Comment on Draft Operating Standards for Specific Reviews

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Mission Creep is a constant subject for discussion in ICANN.
This document demonstrates the Process Creep
should be of great concern as well.

This comment is submitted in my personal capacity. However I do this based on a number of perspectives related to Specific Reviews.

1. On behalf of the ALAC, I have been an active observer of all of the AoC and now Specific Reviews to date.
2. I was a Member and Vice-Chair of the ATRT2 Review Team (RT).
3. I am a Member and Chair of the ongoing RDS-WHOIS2-RT.
4. I was an active Member of the CCWG Accountability which moved the reviews from the AoC to the Bylaws
5. As ALAC Chair, I have been one of the Selectors for the SSR2 and RDS-WHOIS RTs.
6. As ALAC Chair, I am working with the other SO/AC Chairs to address the perceived issues with the SSR2-RT.

1.1 Background

It is refreshing that under "Efficiency", prudent use of volunteer time preceded ICANN budget. Unfortunately, I am not at all sure that effective use of volunteer time is the result of these Operating Standards.

2.1 Scope Setting

I disagree with the proposed process on several grounds

- It adds a year to the process, and thus reduces the time to implement the previous review recommendations by a year (or forces scope to be set without the benefit of the fuller implementation).
- The concept of up to 14 people working for a year to draft a RT scope is rather mind-boggling and demonstrates a clear misunderstanding of the value of volunteer time.
- The work necessary to set scope implicitly will replicate a significant part of the future review team's effort (brief review of previous review, recommendations and implementation; review of "the state of the union" of the topic concerned). There will also be very significant staff time devoted to the exercise which will largely need to be replicated for the full review team.
- If the Scope Drafting Team sets a firm scope, the RT will not have the flexibility to react to things that turn up while it is working.

- If the Scope Drafting team sets a very high-level scope, is it really worth the time and effort it will take?
- It has been claimed that setting the scope, and presumably setting it in detail, allows more careful selection of review team members. If that were to really be the case, the selection process of review team members would have to be RADICALLY altered from what is in the Bylaws, as the RT Selectors do not have the discretion to assemble a finely-tuned team to meet such detailed needs. Nor is it clear they would have the time or skill to do so even if given the task.
- The addition of a scope public comment period, where none existed in the original Review process is another example of process creep.
- Lastly, I have some trepidation of one group setting scope and then another group needing to carry it out. It is FAR too easy to be over-ambitious when you don't need to actually carry out the work.

It is not obvious that this is a refinement that fills a gap. ICANN has so far chartered seven AoC/Specific Reviews. In only one of those, the currently halted SSR2 Review has there been a claim that setting the scope has been a problem that such a Scope Drafting Team may have addressed. And it is FAR from clear that it was the process of setting scope that caused the current issues. Other rationales that have been proposed include the lack of understanding what level of work the RT should be doing, RT leadership, lack of skills or work-level commitment, the lack of independent experts on the team (something that the AoC provided for but not the new Bylaws) and possible conflicts of interest. No doubt, to the extent that real problems exist, it is a complex combination of these.

In short, I believe that this is a solution in search of a problem, and one that will eat up significant ICANN organization and volunteer resources.

On a very specific note, this drafting team is to be led by no fewer than two Co-Chairs. It is far from clear that a drafting tem needs Co-Chairs at all. The selection of a Chair and possible Co- or Vice- chairs should be left to the group (if indeed the group needs to exist).

2.3 Review Team
I presume the "Board-nominated Director or Liaison" is a Board Member or Liaison to the Board who will act as the Liaison to the RT. This should be clarified.

The willingness to commit the required effort to the RT is a key issue and one that needs to be elaborated on, with the Call for Volunteers being far more specific as to the workload expected and the time-frame over which the RT will run.

2.4 Call for Volunteers
The SO/AC Chairs, as the Selectors, need to see the Call for Volunteers, and sign off on it prior to it being posted. SO/ACs should also be able to specify specific questions that they want their applicants to address, or add criteria that the candidates they endorse must meet.

History has told us that it may be necessary to extend or re-open a call for volunteers and the Operating Standards must allow for that.

Experience has proven that in any review team, a significant percentage of members may not devote sufficient time to the activity. Efforts must be taken to reduce the impact of this and it needs to start with careful wording of the Call for Volunteers.

2.5. Eligibility Criteria for Review Candidates

Although not needed by all team members, those who aspire to leadership roles need good management and project management skills, and skills related to consensus building and collaboration.

2.5.3. Skills relevant to Accountability and Transparency reviews (ATRT)

ATRT requires people who are very familiar with ICANN and at least one of its constituent parts.

2.7. SO/AC Nomination Process

I 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.

2.9. SO/AC Chairs' Selection Process

The two week requirement should be a target and not a requirement. Timing related to ICANN meetings (where a face-to-face selection may be possible) and other activities may make the two week target impractical or impossible. Specifically, it is likely to take longer than that just to identify a time when all of the applicable Chairs will be available

Note that according to the Bylaws, it is only the Chairs who have nominated candidates who participate in the selection process.

The description of the summary of "deliberations" to be published by ICANN organization sounds like it may include critiques or candid comments on individual candidates, something that I would strongly object to. If allowed, it would result in a less than candid process. Simply omitting names is not sufficient to anonymize discussions. The Selectors under the AoC were not subject to such "transparency" rules and I do not believe the SO/AC Chairs should in the present case.

2.10. Announcement of the Review Team

I believe that it is good practice and a common courtesy to notify unsuccessful candidates prior to making such announcements.

3.5. Transparency Requirements

Note that there is an unresolved reference in footnote 17 of the document.

3.8. Meeting Attendance

Meeting attendance records with full granularity (down to the meeting level) must be publicly viewable to allow SO/ACs to monitor the participation of their members.

3.9.1. The roles and responsibilities for the Chair/Co-Chairs

" *Remain neutral when serving as Chair or co-Chair*." I would change "serving as" to "acting in the capacity of". Those in leadership positions were selected by their SO/AC to speak on their behalf and must be able to "take off their Chair hat" and participate as a regular participant as noted in the next bullet.

As noted below, the Operating Standards should not presume that the leadership model chosen will be Co-Chairs.

3.11. Determining Review Team Leadership

The Operating Standards should not presume that the leadership structure will be Co-Chairs. For example, the ATRT2 and RDS-WHOIS2 Review Teams decided to have a Chair and Vice-Chairs. Which model is used will depend on people skills and the amount of time and energy they can devote to the process.

The details of how the leadership is selected is far too prescriptive. The timing and detailed process should be left to the RT. If they cannot do that, there is no hope that they will be able to achieve their end goal.

3.12. Terms of Reference

The Terms of Reference (ToR) call for the RT to confer with the Board Caucus Group at crucial junctures in their work. Completion of the Terms of Reference is one such time. The RDS-WHOIS2 RT, with the concurrence of their Board Liaison did so prior to submission of their ToR and found it a useful exercise. The Operating Standards should at least allow for this if not mandate it.

3.14. Resignation of Review Team Members

An SO/AC should be able to name a replacement according to its own processes. Limiting it to the original candidates or a new Call for Volunteers should be allowed but not required. This is exactly the process specified in section 3.15 for replacing removed RT members. In fact, the Operating standards should have sections allowing resignation, removal, and refilling (using the same procedure for both).

The sentence "If the SO/AC Chairs cannot reach consensus on the appointment, then by consensus." does not make sense. However, that is easily remedied by removing the entire paragraph, eliminating the step of the SO/AC Chairs having to approve the replacement.

3.17. Budget Management

The document says that the budget covers travel support for review team members. In fact, I have been told that the budget also covers travel support for ICANN staff who would not otherwise be at that location (such as a F2F meeting or an ICANN meeting) and may also cover hotel and other expenses if their stay is elongated due to a RT event.

CCWGs have a separate budget for volunteer and staff support, with volunteers only responsible for their own expenses. In the case of a Specific Review, the Operating Standards hold the RT (and thus its

leadership) responsible for the overall costs, even though they are explicitly told that they have no control over staff costs (including who should attend a meeting).

I believe it is totally unacceptable to hold a RT responsible for expenses that they have no control over.

In addition, if the RT is to be responsible for ensuring that expenses are with the specified envelope, they must have access to the full detail of the expense ledgers, not just envelopes for types of expenses.

The Document says that *"The overall budget envelope for each Specific review is allocated by the ICANN Board as part of ICANN's annual budget process…"*. That does not seem to be the case. ICANN operates on the basis of annual budgets and we have been repeatedly told that budgets cannot span years. The CCWG-Accountability had to go to extraordinary efforts to be allowed to carry an existing budget over to the next year. Yet Specific Reviews seem to have a set budget that is static and spans multiple ICANN fiscal years.

3.18 Travel Support

If a Review Team member is allowed to travel in business class for medical or other reasons, the RT budget bears the full cost. For regular ICANN volunteer travel to ICANN meetings, although the full cost of airfare for each person is publicly reported, the allocation is in "slots" so an SO;/AC is not penalized if one of their participants has a medical or other condition requiring business class travel. In the case of a Specific Review, the costs is borne by the review, so there is a strong incentive to not have anyone on the review team who has a disability or other condition warranting business class travel. In the extreme case, a RT with SEVERAL people with disabilities, their ability to carry out their work may be extremely hampered.

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.

3.19.1. Procurement of Independent Experts

This section is not sufficiently clear on the extent to which the RT point person(s) have access to sufficient information with which to select the appropriate contractor, nor is it clear to what extent the final decision must be acceptable to the RT.

If the RT is responsible for the propose 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.

I note that the provisions in this section are counter to those in 3.21. Confidentiality Disclosure Framework.

3.19.2. Considering advice from independent experts

Typo in the first sentence: "five" => "give". And later "Sumits" => "submits".

3.20. Decision-Making Procedure

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.

3.22. Changes to the Scope while the review is underway

This procedure is overly complex. As previously stated, I do not believe that we need a Scope Drafting Team. However, even if it were to exist, it should not be involved in this change process (potentially a year or more after it disbanded!). Similarly there is no need for SO/AC involvement. The Board needs to approve the original scope, and it is sufficient for the Board to accept or reject a change.

3.23. Role of Observers

Typo: "ream" => "team"

4. Review Output and Board Consideration

Typo: "while assure" => "while assuring"

I note that this entire document omits any reference to the Board Caucus group, although the Terms of Reference used of for the RDS-WHOIS2 Review have it playing a prominent role.

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. This is later repeated as requiring all identified issues to be addressed. And the following sentence requiring the number of recommendation be kept to a minimum is repetitive.

I explicitly support recommendations being given a priority (high, medium, low) as opposed to trying to prioritize them (that is, put them in order). Recommendations invariably address very different issues to be solved by very different people. Ordering them makes little sense.

4.2. Draft Report

It is very common that at the time a draft report is issued, some aspects of the review may not be at a stage where recommendations can be made. The draft report is an opportunity to put the matter before the community and solicit input. This must be allowed.

4.5. Submission of Final Report and Public Comment

My understanding is that the Final Report is submitted, and then the Board or the ICANN organization puts it out for public comment. That is not clear in this section, and it could be construed that the Review Team puts it out for comment prior to submission to the Board.

Bylaws

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.

SUMMARY

Overall I am very disturbed by the level of prescriptive detail in this document. Although I understand the origin in ICANN's desire to be open and transparent, I find 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.

I 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.