AT-LARGE ADVISORY COMMITTEE

Response to the Letter "Timing and Potential Deferral of ATRT4 and Upcoming Engagement with the ICANN community"

Executive Summary:

This Correspondence by the At-Large Advisory Committee (ALAC) is in response to the [letter](#) to the SO/AC Chairs dated 13 February 2024 from Theresa Swinehart, Senior Vice President, Global Domains & Strategy Internet Corporation for Assigned Names and Numbers (ICANN); seeking the community input on '...the timing of the Fourth Accountability and Transparency Review (ATRT4) and whether there is a need for a deferral of the ATRT4 for a limited time' following the Board's deliberations regarding the proceeding with the Pilot Holistic Review in their Montevideo Board Workshop.

> ALAC / At-Large Advises against any delay in convening ATRT4 as such delay would, in our view, negatively affect this key to legitimacy and recommends starting ATRT4 as close to the current schedule as possible without waiting for the conclusion of the Pilot Holistic Review.

The ALAC/At-Large Operations, Finance and Budget Working Group (OFB-WG) met on 14 March 2024; where the letter was discussed at the meeting, and several ideas were presented. Members of the OFB-WG decided to draft a response summarizing the position of the membership.

Penholders for the OFB-WG *Alan Greenberg*, *Avri Doria*, *Cheryl Langdon-Orr*, *Claire Craig*, and *Sebastien Bachollet*

Draft text of this Community developed proposed ALAC Advice was ratified by the ALAC via a consensus call between 21 March and 22 March 2024.

Introduction:

This comment by the At-Large Advisory Committee (ALAC) is in response to the letter to the SO/AC Chairs dated 13 February 2024 from Theresa Swinehart, Senior Vice President, Global Domains & Strategy, Internet Corporation for Assigned Names and Numbers (ICANN); seeking community input on '...the timing of the Fourth Accountability and Transparency Review (ATRT4) and whether there is a need for a deferral of the ATRT4 for a limited time.' following the Boards deliberations regarding the proceeding with the Pilot Holistic Review (PHR) in their Montevideo Board Workshop.

After building community consensus, considering the issues and concerns presented, a fulsome discussion, and polling of opinion before ratification by the At-Large Advisory Committee as ALAC Correspondence,Be ***ALAC / At-Large advises against altering this key to ICANN's legitimacy and recommends starting ATRT4 as close to the current schedule as possible.***

Community consultative process:

Representatives of our At-Large Community participated in the community consultations regarding this matter during Prep Week on Thursday, 22 February 2024, and during the ICANN79 session on 'ATRT4 Deferral and PHR' on Tuesday, 5 March 2024. Information and materials from these consultations were then reviewed and discussed at length during the At-Large Operations, Finance and Budget Working Group (OFB-WG) call on Thursday, 14 March 2024.

The timing of the ATRT4 and whether there is indeed a need for its deferral for a limited time were then, after deliberation and debate, the subject of a brief poll that informed the drafting of the text for this comment by the OFB-WG, which was consequently adopted and endorsed by the ALAC as its feedback and response.

The poll asked participants to select from 3 options concerning deferral, delay, or proceeding as currently established, with the timing of the upcoming ATRT4:-

With regards to the timing of ATRT4, Which option do you prefer? (Single Choice)
1. Defer to after the PHR
2. Defer for 2-3 months
3. Proceed as planned in April 2024

The first option reflected the proposed benefits of running ATRT4 in series after the PHR was completed, thereby minimizing the concerns raised in materials presented, reviewed and discussed, particularly the strain on resources and volunteers in running concurrent PHR and ATRT4 projects. This option received 44% of the polling.

The 'Proceed as planned in April 2024' option received 22% of the polling. The 'Defer for 2-3 months' option after the commencement of the PHR was recognized as not being significantly different in overall effect regarding resources, but it was posited that it would allow the Community to clearly delineate between the two still overlapping processes. It received 33% of the polling.

The OFB-WG decided to bundle the poll results from both the 2nd and 3rd option, giving us a final 44% to 55% split on a 'Defer or not' choice with a simple majority of the OFB-WG in favor of *not* recommending a delay in ATRT4 or not one of any great significance.

Specific Opinions Shared and Rationale for this Advice:

Some of the rationale for the Advice to not delay or to only delay ATRT4 for a few months after the commencement of the PHR highlighted and discussed included the following points (paraphrased from transcript):-

> *"... though the Board claims to have accepted the recommendation of ATRT3, they did not by creating the PHR. This suggests that ATRT4 is warranted since the Board and much of the community seemed to have issues with the ATRT3 recommendations."*

> *" … we don't think it's a good idea to [delay]. [It] was [the] point of ATRT3 [to hold ATRT4] after the proposed Holistic Review [Rec 3.6 of ATRT3]. This Holistic Review has not come to pass in a timely manner/as planned and with a PHR only soon to begin ATRT4 if delayed post-PHR], meaning more than 2 years [after the expected cadence of ATRTs]."*

> *"... at the same time, it's not a good idea to have it in parallel, … the proposal was to postpone it [until] after the beginning of the Pilot holistic Review,..."*

> *"... it could be maybe short [and] with less topic[s]..."*

> *"... it is only an accountability and transparency review team, though an ATRT. It is only that process that can make recommendations, change, alter, or withdraw another specific review."*

> *"... I would not support a full ATRT4. There would be too much overlapping content and far too large a task to take on in parallel. The aspects of ATRT4. That I would*
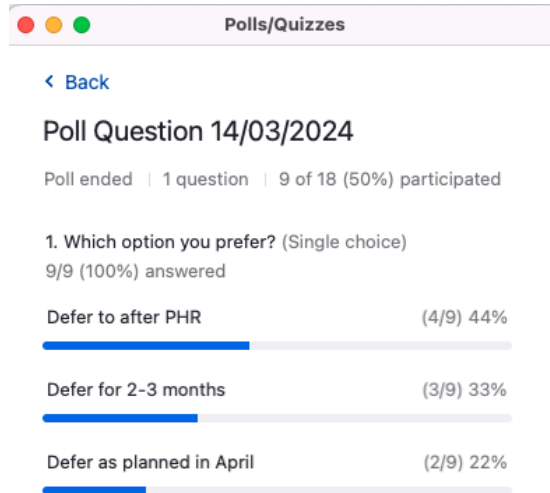
consider reasonable and mandatory is a review of any ATRT3 recommendations that are actually implemented at this point, because there's a long history of ICANN Org saying something's completed, but in the judgment of the community, it is not. I think we want to take this opportunity to review those. I believe the 3 other reviews have to be considered."

"I would say there's far too much going on or not going on with regard to who is an RDS to do a review at this point. We definitely need one. Based on discussions that were had in the San Juan meeting, I would say SSR is mandatory, and we 1. should get on with it, but it likely needs a careful redefinition of just how it's done and who does it. One of the things that is very lacking that most organizations consider essential is an external review. Someone not in the organization coming in and saying you're forgetting some major things, among other things. There also has to be internal people. Lastly, there must be a clear statement about what is allowed to be reviewed. It should be everything because ICANN Org has a long history of saying, "Oh, no, no, that's off the table. It's a secret. We can't even tell you about it." In a security review, I consider that just ludicrous. I also believe CCT needs to be looked at, not necessarily in the content, but in terms of timing. My recollection is that last time, one year after the launch of the round or one year after the first delegation, whatever it was, was insufficient. I think maybe we want to change the timing of that one. I would not take that one off the table for the review. If the ATRT4 were restricted to those items, I would support doing it as soon as possible."

"... transparency has not been fully embraced by the leadership of Board/Org despite its centrality in ICANN ethos."

".I'm very much in favor of starting both things out as soon as possible, or as I said, start the starting. The staggering will happen intentionally because if there's anything that's natural to board and org processes, it's delayed. So they will be delayed at differential rates and end up staggered just by the natural way that the board and Org work together. I want to caution against the idea of a priori constraining of what an ATRT4 is and really caution against using a notion like ATRT light. Remembering that ATRT is the bottom-up oversight. If you start giving the board and Org the ability to lighten things and even have legitimized the notion of doing light ATRT, you might find that we have established a precedent for future lightness. I think having the two of these at the same time is not as bad as it looks. Remember, we're leaving a place where we had nine at the same time. So to end up with these two happening at the same time, in some ways, they'll probably be different sets of people. The people who are interested in that overall pilot are one group. And the people that are really looking at how is ATRT going? Is it really functioning in its proper role now? And it will naturally get constrained. You can constrain it by the people you pick and how they will go into it, remembering it's self-defined."

Results of Community Consultation and Development of ALAC Advice:

While there was consensus but not unanimity on the issue of a delay of ATRT4, the general sentiment in the At-Large Community tends toward support for holding ATRT4 on its current schedule, though a little slippage on any schedule would be understandable.

The importance of ATRT reviews being periodic and timely is based on their role in oversight of ICANN itself, especially its Board, the Board's relationship with the Community and the GAC, and the staff organization.

ATRT3 came out with a set of recommendations, most of which were accepted and are in some stage of implementation, and some of which were only partially accepted, e.g., the PHR which is still waiting for implementation.

Based on ATRT3 recommendations, several other Bylaws mandated reviews have been put on hold, and ATRT4 is awaited to determine their viability and future schedules. This work should not be delayed.

Further, it is necessary for the Community to review the implementation work of the staff organization on the recommendations in ATRT3 that were approved by the Board and implemented by staff; one of the fundamental duties of each cycle of the ATRT is to review the staff organization's implementation with the status given to that implementation, of previous accountability and transparency recommendations.

Each review in the cycle also gives the community, in an organized bottom-up manner, a chance to review the Board's actions with regard to the previous ATRT recommendations. It is important that this be done before those decisions are too far in the past and become just more 'water over the dam'.

On the question of overlap with the PHR, the remnants of the ATRT3 Holistic Review recommendation, which is currently moving along a separate path, has its own schedule and set of community issues. The recommendation has been delayed not only by the actions of the Board and staff but also by the fact that the Community does not understand the extent and scope of a holistic review and does not have the same desire for this review. This will need to be worked out in the PHR and will need to be done on its own time and its own schedule.

As long as ATRT4 does not discuss the PHR, given its prerogative for setting its own agenda, there should be little to no crossover or dependencies. If the PHR is ongoing, there is little precedent or likelihood that ATRT4 would discuss that topic. On the other hand, if delays continue to plague the PHR, ATRT4 will need to discuss the subject. That is a decision for ATRT4 to make at the appropriate time, if necessary.

There is some concern with the Community's ability to undertake two reviews at the same time. Be that as it may, in the past, the Community has had to shoulder more than two simultaneous Specific and Organizational Reviews.

Conclusion:

Given ICANN's number of reviews in the Bylaws, doing all reviews sequentially would take far too many years per cycle. Doing two reviews in similar time frames is, in ALAC/At-Larges' opinion, well within ICANN's historical capabilities, though adequate resourcing, staff cooperation and assistance, such as the early contracting of a suitably experienced technical writer to assist the Review Teams, will be necessary.

To delay ATRT4 would be to leave ICANN without oversight. The bottom-up multistakeholder oversight performed by the ATRT is the foundation of ICANN's legitimacy as a free-standing organization free of government, IGO, or other external supervision.

While recognizing the challenge to Community and ICANN org resources that occurs with simultaneous or overlapping Reviews, the representatives of our At-Large Community have participated in the community consultations regarding the deferring of ATRT4 and have arrived at a consensus position which supports proceeding with the

ATRT4, specifically the ALAC/At-Large advises against giving up this key to legitimacy and recommends starting ATRT4 as close to on schedule as possible.

Although it was and can be debated if ATRT4 can have limitations in its scope or topics to be addressed, the ALAC/At-Large cautions that to do so would set a disturbing precedent for possible future 'unwelcome control over and limitations to' the ATRT process, which we all agree is an important, if not essential, pillar of ICANN's Accountability mechanisms and design of the multistakeholder model.

Finally, the ALAC / At-Large wishes to take this opportunity to note some concerns regarding the timing of Continuous Improvement Program(s) (CIP) and the development of an ICANN-wide CIP Framework specifically raised the following points:

- The Framework development of the CIP started in January 2024 and will end in March 2025.

- The first CIP assessment period will start in April 2025 and last for 3 years, followed by another 3 years for the second CIP assessment period.

- Each year of each CIP assessment period will involve 2 or 3 groups from the ICANN community in an in-depth work.

- As each group needs to develop the CIP framework to have back-and-forth CIP taken care of, an earlier start of the CIP assessment period will be useful.

- The suggestion is to start in July (aligned with the ICANN FY25) with no change to the CIP Framework development schedule. If we do so, we will regain 9 months.

- At-Large (the ALAC and the 5 RALOs) are ready and prepared to be part of the bodies involved in the first year with an in-depth CIP Assessment.

On behalf of the ALAC, I appreciate the opportunity to respond to your letter on the "Timing and Potential Deferral of ATRT4 and Upcoming Engagement with the ICANN Community." We stand ready to continue working with ICANN org and the other Supporting Organizations and Advisory Committees on the scheduling of these important events.

Sincerely,

Jonathan Zuck
ALAC Chair