

Public Comment Process Discussion Paper for ICANN PPC

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This paper is drafted to facilitate the PPC's discussions on Public Comment processes during their ICANN Board Committee Meetings.

0. Background

The new Public Comment Process was launched on 1 January 2012. The implementation details were designed based on ATRT recommendations and following Community feedback (mainly through a Focus Group interaction followed by wider Community feedback through a Public Comment period on the subject).

This whole work is documented at <http://www.icann.org/en/news/public-comment/public-comment-enhancements-ii-31aug11-en.htm>

Accordingly, the system in place has been in effect with the following features:

1. The official minimum Comment period is 21 days.
2. The official minimum Reply period is 21 days.
3. If no substantive comments are received during the Comment period, then there will be no Reply period.
4. During the Reply period, participants should address previous comments submitted; new posts concerning the topic should not be introduced. When constructing Replies, contributors are asked to cite the original poster's name, comment date, and any particular text that is pertinent.

1. Current Status and Problem Statements Summary

After 5 months of the system being in place, the following general problems are being observed regarding the system:

1.1 Reply period is not used as intended: The behavior so far observed is such that Community does not really use the Reply period as intended. Out of 193 posts only 15 of them were observed as really responses to some previous posts (by 11 June 2012 for comment periods concluded end of May 2012). Contrary to this and the point 4 above, the Reply period is observed to be used as sending new and so late comments that should have been sent during the Comment period. In fact, the observation is that the Comment period is still the main mechanism that is used for providing feedback by the ICANN Community.

1.2 Duration of Comment periods: While minimums are set as minimums, some Public Comment periods were opened with the 21 days for the Comment period. (About 50% of all public comments opened since 1 Jan 2012 had the minimum 21 days). A few of these issues were major ones, such as FY13 Budget , that many

ICANN groups would have liked to have more time to gather consensus within their groups and submit a group comment.

This resulted in growing concern about the minimum 21 day from the Community and continuous requests for extensions for some of the highlighted public comment periods.

1.3 Conflicting needs and requests from different parts of ICANN: While 1.2 is a problem perceived by some groups (mostly ALAC and recently ccNSO), GNSO's concern is more about the fact that the process takes too long. During the Public PPC session in Costa Rica, some GNSO representatives raised the issue of exceptions to be made so that Reply period can be cancelled despite having comments received during the Comment Period (as opposed to point 3 above) or having a shorter Reply period than the minimum 21 days.

Based on above, following is a summary of the main concerns raised about the system so far:

1. Reply period is not used as intended
2. Reply period is not useful for some groups
3. Comment periods should be made longer

2.0 Solutions Set

The following are suggested solutions to address the problems outlined above. There may be other variations or completely new solution sets that can be added to this list but these are initial thoughts for the purposes of this discussion document:

Solution Set 1:

- 1.a. Extend the minimum Comment period to 40 days.
- 1.b. Allow overlap between Comment and Reply periods.
- 1.c. Decrease Reply period to 15 days.

Thoughts on Set 1:

Initial Staff recommendation for Comment Period was 30 days, before it was set to 21 days based on various feedback from the Community before the implementation on 1 Jan 2012.

Communication with various groups is that this is already quite a limit for them to gather consensus among themselves before they can submit a public response. 40 days should allow most groups to go through their internal procedures to enable them to contribute to the topic.

Allowing overlap between Comment and Reply is also suggested by the ccNSO. This can also address the “exceptions” request, for those groups who would not like to deploy a Reply period to save time. Allowing full overlap can leave a Public Comment elapsed time at 40 days (or as long as the Comment period).

This method may be preferred as it both allows the ATRT recommendation to be kept (separate Comment and Reply periods) and provides a better solution to the actual need at ICANN without extending the overall elapsed time for Public Comments.

Solution Set 2:

2.a Extend the minimum Comment period to 45 days (or longer).

2.b Remove Reply period

Thoughts on Set 2:

The Reply period is not effectively used as outlined above. The ICANN Community tends to put more focus on providing their groups’ feedback than evaluating or discussing other comments.

Introducing a more interactive discussion environment, where responses/replies are to be promoted and encouraged, should be decided based on a wider discussion on what is the purpose of ICANN Public Comment processes and whether it is the right method for the ICANN Community.

This method may be preferred for simplicity. A single period is much easier to follow and it is less legalistic for the needs of the ICANN Community. Encouragement for more interactive correspondence at the forum can be achieved with better forum tools as well as continuous promotion of the process.