



Comment on Process Proposal for Streamlining Organizational Reviews

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Business Constituency Submission

GNSO//CSG//BC

Background

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 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.

BC comment on Process Proposal for Streamlining Organizational Reviews

In this document, the BC responds to ICANN's four questions in the public comment period for its Proposal for Streamlining Organizational Reviews¹.

For clarity, here is the longstanding Bylaws requirement for Organizational Reviews:

Section 4.4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine

- (i) whether that organization, council or committee has a continuing purpose in the ICANN structure,
- (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and
- (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC under the Articles of Incorporation and these Bylaws.

Question 1. Do you agree with the proposed list of issues to focus the streamlining process?

i) Purpose and scope of organizational reviews

The BC agrees with the three Bylaws criteria for Organizational Reviews above (continuing purpose, improving effectiveness, and accountability). However, we have been disappointed with prior GNSO Reviews because the board inappropriately limited the scope of review to exclude questions of structure and voting. We therefore urge the consideration of structural issues and their impact on constituency voting in subsequent reviews of the GNSO. We feel this would shed light on how the

¹ ICANN public comment page, at <https://www.icann.org/public-comments/streamlining-org-reviews-proposal-2019-04-30-en>

GNSO's current structure may hamper its effectiveness in serving the public interest of global users and registrants.

In our Oct-2018 comments on Proposed Next Steps for Reviews, we prioritized "transparent and consistent ways to assess SO/AC accountability to their stakeholders and a means of implementing meaningful improvements."²

The BC believes that prior reviews have not sufficiently examined whether and how SO/ACs are accountable to the stakeholders they were created to represent, which is supposed to be part of these reviews, per Bylaws section 4.4 a(iii) "whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders."

In our Jun-2019 comment on Evolving ICANN's Multistakeholder Model, the BC suggested several concrete steps to improve recruitment, representativeness, and inclusivity of each SO/AC³. If these steps were taken, the next Organizational Review would find a broader range of stakeholders to which the SO/AC should be accountable.

ii) Limited pool of suitable independent examiners, and selection of independent examiners

The BC agrees that limited pool of suitable examiners could be a concern, but this not an impossible problem. There are 7 SO/ACs to review, each with 1-year engagement of the independent examiner, followed by 5-6 years until the next review. If these reviews were spread out such that just 1 review begins each year, there would be no more than 2 independent reviewers engaged at the same time. So a pool of just 5-7 suitable reviewers offers sufficient choice and capacity to handle these reviews.

iii) Whether recommendations by independent examiner should be binding or non-binding

The BC agrees with the current process where an SO/AC being reviewed is able to respond to reviewer recommendations. We do not, however, believe that the SO/AC should be able to block a recommendation from being considered by the public and the Board. That might allow an entrenched group within an SO/AC to block reform recommendations that diminish their control.

Better to allow those in the subject SO/AC to offer comments on findings and recommendations, and to present those for public comment and Board consideration.

An independent examiner report should also show relative weights for each recommendation, so that critical issues are properly prioritized. This feeds into the ongoing debates about the evolution of ICANN's model, particularly in relation to the issue of prioritization.

iv) Length of the entire review process including implementation

The BC agrees that we need more time to implement and assess prior review recommendations. We support a modification of the Bylaws such that the 5-year cycle begins when *implementation* of

² Oct-2018 BC comment, at https://www.bizconst.org/assets/docs/positions-statements/2018/2019_10October_5%20BC%20comment%20on%20proposed%20Next%20Steps%20for%20Reviews.pdf

³ Jun-2019 BC comment, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_06June_13%20BC%20Comment%20on%20Evolving%20ICANN%20Multistakeholder%20Model.pdf

prior review recommendations has begun, instead of starting when the board receives the final report. This change would add 1-2 years to the time between reviews of any given SO/AC.

Question 2: Do you agree with the proposed underlying principles that should guide the solutions?

i) Accountability

The BC participated extensively in the CCWG-Accountability, and agrees that any procedural changes coming out of this streamlining should adhere to the good practices of accountability, transparency, outreach, and updates to policies and processes on pages 8-11 of Annex 6 – SO/AC Accountability Sub-Group Final Report and Recommendations – CCWG-Accountability WS2.

ii) Timing

The BC agrees that timing of Organizational Reviews should be adjusted, and we have made two suggestions above. First, these reviews should be spread out such that just 1 review begins each year. That means there would be no more than 2 independent reviewers engaged at the same time.

Second, we suggested that the 5-year cycle begins when *implementation* of prior review recommendations has begun, instead of starting when the board receives the final report. This change would add 1-2 years to the time between reviews of any given SO/AC.

iii) Consistency

We agree.

iv) Industry-wide best practice

We agree.

Question 3: Do you agree with the roles of the community, Board, and Org in the streamlining process?

i) Community Role in the streamlining process

We fully agree that the broadest possible community of internet users and registrants should be involved in designing and evaluating the proposed streamlining improvements. This is particularly true because some SO/ACs are substantially controlled by stakeholders who benefit from retaining the status quo and are resistant to change.

ii) ICANN Board Role in the streamlining process

We agree that the Board should be the steward of “ICANN as a whole”.

iii) ICANN Org’s Role in the streamlining process

We agree.

Question 4: **Do you agree with the proposed high-level timeline?**

The BC agrees with the proposed timeline to develop, finalize, and implement streamlining improvements for Organizational Reviews.

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This comment was drafted by Steve DelBianco, Barbara Wanner, and Mark Datysgeld.

It was approved in accord with the BC charter.