Statement of the Non-Commercial Stakeholders Group on the Third Accountability and Transparency Review Team (ATRT3) Final Report

1. The Non-Commercial Stakeholders Group (NCSG) welcomes the opportunity to provide input on the Third Accountability and Transparency Review Team Final Report.

2. The NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System policy within the Generic Names Supporting Organisation. We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor - the Non-Commercial Domain Name Holders Constituency (NCDNHC) - inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

3. In 2020 January, this Stakeholder Group made a Public Comment regarding the ATRT3 Draft Report, which addressed concerns related to (a) the Recommendation for Specific and Organizational Reviews and (b) Suggestion for prioritization towards activities, policies, and recommendations.

4. This document will analyze the changes and improvements made on these two points above in the new report, especially at Sections 8 and 10. It will also focus on the suggestion made by the ATRT3 Team to the ICANN Board of "*implement a moratorium on launching any new Organizational and Specific Reviews until it has made a decision on this recommendation."*

Section 8 - Assessment of Specific and Organisational Reviews

5. The ATRT3 final report assessed that not only the ATRT2 recommendations weren't correctly implemented, but that the ICANN Community found that the Organizational and Specific Reviews lacked effectiveness, having issues "*with the backlog of review recommendations, timing and cadence, and the independent examiners' recommendations."*

6. This context led the ATRT3 team to the following recommendations:

    a. The **Organizational Reviews are to be evolved into continuous improvement programs for individual SO/AC/NCs**, which will produce a status report every three years. SO/AC/NCs would be able to control the cadence and scheduling of these activities according to their needs and should remove most concerns over cadence and timing. These continuous improvement programs would include: annual satisfaction survey of members/participants, regular assessment of ongoing improvement programs and funding of the constant improvement for SO/AC/NC;

b. Regarding the **Specific Reviews**, following the ATRT3 Recommendation, **only ATRT Reviews would remain and Holistic Reviews would be set up**, being the only regularly scheduled Specific Reviews, at least until ATRT4.

7. These recommendations follow the Option 2 idea proposed in the Draft Report that was criticized by this SG in the previous Public Comment. The NCSG understood, at the time, that reuniting different Specific Reviews into a single one (holistic) would be even more complicated since the remit of this review would be so expansive as to make it unworkable. Also, concerns regarding the 5-day workshop model for Organization Reviews were made.

8. It is important to note that the NCSG welcomes the changes and improvements made by the ATRT3 team on Option 2. However, while we feel that the time and cadence issues might be solved with the calendar model presented and that Specific Reviews can be done adequately within a year, the changes introduced on Specific Reviews must be weighted and more well evaluated by the community and ICANN Board.

9. Also, the ATRT3 made several propositions on how the current Specific Reviews should proceed. The NCSG agrees and supports that the Registration Directory Service (RDS) should be suspended until the next ATRT due to the current ongoing Expedited Policy Development Process (EPDP) on Temporary Specification for gTLD Registration Data, since its final report could understand for the termination of RSD Review.

10. Regarding the Competition, Consumer Trust and Consumer Choice (CCT) Review, the NCSG agrees with the decision of keeping another CCT Specific Review due to the upcoming round of new gTLDs and suggests that the outcomes of current policy development work by the New gTLD Subsequent Procedures PDP and the Review of All Rights Protection Mechanisms should be considered when the ICANN Board evaluate the timing of the CCT Specific Review.

11. However, the NCSG does not support the suspension of the Scheduling of Security, Stability, and Resiliency (SSR) Review. While is understandable that the scope and responsibility of some groups should be included in the upcoming SSR Review (as stated by ATRT3 report), the SSR2 Draft Report received a large number of supporting comments of the community, and the critics addressed by the SSAC on the SAC10, and by the NCSG on our Public Comment, can still be solved at their final report.

12. It is not reasonable to end a three-year process currently in the adjustment phase until the next ATRT, presumed to be held in 2026, according to the final report calendar of Reviews. Due to the coronavirus crisis, the community saw an increase in the DNS Abuse issue, with a prospect of a worsening scenario. Suspending the SSR2 Review will delay the provisions and recommendations that were well received in the draft report and will put the whole community under the risks of DNS abuse

and security threats. We understand that the scenario can worse until the time of a new ATRT, hence the need to maintain the ongoing SSR Review.

13. Nonetheless, about the Organizational Reviews, the NCSG is skeptical about the effectiveness of the recommendations made since the SO/AC should already be undertaking continuous improvement of the type recommended. Also, as the SSAC previously stated in their Public Comment at the Draft Report, this type of suggestion adds "*bureaucracy to what should be an ongoing internal process of self-improvement within each SO and AC. The way in which each SO/AC conducts its own ongoing self-improvement should be a matter for that group*". The PDP 3.0 initiative by the GNSO Council, for example, already serves as a continuous improvement as suggested by the ATRT3.

14. With the stated above, the NCSG understands that the content of the recommendations presented in Section 8 represents significant changes to the current model of reviews, principally regarding the Specific Reviews. Note that this is the only recommendation that didn't reach full consensus among the others.

Section 10 - Prioritization and Rationalization of Activities, Policies, and Recommendations

15. The NCSG agrees on the statement at the ATRT3 Final Report that several recommendations were not implemented, and the lack of prioritization results in significant delays in implementation, causing some suggestions to no longer be applicable or desirable. However, we do not support creating a new community-led entity tasked with operating a prioritization process for recommendations made by review teams, cross-community groups, or any other community related budgetary elements.

16. At our previous ATRT3 Draft Report Public Comment this stakeholder group understood that:

> *"This type of prioritization process puts additional work on its members and also entails an extra responsibility that shouldn't be of the community, since conducting the reviews should be its significant role, with ICANN playing an oversight position on the scheme of things.*
>
> *Nonetheless, the future members of the group, that will be representing a structure and not themselves as individuals can also be called upon to deal with exceptional circumstances far beyond the original scope, such as emergency re-allocation of funds, if a prioritized implementation needs to be canceled, or any other emergency approval that is extremely time-sensitive. This amount of work, combined with the urgency of delivering results and lack of counterparts, can lead to another problem:*

the lack of volunteers due to the already overwhelmed community."

17. The creation of a standing group, community-led entity, to perform prioritization work does not recognize existing mechanisms and processes that could be leveraged, with the NCSG considering it not be the suitable approach to solve the immediate problem of prioritization and resourcing over 325 recommendation. This idea was not well received by the community in the Public Comment inputs of the ATRT3 Draft Report and the improvements made at the final report does not fix all the issues presented.

18. The changes regarding transparency and accountability are too vague, not calming the concerns of the community regarding this problem. The SO/AC already has budget and planning processes that are more transparent and accountable. Also, the nomination of only one member per SO/AC would create an under-represented issue since the entity would lack in representing the diverse range of community interests.

19. Another problem in this recommendation lies in the "annual process" of the entity. As IPC stated before in their Public Comment, an annual prioritization process “should be given a fixed one-year term to complete its task” means that as soon as the task is concluded for one year, it will start up again. This would, therefore, appear to envisage the creation of an effectively permanent small group of “ICANN insiders,” who will then operate in a top-down manner. This is not a true cross-community-led process.

20. The ATRT3 team also fails in addressing or considering the ongoing parallel discussions of Enhancing the Effectiveness of ICANN’s Multistakeholder Model (MSM), which approaches the topic of prioritization and is currently also at the phase of Public Comments. While the ATRT3 final report requires that the entity shall consider WS2 recommendations, the ongoing MSM can result in a duplication of efforts if, for example, the recommendations developed for WS2 accountability are not fully implemented or adopted.

ATRT3 Team Letter to ICANN Board

21. The NCSG agrees with the suggestion for the ICANN Board to uphold any new Organizational and Specific Reviews until it decides on the recommendations presented in Section 8 of the ATRT3 Report.

Conclusion

22. As a result of was presented before, the NCSG concludes, in summary, that:

    a. Regarding the "Section 8 - Assessment of Specific and Organisational Reviews" the Board should suspend the Registration Directory Service Review until the next ATRT, keeping another Competition, Consumer Trust and Consumer Choice Review and maintain the Security, Stability, and

Resiliency 2 Review. The Board should also reconsider the suggestion of the Organizational Reviews since only bureaucratize internal SO/AC processes;

b. Regarding the "Section 10 - Prioritization and Rationalization of Activities, Policies, and Recommendations" the Board shouldn't proceed with the creation of a Community-led Entity since there are already ongoing processes and mechanisms that could be used to prioritize. Nonetheless, there are strong transparency and accountability issues that weren't well addressed and solved. However, if the Board wishes to proceed, the NCSG recommends making the number of appointees of each SO/AC to be equivalent as of the ICANN Board to maintain representation and diversity at the entity; More details about operating procedures and working methodology are also needed before establishment.

c. Regarding the "ATRT3 Team Letter to ICANN Board" the Board should follow the ATRT3 advice and uphold any new Organizational and Specific Reviews until it decides on the recommendations presented in Section 8 of ATRT3 Final Report.

23. Thank you again for opening this conversation up to the community. We are grateful for this opportunity to share our views and trust you will find our recommendations helpful. Finally, the NCSG would be happy to participate in any further discussions related to the subject of this present contribution to answer any clarifying questions that you may have regarding the contents of this document.