Statement of the Non-Commercial Stakeholders Group on the Updated Operating Standards for Specific Reviews[1]

The Non-Commercial Stakeholders Group (NCSG) welcomes the opportunity to provide input on the updated Draft Operating Standards for Specific Reviews (Operating Standards), which aim to ensure that ICANN's Specific Reviews are conducted in a transparent, consistent, efficient, and predictable manner, while supporting the community's work to derive the expected benefit and value from review processes.

First of all, we most certainly welcome several new aspects of the current proposed version for comments of the Operating Standards which incorporated our feedback. We specifically highlight the inclusion of the non-binding ICANN organization analysis of skills and diversity of candidates in the process, as well as the deference given to SO/ACs to decide how to run the selection process for the nominees. We find this very suitable in light of the principles of transparency and diversity which we strongly advocate for, as well as given that it allows SO/ACs to tailor processes to their specific operating mode and community composition.

Nonetheless, there still are a couple of elements that we think could be added or modified, in order to improve and to better align these procedures to ICANN bylaws:

1. **Increased transparency in the selection procedure with regards to expected time and financial commitment of selected Review Team members.**

In order to facilitate nomination process within each SO/ACs, we strongly suggest including in the call for volunteers a detailed account of:
   - **Expected time and financial commitment** required from Review Team members, directly or indirectly. This could be done by estimating, from prior similar work and based on the allocated budget, how much time should ideally be dedicated by membership, the proportion of online work versus to face-to-face or on-site meetings etc., the frequency of the meetings, the place and times of potential planned face-to-face meetings, mandatory reading or research requirements etc.
   - **Information about budget allocation** for the said Review Team which is already approved or known, or which can be anticipated with certainty.

This is important because, while for some members, the potential necessity of self-funding may not come as a deterrent from wanting to engage in such voluntary work, for others it may represent a real hustle, thus impeding their proper participation in the group's work. This is particularly true for members of NCSG, which are often mostly engaged in fields such

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[1] https://www.icann.org/public-comments/reviews-standards-2018-12-17-en

as not-for-profit organizations' work or academia, where empirically funding opportunities are of a more limited or restricted nature than in other SO/ACs.

On the other hand, being able to anticipate the exact costs and time commitment of one's participation as a volunteer may encourage some members to apply to be nominated by their SO/ACs, especially if knowing that no burdensome financial involvement would be required from them as volunteers. Transparency is especially important given the necessity to involve newer members, who may be competent and add value to the group, but who may not be familiar with the regular operational aspects of this. It would also discourage cases in which selected Review Team members are forced to miss face-to-face meetings due to lack of funding to attend face-to-face review meetings or time to attend the online ones, as they would be able to exactly anticipate or calculate their potential involvement.

2. A higher degree of accountability of Review Team members towards the SO/ACs that nominated them

As it is the SO/ACs that nominate Review Team members, thus actively choosing to place their trust in their abilities and commitment, selected members should be engaged more actively in reporting to the communities that nominated them. This should transpire at a higher degree within these Operating standards, in the way in which some parts are framed, or by introducing direct reporting obligations.

For instance:
"Individual review team members *are encouraged to* report back to their nominating entity on the progress of the review team."
should be rephrased to
"Individual review team members *have to* report back to their nominating entity on the progress of the review team."

We also recommend adding "The method and frequency of reporting should be decided by the SO/ACs that nominating them" to emphasize this obligation.

For instance:
"The review team shall also share their terms of reference, work plan, and scope with the SO/AC leadership. The review shall duly consider any such feedback offered by the SO/AC leadership." should be extended to sharing to full SO/ACs, not only to SO/AC leadership, to encourage the involvement of the entire community and limit any potential barrier that may come up in SO/AC leaders communication to their communities.

For instance:
"3.6 Individual review team members *also are encouraged to* report back to their nominating entity with respect to the progress of the review team" should be rephrased to "Individual review team members also *have to* report back to their nominating entity with respect to the progress of the review team"

Introducing regular reporting methods would also give more clarity to SO/ACs monitoring obligations, which at this point are rather vague:

"Regularly review the progression of work towards fulfilling the adopted scope and work plan, sharing any concerns with the review team as soon as concerns become apparent.

Regularly monitor the review team's progress and provide relevant and constructive input when appropriate."

Direct and regular reporting of those nominated would also set up the premises for and effective monitoring as it would ensure that SO/ACs members receive up-to-date and complete information from the work done within the Review Team.

3. Inclusion of the same standards regarding diversity and skills in the formation of sub-teams.

Given that, empirically, a majority of the work is done in sub-teams, and in light of the importance of diversity in decision-making processes, we believe that, in the formation of sub-teams, the Review Team should seek to abide by same standards of skills and diversity as in the selection of the Review Team itself. We thus suggest adding to this:

"Sub-teams will only be composed of review team members and will have a clear scope, timeline, and set of deliverables."

the sentence:

"In forming sub-teams, the Review Team members should strive to achieve a group composition balanced for diversity and skill."

As this would encourage potential debates to take place in the sub-team rather than in the full team, it would decrease the chances that the work outcome of sub-teams will be highly disputed within the full Review Team, leading to difficult voting processes or several dissenting opinions which could delegitimize the outcome of the Review Team's work.

4. Inclusion of entity responsible for the procedure in the removal of Review Team Members

"3.4 Removal of Review Team Members

If a review team member is sufficiently inactive or disruptive as to cause at least 50% of review team members (excluding the member in question) to request their removal, such member will be asked to resign. If such member refuses to resign, the SO/AC that endorsed the member will be requested to withdraw their support and nominate a replacement. Should the SO/AC not take action, the member can be removed by a 70% majority vote of the review team members (excluding the member in question). Voting shall be by secret ballot."

While we welcome the inclusion of a concrete process for removing Review Team members, we find it insufficiently detailed, especially with regards to the person coordinating this process. This is a potential highly conflictual and sensitive matter, therefore it should be clearly explained who is the person to whom the 50% of Review Team Members should address to to request member's resignation, who will request the SO/AC to withdraw their

support for the person proposed for removal, who would organize the final voting over the removal. The best would be to have ICANN organization representative in charge of this, due to lack of bias or direct interest in the procedure. Alternatively, the Review Team leadership could also be tasked with this task, as long as there are checks in place to minimize potential biases or conflicts of interest.

5. Inclusion of duty to check potential conflicts of interests or biases in the selection of Independent Experts

At this point, the Operating Standards for Specific Reviews do not include as a duty of selectors the necessity to verify potential conflicts of interests (concrete or potential) in the procurement of Independent Experts process.

Considering (1) it is ICANN funds that is allocated to compensating chosen Independent Experts, and that (2) the Review Team is not bound by the recommendations made by Independent Experts, we consider that additional attention should be given by those selecting the Independent Experts to any declared or appearance of conflict of interests. Independence and neutrality are not only relevant for the quality and neutrality of the expert advice given, but also for its legitimacy, and the legitimacy of the funds usage for this purpose. Any potential rejection of the advice received, paid with ICANN funds, on the grounds of bias or non-impartiality, is a failure of the procurement of Independent Experts process, and should be eliminated from the beginning.

We therefore recommend including this additional duty of care in the selection process in the list of Roles and Responsibilities of both Review Team and ICANN organization, to minimize any potential risk that they may overlook biases.

6. Ensure that the draft and final report fully reflect the process and the outcome of the reviewing process

To better reflect the process and the activity of Review Team members, we recommend that the draft and final reports also include the following:
- whether independent experts have been consulted and highlight what/where their expertise has been considered and to what extent
- list of Review Team membership and SO/ACs nominating them, timeline of any changes in composition, leadership etc.

Given that SO/ACs membership rarely can monitor the progress of the Review Teams' work extensively, it is important for a better feedback and for a deeper understanding of the work that was done to present results that are exhaustive with regards to processes, inputs and outputs, interests, timeline, framework, context etc.