



IPC comment on the Refined Review of Reviews Proposal

Introduction

The Intellectual Property Constituency (IPC) is one of the constituencies within the Commercial Stakeholder Group (CSG) of the Generic Names Supporting Organization (GNSO) at the Internet Corporation for Assigned Names and Numbers (ICANN). It is responsible for advising the ICANN Board, the ICANN Organization, and other stakeholders on policy issues related to the management of the Domain Name System (DNS), particularly sustaining recognized intellectual property protocols as providing a trusted, reliable foundation for consumer protection. The IPC represents the views and interests of intellectual property owners worldwide, with a particular emphasis on trademark, copyright, and related intellectual property rights and their impact on and interaction with the DNS.

We also represent the interests and concerns of Internet users and Internet operators as consumers of limited Internet resources who depend on strong intellectual property protections to function predictably as an essential element to maintain their online consumer confidence, consumer trust and consumer protection. Our members include individuals, public and privately held companies, law firms, and intellectual property organizations located around the world.

The Intellectual Property Constituency appreciates the opportunity to comment on the refined proposal for ICANN Organizational and Specific Reviews. The IPC remains committed to ICANN's multistakeholder model, but the current refinements raise serious concerns for accountability, transparency, and the ability of the community to collaborate on meaningful improvements.

Historical Context Regarding the Reviews

The Specific and Organizational Reviews are not administrative conveniences. They are structural accountability mechanisms that were central to the U.S. Government's decision to relinquish its stewardship of the IANA functions in 2016.

The 2009 Affirmation of Commitments (AoC) between ICANN and the U.S. Department of Commerce established recurring reviews on four topics: Accountability & Transparency, Security/Stability/Resiliency, WHOIS Policy, and Competition/Consumer Trust. The AoC stated that ICANN "commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest". These reviews were placed on "a specific timeline" to prevent drift.

During the IANA Stewardship Transition, NTIA set criteria that any proposal must support and enhance the multistakeholder model and maintain the openness of the Internet. In response, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) recommended moving the AoC reviews into ICANN's Bylaws to make them permanent and enforceable post-transition.

The transition discussions also stressed that the possibility that ICANN might lose the IANA contract provided an independent check on ICANN's monopoly position, and that post-transition accountability must mirror that check. The reviews were designed to be that check. Consolidating, eliminating, or erecting barriers to reviews reverses commitments and nullified undertakings made to the global community as a condition of the transition.

Intellectual Property Rights as a Consumer Protection Imperative in the DNS

ICANN's legitimacy rests on its commitment to act in the public interest and to promote consumer trust in the DNS. The most direct and measurable way consumers experience that trust is through source identification: when an Internet user sees a domain name that incorporates a brand, they reasonably rely on that signal as shorthand for who stands behind a website, email, or online service. Intellectual property rights—particularly trademark rights—are the legal infrastructure that makes that reliance possible and predictable at global scale.

DNS abuse that undermines that reliance and predictability frequently begins with misdirection—domains that imitate or trade on trusted source identifiers (a/k/a trademarks) to divert users into phishing, payment fraud, credential theft, malware delivery, or counterfeit marketplaces. When policy choices impede the ability of rights holders to prevent, investigate, and remediate abusive registrations, the result is not

merely “brand harm”; it is a reduction in consumer safety and a measurable degradation of consumer confidence in the DNS as a reliable addressing system. In this sense, strong intellectual property protection is not a special-interest add-on to ICANN policy, but an essential online consumer protection tool that counters confusion and deters deception.

The community has long recognized this linkage. ICANN’s commitments to promote “competition, consumer trust, and consumer choice” and to enforce its registration data and WHOIS-related obligations were built on the understanding that consumer trust depends on accountability and enforceability. Rights Protection Mechanisms (RPMs) such as the Uniform Domain-Name Dispute-Resolution Policy (UDRP) and related procedures exist precisely because the DNS marketplace cannot function credibly if actors can obscure or falsify their identity, free-ride on a rightsholder’s time-honored goodwill and evade meaningful consequences.

Consumer goodwill established online in a brand or trademark is not established solely by positive intentions or reputation. Genuine goodwill must be earned by repeat evidence of distinctive quality delivered to consumers among competing producers in the marketplace that takes time for consumers to form and develop an ongoing association and trust in the brand or mark. This process requires sustained engagement, consistent quality, and tangible consumer recognition over time.

These mechanisms do not suppress competition; they sustain it by ensuring that competition occurs on legitimate merits rather than on deception and confusion.

Accordingly, any reconfiguration of ICANN’s Reviews framework should be evaluated through a consumer protection lens: does it preserve the stakeholder community’s practical ability to assess whether ICANN is meeting its commitments on consumer trust, registration data accuracy, and the effectiveness of RPMs? If review initiation thresholds are set so high that registration data and consumer-trust safeguards become functionally unreviewable, then the multistakeholder community loses a principal means of ensuring that the DNS continues to support reliable source identification for its website operators and end users.

Banning Policy Topics Weakens Accountability

The new Refined Review of Reviews framework would make optional the required Registration Directory Services (RDS) review. That means we lose the path that led to past improvements: the RDS lookup Interface Tool, better ICANN compliance, privacy/proxy oversight, and RDS accuracy studies.

Review Teams do sometimes touch policy. When they did, the Board sent their recommendations to the GNSO, following the appropriate processes. Cutting policy topics out of reviews means ICANN's policy work, implementation and related operations would run with no independent oversight.

Removal of Commitments Regarding Specific Reviews

The proposal to eliminate or merge certain Specific Reviews, including SSR and RDS, signals that these functions are no longer ICANN priorities. Yet both were deemed so critical during the transition that they were hard-coded into the Bylaws.

The IPC's mission is to "review and raise all intellectual property matters including any proposals, issues, policies, or otherwise, which may affect intellectual property, particularly as it interfaces with the DNS". The constituency has consistently tied DNS policy to IP protection mechanisms. Downgrading RDS-related reviews will stand in the way of significant future improvements to DNS security, rights protection, and public interest safeguards. Any update to the Reviews framework must therefore reaffirm that RDS obligations remain a Bylaws-level commitment. Removing or deferring RDS-related reviews would contradict the community consensus reached during the transition.

Proposed Standards for Initiating Reviews Are Too High

The refined outline raises the evidentiary and community-support thresholds for triggering both Organizational and Specific Reviews. In practice, these supermajority thresholds will entrench the status quo by making it procedurally impossible for the community to initiate reviews except in extraordinary circumstances.

Reviews should be an accountability mechanism, not an exceptional event. The AoC was designed to ensure recurring reviews on key aspects of ICANN's operations under a specific timeline. Erecting new barriers undermines the bottom-up nature of ICANN that the U.S. Government and global community required before relinquishing NTIA's stewardship role. As noted in transition commentary¹, a key concern was to ensure "ICANN is sufficiently insulated against capture by governments or other narrow interests" and that "an independent review process is in place to adjudicate and issue binding judgments". Thresholds that cannot be met defeat that purpose.

¹ See Stakeholder Perspectives on the IANA transition
<https://www.congress.gov/event/114th-congress/house-event/103448>

Transparency Requirements Must Be Preserved

The transparency obligations now codified in ICANN's Bylaws and operating procedures were not accidental. They were carefully negotiated during the IANA Stewardship Transition as core safeguards to protect the community from unilateral or "rogue" actions by ICANN post-transition.

NTIA's 2014 criteria² required any transition proposal to "support and enhance the multistakeholder model" and "maintain the openness of the Internet. The Affirmation of Commitments, later incorporated into the Bylaws, contains "provisions to ensure accountability and transparency in ICANN's decision-making with the goal of protecting the interests of global Internet users. During transition discussions,³ stakeholders argued ICANN should be transparent to the general public—a requirement that necessitated some form of Freedom of Information Act–like obligations to disclose ICANN records. Weakening review-related transparency now would undo a central pillar of the transition bargain.

The Refinements propose to limit Reviews to current ICANN processes rather than to apply to new processes that may emerge in the future. It is unclear why such a limit is necessary.

IPC Recommendations and Takeaway

- Treat intellectual property protections and RPMs as consumer protection infrastructure that reduces confusion and deters deception in the DNS.
- Preserve meaningful, workable review pathways for commitments most closely tied to consumer trust, including registration data obligations and the effectiveness of rights protection mechanisms.
- Avoid procedural thresholds that make it practically impossible for the community to examine whether safeguards are keeping pace with evolving abuse (e.g., phishing and impersonation schemes).
- Ensure transparency and access to the information needed to evaluate consumer harm and remedial effectiveness; consumer trust cannot be measured if key data is inaccessible.
- Reject heightened initiation thresholds that would prevent the community from calling for timely reviews.

² See NTIA, 9 June 2016 announcement of transition criteria.

<https://www.ntia.gov/press-release/2016/iana-stewardship-transition-proposal-meets-criteria-complete-privatization>

³ See congressional statement of Paul Rosenzweig of the Heritage Foundation at

<https://docs.house.gov/meetings/JU/JU03/20140410/102049/HHRG-113-JU03-Wstate-RosenzweigP-20140410.pdf>

- Preserve all Specific Reviews as distinct tracks, particularly SSR and RDS, and ensure they remain on a predictable schedule.
- Amend the proposal to set a realistic, achievable threshold for community-requested Specific Reviews.
- Explicitly incorporate RDS obligations into the Bylaws as part of any Reviews update, to ensure continuity with transition commitments.

The IPC urges the Review of Reviews team to revise the outline to align with the accountability and transparency framework that made the IANA Transition possible. Weakening these mechanisms risks undermining trust in ICANN and the multistakeholder model itself.

Respectfully submitted,

Intellectual Property Constituency