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ICANN | IPC

The Intellectual Property Constituency ("IPC") appreciates this opportunity to respond to the four questions flagged for public comment in connection with the "Process for Streamlining Organizational Reviews: A Proposal" (https://www.icann.org/en/system/files/files/streamlining-org-reviews-proposal-30apr19-en.pdf).

General comments

The IPC applauds ICANN Org's and the ICANN Board's efforts to spearhead discussions within the community on improving our collective, group and individual effectiveness. The IPC embraces the opportunity to provide input on the future of organizational reviews in the same willing and enthusiastic spirit as its recent comments on Evolving the Multistakeholder Model (https://www.ipconstituency.org/assets/ipc-position-papers/2019/2019_06June_13%20IPC%20Comment%20re%20Evolving%20MSM.pdf). We believe that ICANN sits at an important juncture in its evolution, and that critical reflection is not only now timely, but imperative. Further, we commit to and encourage all involved to engage in more than just talk, and to reach tangible outcomes to improve organizational reviews in good time for the next round of reviews in 2021.

To confirm, these comments from the IPC are limited to responding to the four precise questions highlighted in this call for public comments (https://www.icann.org/public-comments/streamlining-org-reviews-proposal-2019-04-30-en). We understand that this is not the appropriate time to provide detailed substantive comments and suggestions on the evolution of organizational reviews, which we intend to provide in due course at the appropriate point.

Further, we emphasize that these comments are made in recognition of the 2021-2025 Strategic Plan; we believe that all future development of the ICANN community must take the Strategic Plan into account to achieve cohesive, achievable results. All aspects of ICANN's operations, strategy and mission must work together for us to be effective in delivering on any of these.

Specific comments

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?**

   1) Purpose and scope of organizational reviews – The IPC agrees that this is an important issue which presents an opportunity to ensure alignment between the Bylaws, ICANN's mission, and the 2021-2015 Strategic plan. More generally, scoping appears to be an area of weakness within ICANN – whether in the context of policy development processes, organizational reviews, SO/AC/SG/C structures, specific reviews, or cross-community working group mandates. Reflection on the scoping of organizational reviews must take place as part of a broader effort to improve scoping across ICANN as a whole; focusing narrowly on improving the scope of organizational reviews will perpetuate the siloed approach currently being taken.

2) Limited pool of suitable independent examiners, and selection of independent examiners – The IPC agrees that this is an important issue which again presents an opportunity for broader critical reflection on the impact of perceived conflicts of interest on all ICANN activities (including organizational reviews, policy development processes, current and former Board members).

3) Whether or not recommendations issued by independent examiner should be binding or non-binding – The IPC agrees that this is an important issue which has obvious connections both to the issue of the independence of examiners and the purpose of review.

4) Length of the entire review process including implementation – The IPC agrees that this is an important issue that must take into account the number of reviews, the length and frequency of the review cycle, and how to align the review cycle and process with the Strategic Plan to facilitate achievement of (rather than frustrate or obfuscate) Strategic Plan objectives. Timelines within ICANN are not currently either developed in concert or working together, and indeed often conflict or frustrate each other. As we evaluate organizational review timelines, we must also evaluate the timing of the development of the Strategic Plan and the Budget, and whether these timelines drive or are driven by SO/AC activity.

5) **Additional issue: Clarify roles and responsibilities in organizational reviews** – As a result of the unprecedented suspension of the Security, Stability and Resiliency 2 review, the IPC requests that the roles and responsibilities of the ICANN Board, ICANN Org, SO/AC leaders and broader community be considered as part of this process.

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?**

In addition to the identified underlying principles (Accountability, Timing, Consistency, and Industry-wide best practice), the IPC believes that the following should guide evolution of organizational reviews:

- Transparency (ICANN Bylaws Article 3) – The community, and indeed the review team members, of the Security, Stability and Resiliency 2 review were taken by surprise by the sudden "pause" of this organizational review. A commitment to transparency, insofar as is possible and not impacting on commercial in-confidence information, is necessary in scoping, operation and implementation of organizational reviews.

- Conformity with relevant principles of international law and international conventions and applicable local law (ICANN Bylaws Article 1, Section 1.2(a)) – The IPC believes that organizational review teams and implementation teams must have the input of qualified legal experts to ensure that outcomes are consistent with and do not impinge upon long-recognized international intellectual property rights conventions. Organizational reviews are not an opportunity to attempt to develop new law or lobby for international law reform; ICANN is a private body, and as such is not empowered to serve as a law-making forum.

- Enable competition and open entry in Internet-related markets (ICANN Bylaws Article 1, Section 1.2(a)) - The IPC believes that organizational reviews and their outcomes must prioritize consumer protection.

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

The IPC highlights the inherently diverse nature of the GNSO community, and acknowledges the many (at times, conflicting) stakeholder interests represented within the GNSO. Effective

participation of the entire GNSO community in the streamlining process cannot be achieved through the GNSO Council, the structure of which does not fairly or adequately reflect, either qualitatively or quantitatively, the post-New gTLD, post-IANA transition DNS. Effective GNSO participation in the streamlining process should involve direct participation of the Stakeholder Groups and Constituencies (through their respective leaderships), not solely the participation of the GNSO Council.

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

The IPC encourages ICANN Org to pursue a more aggressive timetable. Critical reflection on organizational reviews is valuable, but this process cannot turn into what is, in effect, itself a time- and scope-bloated organizational review. We the ICANN community must seize this as an opportunity to be more efficient and effective, rather than an opportunity to perpetuate existing inefficiencies and volunteer burnout.

In closing, the IPC reiterates our keenness to participate in this dialogue with a view to improving the overall effectiveness of ICANN in carrying out its mission. We welcome the opportunity to further engage with ICANN to bring about more effective organizational reviews.

Respectfully submitted,

Intellectual Property Constituency