issues that require substantive engagement and input at any one point in time. In addition, the number of calls for public comments is high.

(ii) High complexity
- The issues that volunteers have to grapple with are complex. It takes time and considerable effort for At-Large volunteers to achieve sufficient understanding of user implications for each issue in order to make meaningful contributions and to consult the At-Large community for input (i.e., be able to frame and guide community consultations, conduct surveys, draft statements, propose recommendations, address differences and achieve consensus).
- Because of the complexity, it takes a minimum of 1 year for a motivated new volunteer to become operationally functional at ICANN. This represents 50% of an ALAC member's term, which fuels the argument that a volunteer should serve multiple terms in order to be more effective, which in turn increases entry barriers and limits opportunities for others to step forward.

(iii) Severe time constraints
- As volunteers with no financial stakes, At-Large volunteers typically have no employers subsidizing their time or activities for ICANN. This

means that volunteers are generally unable to devote sufficient attention or time to ICANN matters unless they have full control over their time, which is rare. Intermittent attention is not conducive for substantive engagement on high volume and complex policy-matters.

(iv) Lack of incentives

- There are no incentives in place to motivate deeper and wider volunteer engagement.
- Opportunities for leadership that bring recognition, which have value for some volunteers, are limited.
- Support for travel to attend ICANN meetings that could deepen networking, policy work, collaboration and learning about the multi-dimensional aspects of issues that can only be obtained from a multistakeholder environment is limited.
- Virtual means/platforms for interaction or collaboration cannot completely replace the need for face-to-face encounters, which nurture social capital such as good will, a more holistic understanding of issues and trust – all things that are essential for multistakeholder cooperation. Also, resolution of conflicts/disputes cannot be achieved effectively or satisfactorily online. At a human level, dissatisfaction does not go away. They get carried forward into future issues.

(v) Lack of substantive policy support

- Given the problems of limited time, high input demand and complexity, At-Large volunteers require dedicated support in terms of policy research and analysis that relate to implications of issues and proposed ICANN policies on users.
- At-Large staff support is currently limited to aspects of administration, logistics, coordination and communication. Staff services ideally should be increased to include support for dealing with policy substance. Alternatively, if staff is limited in terms of capacity, the service can be outsourced to trusted parties with the necessary competence.
- In the face of potential arguments that staff involvement in policy support may lead to influence over At-Large deliberations and conclusions, I would argue that PDP initial issues reports are prepared by staff and there is sufficient intelligence in the At-Large community to discern bias in packaged content.

(vi) Insufficient in-reach and outreach support

- The ideal mechanisms to address volunteer constraints would be to rapidly intensify capacity building for volunteers (in-reach) while actively recruiting more volunteers for a continuous infusion of talent, time and energy (outreach). The latter is particularly important to relieve the burden on the core group of volunteers, who undertake the bulk of policy engagement work and who are continuously at risk of burnout.
- Effective support for crucial in-reach and outreach initiatives have been largely unsatisfactory and Growth in At-Large volunteers who are able to contribute actively and meaningfully is slow.
    - The At-Large's idea of the ICANN Academy as a capacity building mechanism is taking nearly 2 years to reach a pilot stage. Progress is painstakingly slow.

- o Support for outreach has been inadequate and unsystematic. The nature of support required includes:
  - Dedicated research/surveys and consultations to identify suitable outreach targets, venues and ambassadors.
  - Funding and packaged-content support for designated ambassadors to go on specific outreach missions at (for example) regional and global IGF, consumer association fora, regional events organized by entities that deal with various aspects of Internet policies, etc.
  - Follow-up support to secure recruitments.

(vii) Poor volunteer appreciation

- ICANN has few means of demonstrating appreciation for volunteers. One such means is recognition. Much recognition is accorded to Chairs of Supporting Organizations and Advisory Committees. Their significant contribution in leading their respective communities is clear and not at all in question. Nevertheless (while the free-rider problem runs across all communities in various degrees), there are volunteers who toil selflessly behind the scenes and who need to be acknowledged/recognized in ways that make them feel valued.
- Providing travel support for Working Group leaders to attend ICANN meetings is but one small step towards acknowledging the value of their contribution, but this too has yet to materialize despite the support of ICANN's President & CEO for the idea.
- ICANN's penny-conscious travel regulations often make volunteers feel like untrustworthy free riders (instead of valuable contributors), which undermine their dignity. The opportunity cost and value of the time that serious volunteers contribute to ICANN easily exceed the cost of travel, hotel and per diems for all the meetings. These volunteers do not contribute their time only during the meetings. Much of the work happens between meetings.
- ICANN needs to develop a volunteer incentive program to sustain the engagement of volunteers, particularly those whose skills are valuable in ICANN and outside of ICANN.

(viii) Local language consultation needs

- The working language of ICANN is English. This is understood and At-Large volunteers from around the world do their best to work with this requirement.
- One of the problems faced by volunteers is how to reach out to their community of Internet users to raise awareness about key policy issues and to obtain feedback on user impact (to the extent possible) to channel into ICANN's PDP or calls for Public Comments. This cannot be done without grappling to some extent with the issue of having some communication and content in local languages.
- In the At-Large, volunteers are somehow expected to do this on their own, which is challenging, particularly when the issues involve a certain level of technicality or complexity that need to be simplified and communicated in way that non-technically oriented people will understand. This requires both content and communications expertise. Volunteers require support or resources to provide appropriate translations and briefings on key user issues and implications in their local languages. ICANN needs to have

mechanisms in place to support reasonable and justifiable requests to this effect.

3. There has been a lot of discussion, and some ATRT1 recommendations, related to the Public Comment process. Do you think the process to receive comments is working well, and if not, what needs to be done to fix or change it? For the comments that are received, do you feel that those requested by PDP Working Groups, Staff and the Board are effectively taken into account in ultimate decisions?

- The 21-day public comment period is too short for the At-Large to conduct thorough consultations and provide comments that are representative of and vetted by the community. The ALAC has consistently used the reply period as an extension of the comment period for most of its submissions.
- In the past, comments submitted by the At-Large at the request of staff and Board often seemed to be ignored. The renewal of the .com agreement without thick WHOIS is one example.
- Advance planning or announcements for Public Comments are not effective solutions as the main problem for the At-Large is the overall bandwidth/capacity issue.

4. Do you believe that ICANN's organization of Advisory Committees and Support Organizations and their respective internal organizations are effective in achieving ICANN's multi-stakeholder goals, and if not, how should things be changed?

- The structure of ICANN's organization of Advisory Committees (ACs) is appropriate.
- Allowing ACs to have two opportunities to influence policy development (i.e., as welcome participants in the PDP as well as commenters on PDP output irrespective of whether or not they engage in the former) would be appropriate as safeguard measures for end user interest, public interest as well as DNS security and stability.
- The structure of Supporting Organizations requires more reflection and consultation in light of the impact of the new gTLD program (specifically the blurring of boundaries between stakeholder groups) on ICANN's governance, financing and multistakeholder process entitlements.
- In a situation where lines that demarcate stakeholder groups in the GNSO cannot be drawn clearly, the position that GNSO direction must be adopted by the Board has to be reviewed. Concurrently, the input of the GAC, the ALAC and the SSAC needs to increase in weightage to balance GNSO direction. Part of this requires that the Board has formal procedures in place for handling "Advice" from all Advisory Committees and it is recommended that the standard currently applied for dealing with GAC Advice be extended to the ALAC and the SSAC.

5.Do you have any comments with regard to ICANN's implementation of the recommendations of the three earlier AoC Review Teams – Accountability & Transparency, WHOIS, and Security, Stability & Resiliency?

- See "At-Large White Paper on Future Challenges: Making ICANN Relevant, Responsive and Respected (R3)."

6.Do you have concerns about ICANN's overall transparency and accountability, or related issues that are specific to your group?

<u>On Board and Staff accountability in dealing with ALAC input or advice</u>

- The Board's response to ALAC advice has improved tremendously since ICANN's 46th Meeting in Beijing.
- In the past, there was no Board acknowledgement of receipt, feedback or confirmation that the ALAC advice was read, reviewed or discussed.
- The ALAC had (and continues to have) concerns that its comments on policies or calls for public comments are not represented correctly or at all in Board Briefing Materials. The few ALAC comments known to have been explicitly included in Board Briefing Materials are few. This against a backdrop of between 40-50 ALAC statements per year in the past 2 years is a cause for serious concern. Moreover, in the case of the new gTLD Applicant Support, there is belief within the community that the ALAC comments were misrepresented.
- Recommendations:
    - A more formalized process is required for the Board's treatment of ALAC input or advice to instill volunteer confidence that their contributions are useful and appreciated.
    - ALAC comments need to be included and represented correctly in Board Briefing Materials by staff.

<u>On Compliance Enforcement</u>

ICANN Compliance has improved tremendously, but has yet to reach the level envisioned by the WHOIS Review Team.

13. Is it clear to you that the Board has a dual role as a governance component inside the organization and is the last stop policy organ? [How do you deal with that dual role?]

- The duality of the Board's role is clear. It is understood that the roles allow for conflict, particularly in cases where accountability to ICANN, the corporate entity, runs contrary to accountability to the Internet Community.
- The duality requires a safeguard in the form of a procedure where the Board will only exercise its policy role as a measure of last resort in cases of clear and massive disregard of the public interest in proposed policies.
- The procedure requires the following:
    - The Board must articulate clearly and convincingly what constitutes the public interest for that specific decision point.
    - The Board must provide exhaustive and defensible justification/rationale for its decisions against high standards of scrutiny/challenge.

- o The Board must demonstrate that it has conducted extensive consultations, reviewed all input and addressed any consultation/input gap.
- o The Board must demonstrate that it has exhausted all other options in bottom-up policy development such as to revert the policy back to the community (with gaps identified) together with appropriate and well-resourced mechanisms to support the community's re-consideration or re-framing of issues/policy (e.g., expert groups, studies, etc.).
- The procedure also requires that all Board members be made aware of the inherent tension in that duality of roles and that the Board's limitations in developing or replacing policy should be part of the mandatory Board Member orientation program/refresher course.

14. Are the working methodologies of your group fully accountable and transparent? If not, how could they be enhanced or approved.

In general, the working methodologies of the ALAC are transparent and accountable. However, the ability to track or follow policy development consultations/work is affected when volunteers switch work platforms mid-stream, which happens organically (i.e., switching or moving back and forth between mailing list, wiki and skype chats). A simple review process to determine which platform should be used for what stage of policy development/consultation work and the issuance of an advisory for the community to follow can easily rectify the situation.

END