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Consultation on the Affirmation Reviews: Requirements and Implementation Processes

Response from Nominet

Introduction

Nominet is the registry for the .uk country code top-level domain. With over eight million registered domains, we are the third largest country-code top-level domain. Nominet is a long-standing and active participant in ICANN and in ICANN's country code Names Supporting Organisation.

In response to the Affirmation of Commitments, Nominet said, "We strongly support the measures outlined in the Affirmation of Commitments… [The measures] will provide ICANN with a strong framework that will help it serve the international community, the domain industry and more importantly the many governments, organisations and individuals across the world that depend on the effective functioning of the domain name system."

The reviews are fundamental to ensuring effective evolution and development of ICANN and, in particular, its accountability against its public interest mandate.

Hence we welcome this consultation on the reviews required under the Affirmation of Commitments: it is important that these reviews show a high degree of integrity and professionalism. We should also recognise that, while the timescale for the first reviews is very short, as the "benchmark reviews" which will be referenced by future evaluations, they need to be particularly objective and thorough.

Role of the Review Team

The Review Team has the important responsibility of ensuring the integrity and professionalism of the review. The Affirmation of Commitments identifies clearly the expectation of senior-level engagement in this work. We believe that this needs to be spelled out clearly in the Requirements and Implementation Process, that the Review Team provides the overview of the process and ensures its integrity and should not be expected to do the detailed work.

The Review Team should focus on:

- Clarification of the terms of reference for the evaluation;
- Endorsement of the selection criteria for the External Evaluator and subsequently its selection;
- Oversight of the work of the External Evaluator, including challenging assumptions and ensuring effective coverage ("ensure the integrity of the process and … guarantee that the public's interests in [the] review process is … respected…": section 1.4.);
- Assessment of the output from the evaluation and the validation of the conclusions and drawing recommendations from the analysis; and
- Presentation of the output to the Board, to the GAC and to the ICANN community more generally.

Members of the Review Team should be selected on the basis of their ability to contribute to these areas of work. In short, the Review Team should not be actively involved in designing the data-gathering tools, or in carrying out the data-gathering or analysis.

In the Requirements and Implementation Process, three different entities are identified in different parts of the consultation document – the External Consultant (facilitator), the External Evaluator and ICANN staff – to support the Review Team in their work. It would be useful to be more explicit in the Requirements and Implementation Process about the expected role of each of these supporting resources.

In particular, the External Evaluator should be a well established and resourced, professional organisation, with a track record in international evaluation and experience in working with not-for-profit and public-interest bodies.

We welcome the concept of employing an External Consultant: this is a particularly important role and one that could usefully be spelled out in more detail. We believe there are three key roles for the Consultant:

- Project management and coordination;
- Preparation of Review Team meetings; and
- Facilitation of the discussions of the Review Team.

There is a comment in the Requirements and Implementation Process about voting mechanisms for the Review Team (section 2 "Definition of review terms of reference": we believe that the Review Team should work on developing consensus and the process should not depend on majority votes. Where there is an un-reconciled minority view, this should be made clear in the final report.

Consultation and Approaches to data gathering

While the evaluation does need to draw on views and input from people and organisations currently active in the ICANN community, we believe that the data collection needs to go much wider. This should be explicit in the Requirements and Implementation Process. The Affirmation of Commitments refers to accountability to all stakeholders and the reviews should assess how well this accountability is achieved.

We recognise that would be an impossible task to assess the views of all stakeholder groups globally about whether ICANN is working in the best interests of Internet users. However, addressing those currently involved directly in ICANN processes is not a sufficient proxy. The advice of the professional Evaluator needs to be taken on how to get a representative assessment of views from stakeholders who are not involved in ICANN, but who are impacted by ICANN's decisions.

It is probably not appropriate for the Requirements and Implementation Process to define the techniques for the evaluation, given the diverse nature of the issues and the types of organisation impacted by decisions. This should be proposed by the External Evaluator in discussion with the Review Team

Consultations through the Review Process

The Requirements and Implementation Process identifies three separate consultation stages in preparing the reviews (section 2). In addition to slowing the overall process – and timescales are already tight – we believe that this will deflect the focus of the review and lead to consultation fatigue.

The Review Team is responsible for the credibility of the process and the quality of the review. It is responsible for ensuring a rigorous and independent framework for the process. The review should be carried out in an open and transparent manner, perhaps with opportunities for open discussions with the Team and the Evaluator at intervening ICANN meetings. In this context, we would suggest that a single consultation (in addition to that carried out at the end of the review) should be sufficient.

Selection of the Review Team

We recognise the limited time for the preparation of the first review ("ensuring accountability, transparency and the interests of the global Internet users"). We agree that it would be useful for the Review Team to be present in Nairobi, which would allow them to have discussions with some of the key stakeholders.

However, this ICANN consultation on the Affirmation Reviews Requirements and Implementation Process (which includes proposals on the make-up of the Review Teams) does not close until 10 February. Some of the ICANN constituencies have not yet discussed how they will identify suitable Review Team members. In effect, it appears to undermine this consultation that the make-up of the first Review Team is agreed only seven days after the close of the consultation and prior to the publication of the consultation feedback.

We welcome the inclusion of independent experts in the proposals for the composition of most of the Review Teams: it is important to bring in external expertise into the reviews. However, this needs to be shown in figure 5 for the accountability and transparency review (it is mentioned in paragraph 3.1.4).

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