

Staff Report of Public Comment Proceeding

Draft Operating Standards for Specific Reviews

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Public Comment Proceeding		<table border="1"> <tr> <td colspan="2">Important Information Links</td> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Proceeding</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> </table>	Important Information Links		Announcement		Public Comment Proceeding		View Comments Submitted	
Important Information Links										
Announcement										
Public Comment Proceeding										
View Comments Submitted										
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Section I: General Overview and Next Steps

The current draft has been compiled by ICANN's Multistakeholder Strategy and Strategic Initiatives team, with community input solicited throughout [ICANN57](#), [ICANN58](#), and a [webinar](#) in February 2017. Most procedures detailed in the [draft Operating Standards](#) are either based on existing best practices, or on processes that have been adapted from comparable procedures already in existence elsewhere within ICANN.

The Organizational Effectiveness Committee of the Board will review the summary of comments and determine next steps, including community outreach, to move closer to the publication of consensus-based Operating Standards for ICANN's specific reviews.

Section II: Contributors

At the time this report was prepared, a total of ten (10) 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
Registry Stakeholder Group	Stépane van Gelder	RySG
Neustar	Donna Austin	NS
Business Constituency	Steve del Bianco	BC
ccNSO Council	Katrina Sasaki	ccNSO-C
ccNSO Guideline Review Committee	Katrina Sasaki	ccNSO-GRC
GAC	Tom Dale	GAC
GNSO Council	Steve Chan	GNSO-C

Individuals:

Name	Affiliation (if provided)	Initials
Dev Anand Teelucksingh	At-Large	DAT
Alan Greenberg	ALAC	AG
Alejandro Pisanty		AP

Section III: Summary of Comments

Scope Setting

AG does not believe the proposed process, creating a scope drafting team, is prudent use of volunteer time and would add an additional year to the review process. He also does not believe it is useful to have a different group carrying out the scope from the one setting it. Overall, AG does not believe that scope setting has been an issue in past reviews, other than SSR2, and therefore, 'this is a solution in search of a problem.'

The BC 'strongly disagrees with the proposal for a separate Scoping Draft Team to assume a responsibility that rightfully and unquestionably lies with the Specific Review Team.' The BC continues to point out that 'the Scope Drafting team is an unwelcome and unnecessary complication. Moreover, this would give the Board new powers to reject the scope established by the Scope Drafting Team.' The BC then qualifies that 'to the extent the Board believes that the scope is not consistent with the Bylaws, the Board can request further review and/or clarification from the Specific Review Team. In that event, however, the AC/SO leaders have authority to determine whether the review team is acting consistent with the ICANN bylaws, and can thereupon authorize the review to proceed.'

Regarding the proposal to install a scope setting team, the ccNSO-GRC has a concern that 'adding this additional cycle will increase the total duration of a review and resource requirements (both in terms of volunteers, staff support, and other resources).' It believes that, although the process of installing a scope setting team 'is [a] tested method in the realm of the GNSO, and CCWG's, alternatives are feasible as well, as proven by the current RDS/WHOIS 2 Review.'

The GAC too notes that the idea of a scope setting team raises some concerns: 'At the very least, actual review team members should have a meaningful opportunity to participate in the scoping process, either via the Scope Drafting order to conduct an effective and meaningful review.'

The GAC also notes that the current section on the setting of the scope and the amendment to an existing scope, 'neither allow for continuity of membership between Scope Drafting and Review Team members nor provide for an efficient and timely method to modify the scope once the review has commenced.'

The GAC suggests instead to task the Review Team with determining the scope, as was recently the case in the ongoing RDS review. This has proven to be an effective approach to tackling the issue and should be considered as a general best practice for reviews. Sufficient time could be added to the review team process in order to facilitate the scoping activity and ensure that the multistakeholder community has a reasonable opportunity to comment on the proposed scope of review.

It is the RySG's view that 'the Scope Setting process as laid out in the draft Operating Standards is overly cumbersome, especially considering that it has the potential to add a full year to each Review – something that will only exacerbate existing problems with volunteer burnout.'

The RySG also notes that ‘empowering the ICANN Board to approve or reject the scope of any Specific Review represents a troubling overreach on the part of ICANN Organization, as such powers are not provided for in ICANN’s Bylaws.’

The RySG suggests that the Operating Standards adopt an alternative approach wherein each Review Team incorporates steps of setting the scope, publishing that scope for public comment, and submitting the scope to the SOs/ACs for consideration into its overall timeline, similar to the processes the draft Operating Standards suggests for developing the Terms of Reference (see section 3.12) and the Work Plan (see section 3.13).

NS states that ‘the process described for selecting a Drafting Team to develop the scope for Specific Reviews is not an efficient use of time or resources.’ Adding: ‘it is more appropriate for the Review Team to set the scope of the review, guided by the ICANN bylaws, rather than establishing a separate entity to do this ahead of time.’

NS believes that ‘input from the ICANN Board, ICANN organization, and community could be sought to inform the Review Team in developing scope.’

The GNSO-C states that ‘the current process as outlined in the procedures of selecting a Drafting Team to develop the scope of the specific reviews seems to be an extremely inefficient use of time and scarce volunteer resources.’

The GNSO-C believes that ‘it would seem more appropriate for the Review Team to define the scope of the review, taking into account the ICANN bylaws rather than establishing a separate entity to do this ahead of time.’

The GNSO-C suggests that ‘as the Board is responsible for initiating the Review and will review the Terms of Reference prior to finalization, the ICANN Board or its Organizational Effectiveness Committee could raise any concerns with the Review Team about the scope prior to fulfilling the related Board resolution.’

Call for Volunteers

AG believes that the SO/AC Chairs need to be more closely involved in drafting it and need to ‘sign off on it prior to it being posted’. In addition, the Operating Standards should provide a process to ‘re-open’ or ‘extend’ the call for volunteers should it not generate sufficient responses.

The BC believes that ‘ICANN Staff should publish specific criteria it would use to determine whether the pool of applicants meets diversity and skill criteria. The published criteria will help the community in our recruiting, assessment, and selection of candidates for the specific review team. The BC ‘supports the proposal to give ICANN Staff a key role in determining whether the applicant pool meets the published criteria for diversity and skills. And, in the event that Staff can document the lack of diversity and skills, the BC supports the proposal to allow Staff to extend the call for volunteers and for independent experts as provided in the ICANN Bylaws.

The GNSO-C states that ‘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 GSNO-C believes that with regard to the skills of review team members: 'having members on the Review Teams that have experience leading multistakeholder groups should be an important consideration for the SO/AC leaders in considering the final slate for the Review Teams. To that end, it would be helpful if there was a criteria that asked candidates to provide information about their leadership skills, including efforts they may have lead within ICANN.'

The ccNSO-GRC notes that 'alternative methods [to the proposed] for call for volunteers could be used within the parameters set-out in the ICANN Bylaws, such as the method used for call for volunteers for the CSC or Crosscommunity Working Groups. We would therefore prefer to understand the reasons why this method is proposed and preferred over others.'

Regarding eligibility criteria for review candidates, the ccNSO-GRC suggests that 'if a candidate is employed, a statement from the employer [should] be included as requirement, both to ensure the employer is aware of possible time-commitments and to ensure availability.'

SO/AC Nomination Process for Review Teams

AG 'would suggest that an SO/AC not be limited to selecting candidates that requested their nomination. Specifically, with the agreement of the candidate and the designated SO/AC, another SO/AC may (but are not required to) consider any of the candidates who applied.'

The GNSO-C states that '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.'

The ccNSO-GRC suggests that more detail be provided around how SO/ACs should act with regard to specific circumstances that could arise during the nomination process.

SO/AC Chairs Selection Process

AG believes that the 'two-week requirement should be a target and not a requirement'. He also does not agree that notes from the SO/AC Chairs deliberation should be published.

The BC states that 'the SO/AC leaders should be required to select a minimum number of Specific Review Team members. The BC believes that a minimum target of 15 members on each Review Team will allow for diversity and enable the team to divide the workload appropriately.' The BC notes the 'no SO/AC should be permitted to reserve their seats for selection of candidates at a later time. To ensure continuity on the RT it is imperative that all the team members are seated at the start of the RT to begin working together on Scope and Terms of Reference.'

DAT notes that 'ICANN should have some capacity training/teaching resources to aid the wider SO/AC community better understand what is expected in a review team and to learn the core skills needed by review team members. This would help volunteers from the SO/AC community be better able to participate in future reviews and in turn ensure future reviews are conducted in a transparent, consistent, efficient, and predictable manner.'

The RySG supports the steps that the draft Operating Standards lay out for ensuring the skill sets in each Review Team, namely the publication of eligibility criteria for review candidates

(section 2.5) and ICANN Organization conducting a non-binding diversity and skills analysis (section 2.8)

Furthermore, the RySG also suggests ‘implementing a requirement that all Review Teams be fully constituted with 21 members, as allowed in the ICANN Bylaws. To facilitate this, in the event that an SO/AC chooses to nominate fewer than three members, then the SO/AC Leaders should work together to select additional members to complete the 21-member roster, per the Bylaws.

NS points out that ‘potential candidates with the requisite expertise to contribute to Review Teams may be disadvantaged, or even potentially disqualified from participating, because they do not have a Supporting Organisation (SO) or Advisory Committee (AC) to support their expression of interest. There must be consideration in the selection process to ensure that a potential qualified candidate is not disqualified simply because they do not have a SO/AC to call home.’

NS believes that ‘each Review Team must, at a minimum have at least, thirteen members.’

The GSNO-C believes that ‘The SO/AC leaders should be required to select a minimum number of 15 members, including the Board Liaison, for each RT.’

The GNSO-C states that ‘SO/AC may not reserve seats to be nominated at a later time of their choosing. Selection of the review team members must be timely and all members should be seated on the team at the same time. Addition of new members several months after beginning work would interrupt the work flow and be disruptive to the team.’

The GSNO believes that ‘More RT members also provides the opportunity for new members to the community to participate effectively. The ICANN community sorely needs new member participation. But often only the candidates that are well known are selected. A RT composed of experienced members who have served in many areas of the community and new members who are eager to participate helps the ecosystem. New members will learn the process, bring fresh perspectives and balance the team.’

ICANN Organization Non-Binding Diversity and Skill Analysis

The RySG is supportive of ICANN Organization conducting a non-binding diversity and skills analysis.

The ccNSO-GRC believes that the added value of this is unclear, ‘in particular if all documentation provided is available to the selecting SO and AC.’ The ccNSO-GRC continues, ‘it is unclear how and to what extent the SO/AC chairs should and could ensure the diversity and skill level for a review team.’

Conflicts of Interest Policy and Statements of Interest

It is the view of the ccNSO-GRC that the Conflicts of Interest Policy (COI) ‘should also apply to SO/AC chairs. Further, the ccNSO-GRC suggests that the COI and Statements of Interest templates be adjusted, so that they may be used by all community groups.’

Meeting Attendance

NS believes a requirement to attend all meetings is unreasonable.

The GNSO-C believes that ‘the requirement to attend all meetings is unreasonable, however, a 90% attendance rate could be considered acceptable.’

Resignation of a Review Team Member

AG believes ‘the Operating standards should have sections allowing resignation, removal, and refilling (using the same procedure for both).’ The SO/AC whose member resigned/was removed should be allowed to fill the spot according to its own processes and should not be limited to the original applicants or be required to conduct a new call for volunteers. The SO/AC Chairs should not be required to approve the replacement.

The BC objects to the proposed process: ‘if a member who was among the three (3) guaranteed slots of an SO/AC resigns from the review team, then it should be the responsibility of the affected SO/AC to designate the replacement RT member. Naturally, the Review Team and SO/AC leaders should be notified of the designated replacement.’

The GNSO-C ‘agrees that it should be the responsibility of the appointing SO/AC to identify an appropriate replacement taking care to appoint someone that has a similar skillset and diversity of the departing member. The appointing SO/AC would notify the SO/AC leaders of the replacement review team member, rather than require the SO/AC leaders to consider the candidate.’

Removal of a Review Team Member

The BC agrees with this Section 3.15, except that to the extent a removed candidate is filling one of the three (3) guaranteed Review Team slots of an SO/AC, then, it should be the responsibility of the affected SO/AC to designate a replacement RT member.

NS states that ‘the decision by a Review Team to remove any of its members must be the result of an objective process and supported by evidence that a member has been disruptive or inactive, and should follow at least one warning about the concerns.’

The GNSO-C ‘does not support the removal process as described in this section as it lacks an objective process supported by concrete evidence that a member is in fact being disruptive or is inactive. This should be a process of escalation, rather than going straight to a vote. If the RT agrees to a vote and does not reach the requisite 70% threshold, this would likely have disruptive and divisive consequences for the Review Team as a whole, from which it may be difficult to recover any semblance of team and co-operation.’

The GNSO-C believes ‘it would be more appropriate that the initial responsibility for dealing with any concerns about disruption or inactivity rests with the RT Chair/s. In the event that the Chair/s become aware that a member is disruptive or inactive, or if they receive complaints from other review team members, the Chair/s should in the first instance have a discussion with the member in question to ascertain if there are any extenuating circumstances. The member in question should be informed at the time that if the behavior continues, the Chair/s have the discretion to bring this to the attention of the appointing SO/AC and ultimately call for the member to resign.’

Review Team Leadership

Given the importance of the Specific Reviews, NS ‘believes it is essential that at least one member of the Leadership Team has proven experience in chairing or leading similar efforts

and this requirement must be a consideration when the Review Team is selecting their Leadership Team.'

The GNSO-C states that 'it would be preferable if the Chair/s of the Review Team has/have previous experience leading or chairing similar efforts, either within ICANN or outside. This should be a consideration of the review team as a whole when deciding on the leadership team.'

Budget Management

AG believes 'it is totally unacceptable to hold a RT responsible for expenses that they have no control over'; this refers specifically to the costs associated with travel costs for RT support staff. AG points out that 'if the RT is to be responsible for ensuring that expenses are within the specified envelope, they must have access to the full detail of the expense ledgers, not just envelopes for types of expenses.'

The RySG suggests '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.'

Travel Support

AG believes that business class travel for RT members with disabilities or otherwise medical needs for more expensive air fares, should not be subject to budgetary restrictions as this may result in a discrimination against selecting certain community members based on the fact that their travel requirements will impact the RT budget. Specifically, AG states: 'If ICANN is serious about removing obstacles for people with disabilities to participate, the groups in which they participate should not be penalized by their presence.'

The GNSO-C believes that 'While it is reasonable that the RT be responsible for managing their own budget, it must be acknowledged that certain elements of the budget will be beyond their control, particularly the travel component. For example, consistent with the travel support guidelines, some members of a RT may be eligible for a higher class of travel. If the travel component of the budget is based only on economy airfare travel, there will be immediate pressure on the budget if a significant number of RT members are eligible for a higher level of travel. To that end, the budget that the RT is responsible for managing must accommodate such variables.'

Procurement of Independent Experts

AG points out that if 'the RT is responsible for the proposed use of its funds, it must be given full discretion to make decisions. Since the cost of such proposals can vary greatly, the cost cannot be one of the "details" not shared. A non-disclosure agreement may be used if necessary.'

Decision-Making Procedure

AG states that 'If a decision can only be made by a majority vote, it must be explicitly highlighted because it indicates that a significant part of the RT disagrees. Although I believe the specific decision is up to each RT, they must address the issue of quorum and whether decisions can be made at a meeting with less than optimal attendance.'

It is the view of the ccNSO-GRC that ‘the proposed internal decision-making procedure does not reflect the cross-community nature of the Specific Review Teams.’ The ccNSO-GRC suggests that decision-making procedures that have been developed over time for cross-community working groups could be applied.

Further, the ccNSO-GRC believes that ‘the internal decision-making procedures need to be defined and agreed before a Specific Review team commences its substantive work’, and proposes that ‘defining or refining these procedures could be the first work item of a Specific Review Team.’

Changes to the Scope

AG does not believe this provision is necessary for ‘the Board needs to approve the original scope, and it is sufficient for the Board to accept or reject a change.

The BC believes this Section 3.22 should be redrafted or eliminated given our strong recommendation to remove the proposed Scope Drafting Team (see above).

The ccNSO-GRC suggests that the ‘Board may only object [to changes to scope] with super majority’ and asks that more clarification be provided with regards to what should happen if the Board objects to a change.

Review Output

AG states that ‘The requirement that all problems encountered must be addressed by recommendations is not reasonable. The RT must be able to pick and choose what it will focus on.’

NS believes ‘that it is important that the Board be required to consider the recommendation of a Final Report within three months of receipt.’

The GNSO-C states that ‘the ICANN Board should be encouraged to provide comments on the Draft Report, with a view to providing with Review Team with feedback on the recommendations. As the Board is the final decision-maker in the process it would be more efficient for the Review Team to understand any concerns of the Board or the OEC prior to completing the Final Report.’

The GNSO-C points out that ‘in the event that a minority dissent is provided in the Final Report, other members of the RT should be provided an opportunity to counter that position as a means to providing a balanced view.’

The GNSO-C states that ‘the Board should be required to consider which recommendations to adopt within three months of receiving the Final Report. If the Board is unable to meet this timeframe they must provide an explanation to the Review Team and the community as to why this is the case.’

The GNSO-C states that ‘in the event that the Board does not adopt any of the recommendations from the Final Report, they must provide a rationale and the community should be afforded the opportunity to respond to the rationale. It may be appropriate to apply a threshold similar to rejecting GAC advice. Given the reviews are the result of a significant body of work conducted by community representatives, it seems a reasonable approach.’

Reporting

The RySG supports these guidelines and encourages the Operating Standards to require reports to the Board's Organizational Effectiveness Committee be published, where appropriate.

Bylaws

AG believes that a change to the Bylaws may be necessary prior to the start of the next round of specific reviews. Specifically, he states: 'The Operating Standards are subservient to the Bylaws on Specific Reviews, and this is not the opportunity to revise the Bylaws, but that must be done in short order. I believe that the process of porting the AoC Reviews into the Bylaws did not sufficiently take into account many issues. Examples are the overall size of the review team, the need to balance skills and diversity, the ability to utilize external experts as team members and the varying interests in different SO/ACs in the various reviews. The Specific Review Bylaws MUST be redrafted prior to the next round of reviews.'

Implementation

The RySG believes the role of the "recommendation shepherd," a term that is only used once and not defined, should be elaborated. Also, 'adequate guardrails must be put in place to ensure that ICANN Organization and the Board do not quash recommendations they find to be inconvenient during the consultation process.'

General Remarks

Overall, AG is disturbed by the level of details in the document, finding 'the level of detail and the uncountable number of steps taken and procedures followed to be counter to ICANN current desire to control costs and to judiciously use donated volunteer resources.' AG 'strongly suggest that the Operating Standards put far more emphasis on good practices instead of being overly controlling and proscriptive. It is conceivable that in some particular instance, that may lead to a problem that has to be addressed, but it will also lead to FAR better use being made of volunteer resources and as well as ICANN staff and financial resources.'

The ccNSO-C 'expresses [its] concern about the overall timing of the reviews.' The ccNSO-C 'recommends that, in conjunction with this process of developing the Operating Standards, all stakeholders involved will be provided with an overview of all the reviews to be undertaken under the current Bylaws up to 2023 (5 -6 year cycle), so well into the second cycle of Specific reviews, and based on this overview start a discussion on the goal and purposes of these reviews, their frequency in light of sustainability, quality and ultimately the value of these efforts.'

The ccNSO-GRC shares this concern and suggests that 'the timing of reviews should be taken into consideration.'

The ccNSO-C 'strongly suggest that before starting any new specific review, the Operating Standards be developed further to provide a stable basis to conduct the reviews. We suggest that starting at ICANN61 a working party under the auspices of ICANN Org and the SO/AC chairs will further develop the draft Operating Standards and present version 02 in time for ICANN62.'

The ccNSO-C ‘would appreciate clarity and an indication of what should be included on the basis of the Bylaws (“must have”), what is added as perceived best practice, and what is added to assist and mitigate risks already identified based on experience with previous and current (Specific) Reviews.’ The ccNSO-GRC shares this view.

The ccNSO-C ‘would appreciate if alternatives, including an impact analysis of the alternatives, or a rationale for the proposed method would be presented and discussed.’

The GAC states that ‘the ICANN Bylaws express no actual role for the ICANN Board in the workings of a Review Team outside those associated with designating a Board Liaison and the actions the Board should take in cases in which it decides not to accept recommendation(s) in the final Review Team’s report. Furthermore, there is nothing currently articulated in the draft Operating Standards for Specific Reviews that articulates a role for ICANN or its Board to suspend or otherwise disrupt a review.’

The GAC ‘strongly recommends that ICANN and the community consider how best to articulate the role of ICANN and the ICANN Board that remove any ambiguity with respect to the conducting of the reviews.’

The GAC would also like to raise concerns about the administrative burden associated with the review team process. The process has become very cumbersome, especially in the early stages of a review, where a lot of work is focused on discussing terms of reference, scope, conflict of interest statements, progress tracking tables, etc. This causes reviews to lose steam and has had a negative impact on commitment and engagement on the substance, despite the very good support provided by staff in dealing with these administrative requirements.

The RySG ‘advises formalizing a process for SO/AC Chairs to bring up concerns on behalf of their SO/ACs to the other Chairs before making those concerns public. 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 bring up concerns for other Chairs to report back to their SOs/ACs for input.’

The RySG believes ‘The Board should similarly bring up any concerns that it may have about the conduct of a Specific Review with the SO/AC leadership 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.’

The RySG believes ‘the volunteers for a Review Team should also be required to disclose any possible conflicts during the Call for Volunteers, with more detail than simply submitting a Statement of Interest.’

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.’

The ccNSO-GRC suggests that a section on scope of the Operating Standards should be included to provide clarity on when they are applied, who can adopt them, and if adoption is mandatory.

Regarding amendments to the Operating Standards, the ccNSO-GRC believes that ‘the proposed mechanism is very heavy handed and does not reflect the intended purpose.’ Further, the ccNSO-GRC believes that, as currently stated, what is expected of the Board in this process is not clear.

The ccNSO-GRC ‘would appreciate a workflow type of overview of the proposed procedures [in the Operating Standards] and a guestimate of minimum and maximum duration of the combination of all proposed procedures.’ The ccNSO-C would also support such addition.

Section IV: Analysis of Comments

The ICANN Bylaws mandate that the Operating Standards are to be “developed through community consultation, including public comment opportunities as necessary.” The comments submitted were as constructive as they were diverse. Therefore, the most likely path forward is for the community and the ICANN Board to discuss the current draft, the comments received, and any other issues related to the Operating Standards during the upcoming ICANN61 meeting in San Juan. The Organizational Effectiveness Committee of the ICANN Board, charged with overseeing the drafting process, will provide further details on this in due course. Finally, it is anticipated that the community will be actively involved in updating the current draft and that ICANN Org will conduct another comprehensive public comment period on a full second draft of the Operating Standards prior to ICANN62.