



13 June 2018

Subject: SSAC2018-16: Draft Assessment Report of the Independent Examiner
To: Christopher Llop, Analysis Group, Inc.
Cc: Lars Hoffmann , SSAC Review Work Party

Dear Mr. Llop:

SSAC thanks the Analysis Group for its work, and appreciates the opportunity to comment on the draft Assessment Report. Our comments are as follows, and we welcome any questions you may have.

Page 1, page 10, et al: References to the “SSAC Charter” should be replaced with references to the role of the SSAC as described in the ICANN Bylaws, found in Bylaws Section 12.2(b)(i). The “SSAC Charter” was a document from 2002 that first described SSAC, but it was superseded thereafter by the Bylaws and has no current relevance. The Bylaws officially describe SSAC’s role and responsibilities.

Page 2 says: “There is a need for individuals with an understanding of SSR-related issues to take part in policy development, and members of the ICANN community discussed whether or not the SSAC or its members (as individuals) should play that role.” Page 11 then says: “Others state that the SSAC should continue to play a technical advice, audit, and verification role, and that assisting in policymaking itself is not the point of the SSAC.” See also pages 26-29, “Interactions with other SOs/ACs.”

The ICANN Bylaws have always stated that part of SSAC’s role is “To make policy recommendations to the ICANN community and Board.” The role has never been a purely “technical advice, audit, and verification role.”

It is worth noting that SSAC provides input during the public comment periods of policy making efforts when SSAC has been aware of security and stability implications in the work, and has done so with increasing frequency in recent years. Those public comment periods are an official ICANN mechanism designed to gather policy opinions from across the ICANN

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community, and to allow policy-making teams to adjust their work at a certain point in the process.

Some SSAC members participate in GNSO PDP working groups, not as formal SSAC representatives but as individuals or as representatives of their employers and their Stakeholder Groups.

The question remains whether SSAC should send delegates to formally represent SSAC in policy-making working groups.

Page 2 says: “The SSAC’s term length of three years for members is generally considered to be appropriate, but there exists much more variation in individuals’ views as to the appropriate term limit, if any, for SSAC leadership.” See also page 12 ff, page 38 ff “term Length and Term Limits.”

With very few exceptions, the ICANN Bylaws allow all SOs and ACs to determine the term lengths and term limits for their leadership positions. That is generally considered a prerogative of the SOs and ACs, and an opportunity for them to exercise good governance while recognizing their memberships’ needs and desires.

In February 2018, after deliberation and examination of the practices of other SOs and ACs, the SSAC voted to impose term limits for its Vice-Chair and Board Liaison positions; the existing term lengths were also confirmed. So these issues have been recently settled.

The ICANN Bylaws do not allow the SSAC to term-limit its Chair; instead they specifically state that the SSAC Chair may serve an unlimited number of terms. This is an unusual situation for which there is no known reason; it is out of line with general governance practices and does not give the SSAC the prerogative of choice that other SOs and ACs have. The SSAC kindly requests that the IE note that in its final report, and to consider making a recommendation in its final report that the Bylaws be amended to correct this situation.

Page 3: Text related to footnote 7 should directly quote the ICANN Bylaws, Section 12.2(b)(i), rather than the SSAC Operational Procedures.

Page 4: SSAC does not send comment documents to the Board, only advisories and reports.

Page 4: Yes, SSAC has thirty-seven (37) members at this time.

Page 5, footnote 16: Invited Guests do not “participate as full SSAC members” -- the Operational Procedures contain some imprecise wording about that. It is more precise to say that Invited Guests participate in SSAC activities such as Work Parties, but do not have the privileges of

membership, such as voting, serving on the Membership Committee, or holding a leadership position.

Page 11 says: “Some interviewees indicated that as threats continue to increase in number and in complexity, there could be value in developing processes by which the SSAC could more formally review the security ecosystem as part of its topic selection.” See also page 24, “Topic Selection”.

SSAC notes that while security threats continue to increase in number and complexity, some Internet security threats are outside of ICANN’s remit and therefore SSAC’s remit. SSAC regularly considers potential topics, analyzes whether each is in scope or not, and rejects those that are out of scope or do not lend themselves to practical recommendations. The issue remains whether SSAC could more formally review the security ecosystem as part of its topic selection.

Page 12 et al regarding membership: It is worth noting that SSAC has an open process for accepting applications for membership – anyone can contact SSAC and request consideration. While the pool comes from both open inquiries and recruiting by current members, there has always been a limited number of people who evidently have the time, skills, and willingness to participate in SSAC. In any case, SSAC is committed to diversity and improvement.

Page 21 paragraph 1 sentence 2 should be corrected as follows: "Interviews with ICANN Board members indicate there are several factors that affect the speed with which the Board responds to SSAC advice."

Page 28: Using SSAC055 is not a valid example and mischaracterizes SSAC’s advice.

In SAC055, SSAC’s advice did not “defer or reject the advice of work parties, or to shutdown processes” in the words of the draft report. It did not stop anything, nor did it reject, defer, or negate the WHOIS Policy Review Team’s work or recommendations. Instead, the SSAC used the WHOIS Policy Review Team’s report as an appropriate opportunity to point out that the ICANN community was not addressing a fundamental issue--the lack of a basic WHOIS policy--that had to be solved before other issues could be. SSAC’s advice here was actually consistent with the WHOIS Review Team’s Recommendation #2 (see <https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf> page 83).

SAC055 was certainly a case where SSAC flagged a concern and suggested that ICANN orient its approach to a problem in a certain way.

See also the reference to SAC055 on page 48.

Pages 28-29: These pages contain the only two direct quotes from interviewees/respondents in the report. The first is quite critical. Are the quotes representative, or do they give outsized weight to a minority or singular position?

Page 30 paragraph 2 sentence 2 may have an incorrect figure reference as follows: "We find similar results in Figure 27, which shows that most respondents..."

Page 32 says: "In particular, we heard from several interviewees regarding the value of having individuals with a legal and/or policy background, as such expertise would help to ensure that the SSAC's advice is clear, understandable, and actionable."

SSAC notes that over the past several years SSAC has recruited more members with legal and policy backgrounds, as a way of adapting to ICANN's needs and being prepared for current and future issues. SSAC membership includes two members with law degrees; two privacy and public policy experts; seven with experience in government positions across executive branch, law enforcement, and military service; and several members who regularly participate in policy making activities both inside of and outside of ICANN.

Page 48: "awareness's" appears to be a typo or missing some text.

Thank you, and we look forward to the next steps of the review.

Best Regards,

Rod Rasmussen
Chair, ICANN Security and Stability Advisory Committee
On behalf of the SSAC