

Staff Report of Public Comment Proceeding

Updated Operating Standards for Specific Reviews																			
Publication Date:	1 March 2019																		
Prepared By:	Jennifer Bryce																		
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Section I: General Overview and Next Steps																			
<p>The current draft is an update to the Draft Operating Standards that were published for public comment in October 2017. ICANN organization has incorporated public comments received on the October 2017 draft, as well as community feedback on proposed updates in several key areas of importance that were presented via two webinars in October 2018.</p> <p>The Operating Standards aim to ensure that ICANN's Specific Reviews are conducted in a transparent, consistent, efficient, and predictable manner, while supporting the community's work to derive the expected benefit and value from review processes. Areas of guidance in the Operating Standards, as mandated by the ICANN Bylaws, include review team selection process, conflict of interest practices, confidential disclosure to review teams, review team decision-making practices, and guidelines on how review teams are to work with and consider independent expert advice. Specific Review teams currently conducting reviews are encouraged to use these Draft Operating Standards as a reference for their work.</p> <p>ICANN organization will incorporate feedback from this public comment proceeding into an updated final document. The final document will be presented to the ICANN Board, with the aim of Board adoption in April / May 2019. A public session on the final document is planned for ICANN64.</p>																			
Section II: Contributors																			

At the time this report was prepared, a total of six (6) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Generic Names Supporting Organization Council	Steve Chan, Policy Director, GNSO Support	GNSO-C
gTLD Registries Stakeholder Group	Samantha Demetriou, RySG Vice Chair, Policy	RySG
At-Large Advisory Committee	ICANN At-Large Staff	ALAC
Non-Commercial Stakeholders Group	Rafik Dammak	NCSG

Individuals:

Name	Affiliation (if provided)	Initials
Alan Greenberg		AG
Cheryl-Langdon Orr		CLO

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Call for Volunteers

The GNSO-C believes “ICANN org must consult SO/AC Leaders if they believe the pool of candidates is insufficiently diverse or skilled. Any decision to extend the call for volunteers should have support from a majority of SO/AC Leaders. The requirement that an interested candidate indicate which SO/AC they are seeking nomination from has created some challenges for the selection process adopted by the GNSO Council because not all candidates are well-known within the GNSO and this can be detrimental to their application. Where a candidate does not have a natural SO/AC from which to seek nomination, it should be acceptable for that candidate to be considered by all SO/AC in their respective selection processes”.

AG believes the SO/AC Chairs must be involved in the process of publishing the Call for Volunteers and be included in the decision to extend the call.

Eligibility Criteria for Review Candidates

The GNSO-C notes that eligibility criteria must be kept up to date depending on current or future Policy Development Processes, and believes criteria regarding “leadership skills and experience of multistakeholder groups” should be included.

AG also believes that “leadership and group management should be included as a desirable attribute.”

Review Team Selection Process

The GNSO-C believes that “SO/AC leaders should be required to select a minimum number of 15 members, including the Board Liaison, for each RT in order to ensure the balance of skills and diversity, and having enough members to handle the expected workload.” Further, the GNSO-C notes that, “while there should be some flexibility for SO/AC Chairs to organize their deliberations such as

the number of meetings, we also recommend that the decision by SO/AC Chair regarding the final slate should be done within 4 weeks [of receiving the SO/AC nominations].”

While the NCSG welcomes “the inclusion of the non-binding ICANN organization analysis of skills and diversity of candidates in the process, as well as the deference given to SO/ACs to decide how to run the selection process for the nominees”, it calls for “increased transparency in the selection procedure with regards to expected time and financial commitment of selected Review Team members.” The NCSG suggests, for example, “including in the call for volunteers a detailed account of expected time and financial commitment required from Review Team members” and information about budget allocation for the Review Team, as far as it is approved or known.

Further, the NGSC believes that, “in the formation of sub-teams, the Review Team should seek to abide by same standards of skills and diversity as in the selection of the Review Team itself.”

AG believes “there should be a provision for a voice interview” during the SO/AC selection process.

Roles and Responsibilities

The GNSO-C suggests that the Operating Standards may use recommendations from the GNSO-C’s recent work on its own process, “such as the Terms of Participation for members or going into further details to document expectations for review team leadership.”

AG believes the term “actively participate” needs to be further enhanced, and that “it is essential that for teleconferences, team members be able to participate with good voice connectivity.”

CLO notes her expectation that “in keeping with the relatively new expectations of Accountability in and between the AC and SOs of ICANN resulting from Work Stream 2 Recommendations, that language in the Final Operating Standards might be strengthened to set an expectation of performance (in terms of attending RT activities calls Meetings etc.,) of the appointed AC and SO representatives, as well as expectations that there will be good and accurate regular reporting and ‘Liaison’ between the AC/S.”

Determining Review Team Leadership

The GNSO-C emphasizes that “the leadership of the Review Team should have previous experience leading or chairing similar efforts, either within ICANN or outside. The candidates for RT leadership should also indicate their commitment for the workload necessary for that role.” Further, in the case of co-chairs, the GNSO-C believes “there shouldn’t be more than 2 co-chairs in order to ensure responsiveness from leadership.”

AG believes it should be possible to defer the decision on the format of leadership until the leadership candidates are known. He notes that, “depending on the style, skills and time availability of the candidates, different combinations might be preferable”, and “once leadership candidates are known, they should be given the opportunity to resolve the leadership configuration amongst themselves prior any vote.”

Terms of Reference, Scope, and Work Plan

The GNSO-C “finds it necessary that a public comment period be included in the Operating Standards post scope setting, as it will rightfully allow the community to provide feedback on the Scope drafted by the Review Team.”

AG believes “a face-to-face meeting is the preferable venue for finalizing the terms of reference, and it is unlikely that such a meeting can be scheduled to occur within 8 weeks of the inaugural meeting.”

Removal of Review Team Members

The GNSO-C notes that it “does not support the removal process as described in this section” and believes “the suggested process lacks an objective mechanism which is supposed to be supported by concrete evidence of disruption or inactivity.” The GNSO-C believes that “RT members should have a number of options available to them when a need to raise concerns about the behavior of a fellow RT member or the management of the RT as a whole arises”, and it would be appropriate that “the initial responsibility for dealing with any concerns about disruption or inactivity rest with the RT leadership.”

While the NGSC “welcome[s] the inclusion of a concrete process for removing Review Team members,” it believes it “insufficiently detailed, especially with regards to the person coordinating this process.”

CLO believes that the removal process, “should it be necessary after remediation and mediation efforts have been made and still found lacking, that efforts to demonstrate publically impartiality and fairness will be required. This perhaps needs greater input in implementation from the ICANN Ombudsman Office to ensure expectations are clear and well managed.”

Reporting

The GNSO-C “supports the described reporting mechanism which is consistent with the current practices in other groups.” It suggests that “the preparation of the factsheet by ICANN Org should be done with consultation and review by the RT leadership and RT liaison.”

The NCSG believes the Operating Standards should call for “a higher degree of accountability of Review Team members towards the SO/ACs that nominated them,” and could include “direct reporting obligations” to this effect.

CLO believes that the Operating Standards should include an “expectation on Review Team Members ...that a degree of public reporting (metrics) will be made on RT activities and as such they will be expected to agree that matters such as attendance records etc., will be included in reports on wikis etc.”

Monitoring Review Progress

The GNSO-C “supports the role of Board OEC and SO/AC in monitoring the RT progress and considered areas for tracking. While not prescribing how OEC or SO/AC should conduct their monitoring of RTs, those efforts should be standardized and consistent and using objective criteria and metrics.”

Budget Management

The RySG is “concerned that in the course of conducting a Specific Review, a given Review Team may mismanage its allocated budget and deplete the available funds before its work is complete. The updated draft Operating Standards recommend that each Review Team should manage its own budget and must submit a request to the ICANN Board if additional funds are required (section 3.8). The RySG reiterates its prior suggestion that in order to more proactively mitigate against this risk, either the role of the Board Liaison should be formalized to include providing the Review Team with guidance on managing its budget, or that a member of the ICANN Organization should be appointed to help each Review Team manage its budget more effectively.”

AG believes the review team budget “needs to be fully reviewed by the review team leadership once selected including a full briefing of the costs associated with various review team activities. Moreover, if a review team spans fiscal years, the review team leadership should be given an opportunity to provide input into the annual budgets. It needs to be made clear EXACTLY what staff costs (including travel are borne by the review team budget).”

With regards to managing budget implications of face-to-face meetings, the GNSO-C notes that, while it supports face-to-face meetings, review teams “should be strongly encouraged to conduct them immediately preceding ICANN meetings.”

AG believes that the current travel requirement for review teams to submit final travel arrangements to ICANN organization 120 days in advance “may not be practical, particularly for a review that is limited to terminate in twelve months. It is particularly onerous for the activities of finalizing reports and reviewing public comments – both of which benefit greatly from being done face-to-face.”

Independent Experts

Regarding independent experts that may be contractually engaged by the ICANN organization to provide advice to the review team, the NCSG believes “independence and neutrality are not only relevant for the quality and neutrality of the expert advice given, but also for its legitimacy, and the legitimacy of the funds usage for this purpose. Any potential rejection of the advice received, paid with ICANN funds, on the grounds of bias or non-impartiality, is a failure of the procurement of Independent Experts process, and should be eliminated from the beginning.” The NCSG therefore recommends “the inclusion of duty to check potential conflicts of interests or biases in the selection of Independent Experts...in the list of Roles and Responsibilities of both Review Team and ICANN organization, to minimize any potential risk that they may overlook biases.”

Decision-Making Procedure

AG believes “review teams should be given the opportunity to adapt, add or replace decision methodology by unanimous consent (which of course would need to be documented in the Terms of Reference).”

Modifications to the Scope of Work While the Review is Underway

AG believes that “it is not clear that the SO/ACs have the knowledge or understanding to pass judgement on the changes” to the review team’s scope of work. Further, he notes that “the time-frame of six weeks or more adds an unreasonable delay to a review process that is time-constrained.”

Review Output and Board Consideration

The GNSO-C notes that, while it “support[s] the proposed approach for RT recommendations based on SMART goal-settings and considering feasibility and implementation”, it does not believe that “the number of total recommendations should be limited or considered as a factor to evaluate them.”

Further, the GNSO-C suggests that “the Board should consider the recommendations within three months of receiving the final report or they should provide a rationale if they find themselves being unable to meet the timeframe.”

The NCSG notes that to “better reflect the process and the activity of Review Team members”, review team draft and final reports should include “whether independent experts have been consulted and highlight what/where their expertise has been considered and to what extent; list of Review Team membership and SO/ACs nominating them; timeline of any changes in composition, leadership etc.” Further, the NCSG believes that “given that SO/ACs membership rarely can monitor the progress of the Review Teams’ work extensively, it is important for a better feedback and for a deeper understanding of the work that was done to present results that are exhaustive with regards to processes, inputs and outputs, interests, timeline, framework, context etc.”

Implementation Shepherd

The GNSO-C believes that “having a whole team e.g. an implementation oversight team, composed of some of the RT members can be a better option [than having RT team members acting as implementation shepherds] instead while assuring the same role and expectations.”

AG believes that “[implementation] shepherd travel should be allowed if deemed important by the ICANN organization.”

Dispute Resolution

The GNSO-C notes that, while it supports the proposed process and approach, it believes that “pausing a review team should be a last resort and needs a higher threshold.”

Safety Clause in the Event of Failure

The RySG believes that “finalized Operating Standards should include a clear designation of authority (and the limitations thereof) in the event that a Review Team fails to function properly or ceases to perform its work. This designation should be firmly grounded in the ICANN Bylaws and the powers and limitations granted to various stakeholders within the ICANN community therein.”

SO/AC Process to Raise Concerns

RySG believes that “during the course of conducting a Specific Review, it is possible for the work to go awry for a variety of reasons, necessitating an intervention by members of the ICANN community. The updated Operating Standards, unfortunately, neglect to address what should happen if one or more SO/AC raises concerns about a particular Review Team or its work.” The RySG advises “formalizing a process for SO/AC Chairs to raise concerns on behalf of their SO/ACs to the other Chairs to determine if there is a problem that can be addressed efficiently, or whether the concern is such that it needs to be brought to the attention of the community or the Board. As an example, while a Review is underway, there could be a standing agenda item for each SO/AC Chair meeting/call where Chairs could raise or discuss concerns that would serve as a basis for Chairs to report back to their SOs/ACs for input. The Board should similarly raise any concerns that it may have about the conduct of a Specific Review with the SO/AC Chairs through a process delineated in the Operating Standards, which should also make clear that the Board has no authority to unilaterally intervene in the proceedings of a Specific Review, much less suspend or dissolve it, as this would be contrary to the Review’s independence.”

General Remarks

The ALAC notes that “while there are some concerns about the potential for too much process associated with these already challenging reviews, it is the view of the ALAC that this level of specificity is necessary to prevent misunderstandings and missteps by any of the parties involved in the review. Scope should be well defined within the confines of bylaws and review teams should be free to pursue their mandate within that scope. Accordingly, the ALAC would like to voice our strong support for these updates to the Operating Standards for Specific Reviews.”

CLO notes her expectation that the Operating Standards “will be regularly reviewed, analysed and undergo renewal or updated/edited to meet changing circumstances and that such ‘update opportunities’ could be triggered both periodically, on ICANN Community or Board request, and out of any regular recent experiences of Specific Review Teams. Perhaps as a standard ‘Post Review Team’ activity.”

Further, CLO believes the Operating Standards should include “a set of templates relevant to RT activity (SOI Forms, expectations on RT Members, Travel Guidelines, Report forms for use with OEC and Board requirements etc..)”

Section IV: Analysis of Comments

The comments were generally supportive of the updated Operating Standards, with a number of commenters believing the updated version to be an improvement on the previous version, published for [public comment](#) in October 2017.

However, commenters noted a number of areas that could be expanded or modified, in order to improve the document further. As a next step, the community and the ICANN Board will discuss the current draft, the comments received, and any other issues related to the Updated Operating Standards during an [open session](#) at the upcoming ICANN64 meeting in Kobe.