Comment on Proposed Operating Standards for ICANN's Specific Reviews

Status: FINAL

Version: 3

2-Feb-2018

Business Constituency Submission

GNSO//CSG//BC

Background

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

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

Proposed Operating Standards for ICANN's Specific Reviews[1]

Specific reviews that were originally required in the *Affirmation of Commitments* ("Specific Reviews") are a critical component of ICANN's accountability mechanisms that are now in Article 4, Section 4.6 of ICANN's Bylaws.[2]

The ICANN Board, pursuant to the ICANN's Bylaws, initiates Specific Reviews. Designated teams that are composed of members of the ICANN community then conduct these reviews.

Section 4.6 of the ICANN's Bylaws requires that operational standards be developed for these Specific Reviews "through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN".[3]

The process for developing the operating and organizational standards for Specific Reviews began in late 2016 with a community webinar in Hyderabad that delineated the original goals for a proposed Operating Standards document:

(i) The Operating Standards shall be developed through community consultation…

(ii) Are flexible and are subject to amendments over time.

(iii) Supplements ICANN Bylaws; does not replace or amend.

(iv) Provide[s] system to conduct reviews efficiently and effectively.

(v) Guidance and tools to assist with the review processes.

(vi) Evolve[s] to reflect lessons learned and best practices.

(vii) Captures and summarizes existing processes and best practices[4]

The process culminated on October 17, 2017 when ICANN opened a public comment on its Draft Operating Standards for ICANN's Specific Reviews ("Draft Operating Standards"). These proposed

---

[1] See ICANN Public comment page at https://www.icann.org/public-comments/reviews-standards-2017-10-17-en

[2] The purpose of the Operating Standards, once adopted, is to centralize existing operational best practices and to bring consistent rules, clarity, and transparency to ICANN's four specific reviews: Competition, Consumer Trust, and Consumer Choice Review (CCT), The Security, Stability, and Resiliency of the DNS Review (SSR), The Accountability and Transparency Review (ATRT), and the Registration Directory Service Policy Review (RDS-WHOIS). (See https://www.icann.org/news/announcement-2-2017-10-12-en)

[3] (See ICANN Bylaws Section 4.6)

[4] http://schd.ws/hosted_files/icann572016/5f/Operating%20Standards_presentation.pdf

[standards](#) were developed and compiled by ICANN's Multi-stakeholder Strategy and Strategic Initiatives.

BC Comments on selected Operating Standards for ICANN's Specific Reviews

The BC welcomes the opportunity to comment on ICANN's current proposal seeking a more consistent and efficient approach to the structure and process around the Specific Reviews.

Section 2.1. Scope Setting

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. Any provision in the Operating Standards proposal that references the Scope Drafting Team and/or its continuing responsibilities (e.g. Section 3.22) should be removed in its entirety.

 ICANN's Bylaws Section 4.6 already describes the scope for each of the Specific Reviews. Once assembled, the Specific Review Team should define the scope of the present review consistent with the Bylaws. Separating the scoping responsibilities from the designated review team would result in a cumbersome process, given that the actual review team will need to keep revisiting the thinking behind the scope drafting team's recommendations.

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.

To be clear, the BC believes that scoping is an important function of the Specific Review Team. 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.

Section 2.4. Call for Volunteers

The Board has directed that ICANN Staff be responsible for, among other things, "determining the need to extend the call, in case of insufficiently diverse or skilled pool of applicants".

The BC recognizes that ICANN Staff can be helpful in determining whether an applicant pool lacks diversity or requisite skills for the Specific Review.

However, we believe 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 BC believes that ICANN Staff should be authorized to extend the call for volunteers only once. If after one extension ICANN Staff still believes that the applicant pool lacks diversity and/or skills, Staff can advise AC/SO leaders, who would have the sole authority to further extend the call for volunteers.

Section 2.6. Review Team Selection Process

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. More Review Team members also gives the opportunity for new members to the community to participate effectively.

Establishing a practice of having Review Team membership composed of experienced members who have served in many areas of the community and new members who are eager to participate helps to strengthen the ICANN ecosystem. New members will learn the process, bring fresh perspectives, balance the team, and subsequently bring their experience into further engagement within ICANN.

To provide a fully seated Review Team, SO/ACs should nominate their candidates at the time of selection. 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.

3.14. Resignation of Review Team Members

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.

If the Review Team member is not filling one of the three (3) guaranteed slots of a particular SO/AC, then the Chairs of the SO/AC's shall designate a replacement by choosing from the already existing pool of volunteers, or after issuing a public call for additional volunteers. The GNSO created a Standing Selection Committee to review and assess candidates and always recommend seven (7) candidates for each review team. [5]

3.15. Removal of Review Team Members

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.

3.22 Changes to the Scope while the review is underway

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).

 --

This comment was drafted by Faisal Shah, Steve DelBianco, Susan Kawaguchi, Marilyn Cade, and Lawrence OlaWale-Roberts.

It was approved in accord with the BC charter.

---

[5] https://community.icann.org/display/GSSC