NCSG Comment on the Proposed Process for Streamlining ICANN Reviews

The Noncommercial Stakeholders Group (NCSG) appreciates the opportunity to comment on the proposed process for streamlining ICANN organizational reviews that was shared with the community on 30 April 2019.[1] The NCSG agrees that ICANN needs to undertake organizational reviews in order to keep the community accountable and effective. There may be ways in which ICANN can keep the costs of conducting these reviews down, such as by cutting down unnecessary expenditure. ICANN should not shorten the duration of any review or predict budget cuts that could potentially hamper the necessary and important steps of undertaking the review.

We would like to thank the Organizational Effectiveness Committee (OEC) for respecting the bottom-up multistakeholder process and seeking our input on this process, these issues, and for including us in every step.

Please find below our responses to your questions:

Four issues needing public comment

1.Do you/your organization agree with the proposed list of issues that should form the focus of the streamlining process? If not, with which do you disagree and what would you like to add?

Generally the NCSG agrees with streamlining the issues mentioned in this document but we are curious as to how they will be implemented. Is this streamlining process going to become guidelines for holding reviews? How binding are these guidelines going to be?

1.1 Purpose and scope of organisational reviews

Each organization's purpose has been defined in the ICANN Bylaws. The purpose of the review should be related to the purposes of the organizations' mandates as defined by the Bylaws. The scope of the review should respect ICANN bylaws and its technical and narrow mission. The scope of the review has to be based on a narrow interpretation of the Bylaws.

Review of the structures should happen very carefully. Sometimes it is very obvious that a structure is not balanced. For example, the GNSO is divided into two houses. Within the Non-Contracted Parties House the two Stakeholder Groups are supposed to be equal in terms of power and representation. Yet the Non-Commercial Stakeholder group has only one representative on the Nominating Committee, while the Commercial Stakeholder Group has three representatives on the Nominating Committee. This is an obvious imbalance which unfortunately the most recent NomCom Review did not sufficiently address and we are still

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[1] https://www.icann.org/public-comments/streamlining-org-reviews-proposal-2019-04-30-en

underrepresented. However, some groups might want to support structural changes to break the stakeholder group balance that has been carefully crafted and has worked so far. The ICANN Board has been aware of such attempts in the past and should continue being cautious when it comes to matters of changes in the structure of an organization.

1.2. Limited pool of suitable independent examiners, and selection of independent examiners

While ICANN has a peculiar governance structure, many of the issues that ICANN review processes raise are typical organizational and management issues that can be addressed by those who are not familiar with ICANN structure. Hence the knowledge that an independent examiners may or may not have about ICANN should not be a selection criterion, as such familiarity might even hamper their independence.

1.3. Whether or not recommendations issued by independent examiner should be binding or non-binding

The bylaws in section 4.4 state: "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."

It can be construed that if the Board decides on implementing some of the recommendations which relate to the structural changes, it can only do so with two-thirds of the vote of all Directors. If we can interpret in the same vein, the Board might be able to vote on the review to be adopted and be binding by ⅔ of votes. If the Board cannot decide on that and the community has positively responded to other recommendations, those recommendations can be implemented by the organization under review on a voluntary basis. However non implementation of the recommendations should be explained and the majority of the review results have to be adopted.

Some organizations implementation teams have rejected half of the recommendations of the review in the past. Considering the importance of the reviews for ICANN's organizations accountability and effectiveness, it is important for the implementation review team to accept at least most of the recommendations supported by the community so long as they do not concern the structure of the organization.

1.3 Length of the entire review process including implementation

It seems that the challenges of multiple reviews happening at the same emerged as a result of delays in undertaking the reviews during the IANA transition period. If that is the case, then the Board could decide to delay one or more reviews (in consultation with the community) so that reviews are not held at the same time and there is time for implementation. Section 4.4 of the Bylaws provides such flexibility, stating: "These periodic

reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board". Since delay in reviews have been done in the past and have resulted in holding reviews within a timespan of every 7 years,[2] it seems that the Board can either change the bylaws to reflect that reviews should happen every 7 years or continue deciding on whether to delay the reviews on a case-by-case basis.

2.Do you/your organization agree with the proposed underlying principles that should guide the solutions? If not, with which do you disagree and what would you like to add?

We agree with the principles but we reserve the right to disagree at a later stage if the principles are construed in ways that NCSG does not agree with.

3.Do you/your organization agree with the community role in the streamlining process? If not, what would you propose?

Yes. The NCSG agrees with the role of the community, but we also would like to point out that the community's public comments have to be taken seriously. It is not enough for the community to be allowed to speak - the community must also be heard.

4.Do you/your organization agree with the proposed high-level timeline? If not, what would you propose?

Yes.

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[2] The second review of the At-Large Advisory Committee was delayed due to the IANA transition.