Registries Stakeholder Group Statement

Issue: **Operating Standards for ICANN's Specific Reviews**

Date statement submitted: **2 Feb 2018**

Reference URL: https://www.icann.org/public-comments/reviews-standards-2017-10-17-en

Background[1]

There are four Specific Reviews as per ICANN Bylaws Article 4, Section 4.6:
- Accountability and Transparency Review - 4.6 (b)
- Security, Stability, and Resiliency Review - 4.6 (c)
- Competition, Consumer Trust and Consumer Choice Review - 4.6 (d)
- Registration Directory Services Review - 4.6 (e)

The Operating Standards are required as per ICANN Bylaws Section 4.6 (a), and must adhere to the guidelines set in Section 4.6. (a):
https://www.icann.org/resources/pages/governance/bylaws-en/#article4.6

The draft Operating Standards cover every aspect of the review process from the planning stage (Scope setting, Review initiation, Selection of Review team, etc.), the review (ToR, support, budget, practicalities, etc.), the review output and Board consideration (recommendations, draft and final reports, public comment, implementation, etc.):
https://www.icann.org/en/system/files/files/draft-operating-standards-specific-reviews-17oct17-en.pdf

There was a Cross Community Session on these Operating Standards at ICANN 60.
Recording at http://sched.co/CbHX

Registries Stakeholder Group (RySG) comment:

The Registries Stakeholder Group (RySG) appreciates the opportunity to provide comments on the draft "Operating Standards for Specific Reviews" ("Operating Standards"). Specific Reviews are a critical part of ensuring that ICANN is and remains a transparent and accountable organization. In the post-IANA Transition era, Specific Reviews have grown in their significance, and thus ensuring that each Review is conducted in a transparent, consistent, efficient, and predictable manner, as the Operating Standards seek to do, is critical to ICANN's ongoing self-governance.

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[1] *Background: intended to give a brief context/summary and to highlight what is most relevant for RO's in the subject document.*

With that context in mind, the RySG would like to begin by expressing its appreciation for the work ICANN Organization has put into compiling the Operating Standards document. The draft published in October 2017 offers a constructive first step on the path to creating consistency in the Specific Review process, and in turn making the Reviews more effective. The following comments offer the RySG's feedback on how the Operating Standards as drafted can address some of the challenges that currently exist with ICANN's Specific Reviews, as well as suggestions for further improvements to procedures outlined in the document. This feedback falls into the following areas:

- Scoping a Specific Review
- Interacting with the Broader ICANN Community
- Conducting the Review
- Addressing Problems that May Arise

Scoping a Specific Review

One key challenge that Review Teams face when embarking on a Specific Review is setting the scope in a way that is not overly broad or narrow. In fact, some Review Teams have been criticized for setting too wide of a scope for their Specific Reviews. The Operating Standards draft includes an elaborate Scope Setting process that is conducted prior to a Specific Review starting, even before the official Review Team is constituted. This process also concludes with ICANN's SOs/ACs considering the scope, followed by the ICANN Board of Directors; both groups are empowered to reject the scope if a majority (defined in the document) wishes to do so. **It is the RySG's view that the Scope Setting process as laid out in the draft Operating Standards is overly cumbersome, especially considering that it has the potential to add a full year to each Review – something that will only exacerbate existing problems with volunteer burnout.**

More importantly, empowering the ICANN Board to approve or reject the scope of any Specific Review represents a troubling overreach on the part of ICANN Organization, as such powers are not provided for in ICANN's Bylaws. The Bylaws very notably limit the ways in which the Board can be involved in Specific Reviews, which is key to ensuring that the Specific Reviews can act as meaningful independent accountability mechanisms. As such, **the RySG disagrees with the suggestion to allow the Board to approve or reject the scope of a Specific Review.** In fact, the entire Operating Standards document would be strengthened if it included a clearer delineation of what authority each ICANN community group has in regard to Specific Reviews.

While the RySG does not endorse a separate Scope Setting process, the suggestion of allowing the ICANN community to exercise oversight over Specific Reviews by reviewing their scope is welcome. The RySG suggests that the Operating Standards adopt an alternative approach wherein each Review Team incorporates steps of setting the scope, publishing that scope for public comment, and submitting the scope to the SOs/ACs for consideration into its overall timeline, similar to the processes the draft Operating Standards suggests for developing the Terms of Reference (see section 3.12) and the Work Plan (see section 3.13).

Interacting with the Broader ICANN Community

Another challenge with ICANN's Specific Reviews is that Review Teams are not always fully constituted with a full slate of members, or that the members that do volunteer do not possess the requisite skills to adequately conduct the Review. **The RySG supports the steps that the draft Operating Standards lay out for ensuring the skill sets in each Review Team, namely the publication of eligibility criteria for review candidates (section 2.5) and ICANN Organization conducting a non-binding diversity and skills analysis (section 2.8)**. Furthermore, **the RySG also suggests implementing a requirement that all Review Teams be fully constituted with 21 members, as allowed in the ICANN Bylaws**. To facilitate this, in the event that an SO/AC chooses to nominate fewer than three members, then the SO/AC Leaders should work together to select additional members to complete the 21-member roster, per the Bylaws.

A third challenge that exists with Specific Reviews is that ongoing communication between each Review Team and the broader ICANN community can be inadequate, resulting in a lack of understanding among certain community groups of the status of the review (the RySG does note, however, that the SSR2-RT's outreach efforts during the recent ICANN 60 meeting were beneficial and appreciated). The draft Operating Standards lay out numerous guidelines designed to improve communication and thus enhance transparency into the review process, including the maintenance of a wiki space (section 3.3) and the publication of quarterly reports (section 3.16), as well as regular reporting to the ICANN Board. The RySG supports these guidelines and encourages the Operating Standards to require reports to the Board's Organizational Effectiveness Committee be published, where appropriate. The RySG further encourages ICANN Organization to explore additional, innovative means for Review Teams to keep the community apprised of and engaged in their work, such as webinars prior to ICANN meetings (similar to the "Policy Open House" webinars that ICANN hosts) and engagement sessions during ICANN meetings, as the CCT-RT has held during recent public meetings.

Conducting the Review

One inherent risk in all of ICANN's Specific Reviews, which the draft Operating Standards attempt to mitigate, is that Reviews may result in recommendations that are impossible, logistically arduous, or prohibitively expensive to implement. To temper this risk, the draft Operating Standards advise that Review Teams should consult with both the ICANN Organization and the Board while developing recommendations to ensure their feasibility and usefulness as well as to gauge their potential expense for cost/benefit estimation purposes. The draft also mentions that when implementing recommendations, ICANN Organization should work with a "recommendation shepherd" appointed by the Review Team. While these guidelines seem sensible on the surface, the RySG believes each needs to be further clarified with additional detail. For starters, **the role of the "recommendation shepherd," a term that is only used once and not defined, should be elaborated**. It may be appropriate for the "shepherd" to be a small team of people, rather than an individual. Additionally, **adequate guardrails must be put in place to ensure that ICANN Organization and the Board do not quash recommendations they find to be inconvenient during the consultation process.**

Another risk present in the course of conducting Specific Reviews is that a given Review Team may mismanage its allocated budget and deplete the available funds before its work is complete. The authors of the draft Operating Standards recommend that each Review Team should manage its own budget and must submit a request to the ICANN Board if additional funds are required (section 3.17). **The RySG suggests that in order to more proactively mitigate against this risk, either the role of the Board Liaison should be formalized to include providing the Review Team with guidance on managing its budget, or that a member of the ICANN Organization should be appointed to help each Review Team manage its budget more effectively.**

Addressing Problems that May Arise

During the course of conducting a Specific Review, it is possible for the work to go awry for a variety of reasons, necessitating an intervention by members of the ICANN community. The draft Operating Standards, unfortunately, neglect to address what should happen if one or more SO/AC raises concerns about a particular Review Team or its work. As we saw in the events that transpired around the SSR2 Review during ICANN 60, it is clear that some additional guidelines, agreed upon by the community, are necessary. **The RySG advises formalizing a process for SO/AC Chairs to bring up concerns on behalf of their SO/ACs to the other Chairs before making those concerns public.** As an example, while a Review is underway, there could be a standing agenda item for each SO/AC Chair meeting/call where Chairs could bring up concerns for other Chairs to report back to their SOs/ACs for input.

The Board should similarly bring up any concerns that it may have about the conduct of a Specific Review with the SO/AC leadership through a process delineated in the Operating Standards, which should also make clear that the Board has no authority to unilaterally intervene in the proceedings of a Specific Review, much less suspend or dissolve it, as this would be contrary to the Review's independence.

Another potential scenario is that a Review Team becomes "captured" by a member or Chair with a malevolent agenda. While the draft Operating Standards outline requirements for Review Team members to disclose any conflicts of interest, **the RySG believes the volunteers for a Review Team should also be required to disclose any possible conflicts during the Call for Volunteers, with more detail than simply submitting a Statement of Interest.** The RySG also believes that increased communications, as suggested earlier in these comments, can go a long way toward alerting the community about potential issues before they become extreme.

Finally, and most importantly, **the RySG believes that finalized Operating Standards should include a clear designation of authority (and the limitations thereof) in the event that a Review Team fails to function properly or ceases to perform its work**. This designation should be firmly grounded in the ICANN Bylaws and the powers and limitations granted to various stakeholders within the ICANN community therein.