Third Accountability and Transparency Review Team (ATRT3) Report - Minority Statement
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As a member of ATRT3 review team, and per the current Operating Procedures for Specific Reviews[1], I (kc claffy) respectfully object to ATRT3's recommendation on the future of reviews.

The report recommends terminating all Specific Reviews except their own (ATRT): the Security, Stability, and Resiliency Review (SSR), the Competition, Consumer Trust, and Consumer Choice Review (CCT) and the Registration Directory Service (RDS) Review (formerly WHOIS Review). More precisely, the report recommends to suspend any further SSR or RDS reviews until and unless a future ATRT deems them necessary again, and to allow only one additional CCT review, but not until after the next round of new gTLDs. The report recommends replacing these terminated reviews with a single new *holistic review* approximately every 8 years, a remarkably long time for the Internet industry.[2] In addition, the report recommends terminating all independent organizational reviews and replacing them with self-directed, i.e., not independent, "continuous improvement programs which have to produce a status report at least every three years." Implementing these changes would require substantial changes to ICANN's Bylaws.

ATRT3's primary objective with this recommendation is to address the ICANN community's problem of "overloaded volunteer reviewers" and "too many reviews". Based on my participation, I found the ATRT3 review team had no appetite to analyze how the changes would address the need for the *independence* of the existing review process as the lever of accountability for the ICANN community.

My first reservation with this recommendation derives from the fact that all three independent reviews of specific aspects of ICANN's performance (WHOIS2, SSR2, and ATRT3 itself) found that ICANN's implementation of many recommendations from previous independent review teams (WHOIS, SSR, ATRT2) was either incomplete – contradicting ICANN's own self-assessments [3] – or ineffective at achieving the recommendations' intended objectives. This disparity does not support abandoning an independent review process. The remainder of ATRT3's report, including Section 9's indictment of ICANN's own attempt at accountability indicators, also does not support this direction.

ATRT3's optimistic consensus was that ICANN's new Operating Standards for Reviews, adopted by the ICANN Board in June 2019, combined with its new website for tracking implementation of recommendations, should address these accountability gaps. My second reservation is that ATRT3 has been the first team to attempt following these standards (its success has not been independently evaluated), and the website for tracking advice to the board stops tracking as soon as ICANN sends the recommendation to a constituency, regardless of its future handling.[4] ATRT3's optimism here is not supported by substantive evidence.

My third reservation with this recommendation is SSR-specific. The CCT, SSR, and RDS-WHOIS2 teams have all echoed similar (and often repeated, unimplemented) recommendations related to consumer trust in the DNS from various previous reviews. In its public comment to the SSR2 reviews, the GAC noted:

> *"endorsement by three separate cross-community review teams of the same recommendations should be viewed as a strong incentive for swift action. At the same time, the need to repeat identical recommendations or endorsements thereof, shows a mounting concern regarding the state of their implementation. This in turn raises important questions about the challenges for the implementation of ICANN's accountability measures and the challenges for the ICANN Board to act in the context of Specific Reviews mandated by the ICANN Bylaws."[5]*

Several constituencies have recently urged swift progress on these unresolved SSR accountability concerns, primary with respect to DNS abuse and RDS data integrity.[6] I am perplexed that ATRT3's response to these mounting accountability concerns is to recommend termination of all but their own review process, without an

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[1] https://www.icann.org/en/system/files/files/operating-standards-specific-reviews-23jun19-en.pdf

[2] Timeline is in Section 8 of report. The report does not define a process for the holistic review, but defines its objectives as:

1. *Review continuous improvement efforts of SO/AC/NC based on good practices.*

2. *Review the effectiveness of the various inter SO/AC/NC collaboration mechanisms.*

3. *Review the accountability of SO/ACs, or constituent parts, to their members/constituencies (this will include an in depth analysis of the survey results).*

4. *Review SO/AC/NC as a whole to determine if they continue to have a purpose in the ICANN structure as they are currently constituted or if any changes in structures and operations are desirable to improve the overall effectiveness of ICANN as well as ensure optimal representation of community views (but taking into consideration any impacts on the Board or the Empowered Community).*

[3] ICANN provided self-assessments of its implementation of recommendations from each previous review, consistently declaring all recommendations implemented.

[4] https://features.icann.org/board-advice/ssac

[5] https://gac.icann.org/file-asset/public/gac-comment-ssr2-rt-draft-report-3apr20.pdf

[6] A few examples:

explanation of how this will improve any accountability measures, or how the proposed replacement process will address long-standing SSR-related accountability and transparency issues.

Other ATRT3 team members asked for a more detailed defense of this recommendation, noting that: (1) it was substantially different from what was in the draft report that went through public comment; and (2) public comments did not support the proposed changes; on the contrary, there was strong support to maintain independence in the review process.

This example illustrates my fourth reservation: the lack of analysis of how ATRT3 considered public comments and shaped its final report in response to them.[7] The bylaws require "an explanation of how public comments were considered as well as a summary of changes made in response to public comments."[8]

I agree that the current reviews are, by available data and measures, failing as mechanisms for accountability and transparency. But the review system was architected to satisfy concerns that the multistakeholder community would take seriously its responsibility for accountability following the IANA transition. If this accountability system is failing, it merits an overhaul in the direction of more accountability – not less – especially with respect to security and consumer protection issues. If ICANN accepts ATRT3's recommendation, it will send a strong signal to governments and industry that the steward of the multistakeholder model has decided to abandon independent review as the lever of accountability as described in ICANN's bylaws.

I would recommend instead that ICANN overhaul the review process – including gauging implementation of recommendations – to follow industry best practices for accountability audits, starting with hiring a consulting firm with no financial CoI and with specific expertise in social responsibility and multistakeholder engagement. I would also recommend that the ICANN community accept the reality that volunteers cannot effectively review the topics required by the Specific Reviews. This approach naturally degenerates into vested interests driving the review process. I note a relevant suggestion from the first ATRT review:

> ..future ICANN reviews should assess the extent to which these recommendations if implemented have improved the status quo, and whether or not more radical measures that are currently outside the scope of this report need to be considered, such as the introduction of a sanction-based accountability mechanism (e.g., a binding third-party review process).[9]

The current operating standards do not allow a minority dissent to recommendations that were not made, or to other aspects of the report. As an example, ATRT3 chose not to make any recommendation regarding the Policy Development Process (PDP), due to the ongoing Expedited-PDP, and efforts to reform the multistakeholder model,[10] both of which are responses to accountability gaps.

In my roles on SSAC and SSR2 I have watched growing dissatisfaction with the EPDP, culminating in a recent SSAC document describing fundamental accountability failures of EPDP as a multistakeholder process.[11] Access to accurate RDS data has been an accountability and transparency issue for decades, and this "Expedited" process has been ongoing for 2 years and is still failing to achieve its goals. It represents another foundational gap in accountability and transparency for ICANN. Unfortunately, the ATRT3 review team declined to consider this important issue.

My highest-level concern is that ICANN avoid creating the impression that the multistakeholder model is imbalanced in favor of the industry it oversees. This review has occurred at a time when ICANN is under scrutiny by legitimately independent parties. The resulting report, both in what it included and what it omitted, strengthens the case for regulatory capture of ICANN. The report presents another challenge for ICANN to overcome the perception that it operates as a industry trade association, rather than as an organization incorporated to protect the public's interest in stable and secure operation of the Internet's unique identifier systems. The first step is establishing a robust and formal approach to managing conflicts of interest in an independent review process.

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a) (COA) https://www.icann.org/en/system/files/correspondence/marks-to-botterman-shears-24apr20-en.pdf

b) (GAC echos CCT advice) https://www.icann.org/en/system/files/correspondence/ismail-to-botterman-22jan20-en.pdf

c) (SSAC) https://www.icann.org/en/system/files/files/ssac2019-02-03may19-en.pdf

[7] As one example, it is not clear how ATRT3 considered SSAC's comment on this topic: Issue 8 in https://www.icann.org/en/system/files/files/ssac2020-05-31jan20-en.pdf.

[8] After the main report was finalized and sent to ICANN for copy-editing, the ICANN-contracted technical writer for the team drafted a spreadsheet Annex E retroactively analyzing how the final report handled public comments, which he sent to the list 22 May 2020. This Annex E never underwent group review or consensus.

[9] https://www.icann.org/en/system/files/files/review-berkman-final-report-20oct10-en.pdf

[10] https://www.icann.org/news/blog/evolving-icann-s-multistakeholder-model-the-work-plan-and-way-forward

[11] https://www.icann.org/en/system/files/files/sac-111-en.pdf