

GNSO Council comments on Operating Standards for Specific Reviews

The GNSO Council welcomes the opportunity to comment on the proposed Operating Standards for Specific Reviews. The comments provided below were discussed by the GNSO Council during their meeting on 30 January 2018.

Responsibilities

The Operating Standard would benefit from a high level overview of responsibilities as they relate to the ICANN Board, ICANN org, SO/ACs and the Review Team itself. This would be beneficial in helping the broader community understand the decisions points in the process and who has ultimate responsibility.

2.1 Scope Setting

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 fact that the Review Team has the ability to amend the scope, as per section 3.22 of the draft operating standards, also suggests that this effort is potentially duplicative and at worst, a wasted effort.

There is no rationale to explain why a Drafting Team, rather than the actual Review Team, should be established to develop the Scope for each review. The ICANN bylaws provide adequate guidance for what each review may assess and this should be used by the respective Review Teams to develop the scope of the review. It is noted that under 3.12 Terms of Reference, it is the responsibility of the Review Team to develop and agree the Terms of Reference that includes, among other things, the scope. Therefore, 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 Review Team could be required to seek input from the ICANN Board, ICANN org and the ICANN community on the scope of the review that could be incorporated into their discussion of the Scope.

As the Board is responsible for initiating the Review and will review the Terms of Reference prior to finalization, the ICANN Board or its Organisational Effectiveness Committee could raise any concerns with the Review Team about the scope prior to fulfilling the related Board resolution. If necessary, the Board and the Review Team should engage in a good faith dialogue in an attempt to resolve any differences or clear up any misunderstandings.

General comments:

If it is determined that a Scope Drafting Team (SDT) is a necessary part of this process, associated timelines for its work should be re-evaluated to ensure operational success. The total timeline of 12 months assumes absolutely no delays in forming and starting the SDT or the SDT's ability to publish the scope for public comment within 6 months. Any delays or rejections appear to jeopardize the start of the Review Team at the end of the 12-month period.

The process as currently written in the Operating Standards is as follows:

1. 8 weeks to form SDT and start work
2. 6 months for SDT to get scope to public comment
3. 30-45 days for public comment
4. Est. 30+ days to review and address public comments
5. Est. 30+ days for SO/ACs to approve or reject; rejections must include revisions to scope
 - a. If rejected, revised scope returns to step 4
6. Board approval required
 - a. If rejected, SDT is reconvened

The suggested size of the SDT also appears to be excessive. Given the discrete nature of the exercise it would seem that an SDT of no more than 7 members seems more appropriate and a better use of scarce resources.

The Operating Standards currently states that the public comment procedure will be managed by ICANN org. To be clear, ICANN org should only manage the administrative elements of the procedure, but the SDT must be responsible for the consideration and analysis of any comments received on the draft scope that is published for public comment.

2.4 Call for Volunteers

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.

2.5 Eligibility Criteria for Review Candidates

We note that the eligibility criteria should be consistent with the scope and in this regard, our earlier comments regarding who determines the scope would appear to make this assessment challenging. However, we note that section 2.5 contains considerable detail about the possible skills and attributes that would be relevant to any of the specific reviews, and we believe that sections 2.5.1, 2.5.2, 2.5.3 and 2.5.4 provide good outlines of the possible skills and attributes that may be considered relevant to each of the four specific reviews.

While not a mandatory requirement, we also believe that 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.

2.6 Review Team Selection Process

This section notes that the SO/AC leaders shall select a group of up to 21 review team members; and where an SO or AC has not nominated three prospective review team members, the SO/AC Leaders shall determine whether all 21 seats shall be filled.

The SO/AC leaders should be required to select a minimum number of 15 members, including the Board Liaison, for each RT. The RDS RT only has 11 members, which includes the Board Liaison, effectively limiting most of the work to 10 members. One of the reasons for this low number is because the ccNSO did not provide candidates for this RT. The GNSO was able to secure 4 seats on the RT in agreement with the other SO/AC leaders and could have provided more candidates as the GNSO always is prepared with 7 willing candidates.

This will allow for diversity both gender and geography and enable the RT to divide the workload appropriately. 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.

An 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.

3.8 Meeting Attendance

The requirement to attend all meetings is unreasonable, however, a 90% attendance rate could be considered acceptable.

3.11 Determining Review Team Leadership

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.

3.14 Resignation of Review Team Members

In the event that a review team member resigns, we agree 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.

3.15 Removal of Review Team Members

This section repeats much of that contained in 3.14.

It seems that there should be three elements covered in these points:

- Resignation
- Removal
- Replacement

We do 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.

As a general principle, it is important that RT members have a number of options available to them to raise concerns about the behavior of a fellow RT member or the management of the RT as a whole, for example RT members could raise concerns with their appointing SO/AC, could contact the Ombudsman, or the Board Liaison. Any complaints must be accompanied by evidence to support the claims.

However, in the first instance, 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.

We believe that this approach is consistent with the roles and responsibilities for the Chair/Co-Chairs as contained in 3.9.1, in particular:

- Maintain standards and focus on the aims of the review team as established in the terms of reference.

However, for clarity, the roles and responsibilities should provide the Chairs/Co-Chairs with the discretion to address behavior and performance related issues of RT members.

In the event that a member or members of the RT believes that the Chair/Co-Chairs are not meeting their roles and responsibilities as described in 3.9.1, or an element thereof, they should raise their concerns with their appointing SO/AC, the Ombudsman, or the Board Liaison.

It is noted that while the roles and responsibilities of the RT members and the Chairs/Co-Chairs are defined in the Operating Standards; the role of the Board Liaison is not and we believe this should be provided in the Operating Standards. If members of the RT believe that the Board Liaison is not meeting their role and responsibilities they should raise their concerns with their appointing SO/AC and/or the Chair of the ICANN Board.

3.16 Reporting

The Review Team should provide regular updates to each SO/AC, and RT members should also be encouraged report back to their nominating SO/AC with regular updates as well.

3.17 Budget Management and 3.18 Travel Support

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.

4.2 Draft Report

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.

4.4 Minority Dissents

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.

4.5 Submission of Final Report and Public Comment

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.

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.