

# Draft Operating Standards including ccNSO suggestions

## For Specific Reviews

Draft version for public comment, October 2017

This draft includes the annotations and suggestions by the  
GRC



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# 1. Introduction

## 1.1. Background

Specific reviews (hereafter: ‘Reviews’) are an integral part of ICANN’s accountability mechanisms that derive, respectively, from Article 4, Section 4.6 of ICANN’s Bylaws (hereafter ‘the Bylaws’). These reviews are conducted by the ICANN community (hereafter ‘the community’) and are overseen by the ICANN Board (hereafter: ‘the Board’). Such reviews adhere to standards and criteria that are documented in these ICANN Operating Standards for Specific Reviews (hereafter: ‘Operating Standards’), to ensure that they are conducted in a transparent, consistent, efficient, and predictable manner, while supporting the ICANN community’s work to derive the expected benefit and value from the process.

To assure that reviews are conducted productively, they shall, wherever possible, adhere to the following principles:

- Efficiency: make prudent use of volunteer time and ICANN budget;
- Effectiveness: result in recommendations that are specific, measurable, attainable, realistic, and time-aware;
- Timeliness: establish and adhere to meaningful time boundaries for review activities.

According to the CCWG Accountability the goal of the Operating Standards is improving the efficiency and effectiveness of reviews.

Although we do not disagree with the principles as detailed in the draft, we wonder this is the most appropriate interpretation of the CCWG recommendations that the goal of the operating standards is to *improve effectiveness and efficiency of the reviews*. We also believe that other principles such as transparency and predictability of process are relevant.

The ccNSO would appreciate a workflow type of overview of the proposed procedures and a guestimate of minimum and maximum duration of the combination of all proposed procedures.

## 1.2. Values

Specific reviews are conducted in accordance with ICANN’s Bylaws’ mission, commitments, and core values. Specific reviews are one of numerous ICANN commitments to continuous improvement, and they help evaluate how ICANN is meeting its commitments.

### 1.3. Overview of ICANN's four Specific reviews

As of 1 October 2016, <sup>1</sup>, the four "Specific Reviews" are part of the ICANN Bylaws,<sup>2</sup> with the following mission:

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1. Ensuring accountability, transparency and the interests of global Internet users (Accountability

<sup>1</sup> Prior to 1 October 2016, ICANN committed to perform four different kinds of reviews under the Affirmation of Commitments (AoC) it held with the U.S. Government, see <https://www.icann.org/resources/pages/governance/aoc-en>.

<sup>2</sup> See <https://www.icann.org/resources/pages/governance/bylaws-en>.

and Transparency review; Section 4.6 (b) of ICANN Bylaws);

2. Preserving security, stability and resiliency of the Domain Name System (Security, Stability, and Resiliency review; Section 4.6 (c) of ICANN Bylaws);
3. Promoting competition, consumer trust, and consumer choice (Competition, Consumer Trust and Consumer Choice review; Section 4.6 (d) of ICANN Bylaws).
4. Enforcing its existing policy relating to registration directory services, subject to applicable laws (Registration Directory Services review; Section 4.6 (e) of ICANN Bylaws);

According to the Bylaws, these Specific reviews shall be each carried out in five-year intervals (except Competition, Consumer Trust and Consumer Choice review which is to take place after a New gTLD Round has been in operation for one year), measured from the convening of the previous review team, and conducted by a community-selected review team “balanced for diversity and skill.”<sup>3</sup>

Comment: We would have expected a section on scope of the Operating Standards. Do OS apply to all review teams? Can they be adopted voluntarily and if so by whom? For example, for organizational reviews. And from another perspective what is included based on the ICANN Bylaws (i.e. has to be included, what is included based on experience to date, and what is included to address potential issues.

## 2. Planning Phase

### 2.1.Scope Setting

To allow for an efficient, effective, and timely review process, the scope for each of the four Specific reviews shall be set prior to the selection of the review team.<sup>4</sup>

General Comment. It is not clear why this method of drafting team followed by Review team is proposed. Although this is tested method in the realm of the GNSO, and CCWG’s, alternatives are feasible as well, as proven by the current RDS/WHOIS 2 Review.

Related, adding this additional cycle will increase the total duration of a review and resource requirements (both in terms of volunteers, staff support, and other resources). We fear that as a result of the proposed method, the issues identified

under our general comment relating to the resourcing and staggering of reviews will increase will increase, as the duration of each review is extended, and hence the time between reviews further diminished.

No less than twelve months prior to start of each Specific review, as determined by the Bylaws, the ICANN Board shall request that the SOs and ACs form a Scope Drafting Team that is tasked with drafting the scope for the respective review within a 12-month period, including a standard ICANN Public Comment period on the suggested scope for the review. The Scope Drafting Team shall start its work no later than eight weeks following the Board's request.

The Scope Drafting Team shall consist of no more than two representatives from each of the SO/ACs, to be selected by each SO/AC in accordance with their respective, internal procedures, and one Board Director or Liaison. If an SO/AC does not wish to participate in the Scope Drafting Team, it may choose to decline participation, which shall not preclude that SO/AC from participating in the Review Team itself.

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<sup>3</sup> ICANN Bylaws, Article IV, Section 4.6 (a)(i); <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>4</sup> The Selection Process is detailed below in Section 2.

SO/ACs that do not participate in the Scope Drafting Team may still provide input into the work via the Public Comment period and are still requested to consider the finalized scope as per the procedure detailed in these Operating Standards.<sup>5</sup>

The Scope Drafting Team shall meet remotely as necessary and receive administrative support by the ICANN organization.<sup>6</sup> Once formed, the Scope Drafting Team shall aim to submit the scope for public comment within six months. If the Team requires a longer time period it shall inform the SO/ACs of the delay, provide any applicable justifications, and provide a realistic timeframe for the conclusion of its work – taking into consideration the Bylaw-mandated deadline to start the review.<sup>7</sup>

The Scope Drafting Team shall operate under the same guidelines and procedures as a review team, detailed in these Operating Standards, including a leadership team of no fewer than two co-Chairs. The Team’s decision-making shall be based on consensus.<sup>8</sup>

In determining the scope for each of the Specific reviews, the Scope Drafting Team must take into account the scope requirements for each of the reviews detailed in the Bylaws and identify how those requirements are satisfied. The Scope Drafting Team must also observe ICANN’s mission when identifying the scope for any review.

Once a draft scope has been agreed by the Scope Drafting Team, it shall be subjected to ICANN’s standard public comment procedure, managed by the ICANN organization.

SOs and ACs, particularly those that chose not to have representatives on the Scope Drafting Team, are strongly encouraged to use the Public Comment period to highlight any issues that may prevent the SO or AC from adopting the proposed scope.

In addition to the public comment, members of the Scope Drafting Team are encouraged to reach out to the wider ICANN community, via webinars, or individual briefings, to provide information on the draft

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<sup>5</sup> See Section [insert Section number].

<sup>6</sup> This includes facilitation to set up conference calls, virtual meeting rooms, draft agendas, and support drafting of substantive output (if requested by the Scope Team), in line with support for review teams detailed below; it does include travel support.

<sup>7</sup> The Bylaws mandate a review must start 5 years after the the formation of the previous review team.

<sup>8</sup> The decision-making procedure for review teams is detailed below in Section 3.20.



scope and its content. ICANN organization will support these efforts, whenever possible, by publicizing outreach efforts, facilitating calls, and providing virtual meeting rooms.

The Scope Drafting Team, having considered all public comments received, shall update the proposed scope based on comments and feedback received during the public comment period.<sup>9</sup> The final document, supported by the consensus of the Scope Drafting Team, shall be forwarded to all of ICANN's SO/ACs for their consideration. In accordance with internal procedures, each SO and AC may either approve the proposed scope, reject it, or abstain from a decision. The proposed scope is considered approved unless it is rejected by three or more SO/ACs.

Any SO/AC that rejects the proposed scope shall include a rationale for its decision and also indicate which amendments to the scope would render it acceptable.

If rejected by three or more SO/ACs, the Scope Drafting Team shall reconvene. All SO/ACs that have rejected the initial scope must have at least one representative on the reconvened Scope Drafting Team.

Once concluded, the updated scope will be submitted for public comment and approval by the SO/ACs, in accordance with the threshold laid out above in this section.

The SO/AC-approved scope shall be forwarded to the ICANN Board for its consideration. The Board may reject the scope by a 2/3 majority vote. In case of the Board's rejection, it shall provide a detailed rationale and the Scope Drafting Team is to be reconvened, in accordance with the procedure detailed above.

Once the Board has confirmed the scope, it shall also initiate the respective review as detailed in the Operating Standards, and subject to the timeline mandated in the Bylaws.

If the Scope Drafting Team has not completed its work in time for the scope to be adopted prior to the Board's convening of the review,<sup>10</sup> the scope of the review shall be limited to the scope provisions

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<sup>9</sup> The consensus rules applicable are the same as those for the Specific review Teams, detailed in Section 3.20 below.

<sup>10</sup> As mandated by the Bylaws to occur five years after the convening of the previous review.

detailed in the ICANN Bylaws for that review.<sup>11</sup> This does not negate the review team's ability to amend the scope as per section 3.22 of these Operating Standards.

Comment: is this ability to amend the scope of a review as foreseen under 3.22 only limited to this case?

## 2.2. Review Initiation

The ICANN Board initiates the review within the timeframes set out in the Bylaws for each Specific review, with a resolution containing at a minimum:

- ☐ Direction to ICANN organization to issue a call for volunteers for review team membership;
- ☐ Appoint a Board Director or Liaison as a member of the review team;
- ☐ Instruction to the review team, once formed, to produce the terms of reference,<sup>12</sup> and a work plan,<sup>13</sup> including a timeline.

## 2.3. Review Team

Each Specific review is conducted by a community-appointed review team, including a Board-nominated Director or Liaison. The members shall be qualified to conduct the respective review and willing to commit the necessary time and work effort.

## 2.4. Call for Volunteers

As directed by the ICANN Board, ICANN organization shall issue and run a call for volunteers for each review team and, in this context, be responsible for:

- ☐ Timely publication of call for volunteers;
- ☐ Determining the need to extend the call, in case of insufficiently diverse or skilled pool of applicants;
- ☐ Assure that each applicant indicates which SO/AC from which they seek nomination and encourage applicants to familiarize themselves with the work and leadership of the SO/AC from which they seek nomination
- ☐ Provide a non-binding assessment of the skillset of each of the applicants relative to the skills

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<sup>11</sup> See Bylaws Article IV, Section 4.6 (b)(ii), (c)(ii), (d)(iii), (e)(ii-iv).

<sup>12</sup> Detailed on requirements for the terms of reference can be found in Section 3.12.

<sup>13</sup> Detailed on requirements for the work plan can be found in Section 3.13.

and experiences identified in the call for volunteers;

- ② Provide each SO/AC with a list of those applicants who have sought their respective nomination, including all application materials, and the non-binding skillset assessment;
- ② Coordinate the meeting of SO/AC Chairs for the final selection of the review

team. The call for volunteers must:

- include a mandatory field for candidate to indicate which of the seven SO/ACs from which they seek nomination.
- include a Statement of Interest (SOI) to be filled in by every candidate.
- solicit information from applicants regarding their skillset and experience, relevant to the review.
- set an expectation that a review team member may be asked to execute a non-disclosure agreement.

The call for volunteers shall remain open for no less than 10 weeks.

Once the call for volunteers is closed, ICANN organization shares with each SO/AC the information of all applicants who have sought their respective nomination.

Comment: It is the understanding of the ccNSO Council that the ccNSO should select and nominate a limited number of members on a Specific Review if the ccNSO would decide to participate. It is also our understanding that the proposed method for the call for volunteers, has been used for the SSR 2, ATRT 3 and RDS/WHOIS 2 review is based on the method developed for SSR 2. We note that alternative methods for call for volunteers could be used within the parameters set-out in the ICANN Bylaws, such as the method used for call for volunteers for the CSC or Cross-community Working Groups. We would therefore prefer to understand the reasons why this method is proposed and preferred over others.

## 2.5. Eligibility Criteria for Review Candidates

ICANN organization shall publish a list of skills and attributes that each candidate should have in the initial call for volunteers, consistent with the requirements detailed in these Operating Standards.

These desired skills shall be shared with the SO/ACs to inform their nomination process, as well as

the SO/AC Chairs to inform their selection process.

Criteria should be consistent with the scope and they may be adapted to fit each of the Specific reviews but some general skills and attributes should form part of the required skillsets for all reviews, these include but are not limited to:

- Familiarity with ICANN’s multistakeholder model;
- ☐ Team spirit, adaptability, consensus-seeking attitude;
- ☐ Willingness to learn;
- ☐ Readiness and time to contribute;
- ☐ Capacity to reason objectively, putting aside personal opinions or preconceptions;
- ☐ Analytical skills; and
- ☐ Based on the information provided on the Statement of Interest, no apparent conflicts of interest that may impact the review work.

In addition, each Specific review may also require skills and attributes relevant to its specific subject area, including, but not limited to those listed in section 2.5.1 to 2.5.4 below.

**Comment:** We suggest that a statement from the employer will be included as requirement, both to ensure the employer is aware of possible time-commitments and to ensure availability.

#### 2.5.1. Skills relevant to the Security, Stability, and Resiliency of the DNS reviews (SSR) may include:

- ☐ Knowledge of Internet Unique Identifiers, including; DNS (Domain Name System), IP Numbering, AS Numbers, and Protocol Parameters;
- ☐ Knowledge of Unique Identifier abuse;
- ☐ Understanding of Registry and Registration security and abuse;
- ☐ Understanding of operation of the DNS root name system;
- ☐ Understanding of malware and abuse vectors and mitigations;

- ☐ Knowledge of risk assessment and management;
- ☐ Understanding of corporate data Security and/or business systems; and
- ☐ Understanding of Incident response.

### 2.5.2. Skills relevant to Competition, Consumer Trust and Consumer Choice reviews (CCT) may include:

- ☐ Knowledge of ICANN and its working practices and culture, including the New gTLD Program;
  - ☐ Expertise in consumer protection matters;
  - ☐ Understanding of the New gTLD application processes and protection mechanisms;
  - ☐ Expertise in or knowledge of mitigating DNS and potential security threats;
  - ☐ Experience in evaluating competition and market forces in the gTLD space or in other industries;
- Expertise in quantitative analysis and information systems;
  - Expertise in or knowledge of intellectual property rights protection;
  - Knowledge of competition, consumer choice and consumer trust in the domain name or other marketplaces; and
  - Capacity to draw fact-based conclusions and feasible and useful recommendations.

### 2.5.3. Skills relevant to Accountability and Transparency reviews (ATRT) may include:

- Knowledge of performance assessment and audits;
- Expertise in good governance and board performance;
- Understanding of performance measurement;
- Knowledge of process improvement;
- Knowledge of recognized frameworks for organizational excellence; and
- Understanding of principles of accountability applicable to organizations broadly similar to ICANN.

#### 2.5.4. Skills relevant to Registration Data Service reviews (RDS) may include:

- Familiarity with operation of the Domain Name System (DNS);
- Familiarity with WHOIS registrant data collection, compliance, directory service (RDDS) management;
- Familiarity with Translation and Transliteration of WHOIS Contact Information;
- Familiarity with ICANN Procedure for Handling WHOIS Conflicts with Privacy Law;
- Familiarity with malware and abuse vectors and mitigations, including cybercrime; and
- Familiarity with WHOIS Data Retention Waiver Process.

## 2.6. Review Team Selection Process

As per the Bylaws, “[r]eview teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team.”<sup>14</sup>

In addition, the Bylaws state that the selection process must “be aligned with the following guidelines: Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team; [a]ny Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and [i]f any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.”<sup>15</sup>

## 2.7. SO/AC Nomination Process

In accordance with the criteria detailed in the Bylaws, each SO/AC, following its own internal processes, nominates up to seven candidates for each review team, selecting from the pool of applicants that responded to the call for volunteers. In doing so, the SO/AC shall take into consideration the skillset and diversity of the applicants who have sought their nomination, as well as the potential for an applicant to have a conflict of interest in any specific matter or issue likely to be in the review, based on the information candidates provided in their Statement of Interest.

To set applicants’ expectations and assure an efficient and timely process, the SO/AC nomination process shall be completed no later than eight weeks following the submission of the list of candidates by ICANN organization to the SO/ACs.

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<sup>14</sup> Bylaws, Article 4, Section 4.6(a)(i).

<sup>15</sup> Bylaws, Article 4, Section 4.6(a)(i)(A-C).

Once the nomination is completed, the SO/ACs shall submit their candidates, including any indication of preferences for selection in case more than three candidates are nominated, to ICANN organization and the SO/AC Chairs.

Comment: the ccNSO Council suggest that this section will be more elaborated and discussed.

Additional issues we have identified are:

- If a SO/AC proposes 4 or more candidates in order of preference, will it be possible for the SO/AC chairs participating in the process to deviate from that order of preference
- When should a SO/AC decide, inform ICANN and the other SO/ACs it is not participating?
- If a SO/AC declines to participate, should the chair of that SO/AC refrain/ be excluded from the selection process?

## 2.8. ICANN Organization Non-Binding Diversity and Skill Analysis

Based on the candidates nominated by the SO/ACs and taking into consideration any preferences in nominated candidates, ICANN organization shall draft a non-binding analysis of the diversity and skillset for the presumed review team, based on the analysis that ICANN organization performed of all candidates and had previously submitted to the SO/ACs (see Section above). This non-binding analysis shall be based on the nominees' application material and ICANN organization should complete it within seven calendar days of having received the nomination response from all seven SO/ACs.

Once completed, ICANN organization will share the non-binding analysis of skills and diversity with the SO/AC Chairs to inform their selection process.

Comment: The added value of the proposed (non-binding) analysis is unclear. In particular if a SO or AC proposes 3 or less candidates.

## 2.9. SO/AC Chairs' Selection Process

No later than two weeks after it submitted the non-binding skill and diversity analysis, ICANN organization shall organize a call for the SO/AC Chairs to discuss and determine the final selection of the review team.



If more than one call is required, the SO/AC Chairs shall determine the frequency and ICANN organization shall provide appropriate administrative support for these meetings.

The SO/AC Chairs' selection must be subject to the criteria laid out in the Bylaws and in the call for volunteers, to assure a skilled and diverse review team.

**Comment:** See above, comment section 2.6. Further, it is unclear how and to what extent the SO/AC chairs should and could ensure the diversity and skill level for a review team. What means are available to them?

In addition to the preference indicated by the SO/ACs, the SO/AC Chairs are strongly encouraged to take into account the non-binding diversity and skill analysis (see 2.8), as well as any other relevant information, to assure a diverse and competent review team.

**Comment:** The added value of the proposed (non-binding) analysis is unclear, in particular if all documentation provided is available to the selecting SO and AC.

The purpose of this additional step is to alert the Chairs of any shortcomings in diversity and skillset across the full anticipated composition, and to allow them to confer with their respective SO/ACs in order to make changes to nominations or otherwise receive modified direction on completing the selection process.

**Comment:** Does this imply that the Chairs could deviate from the preference from a SO or AC?

In their deliberations, and per the Bylaws, if one or more SO/ACs nominated fewer than three candidates, the SO/AC Chairs may select more than three nominated candidates from any SO or AC that has nominated more than three candidates. This may aid the goal for an adequate balance of diversity and skill among the review team, as required under the Bylaws.

While the deliberations of the SO/AC Chairs may be held in private, for transparency purposes, a post-factum summary report of the SO/AC Chairs deliberations and decisions, prepared by ICANN organization, will be published no later than two calendar weeks after the conclusion of the selection process. The report will be compiled by the ICANN organization. Personal information of applicants,

such as email addresses, dates of birth, and phone numbers will not be made public.

## 2.10. Announcement of the Review Team

Once the SO/AC Chairs have finalized their review team selection, ICANN organization shall publish an announcement on icann.org announcing the composition of the review team.

## 3. Conducting the review

### 3.1. Support for Review Team

ICANN organization will support the review team's work, providing project management, meeting support, document drafting if/when requested, document editing and distribution, data and information gathering if/when requested, and other substantive contributions when deemed appropriate.

### 3.2. Language

The working language of all review teams is English.

### 3.3. Wiki Space

Each review team shall maintain a community wiki space that shall contain at a minimum:

- ❓ Membership list of the review team, including regional affiliation and the SO/AC from which each was nominated;
- ❓ Terms of reference, including scope;
- ❓ Work plan;
- ❓ List of all review team and Sub-Team meetings, including agenda, recordings, and transcripts;
- ❓ Opportunities for observers to participate;
- ❓ Request/action item tracking;
- ❓ All published quarterly factsheets;
- ❓ Clear description of all outreach efforts;
- ❓ List of all research efforts undertaken by the Team, ICANN organization, or outside researchers;
- Link to the review team's public email archive.

### 3.4. Conflicts of Interest Policy and Statements of Interest

All review teams will be subject to a Conflict of Interest Policy that is in line with the practice of the ICANN Board. The Conflict of Interest Policy shall provide for mechanisms for the review team to consider when a review team member has a conflict that requires exclusion from discussion on a particular topic. To facilitate the identification of potential or actual conflicts of interests, all review team members shall maintain up-to-date statements of interest in the form provided by ICANN organization. In the event the review team identifies that a member has a conflict of interest on a number of issues across the review team's work, such that participation in review team work is greatly impaired, the [leadership of the] review team shall notify [?] to determine if it is appropriate for the member to remain, in accordance with the removal process set out at [] below.

A Statement of Interest template will be provided by the ICANN organization to all candidates.<sup>16</sup>

Comment Col / NDA. Structure: It is the view of the ccNSO that the Col is also relevant to SO/AC chairs. From a structural point of view one would expect it would look at the whole specific review, including the drafting team as well. In addition to change the templates i.e make them relevant for a all community members. The ccNSO does not use the Sol or Col mechanism as proposed. People contributing to the work of the ccNSO are directly related with a ccTLD Manager. We therefore propose a more flexible an SO/AC specific approach.

### 3.5. Transparency Requirements

The review teams, with assistance from the ICANN organization,<sup>17</sup> shall maintain a public wiki space as set out above. All review team plenary meetings must be conducted in a transparent manner, recorded and transcribed.

Comment: The ccNSO Council understands the need to strive for transparency of meetings. However, it is unclear what is meant by stating plenary meetings must be conducted in a transparent meeting: conducting a transparent meeting is in the eye of the beholder. We therefore suggest to list the mechanisms that will result in a transparent meetings.

The recordings and transcripts must be posted on the review’s wiki page in a timely manner, usually no later than 48 hours after the call. Mailing lists, except those used for discussion of information provided to a review team under a Non-Disclosure Agreement subject to the Confidential Disclosure Framework discussed here, must be publicly archived and links to it provided on the review’s wiki page.

### 3.6.Meeting Schedules

Review teams shall decide on their own meeting schedule, however, there must be a sufficient number of meetings to assure that review teams meet their milestones as set out in the work plan.

### 3.7.Meeting Agendas

Based on information received from the review team leadership, ICANN organization shall circulate on the email list a draft agenda no later than 24 hours before a meeting and also post it on the review wiki page, subject to approval by the review team leadership. The final agenda is subject to review team approval. In case of a face-to-face meeting, the draft agenda shall be circulated and posted at least five calendar days in advance.

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<sup>16</sup> For a sample SOI, see: <https://community.icann.org/display/WHO/Legal+Documents?preview=/71600710/71600714/RDS-SOI-Sept%202017.docx>.

<sup>17</sup> A full list of administrative support that ICANN organization provides to review teams can be found in Section **Error! Reference source not found.**

### 3.8.Meeting Attendance

Review team members are expected to attend all meetings. If members are not able to attend they shall inform the ICANN organization, so that their apology can be recorded in the meeting's minutes. ICANN organization shall keep an up-to-date attendance log that is posted on the review's wiki page. This information serves as the basis for review team participation reporting on the review fact sheet.

### 3.9.Roles and Responsibilities

The roles and responsibilities for all review team members include:

- ☐ Attend all meetings.
- ☐ Provide apologies for planned absences at least 24 hours in advance for all remote meetings; provide apologies for planned absence for face-to-face meetings as early as possible to minimize unnecessary expenses.
- ☐ Actively engage on email list(s) and other collaboration tools, including providing feedback when requested to do so through that medium.
- ☐ Actively engage with relevant stakeholder groups within the ICANN community, and within each review team member's respective community.
- ☐ Provide fact-based inputs and comments based on core expertise and experience.
- ☐ Undertake desk research as required and in accordance with scope of work, including assessment of implementation of recommendations from prior reviews.
- ☐ Be prepared to listen to others and make compromises in order to achieve consensus recommendations.
- ☐ Participate in sub-groups and assist with drafting of findings, recommendations and other portions of of the Team Report as required.
- Comply with ICANN's Expected Standards of Behavior.

#### 3.9.1. The roles and responsibilities for the Chair/Co-Chairs include:

- ☐ Remain neutral when serving as Chair or co-Chair.
- ☐ Identify when speaking in individual capacity.

- ☐ Maintain standards and focus on the aims of the review team as established in the terms of reference.
- ☐ Drive toward delivery of key milestones according to the work plan.
- ☐ Ensure effective communication between review team members and with broader community, Board and ICANN organization.
- ☐ Set the agenda and run the meetings.
- ☐ Ensure that all meeting attendees get accurate, timely and clear information and that each review team member has an opportunity to express his/her point of view
- ☐ Determine and identify the level of consensus within the review team.
- ☐ Provide clarity on review team decisions.
- ☐ Ensure decisions are acted upon.
- ☐ Build and develop team-work with co-Chairs and the ICANN organization team supporting work of the review.
- Manage the review team’s budget and work with the ICANN organization team supporting work of the review to provide reporting to maintain accountability and transparency.

### 3.10. Sub-Teams

The review team may establish sub-teams of members that act as research teams to explore specific issues.

The review team can create as many sub-teams as it deems necessary to complete its tasks through its standard decision process, as follows.

- ☐ Sub-teams will only be composed of review team members and will have a clear scope, timeline, deliverables and leadership.
- ☐ Sub-teams when formed will appoint a rapporteur who will report the progress of the sub-team back to the plenary on a defined timeline.
- ☐ Sub-teams will operate as per the provisions of the Operating Standards, and all sub-team requests for support, including but not limited to funding, resources, or support from the ICANN organization, requires review team approval.
- ☐ Sub-teams may arrange face-to-face meetings in conjunction with review team face-to-face meetings, subject to approval by the full review team.

- ☐ All documents, reports and recommendations prepared by a sub-team will require review team approval before being considered a product of the review team.

The review team may terminate any sub-team at any time.

Sub-teams, if so required, shall receive support from ICANN organization to the same extent as the full review is supported, subject only to staffing limitations, of which the review team must be informed.

### 3.11. Determining Review Team Leadership

At the inception of the review team, and only until a Chair or co-Chairs is/are appointed, a supporting member of the ICANN organization will lead and facilitate all review team calls.

At the first review team meeting, the facilitator shall call for volunteers to take on the position of co-Chairs. All review team members are eligible and can put themselves forward, either during the first review team meeting or on the mailing list.

The nomination for co-Chairs shall remain open for two calendar weeks. If three or fewer volunteers step forward as co-Chairs, they shall assume the co-Chair roles without a poll.

If more than three candidates put themselves forward, the acting Chair calls for a poll with each review team member casting up to three votes for their preferred candidate(s). The poll can be conducted during a call, by email, or in person, or a combination of the three. The three candidates who obtain the most votes are elected co-Chairs.

It is encouraged that co-Chairs hail from different times zones and different SO/ACs.

### 3.12. Terms of Reference

Once the co-Chairs are selected, and before any substantive review work is started, the review team shall draft the terms of reference, a template for which shall be provided by the ICANN organization. The drafting of the terms of reference plan (see 3.13 ) should be completed within two months. The terms of reference shall contain:

- ☐ Overview
  - Background of the review

- Scope
- Deliverables as specified in the work plan
- ❓ Membership
  - Roles and Responsibilities of review team members – including any additions to those listed in these Operating Standards
  - Roles and Responsibilities of review team Co-Chairs – including any additions to those listed in these Operating Standards
- ❓ Methodology
  - Decision-making – subject to the requirements in the Bylaws and the guidelines provided in these Operating Standards
  - Accountability and Transparency requirements, subject to the guidelines provided in these Operating Standards
  - Reporting procedures
  - Dependencies on other reviews, if applicable

Comment: It is the understanding of the ccNSO Council that the terms of reference are drafted by the Review Team. We note that as part of drafting the ToR the Review Team should include the scope of the review and that to date Specific Review Teams have developed their scope. Please clarify how this drafting of the ToR, including the scope of the review relates to the envisioned role of the drafting team with respect to drafting the scope of the Specific Review.

ICANN organization will provide the review team with a template for the terms of reference, based on best practices, documents and procedures used during previous reviews and lessons learned from prior reviews. The review team may adapt the terms of reference template to its specific needs.

Once completed and adopted by the full review team, the terms of reference shall be provided to the Board to fulfill the relevant Board resolution. The Board may ask for additional information if any required details, as listed above, are missing. The finalized terms of references shall be published on the review wiki page.



### 3.13. Work Plan

The work plan is based on the agreed upon scope and generally is produced once the terms of reference are completed. A work plan template shall be provided by ICANN organization. The combined drafting of the work plan and the terms of reference (see 3.12) should be completed within four months of the first meeting of the review team. The work plan shall contain, at a minimum, target dates for the following deliverables:

- ☐ Analysis of implementation activities from prior review (if so mandated)
- ☐ Desired face-to-face meetings
- ☐ Identification of need for any external research and an explanation of its relevance
- ☐ Deadline dates for external research requests
- ☐ Goals and deliverables for all ICANN meetings that fall within the review timeline
- ☐ Publication of interim findings
- ☐ Publication of Draft Report
- ☐ Public comment period for Draft Report
- ☐ Publication of Final Report

The review team shall regularly consult the work plans and it shall provide updates if and when necessary. The work plan shall be published on the review team's wiki page.

ICANN organization will provide the review team with a template for the work plan, based on documents used during previous reviews.

Once completed, the work plan shall be published on the review wiki page.

### 3.14. Resignation of Review Team Members

Review team members may resign from the review team at any time. Their resignation may contain a rationale and be addressed to the co-Chairs and to the SO/AC that nominated the resigning review team member.

The SO/AC whose member resigned may elect to nominate a replacement in accordance with its own, internal procedures, while considering if it is beneficial to do so due to the status of the review. The SO/AC may nominate a member from the initial group of applicants it received or, alternatively, publish a

call for volunteers to receive new applications. It shall inform the review team co-Chairs of their procedural decision, and indicate a timeframe by which the new member will be nominated.

Once nominated by the relevant SO/AC, within two calendar weeks the the SO/AC Chairs shall convene to consider the appointment of the nominated replacement. If the SO/AC Chairs cannot reach consensus on the appointment, then by consensus. Failure to obtain consensus may result in a straw poll being held – if the candidate does not receive a majority the SO/AC shall nominate an alternative candidate subject to the same procedure detailed above.

Depending on the remaining time of a review, or any other factors, the relevant SO/AC may choose not to nominate a replacement candidate.

### 3.15. Removal of Review Team Members

If a Review Team member is no longer able or willing to serve, the SO/AC making the original endorsement may fill the vacancy with a new member.

The SO/AC may nominate a new candidate according to their own internal procedures and their nomination is not limited to those candidates who originally applied requesting their endorsement.

Once nominated by the relevant SO/AC, within 2 calendar weeks the the SO/AC Chairs shall convene to select the nominated replacement by consensus. Failure to obtain consensus may result in a straw poll being held – if the candidate does not receive a majority the SO/AC shall nominate an alternative candidate subject to the same procedure detailed above.

Depending on the remaining time of a review, or any other factors, the relevant SO/AC may choose not to nominate a replacement candidate.

If a Review Team member is sufficiently inactive or disruptive as to cause at least 70% 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 endorsement 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). Balloting shall be carried out in such a way as

to not reveal how individual members voted.

### 3.16. Reporting

Review team members are, as a general matter, encouraged to report back to the nominating entity that with respect to the work of the review team, using publicly available information.

As and when requested by the ICANN Board, the review team will provide regular updates to the Organizational Effectiveness Committee, whose charter stipulates that it ‘oversees the conduct of reviews’.<sup>18</sup> ICANN organization may assist with this effort.

ICANN organization will also provide a quarterly fact sheet detailing relevant metrics on the review, including attendance records of review team members, progression of work, and budget updates. A template for such a fact sheet will be provided by the ICANN organization support staff to each review team.

### 3.17. Budget Management

The review team is responsible to manage its own budget. All expenditures related to third parties are subject to ICANN’s procurement policy, and all travel expenditures are subject to ICANN’s Constituency Travel Guidelines.<sup>19</sup> The overall budget envelope for each Specific review is allocated by the ICANN Board as part of ICANN’s annual budget process; the review team will work with ICANN organization to provide appropriate justification, rationale and clear documentation of the review team’s expenditures in line with ICANN’s transparency and accountability standards..

The approved review team budget covers:

- Travel support for review team members, subject to ICANN’s Community Travel Guidelines.
- ☐ Costs related to face-to-face meetings, such as room hire, and catering.
- ☐ Services provided by independent experts<sup>20</sup>.
- ☐ Other tools or services relevant to the review work.

If additional funds are required beyond the budget allocation, the review team must submit a request to the ICANN Board, in accordance with all applicable procedures, including a rationale, and subject to relevant timelines. ICANN organization will provide administrative support for making such a request.

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<sup>18</sup> See Section II, B: <https://www.icann.org/resources/pages/charter-oec-2017-05-11-en>.

<sup>19</sup> See <https://www.icann.org/resources/pages/travel-support-2012-02-25-en#guidelines>.

<sup>20</sup> Contracting of independent experts is subject to the guidelines detailed in these Operating Standards.

### 3.18. Travel Support

Members of the review team who request funding from ICANN to attend face-to-face meetings convened outside of ICANN’s public meetings will receive travel support in accordance with ICANN’s standard community travel policies and subject to the review team’s budget.

When a review team face-to-face meeting is held in conjunction with an ICANN public meeting, as well as outreach sessions scheduled outside ICANN meetings, review team Members, who are not funded otherwise, may receive travel support for the days necessary for the review team members to attend these meetings.

### 3.19. Independent Experts

As per the Bylaws, the review team may solicit and select independent experts “to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by [Section 4.6 of the Bylaws] to the extent such fees and costs are consistent with the budget assigned for such review.”<sup>21</sup>

For the purpose of Specific reviews, independent experts are third parties that may be contractually engaged by ICANN to provide advice to the review team. Should the need for independent experts arise, the review team will consider the scope of work required, expected deliverables, necessary skills and expertise, and the budget implications associated with the project.

#### 3.19.1. Procurement of Independent Experts

To initiate a request for engagement of an independent expert, the review team will create and formally approve a statement of work which includes:

- ❑ A clear, specific project title and concise description of the work to be performed
- ❑ A description of required skills, skill level, and any particular qualifications
- ❑ Concrete timelines for deliverables, including milestones and measureable outcomes
- ❑ Any additional information or reference material as needed to detail requirements

The co-Chairs will communicate the review team’s request to ICANN organization for processing in

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<sup>21</sup> Bylaws, Article 4, Section 4.6 (a)(iv), see <https://www.icann.org/resources/pages/governance/bylaws-en>.

accordance with ICANN's standard procedures, including ICANN's procurement guidelines.

Selection of experts to support the work of the review team will follow ICANN's procurement processes and guidelines.

The roles and responsibilities for the procurement, and management of an independent expert are shared as follows:

#### Review team

- ☐ Determines scope of work, skills/expertise, deliverables, timeline
- ☐ Approves expenditure
- ☐ Shares request for submissions with network
- ☐ Designates point person(s) from RT to select and interact with contractor
- ☐ Designates point person(s) share(s) responsibility with ICANN organization for selection of suitable candidate & management of work
- ☐ Manages substantive aspects of work (as defined in statement of work and within budgetary constraints)

#### ICANN organization

- ☐ Liaises with review team and ICANN Procurement
- ☐ Determines appropriate procedural steps based on scope of work
- ☐ Manages operational elements, financials, and deliverables, based on contractual terms
- ☐ Manages invoicing and remittances
- ☐ Monitors for compliance with contractual terms
- ☐ Ensures compliance with procurement process and best practices
- ☐ Informs applicants that some information will be shared with designated point person(s) (no cost or contractual terms will be shared)
- ☐ Announces request for submissions or proposals
- ☐ Identifies contractors based on criteria
- ☐ Evaluates candidates
- ☐ Shares responsibility with designated point person(s) from RT for selection of suitable candidate
- ☐ Negotiates contract

### 3.19.2. Considering advice from independent experts

The review team shall give appropriate consideration to any work submitted by an independent expert.

While the review team is at liberty to adopt or reject any input or advice provided by an independent expert, it must include a dedicated section in its draft and final reports that details how the independent examiner's work was taken into consideration by the review team.

In case the independent examiner provides concrete advice, and the review team rejects that advice, a rationale shall be provided.

Any work that the independent experts submit to the review team shall be included in full as an annex to the review team's draft and final reports.

### 3.20. Decision-Making Procedure

According to the Bylaws: "Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken."<sup>22</sup>

With regards to drafting recommendations, the Bylaws state: "Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team [...]."<sup>23</sup>

The review team Leadership will be responsible for designating each decision as having one of the following designations:

- ❑ Full consensus - no review team members speak against the recommendation in its last readings.

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<sup>22</sup> Bylaws, Article 4, Section 4.6(a)(iii), see <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>23</sup> Bylaws, Article 4, Section 4.6(a)(iv)(A), see <https://www.icann.org/resources/pages/governance/bylaws-en>.

- ☐ Consensus - a small minority disagrees, but most agree.
- ☐ Strong support but significant opposition - most of the group supports a recommendation but a significant number do not.
- ☐ Divergence - no strong support for any particular position, rather many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
- ☐ Minority statement (see also Section 4.4) - a proposal where a small number of people support the recommendation. This can happen in response to a Consensus, Strong support but significant opposition, and No Consensus; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of Consensus, Strong support but significant opposition, and No Consensus, an effort should be made to document that variance in viewpoint and to present adequately any minority statements that may have been made. Documentation of minority statement recommendations normally depends on text offered by the proponent(s). In all cases of Divergence, the co-chair(s) should encourage the submission of minority statement(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the review team has discussed an issue long enough for all issues to have been raised, understood and discussed, the co-Chairs make an evaluation of the designation and publish it for the review team to review.
- ii. After the review team has discussed the RT Leadership's estimation of designation, the co-co-Chair(s) should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the co-Chair(s) makes an evaluation that is accepted by the review team.
- iv. The co\_Chairs may decide that the use of a majority is reasonable – in line with the Bylaws Article IV, Section 4.6(a)(C)(iii) . Some of the reasons for this might be:



- A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
- It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to distinguish between Consensus and Strong support but Significant Opposition or between Strong support but Significant Opposition and Divergence.

Based upon the review team's needs, the co-Chairs may direct that review team participants do not have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all cases, in which a group member represents the minority statement, their name must be explicitly linked to that position.

Consensus calls should always involve the entire review team and, for this reason, should take place on the designated mailing list to ensure that all review team members have the opportunity to fully participate in the consensus process. It is the role of the co-Chair(s) to designate which level of consensus is reached and announce this designation to the review team. Member(s) of the review team should be able to challenge the designation of the co-Chair(s) as part of the review team's discussion. However, if several participants in a review team disagree with the designation given to a position by the Chair(s) or any other consensus call, they may follow these steps sequentially:

1. Send email to the co-Chair(s), copying the review team explaining why the decision is believed to be in error.
2. If the co-Chair(s) still disagrees with the opposing member, a straw poll shall be conducted to determine the result.

Comment: This decision-making procedure appears to be adopted from the GNSO working method. The ccNSO Council notes that other Supporting Organisations and Advisory Committees, use other, less over-specific rules to denote consensus and these differences in approach have resulted in decision-making methodologies used by the CWG Stewardship and CCWG Accountability. As Specific Reviews are a cross-community effort, we

suggest that the methodology used by the two mentioned groups and as suggested in the Framework of Principles and Recommendations for Cross Community Working Groups would be used (<https://community.icann.org/display/gnsocccwgdraftteam/Final+Framework+of+Uniform+Principles+for+Future+Cross+Community+Working+Groups?preview=/59648224/62399727/Final%20CCWG%20Framework%20-%2016%20September%202016.pdf> ). If they will not be included we would appreciate and expect a rationale.

Further, we suggest to include a mechanism to allow a minority to express that not all views are properly reflected or the designation of level of consensus by the co-chairs/leadership does not reflect the view of all review team members. Based on our understating of the Specific Reviews it is an issue that will need to be addressed.

### 3.21. Confidentiality Disclosure Framework

As per the Bylaws:<sup>24</sup>

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<sup>24</sup> ICANN Bylaws, Article 4, Section 4.6 (a)(iv)(A), see <https://www.icann.org/resources/pages/governance/bylaws-en>.

“To facilitate transparency and openness regarding ICANN's deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "Confidential Disclosure Framework"). The Confidential Disclosure Framework must be aligned with the following guidelines:

“(1) ICANN must provide a justification for any refusal to reveal requested information. ICANN's refusal can be appealed to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request.

“(2) ICANN may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN's designation of documents may also be appealed to the Ombudsman and/or the ICANN Board.

“(3) ICANN may require review team members to sign a non-disclosure agreement before accessing documents.”

The Confidentially Disclosure Framework (CDF), aligned with the provision set out in the Bylaws, is annexed to this document. A copy will be provided to all review team members at the start of the review.

Review team members that do not wish to adhere to the conditions set forth in the CDF to access confidential information, may continue to participate in the review. Yet, as detailed in the CDF, they may face restriction when accessing documents and when participating in discussions pertaining to those documents.

A copy of the current Confidentially Disclosure Framework can be found on the ICANN website<sup>25</sup>.

Comment: Previous community work on Non-disclosure is included in the final report of the Non-PDP Joint DNS Security and Stability Analysis Working Group (see [https://ccnso.icann.org/sites/default/files/filefield\\_42587/dssa-final-08nov13-en.pdf](https://ccnso.icann.org/sites/default/files/filefield_42587/dssa-final-08nov13-en.pdf) page 35 protocol for handling confidential information and template non-disclosure, page 51). This framework was developed by the community to handle confidential information.

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<sup>25</sup> As an example, please see the CDF for the SSR2 Review: <https://community.icann.org/display/SSR/Legal+Documents?preview=%2F64950831%2F71599536%2FOperating+Standards-+CONFIDENTIAL+DISCLOSURE+FRAMEWORK-+UPDATE+August+2017.>

### 3.22. Changes to the Scope while the review is underway

If at any time, the review team agrees by consensus that the scope is either too broad or too narrow, the Co-Chairs may contact the SO/ACs with the details of what changes the review team would like to see made to the scope, including a detailed rationale why the scope needs expanding or restricting.

If no member of the Scope Drafting Team is a member of the review team, the Chairs of the Scope Drafting Team – or a person designated by her/him/them – shall be consulted, and, their view on the necessity for an amendment to the scope shall be included in the rationale for the change.

Any proposed change in scope shall be accompanied by a assessment of its impact on the timeline and budget of the review, and, like the initial scope, it must be in line with the Bylaws and ICANN mission.

Once they have received the proposal for a changed scope, including the rationale and the view of the Chair of the Scope Drafting Team (or her/his designate), the SO/ACs shall respond, according to their own procedure, to the review team whether it supports or objects to a change of scope within six (6) weeks. If an SO/AC requires more time they shall inform the review team at their earliest convenience on the likely time they require to provide a response. Unless three or more SO/ACs object to the change, the amended scope shall be submitted to Board for its consent, assuring that the amended scope remains aligned with the ICANN Bylaws and ICANN's mission.

Once the change of scope is confirmed, together with the Board's consent, the terms of reference and work plan shall be updated and an announcement on the updated scope be posted on [icann.org](http://icann.org).

Comments: We suggest that the Board may only object with super majority. Further unclear what will happen if the Board objects to such a change. Should the review continue or be put in hibernation until issue is resolved.

In addition, the proposed procedures will take quite some time. The ccNSO recommends that the timing of reviews is taken into consideration as well.

### 3.23. Role of Observers

Anyone can sign up as an 'observer' to any Specific review team. The number of observers is not limited.

There shall be clear instructions on the review team wiki space on how to become an observer to that review.

All candidates who have applied for a review team but were not selected shall be offered by ICANN organization to participate as an observer.

All observers shall receive plenary meeting agendas, as well as information on where to find recordings of meetings and/or any supporting documentation.

Observers may stay updated on the review Ream's work in several ways:

Attend a meeting virtually: All meetings, whether in person or online, will have a dedicated Adobe Connect room for Observers to participate. Observers may subscribe to the Observers email list by sending requests to the relevant staff person from the ICANN organization, details of which must be provided on the review wiki page.

- Attend a meeting in person: When review team members gather for public face-to-face meetings, Observers may attend to share their input and questions with the review team, subject to any applicable space limitation. The calendar of scheduled calls and meetings is published on the review team's wiki page.
- Email input to the review team: Observers may send an email to the review team to share input on their work. The relevant email address to direct such input shall be posted on the review team's wiki page. Having received input from Observers via email, the review team is encouraged to respond, if appropriate, and ensure that a record of the submission is posted on the review wiki page.
- ☐ Public Comments and public consultations: Observers may contribute their views via the standard public comment process and during public consultations.

## 4. Review Output and Board Consideration

### 4.1.Recommendations

The review team is expected to use all reasonably available information to provide answers, solutions, and recommendations to the issues, problems, and questions raised within the scope of the review.

The review team is expected to address all issues raised in the scope and, where appropriate, provide

specific, measurable, realistic, achievable, and time-bound recommendations based on fact-based findings. In doing so, the review team is strongly encouraged to lay out problems it has discovered and to explain how its recommendations will address these, leading to substantive improvements.

To assure the feasibility and usefulness of its recommendations, the review team shall consult with the ICANN organization and Board in addition to its community-wide outreach. An open and transparent exchange between these groups must occur,<sup>26</sup> so that the identified problems, the recommended solutions, and the expected impact of implementation is clearly defined and well understood by all.

**Comment: The ccNSO Council understands the need to strive for an open and transparent exchange. However, if included as done, what are the criteria to assess the obligation as formulated?**

After consulting with ICANN organization, and considering any feedback from the ICANN Board, the review team shall also take into consideration the expected impact of implementation on the workload of the ICANN community and whether there is sufficient community capacity and expertise to assure successful implementation.

To facilitate the eventual implementation of its recommendations, the review team shall include, wherever possible, relevant metrics and applicable key performance indicators (KPIs) that could be applied to assess implementation of each of its recommendations.

To help assure effective implementation and long-lasting improvements, review teams shall, wherever possible, produce specific, measurable, realistic, and time-sensitive recommendations.

Recommendations shall address specific problems, as identified by the review team. The number of total recommendations shall be as low as possible, while assure that all problems identified by the review team during the course of its work are addressed, and, where necessary, a recommendation is made how to address them.

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<sup>26</sup> Review team, subject matter experts, ICANN organization, ICANN Board. [who are these SMEs? Note: the term SMEs is also used in Section 5.5 of this document.]

Notwithstanding the need to assure that all identified issues are appropriately addressed, the review team shall strive to keep the total number of recommendations to a minimum. Furthermore, recommendations shall also include an indication as to whether their implementation should be a priority or whether implementation can be deferred until later in the implementation process. A categorization of each recommendation as ‘high priority’, ‘medium priority’, or ‘low priority’ would be a useful guideline for the eventual planning of the implementation work.

## 4.2. Draft Report

The review team will produce two key outputs: the Draft Report and the Final Report. Review team is strongly encouraged to formulate clear statements of identified issues and how the draft recommendations would address these issues – bounded by the agreed upon scope of work.

The Draft Report should include the following:

- Overview of the review team’s working methods, tools used and analysis conducted.
- ❑ Facts and findings related to the investigation of the objectives identified in the scope.
- ❑ Resolution of all questions raised in the scope or those that arose subsequently during the course of the review.
- ❑ Summary of public consultations and engagement with SO/ACs and their input on the findings.
- ❑ Assessment of what processes (pertinent to the scope) worked well and where improvements can be made; the assessment ought to be based on and refer to facts, findings, and data provision wherever possible.
- ❑ Preliminary recommendations that address significant and relevant issues detected.
- ❑ A preliminary<sup>27</sup> impact analysis and definition of desired outcome, including initial definition of metrics to measure the effectiveness of the recommendations proposed by the review team, including, where possible, source(s) of baseline data for that purpose<sup>28</sup>:
- ❑ received, as defined in the Operating Standards. This is to inform the community during the

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<sup>27</sup> If it is not practical for the review team to include all details of the impact analysis, a rationale shall be included in the Draft Report, and the complete analysis can then be included in the Final Report only.

<sup>28</sup> The review team is expected to communicate with ICANN organization on the availability and relevancy of all data points.

- Identification of issue
  - Definition of desired outcome, including metrics used to measure whether recommendation goals are achieved
  - Initial identification of potential problems in attaining the data or developing the metrics
  - A suggested timeframe in which the measures should be performed
  - Define current baselines of the issue and define initial benchmarks that define success or failure
  - Data retained by ICANN
  - Industry metric sources
  - Surveys or studies
- ☐ All recommendations should indicate a preliminary, non-binding level of consensus they have public comment period to indicate the level of review team support for each recommendation, without binding the review team members on their support level in the Final Report.

### 4.3. Public Comment and Final Report

While the review team may produce several iterations of its draft report, at least one draft report must be submitted for public comment, following standard ICANN procedures.

The review team shall update the Draft Report based on the comments and any other relevant information received and submit its Final Report to the ICANN Board. The Final Report shall contain the same information as required in the Draft Report and, in addition, a section detailing the public comments received on the Draft Report and an explanation why and how they were incorporated into the Final Report or why and how they were rejected by the review team. Each recommendation shall include the level of consensus received from the review team members, as defined in these Operating Standards.

### 4.4. Minority Dissents

According to the Bylaws, 'Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation.'<sup>29</sup>

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<sup>29</sup> Article IV, Section 4.6(a)(vii)(A).



All minority dissents must detail the analysis or recommendations in the Final Report with which its author(s) disagree(s), including a rationale for that disagreement.

The authors of minority dissents are encouraged to provide alternative recommendations that include the same details and context as is required from the recommendations in the Final Report as per the Operating Standards (see Section 4.1 and 4.2).

#### 4.5.Submission of Final Report and Public Comment

As mandated by the ICANN's Bylaws, the Final Report of the review team shall be published for public comment in advance of the Board's consideration. ICANN organization will then provide a staff summary of the comments and provide those, together with the review team's Final Report to the ICANN Board for its consideration.

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<sup>39</sup> Article IV, Section 4.6(a)(vii)(A).

As per the Bylaws, all minority dissents ‘shall be included in the report of the review team.’<sup>30</sup>

#### 4.6. Board Consideration and Implementation

The ICANN Board, having received the Final Report, including any minority dissents (if applicable), and staff reports of all related public comments, will consider which recommendations to adopt.

Once the Board has made its decision which recommendations to adopt, with rationale, it shall direct the ICANN organization to draft an Implementation Plan that contains at a minimum the following:

- ☐ Priority for implementation (i.e. high, medium, low);
- ☐ Time and resources required (ICANN community and ICANN organization);
- ☐ Potential obstacles and risks; proposed mitigations;
- ☐ Measurability (status quo v desired outcome);
- Details on how the recommendations align with the ICANN’s strategic plan;
- ☐ Impact/dependencies on existing/ongoing improvements/work within the organization/work of community groups;

If the Board rejects any recommendations, it must provide a rationale for that rejection.

Comment: What if Board rejects a recommendation from a Specific Review Team? What are next steps to resolve the potential impasse? What are criteria for rejecting a recommendation?

Comment: The Council suggest that the priority of implementation of recommendations is not suggested by ICANN Org, but the Specific Review Team should be required to prioritize its recommendations, taking into account the resource impact of the recommendations.

When leading the implementation, ICANN organization shall cooperate closely with the review team’s appointed ‘recommendation shepherd’ as well as the wider community. This includes providing timely

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<sup>30</sup> Article IV, Section 4.6(a)(vii)(A).

updates on progress, highlighting roadblocks, and working to confirm that the implementation reflects the intention of the review team.

Reporting on the implementation status should occur on a regular basis. Under the OEC’s mandate, implementation updates will be provided to the OEC and posted publicly. This is in addition to an annual report on the status of review implementation that ICANN organization shall present to the Board and the community once per calendar year, in accordance with the Bylaws. At a minimum, this implementation status report shall contain an up-to-date status of the implementation progress for all recommendations, mention all past and ongoing community consultations on the implementation efforts

– if applicable – and provide a timeline for the remaining implementation work.

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<sup>40</sup> Article IV, Section 4.6(a)(vii)(A).

## 5. Amending the Operating Standards

The Operating Standards must be aligned with the existing ICANN Bylaws at all times. Subject to that condition, the Operating Standards may be amended by a majority decision of the ICANN Board.<sup>31</sup>

The ICANN Board may not propose amendments to the Operating Standards. Upon completion of a Specific Review, the ICANN Board shall request inputs from the SO/AC Chairs and the review team members on how the Operating Standards facilitated the conduct the review. Those inputs may then lead to a recommendation of amending the operating standards in accordance to the provisions below.

**Comment:** The logic in the above paragraph is unclear. On one side the Board may not propose amendments, on the other, the Board is expected to recommend changes to the OS after conclusion of a Specific Review.

Separately, a proposal for an amendment to the Operating Standards may be made at any time by:

- Any one of ICANN's Supporting Organizations
- Any one of ICANN's Advisory Committees
- The Accountability and Transparency review team (ATRT)
- ICANN organization

Before any amendment is considered by the Board, the amendment has to be published for public comment, according to ICANN's standard procedure. If the amendment is proposed by the ATRT in its Final Report, no public comment in addition to the one for the Final Report needs to be conducted, unless the text of the amendment is not available in the Final Report.

During the public comment period, SO/ACs may submit objections or concerns, as may any other member of the ICANN community, or the general public.

Once the public comment period closes and the staff summary report is published, the Board shall consider the proposed amendment, as well as all public comments submitted.

If the proposed change receives broad support from the community and conforms to ICANN's Bylaws and ICANN's mission, the Board shall adopt the proposed change.

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<sup>31</sup> Note: the Confidential Disclosure Framework, though referenced in these Operating Standards, has its own defined amendment and review process and is excluded from this section.

However, if the Board determines that there is not sufficient unity within the community to support a modification, or that the modification is not aligned with the Bylaws, the Board may decline the change and encourage continued community-wide dialogue on the issue.

The final decision on amending the Operating Standards lies with the ICANN Board.

Comment: It is the view of the ccNSO that the proposed mechanism is very heavy handed and does not reflect the intended purpose.