Public Comment Summary Report

Title of Open Proceeding:
Pilot Holistic Review Revised Draft Terms of Reference

Open for Submissions Date:
Thursday, 28 September 2023

Closed for Submissions Date:
Monday, 27 November 2023

Summary Report Due Date:
Wednesday, 20 December 2023 (extended from 11 December 2023)

Category: Reviews

Requester: ICANN Board

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Open Proceeding Link: https://www.icann.org/en/public-comment/proceeding/pilot-holistic-review-revised-terms-of-reference-tor-28-09-2023

Outcome:
ICANN org received seven submissions addressing the Pilot Holistic Review (PHR) Revised Draft Terms of Reference (ToR). The Organizational Effectiveness Committee of the Board will review the input received and will in turn inform the ICANN Board on the conclusions of this Public Comment and will lead the discussions on next steps for the Pilot Holistic Review (PHR).

Section 1: What We Received Input On

On 28 September 2023, the ICANN Board sought the community's input on the proposed Pilot Holistic Review Revised Draft Terms of Reference. This was an update to the first version posted for Public Comment in August 2022 and was modified to reflect community input.

The primary focus of the Pilot Holistic Review Revised Draft Terms of Reference (ToR) was to address the four primary issues raised during the first Public Comment proceeding:
- The scope of Holistic Review is unclear
- There is a lack of independent examination in the Holistic Review
- There is a lack of identified dependencies
- The community might not have the ability to support the Pilot Holistic Review work

The ToR Development Team also shortened and revised the ToR document to include more direct language and clearer deliverables.

Considering the potential implications on the ICANN structures and work, the Board sought input on whether the revised Draft ToR seems fit for purpose, and whether it sufficiently addressed the issues identified in the first Public Comment proceeding.

The following questions were posed to aid responders in formulating their views:
1. Do you support the Pilot Holistic Review Revised Terms of Reference as drafted?
2. Does the Pilot Holistic Review Revised Terms of Reference sufficiently address the four primary issues identified in the first Public Comment proceeding?
3. Does the Pilot Holistic Review Revised Terms of Reference sufficiently clarify the deliverables for the Pilot Holistic Review?
4. Do you support the next steps for the Pilot Holistic Review?

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Registries Stakeholder Group	N/A	RySG
Country Code Name Supporting Organization (ccNSO) Council	Alejandra Reynoso	ccNSO Council
ISPs and Connectivity Providers Constituency	Osvaldo Novoa	ISPCP
Non-Commercial Stakeholder Group	Mesumbe Tomslin Samme-Nlar	NCSG
At-Large Advisory Committee	ICANN Policy Staff in support of the At-Large Community	ALAC

Individuals:

Name	Affiliation (if provided)	Initials
Bill Jouris	N/A	BJ

Section 2a: Late Submissions

At its discretion, ICANN org accepted late submissions, which have been appended to this summary report.

Organizations and Groups:

Name	Submitted by	Initials
Business Constituency	Steve DelBianco	BC

Section 3: Summary of Submissions

Submission from Bill Jouris

BJ suggested several clarifications to the definitions of several acronyms for readers less familiar with ICANN's ecosystem, which would result in greater transparency. BJ also recommended adding a definition of what the Pilot Holistic Review really is – that is to say, not a pilot but an effort to "clarify certain aspects of the Holistic Review Process as currently outlined."

Submission from the Country-Code Name Supporting Organization (ccNSO) Council

The ccNSO Council commented how the comments and issues raised in first Public Comment proceeding were "taken into account and addressed," and noted that it understood that all of its concerns could not be addressed. The ccNSO Council went on to express its support for the revised Draft ToR and the proposed next steps as presented.

Submission from the Registries Stakeholders Group (RySG)

The RySG restated its support for the Third Accountability and Transparency Review (ATRT3's) recommendation to institute a new holistic review of ICANN, and the ICANN Board's decision to initiate a pilot as "a test-bed for the scope and extent of such reviews." The RySG expressed general support for the revised ToR and refined scope, but asserted that "the review of the purpose, structure and operations of 'specific community institutions' should remain at the discretion of the specific SOs and ACs)," continuing that the review "should focus on the effectiveness of the Holistic Review and not the SOs and ACs." It went on to suggest that more details on the outcomes and next steps of the pilot are needed, stating, "questions remain with regards to whether the outcomes of the pilot will be binding on the ICANN community, and on the membership and composition of the pilot review."

In response to whether the primary issues identified in the initial proceeding were addressed, the RySG stated that it believes the revised Draft ToR provided greater clarity on the scope of the Holistic Review and pilot, but asked that the "role and extent of external engagement in both the pilot and subsequent holistic reviews be clarified," highlighting that it "strongly encourages the possibility for the members of the pilot and subsequent reviews to have the opportunity to solicit advice and feedback from qualified external third party subject matter experts."

In its response to the deliverables, the RySG stated that it believes the deliverable number two should "identify specific metrics or identifying characteristics that would make an SO/AC accountable," that the deliverable number three should be "rephrased to clarify that the guidelines should be for the review of SO/AC/NomCom engagement and interfacing," and that deliverable number 12 should be clarified to "state that the stress testing would relate to the engagement between SOs and ACs and assess whether deliverables 1-11 are achievable and manageable" and that the stress tests should "be hypothetical in nature, and not based on current or past litigation or disputes."

In response to the outlined next steps for the Pilot Holistic Review, the RySG suggested that the next steps be separated from the Closure of the PHR and Review Team Self-Assessment. The RySG suggested "identifying decision points for moving forward with the work, and owners for moving forward with the work, and who will be taking that decision would also be helpful" and that this should include the "impact the decision will have on which parties i.e. the Community, Board and/or Org."

Submission from the ISPs and Connectivity Providers Constituency (ISPCP)

The ISPCP started by sharing concerns that there will not be a GNSO review until "the end of the first Holistic Review," noting that the Bylaws state that Organizational Reviews should be conducted every five years. The ISPCP stated it believed that revised ToR are "clearer and more concise than the previous ones," but added that it thought there were still "some definitions needed."

In response to the the addressment of the primary issues identified in the initial proceeding, the ISPCP stated it believes that "there continues to be a lack of independent examination and of identified dependencies in the Pilot Holistic Review, also there is no definition of how the different stakeholders will be represented in the review team."

In its response to the deliverables, the ISPCP confirmed that it believed the revised Draft ToR sufficiently clarified the deliverables of the Pilot Holistic Review. However, it raised concerns that the 18-month timeframe for the pilot is "too ambitious, considering the deliverables (12) and the amount of time required from community volunteers, most of whom are participating in different working groups," suggesting "contracted independent consultants" could help the pilot finish on time while also introducing "an outside perspective of the different groups in ICANN."

Submission from the Non-Commercial Stakeholder Group (NCSG)

The NCSG reported some confusion with the purpose of the pilot as outlined in the revised Draft ToR, suggesting the language stating *"defining the roles of the community structures, the Board and ICANN org, and whether, and if so how, external parties should be involved"* contradicts with a sentence *"it is not the role of the PHR to make Recommendations with respect to the purpose or structure of the ICANN SOs, ACs, the NomCom, ICANN org or the Board."* To resolve the confusion, it suggested removal of "c)" from the purpose section of the document.

In response to whether the primary issues identified in the initial proceeding were addressed, the NCSG stated that it believes the revised Draft ToR addresses three out of the four primary issues identified by "clarifying its scope and identifying the more comprehensive role of the Continuous Improvement Program (CIP) in creating the self- assessment," and addressed the workload by clarifying that the "PHR will be run as the only review within that time frame." However, the NCSG reiterated their initial comment on the first Draft ToR that the scope of the Holistic Review "still contains some level of ambiguity that requires better clarity."

In its response to the deliverables, the NCSG also reported it believes that the revised Draft ToR "sufficiently describes the deliverables" and that it is "looking forward to the stated concerns being addressed, after which it is willing to support the next steps in this process."

Submission from the At-Large Advisory Committee (ALAC)

The ALAC started by noting "that it strongly supports the PHR ToR as developed in version 2," adding it is "strongly in favor" of starting the pilot "as quickly as possible after the end of the Public Comment period." The ALAC went on to propose that ICANN org "seriously consider the benefits of running various preparatory phases for the 'Pilot Holistic Review,' as outlined in these ToRs, in a parallel, overlapping manner to better expedite what has been an already protracted process," attaching several timelines to illustrate this suggestion. The ALAC additionally suggested that the ToR should include an additional deliverable consisting of "an outline of a plan, including dates, for the first full Holistic Review," and that ICANN org publish review team skill sets for the pilot review team in accordance with the Operating Standards for Specific Reviews. It additionally offered a "Reviews Multi-Year Timeline" to "ensure that consequences to timelines of other reviews, currently on hold or being planned, are properly taken into account so that unintended consequences on the community and other resources are limited and minimized."

Submission from the Business Constituency (BC) | *This submission was submitted after the Public Comment Proceeding closed and is therefore appended to this summary report as a matter of formality.*

The BC stated that it looks forward to the recommendation "being implemented as soon as is practicable." Although the BC stated its support for the objectives of the ATRT3 recommendations, it questioned "whether the PHR can lead to fulfillment of the objectives."

The BC expressed several concerns with the timeline of the Pilot Holistic Review and the Holistic Review, highlighting that the Pilot Holistic Review "will only begin to be "prepared" 5 years after the Review was recommended by the community" and that "no actual timeline is foreseen for the opening of the Review itself." It suggested that "as the bylaw-mandated five-yearly GNSO Review was deferred for this Review, it is clear that ICANN does not intend to allow us to examine the structure and thus efficacy of the GNSO for several years to come." The BC continued: "The current structural problems in the GNSO will only continue to undermine its effectiveness and fairness as a policymaking body, with the related accountability shortcomings

of certain GNSO constituencies." The BC stated that it "struggle(s) to understand why the review has not been prioritised as the current structure and working practices of ICANN are in need of improvement and meanwhile have a direct, tangible effect on the allocation of those same resources, resulting in both procedural roadblocks and implementation delays of the core policies that the global user community relies upon ICANN to deliver." The BC noted that it is also concerned there is no reference in the revised Draft ToR to the structure of the Board as it considers the Holistic Review to be "the only route open to us to address such concerns" and called for "ICANN to include in the ToR the potential for the restructuring of the Board; a simple allocation of 4 seats to the GNSO: 2 for the CPH and 2 for the NCPH."[1]

The BC stated it disagreed that observations recorded in the pilot should only be considered by the future Holistic Review, suggesting that postponing these observations "for an undefined period neither serves the community nor enhances our reputation to the outside world," further noting that it is also unclear as to how those observations would eventually be considered. In response to the composition of the pilot review team, the BC requested additional clarification, asking several questions about the team's composition, the breakdown among SOs and ACs and if constituencies will be represented, who would be involved in determining skill sets, how will leadership be appointed, and "under whose ultimate authority will it act?"

In response to whether the primary issues identified in the initial proceeding were addressed, the BC stated that it did not believe that independent examination was addressed in the ToR and that it believed "external consultation would be helpful in obtaining objective input." The BC additionally noted a need for clarity on how the community would be "openly and transparently engaged" in the pilot as outlined in the Operating Procedures section of the revised Draft ToR, asking, "is it via public comment, or the Formation of a Continuous Improvement Program Community Coordination Group (CIP-CCG), or is there any other mechanism being considered?"

In its response to the deliverables, the BC noted that "the development of the new schedule of all existing reviews to accommodate HR is not one of the deliverables." It also asserted that clarity was needed on "who will be involved in reviewing "the SO/AC/NomCom as a whole to determine if they continue to have a purpose within 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" and how this will be achieved."

Section 4: Analysis of Submissions

The submissions were wide ranging from support to concerns over the Revised Draft ToR, with many containing the following themes:

- *Concern over lack of independent examination within the Holistic Review*

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[1] This item was not part of the objectives of ATRT3 Recommendation 3.5.

- *Concern over the timeline for the Pilot Holistic Review and Holistic Review and next steps*

3 Submissions stated support for the Pilot Holistic Review Revised Draft ToR as written with some still noting the need for clarifications
- ccNSO Council
- RySG
- ALAC

3 Submissions raised concerns with the Pilot Holistic Review Draft ToR as written
- ISPCP
- NCSG
- BC

1 Submission did not express support or opposition
- BJ

Supportive submissions

Three commenters expressed support for the revised Draft ToR: the ccNSO Council, the RySG, and the ALAC. The RySG and ALAC additionally identified areas that they believe require further clarification.

The RySG expressed its general support over the revised draft noting that "they provide increased clarity on the scope and extent of the pilot," underlining its understanding that "the goal of the pilot is not to conduct a mini review but instead to identify the focus areas, objectives, and guardrails for eventual Holistic Reviews."

The ccNSO Council expressed "its support for the draft Revised Terms of Reference and the next steps."

The ALAC reiterated its "continuous support of the recommendations made by ATRT3 regarding Reviews, Holistic Review(s), and the essential implementation of Continuous Improvement Programs ICANN-wide." The ALAC further expressed strong support for getting "the proposed 'Pilot' Holistic Review started as quickly as possible after the end of the Public Comment period."

Concerns across submissions

Concern: Lack of independent examination within the Holistic Review

Background and context

A lack of independent examination was identified as a concern in the previous Public Comment proceeding on the first Pilot Holistic Review Draft ToR as well as in the ATRT3 Final Draft Report Public Comment proceeding.

The ToR Development Team attempted to address this concern in its Cover Note for Pilot Holistic Review Revised Draft ToR by stating that "in the latest ToR revision, the SO, AC, and NomCom self-assessments would come directly from each group's reporting of their continuous improvement efforts under the Continuous Improvement Program (CIP), not the Holistic Review itself." Further explaining that in "the ATRT3 Final Report, ICANN's structures can obtain independent contractors to assist in their continuous improvement efforts, if so desired."

In its approach, the ToR Development Team sought to address the use of independent examination as it pertained to the assessment of SOs and ACs under the CIP, which would be used as an input to the Holistic Review's evaluation of SOs and ACs. The use of independent examination as a part of the Holistic Review's evaluation of the SOs and ACs was not directly addressed in the revised Draft ToR.

Three submissions expressed concerns about the lack of clarity on independent examination within the Holistic Review

Both the ISPCP and BC stated that they do not believe that the revised Draft ToR addressed the concern over independent examination, while the RySG stated that the draft "does not adequately set out the role of external review" and that it "needs to clarify the role and extent of external engagement in both the pilot and subsequent holistic reviews." The RySG additionally expressed concern about the "role of external stakeholders in the evaluation of the internal policies," suggesting that the "review of SO and AC operations must be limited in order to sustain independence of these structures and the neutrality of the review itself."

Several illustrative quotes include:

RySG: "The draft does not adequately set out the role of the external review. The draft needs to clarify the role and extent of external engagement in both the pilot and the subsequent holistic reviews. The RySG strongly encourages the possibility for the members of the pilot and subsequent reviews to have the opportunity to solicit advice and feedback from qualified external third party subject matter experts."

RySG: "It is important to respect the independence of SO/ACs and the unique purposes and structures of ICANN's constituencies. Therefore, the role of external stakeholders in the evaluation of the internal policies and processes should focus on the effectiveness of the Holistic Review and not the SOs and ACs. Review of SO and AC operations must be limited in order to sustain independence of these structures and the neutrality of the review itself."

ISPCP: "There continues to be a lack of independent examination and of identified dependencies in the Pilot Holistic Review, also there is no definition of how the different stakeholders will be represented in the review team."

BC: "There is a lack of independent examination in the Holistic Review. This does not seem to be addressed in the ToR. Since the SO/AC/NomCom need self-assessment and Continuous Improvement Programs are the mechanism to do so, external consultation would be helpful in obtaining objective input."

Concern: Timeline for the Pilot Holistic Review and Holistic Review and next steps

Background and context

In the Board's action on the Holistic Review (Recommendation 3.5), it recommended the review be initiated as a pilot which would last no more than 18 months. The Board additionally stated the community should assess the effectiveness of the pilot immediately following its conclusion, before the community develops a Bylaws amendment to add the review.

The ATRT3 stated in Recommendation 3.5 that "the launching of any other review activities should be suspended while a Holistic Review is active."

The initial Public Comment proceeding for the Pilot Holistic Review Draft ToR concluded in November 2022, with the second proceeding concluding in November 2023.

Additional relevant timing considerations are:
- The Fourth Accountability and Transparency Review (ATRT4) is due to begin in April 2024, based on the Bylaws-mandated timing.

- The Board deferred organizational reviews of the ALAC, ccNSO, Address Supporting Organization (ASO), NomCom, Root Server System Advisory Committee (RSSAC), and Security and Stability Advisory Committee (SSAC) in June 2022 (see [Board resolution](#)). This Board action was a result of the Board's consideration of various factors including: consultation on Organizational Reviews timing, current community workload, and the upcoming implementation of ATRT3 recommendations. Based upon those considerations, the Board concluded that it was not feasible to proceed with the six Organizational Reviews as scheduled. The Board will oversee the implementation of ATRT3 recommendations and determine whether the timing of Organizational Reviews should be re-examined based on the changing environment, as outlined in the comprehensive plan for the next cycle of Organizational Reviews.

- The Board deferred the organizational review of the GNSO in June 2021 (see [Board resolution](#)). For the third Generic Names Supporting Organizational (GNSO3) Review and all upcoming Organizational Reviews in this next cycle, there is a dependency on, and an expected impact from, the implementation of ICANN Board-approved ATRT3 recommendations. Specifically, ATRT3 Recommendation 3 calls for evolving the current Organizational Reviews into continuous improvement programs for SO and ACs, and introduces a new Holistic Review to consider the effectiveness of the continuous improvement programs, accountability of SO and ACs, and their continuing purpose and structure.

Four submissions expressed concerns related to the timeline and for the Pilot Holistic Review and Holistic Review and next steps
The timeline for conducting the Pilot Holistic Review, assessment of its outcomes, and the potential initiation of the Holistic Review resulted in differing concerns from community groups.

The ISPCP expressed concern that the current timeline wouldn't result in a GNSO review until the conclusion of the first Holistic Review, "hopefully by the end of 2026 or mid 2027." It noted that this would be 10 years following the last review, "though in the Bylaws it is established that the organizational reviews should be done every 5 years."

The ALAC suggested that the process to attain community agreement on the Pilot Holistic Review ToR has has been a "protracted process" and advocates for "running various preparatory phases for the 'Pilot Holistic Review', as outlined in these ToRs, in a parallel, overlapping manner" to expedite the process. It additionally expressed that it "wishes to ensure" that the timelines of other reviews are taken into account so it doesn't result in "unintended consequences on the community and other resources are limited and minimized."

Although the BC acknowledged that it "trusts the PHR will be launched as soon as practical," it noted concern that "no actual timeline is foreseen for the opening of the (Holistic) Review itself."

The RySG suggested that further clarity on the "decision points for moving forward work, and who will be taking that decision would also be helpful," noting that there were still questions as to "whether the outcomes of the pilot will be binding on the ICANN community."

Several illustrative quotes include:

RySG: "The RySG would suggest that the second paragraph in the "Closure of the PHR and Review Team Self-Assessment" be set out separately under a heading of next steps (or something similar). Identifying decision points for moving forward with the work, and who will be taking that decision would also be helpful. This should also include what impact the decision will have on which parties i.e. the Community, Board and/or Org."

RySG: "Further clarity is solicited regarding the outcomes and next steps of the pilot. Questions remain with regards to whether the outcomes of the pilot will be binding on the ICANN community, and on the membership and composition of the pilot review."

ISPCP: "18 months to fulfill the PHR is too ambitious, considering the deliverables (12) and the amount of time required from community volunteers, most of whom are participating in different working groups. With contracted independent consultants it would be possible to finish in time and we would get an outside perspective independent of the different groups in ICANN."

ISPCP: "We would like to note that the last GNSO Review was done in 2014, its recommendations were approved by the Board in June 2016, so the third GNSO Review should have started in 202, but it was deferred by the Board due to the recommendation from ATRT3. We are now ending 2023, this Pilot Holistic Review will take 18 months, at least, and as it is stated "It is not the role of the PHR to make recommendations with respect to the purpose or structure of ICANN SOs, ACs, the NomCom, ICANN org or the Board". This means that we won't have a GNSO review till the end of the first Holistic Review, hopefully by the end of 2026 or mid 2027, more than 10 years after the previous GNSO Review, though in the Bylaws it is established that the organizational reviews should be done every 5 years."

ALAC: "ALAC/At-Large also wishes to ensure that consequences to timelines of other reviews, currently on hold or being planned, are properly taken into account so that unintended consequences on the community and other resources are limited and minimized;"

ALAC: "We are especially strongly in favor of getting the proposed 'Pilot' Holistic Review started as quickly as possible after the end of the Public Comment period. To this end, we propose that ICANN.org seriously consider the benefits of running various preparatory phases for the 'Pilot Holistic Review', as outlined in these ToRs, in a parallel, overlapping manner to better expedite what has been an already protracted process."

BC: "No actual timeline is foreseen for the opening of the Review itself. While we appreciate the need to correctly manage resources, we struggle to understand why the Review has not been prioritised as the current structure and working practices of ICANN are in need of improvement and meanwhile have a direct, tangible effect on the allocation of those same resources, resulting in both procedural roadblocks and implementation delays of the core policies that the global user community relies upon ICANN to deliver."

BC: "We trust that the PHR will be launched as soon as practicable, and regret that this is not foreseen before FY25. We also regret the lack of any projected timeframe for Board approval,"

Analysis of identified concerns

Some of the commenters acknowledged and appreciated the improvements the ToR) Development Team made to address prior community concerns, but there continues to be a divergence of views on what the Holistic Review is meant to achieve and how the outcomes from the PHR will lead to the next steps toward the eventual Holistic Review. Central to these divergent views is the ATRT3 objective that the Holistic Review should "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."

Some emphasized that changes in structures and operations should be up to the respective groups to determine, and that the above-stated ATRT3 objective should focus only on how the different groups fit together to contribute to the overall effectiveness of ICANN.

Others expect the Holistic Review to review and propose changes to the structure and operations of the SOs, ACs, and NomCom. Several expressed expectations that the Holistic Review would address the structural problems observed within the GNSO, asserting that the Holistic Review needs to be expedited to accomplish this. Note: Although any SO and AC has the ability to examine its structure at any time, many are viewing the Holistic Review as the only means to do so.

Many additionally expressed concerns about the timing of the Pilot Holistic Review and the steps toward the eventual Holistic Review, noting a lack of clarity on decision points and potential dependencies in the cadence and scheduling of future reviews. It is important to note the work toward implementation of the Pilot Holistic Review has been underway for nearly two

years and has included broad community engagement and participation in two Public Comment proceedings. At the request of the Board, the ToR Development Team was formed in March 2022, composed of former ATRT3 members and members of the Board, and facilitated by ICANN org. The ToR team has worked since then on the Terms of Reference that are reflective of the intent of the ATRT3 recommendation and are in line with the Board action in November 2020, acknowledging the divergent community views and attempting to resolve the outstanding differences through two Public Comment proceedings.

Section 5: Next Steps

The following steps are envisioned to guide the process from the Public Comment on the Revised Draft ToR to the initiation of the Call for Volunteers for the PHR:

1. The ICANN Board considers whether there is sufficient community support for the revised Draft ToR.
    a. If there is not sufficient community support, the Board will determine a way forward.
    b. If the Board determines there is sufficient community support for the revised Draft ToR, the Board will proceed with the initiation of the PHR.
2. If the Board proceeds with initiation, the Call for Volunteers will be published in line with the Operating Standards for Specific Reviews.
3. ICANN org will then begin preparations for the start of the Pilot Holistic Review, currently targeted for FY25.

The ICANN GNSO "Business Constituency"

ICANN Business Constituency (BC) Comment

on

[Pilot Holistic Review Revised Draft Terms of Reference](#)

27-Nov-2023

Introduction:

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter. The mission of the BC is to ensure that ICANN policy positions are consistent with the development of an internet that:

- Promotes end-user confidence, because it is a safe place to conduct business;
- Is competitive in the supply of registry- and registrar-related services; and
- Is technically stable, secure and reliable.

General Comment:

The Business Constituency thanks the ICANN Board for seeking input on the [Revised Draft Terms of Reference ("ToR")](#) for the [Pilot Holistic Review ("PHR")](#). The community recommended that a Holistic Review be carried out in May 2020 so we look forward to this ATRT3 recommendation being implemented as soon as is practicable.

It is important to clarify that the stated purpose of the PHR is *not* to actually implement the ATRT3 recommendation. The revised T0R states "It is not the role of the PHR to make Recommendations with respect to the purpose or structure of the ICANN SOs, ACs, the NomCom, ICANN org or the Board." For further clarity The cover note from the ToR Development states "In the latest ToR revision, the SO, AC, and NomCom self-assessments would come directly from each group's reporting of their continuous improvement efforts under the Continuous Improvement Program (CIP), not the Holistic Review itself. "

It is the BC's understanding that the purpose of the PHR is an initial exercise to satisfy the "*ICANN Board-Identified Information Gaps*" in the ATRT3 recommendations. For ease, we copy below the texts as published by ICANN:

> *The purpose of this review is to:*
> *a) define the inter-dependencies between future Holistic Reviews and other Specific and Organizational Reviews or Continuous Improvement Programs (CIP), and ongoing work streams,*
> *b) address, based upon community input, methods for future Holistic Reviews including the make-up of the review teams and their role,*
> *c) define the roles of the community structures, the Board and ICANN org, and whether, and if so how, external parties should be involved,*

d) consider what Bylaws amendments may be necessary to ensure that future Holistic Reviews can be conducted in accordance with the Third Transparency and Accountability Review Team (ATRT3) recommendations and the findings of this review.

[ATRT3 Holistic Review Objectives](#)
In its recommendation for the creation of a Holistic Review, the ATRT3 identified the following objectives for such a review:
- *· Review continuous improvement efforts of SO/AC/NomCom based on good practices.*
- *· Review the effectiveness of the various inter-SO/AC/NomCom collaboration mechanisms.*
- *· Review the accountability of SO/ACs or constituent parts to their members/constituencies (this will include an in-depth analysis of the survey results).*
- *· Review SO/AC/NomCom as a whole to determine if they continue to have a purpose within 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).*

The BC supports the objectives of the ATRT3 recommendations but we are concerned, on several fronts, whether the PHR can lead to fulfilment of the objectives.

Concerns with the Timeline of the PHR/HR
As ICANN org currently expects to "*begin preparations for the start of the Pilot Holistic Review*" in FY25, we respectfully note that this means the PHR, not the Holistic Review itself ("the Review"), will only begin to be "prepared" 5 years after the Review was recommended by the community. No actual timeline is foreseen for the opening of the Review itself. While we appreciate the need to correctly manage resources, we struggle to understand why the Review has not been prioritised as the current structure and working practices of ICANN are in need of improvement and meanwhile have a direct, tangible effect on the allocation of those same resources, resulting in both procedural roadblocks and implementation delays of the core policies that the global user community relies upon ICANN to deliver.

Structural concerns:
The BC regrets that once again, ICANN has decided not to address the practical - that is, structural - issues targeted by the ATRT3 recommendation. As we raised in our Comments in May 2020 ([Enhancing the Effectiveness of ICANN's Multistakeholder Model](#)), July 2020 ([ATRT3](#)) and November 2022 ([ToR for the PHR](#)):
> " …. *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.*"

The BC has full respect for the multistakeholder model, which we firmly believe is the most appropriate way to ensure that all voices from all communities and regions are both heard and addressed in the open, secure and resilient gTLD ecosystem. We have always sought to work within this model with integrity and diligence, and will continue so to do. However, in specifying that the PHR will not "*make Recommendations with respect to the purpose or structure of the ICANN SOs, ACs, the NomCom, ICANN org or the Board*" but rather will develop guidelines for how the Review itself may do so, the current

structural problems in the GNSO will only continue to undermine its effectiveness and fairness as a policymaking body, with the related accountability shortcomings of certain GNSO constituencies.

There is also no reference in the ToR to the structure of the Board. The Holistic Review is the only route open to us to address such concerns. ICANN's Continuous Improvement Program has made no difference to these frequently raised problems. Further, not only is there no timeline foreseen for the Review itself, as the bylaw-mandated five-yearly GNSO Review was deferred for this Review, it is clear that ICANN does not intend to allow us to examine the structure and thus efficacy of the GNSO for several years to come, and notably far outside the five year window (the last such GNSO Review being conducted in 2014 and approved by the Board in 2016).

The ToR state that "*If in the process of developing guidelines and testing those guidelines, observations are made that are relevant to purposes or structure, these may be included in the Final Report of the PHR to be considered by the future Holistic Review*." This is exactly what the ATRT3 recommendation identified in its objectives for the Review. Postponing the practical import of the recommendation for an undefined period neither serves the community nor enhances our reputation to the outside world. Unfortunately, there is no clarity in the ToR as to how such "observations" could be "considered".

ICANN's questions:

1. **Do you support the Pilot Holistic Review Revised Terms of Reference as drafted?**

The BC again notes the absence of reference to any consideration of the composition of the ICANN Board. Despite the importance of the GNSO in terms both of policy development and ICANN revenue, it is currently allocated only 2 of the 15 Board seats, forcing an artificial representation model on the (already artificially constituted) NCPH as it ignores the reality that the NCSG and CSG represent very different communities. This in turn fuels unwanted and certainly unhelpful intra-GNSO impasses and procedural delays. No one in the NCPH wants to maintain the current scenario of repeated circular debates, and the difficulties they create for good working relationships and respect for timelines.

We therefore, once again, call on ICANN to include in the ToR the potential for the restructuring of the Board; a simple allocation of 4 seats to the GNSO: 2 for the CPH and 2 for the NCPH. This would have immediate positive impact without any effect on the overall size of the Board as these 2 seats should be removed from the NomCom's purview. We do not believe that this would be contentious.

The ToR suggests that the PHR should be completed within 18 months. Assuming that the target date of FY25 is met, this means that it will close at the earliest in late 2026. We regret the lack of any reference as to when the actual Review will therefore be launched.

Given ICANN's oft-cited concerns about its own prioritisation, we trust that sufficient resources will be allocated to the PHR Team so that the 12 deliverables can be adequately achieved within this timeframe, especially given the references to a Public Comment proceeding and regular consultation with the community, Board and ICANN org. We would appreciate a clear, structured project plan so that the deliverables are tangible and actionable.

Further, who will decide on the composition of the PHR Team? If it is to follow the Operating Standards for Specific Reviews, is it to be limited to "*21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity*

and skill" with a Board member as a liaison? Will it be limited to certain SOs and ACs? Will constituencies be represented? Is ICANN org (alone) intending to identify the appropriate skill set? Will the Team appoint its own leadership/chair? Under whose ultimate authority will they act?

2. **Does the Pilot Holistic Review Revised Terms of Reference sufficiently address the four primary issues identified in the first Public Comment proceeding?**

The scope of Holistic Review is unclear.
While we appreciate the shortened and revised the ToR document with its more direct language and clearer deliverables, our understanding is that this not to actually be a review, but a working group to define what the Review will look like and how it will operate.

There is a lack of independent examination in the Holistic Review.
This does not seem to be addressed in the ToR. Since the SO/AC/NomCom need self-assessment and Continuous Improvement Programs are the mechanism to do so, external consultation would be helpful in obtaining objective input.

There is a lack of identified dependencies.
This does not seem to be addressed in the ToR. If the dependency is understanding what the community SO/AC/NomCom need from the Holistic Review, and if that requires these parties to identify their needs, BC has done so here and previous submissions.

Under Operating procedure, we see "The Community should also be openly and transparently engaged early in the process to ensure their input on findings is considered, especially as it relates to their unique operations, processes, and procedures. This will help flag potential issues with recommendations before they are finalized". How will the community be involved? Is it via public comment, or the **Formation of a Continuous Improvement Program Community Coordination Group (CIP-CCG), or** is there any other mechanism being considered?

The community might not have the ability to support the Pilot Holistic Review work.
Please see the comments above as to timeline and prioritisation. Should the PHR run into FY25 and Holistic Review take place later, many of the frustrations that exist today will continue to intensify, further diminishing the productivity of the community.

3. **Does the Pilot Holistic Review Revised Terms of Reference sufficiently clarify the deliverables for the Pilot Holistic Review?**

There are 12 deliverables in the Revised ToR, all focussed on developing the pathway for future Holistic Reviews. With the intention of the ATRT3 recommendation in mind, we note the absence of any pathway for the concerns about "*the purposes and structure*" to actually be addressed in any "*consideration*" by the Review. Clarity is needed on what such "consideration" will entail, who will be involved in reviewing "*the SO/AC/NomCom as a whole to determine if they continue to have a purpose within 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*" and how this will be achieved.

In addition, we note that the development of the new schedule of all existing reviews to accommodate HR is not one of the deliverables. Will this schedule be proposed by another small group before HR can be integrated?

4. **Do you support the next steps for the Pilot Holistic Review?**

Given the concerns cited above about the time taken to date to address the community's concerns as articulated in ATRT3, we trust that the PHR will be launched as soon as practicable, and regret that this is not foreseen before FY25. We also regret the lack of any projected timeframe for Board approval, "*the initiation of the process of adding the Holistic Review to the Bylaws, updating Operating Standards for Specific Reviews to include this new review, and updating the schedule of subsequent reviews that are dependent on the completion of this pilot*."

We stress that the BC fully supports the ATRT3 recommendation, but we note that it is unlikely to enter any form of implementation for several years to come.

In the guiding principle the first one states that "ATRT3 Recommendation 3.5 (as stated in the ATRT3 Final Report) and elaboration where further clarity is required.", who will provide this clarity wherever required?

This comment was drafted by Vivek Goyal, Timothy Smith, Marie Pattullo, and Mark Datysgeld.

It was approved in accord with the BC Charter