

## Business Constituency (BC) Comment on Terms of Reference for a Holistic Review of ICANN

10-Nov-2022

The ICANN Business Constituency (BC) is pleased to comment on the [Draft Terms of Reference for a Holistic Review of ICANN](#). We appreciate the work that went into developing a way to implement what we regard as an important recommendation of the ATRT3 to ensure accountability of the SO/ACs and consider structural changes to improve representation of community views.

In particular, the BC appreciates the broad scope of the review mandate from ATRT3, at p.4 of the [draft Terms of Reference \(ToR\)](#) :

*The Pilot Holistic Review Team must develop a program that:*

- *Reviews the effectiveness of the various inter-SO/AC/NC collaboration mechanisms.*
- *Reviews the accountability of SO/ACs or constituent parts to their members and constituencies*
- *Reviews if SO/AC/NC continues to have a purpose in the ICANN structure, as currently configured.*
- *Reviews if any changes in SO/AC/NC structures and operations would be desirable to improve the overall effectiveness of ICANN.*
- *Reviews whether SO/AC/NC are providing optimal representation of community views, taking into consideration any impacts on the Board or the Empowered Community.*
- *Reviews the continuous improvement efforts of SO/AC/NC based on good practices.*

### **Structural Concerns**

Before addressing specific questions, it is important to reiterate a key point we raised in our May 2020 [Comment on Enhancing the Effectiveness of ICANN's Multistakeholder Model](#) and reemphasized in July 2020 [Comments on the ATRT3](#) because it expresses how the BC sees the Pilot Holistic Review. That is, how structural problems in the GNSO continue to undermine its effectiveness and fairness as a policymaking body, with related accountability shortcomings of certain GNSO constituencies. In brief, we have stated:

“ .... Structure continues to be the most significant gap in community efforts to enhance the effectiveness of the multistakeholder model ... Currently, the balance of stakeholders is set up in a way that does not properly consider the underlying incentives of each group, forcing very difficult or sometimes impossible compromises to achieve even simple goals. Thus, the problems identified by the community with regard to “Consensus, Representation, and Inclusivity” are merely symptoms of an underlying structural imbalance which remains unaddressed.”

Board Restructuring -- One factor fueling internal GNSO disputes is the limited number of GNSO seats on the Board, which are only 2 of the 15 seats. Considering that gTLDs are responsible for 98% of ICANN's revenue and nearly all of ICANN's policy work, 2 seats seem like an insufficient representation for the GNSO.

It is critical that the scope of the Terms of Reference for the Holistic Review be sufficiently broad to include the restructuring of Board seats and of the GNSO Council. This is all the more urgent in view of the fact that ICANN's Continuous Improvement Program – which we understand the Holistic Review would evaluate – *has not succeeded* in adjusting a structure that currently undermines the effectiveness of community collaboration to the policy-making process.

#### **Questions:**

With the above providing context, we offer the following responses to selected questions posed in the request for comments:

#### ***Do you support the Pilot Holistic Review Terms of Reference as drafted?***

We do not have major concerns with how the ToR sets forth specific steps to address the four ATRT3 objectives set forth in Recommendation 3.5.<sup>1</sup> For example, with respect to the first objective – “reviewing the effectiveness of various inter-SO/AC/NC collaboration mechanism” – it would be helpful and potentially insightful to develop an assessment of existing inter-constituency collaboration mechanisms.

However, where we begin to have concerns with *all elements of the ToR* is the assumption that SO/ACs and NomCom, indeed, would want to cooperate in developing a set of principles for self-assessment. This goes back to the structural problems that continue hamper consensus-building and collaboration across the entire ICANN community.

We question whether the provision under the second ATRT3 objective – “reviewing the accountability of SO/ACs to their members and constituents” – which calls for identification, aggregation and analysis of accountability, and development of criteria for a self-assessment could be implemented.

Finally, we strongly agree with the intent of the 3<sup>rd</sup> ATRT3 objective – “Review SO/AC/NC as a whole to determine if they continue to have a purpose in the ICANN structure or if changes in structures and operations are desirable. However, we anticipate lack of consensus on this point within the NCPH because certain constituencies would be averse to adjusting their present advantage.

#### ***Does the Holistic Review Program outlined in Section II of the Draft Terms of Reference provide a clear approach to accomplishing the ATRT3's objectives, as set out in the same section, while addressing the information gaps identified by the ICANN Board set out below?***

The Holistic Review Program as outlined in Section II of the draft ToR is methodically laid out. However, we find the level of detail is excessive and the process overly elaborate.

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<sup>1</sup> (1) Review the effectiveness of collaboration mechanisms between ICANN structures; (2) Review the structures' accountability to their members and constituencies; (3) Review continuing purpose of structures, and potential changes in structures and operations to improve the overall effectiveness of ICANN as well as ensure optimal representation of community views; and (4) Review continuous improvement efforts of structures.

We question whether this approach can produce deliverables that address the information gaps identified by the Board in the allotted 18 months.

The BC is worried that the Pilot – as currently outlined -- will become bogged down in the profusion of “process issues,” and inhibit sufficient attention to the difficult, sensitive, but core issues of SO/AC accountability and structural improvements. We would urge a streamlining of the process set forth in Section II so it is not so overwhelming and discourages thoughtful participation from across the ICANN community.

***Do the steps and the deliverables associated with each ATRT3 recommendation 3.5 objective, as described in Section II of the Terms of Reference, clearly outline the scope of work for the Pilot Holistic Review?***

The steps and deliverables are clearly outlined, but again, we question their ultimate success in view of structural imbalances discussed above skew results and hamper a true community consensus.

***Do the steps and the deliverables associated with each ATRT3 Recommendation 3.5 objective, as described in Section II of the Terms of Reference, explain clearly how Supporting Organizations, Advisory Committees, Nominating Committee, as well as their constituent parts will participate in the process of establishing a Holistic Review Program?***

Again, this is clearly explained. We continue to question the desire of SOs and ACs to undertake perhaps challenging self-assessments or truly collaborate within their respective houses to realize meaningful changes in how ICANN operates for its community.

To reiterate, it is imperative that the ToR accommodate consideration of restructuring of the ICANN Board of Directors as well as representation on the GNSO Council

The Board further noted “information gaps to be addressed as part of the pilot, for example:

- Develop guidance as to how Holistic Review Teams should determine and prioritize their work areas to ensure effective review outcomes within the 18-month timeframe.
- Propose a methodology for gathering and analyzing data to inform evidence-based findings and recommendations.
- Consider dependencies, including those relating to other Specific and Organizational Reviews and related work streams, and how such dependencies would factor into the scope of the pilot and of future Holistic Reviews.
- Propose necessary skill sets for Holistic Review Team members required to achieve review objectives, which will later be included in the Operating Standards for Specific Reviews.
- Provide input on resources and budget required to complete future reviews effectively.
- Develop suggestions as to how various ICANN structures would be held accountable for implementing the recommendations coming from the Holistic Review, if directed to entities other than the ICANN Board or ICANN org.
- Determine how future review teams would measure the success of future Continuous Improvement Programs, including a set of principles that could be applied across the SO/ACs to inform their work to develop effective Continuous Improvement Programs.

- Develop a set of guiding principles and provide roadmaps for the implementation of effective Continuous Improvement Programs across all ICANN structures and guidance for the evaluations to be performed by the subsequent review teams.

The Pilot Holistic Review Team must develop a program that:

- Reviews the accountability of SO/ACs or constituent parts to their members and constituencies (this will include an in-depth analysis of the survey results)
- Reviews if any changes in SO/AC/NC structures and operations would be desirable to improve the overall effectiveness of ICANN.
- Reviews whether SO/AC/NC are providing optimal representation of community views, taking into consideration any impacts on the Board or the Empowered Community

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These comments were drafted by Barbara Wanner, Steve DeBianco, and Margie Milam.  
They were approved in accord with our charter.