Draft GNSO Council response to the draft proposal on the Affirmation Reviews Requirements and Implementation Processes
18 January 2009

The GNSO Council largely supports the approach outlined in the draft proposal on the Affirmation Reviews Requirements and Implementation Processes. In the hope of strengthening the processes and ICANN's ability to satisfy the AoC requirements, we would like to offer the following observations and recommendations.

1. Size and Composition of the Review Teams

The draft argues that, "there is no doubt that the review teams should be kept small. This self-evident assumption is confirmed by the volume of literature on group dynamics. *[sic]* Also, the optimal size of working, consensus-based groups is often considered to be between six and eight individuals." Accordingly, the draft recommends teams of that size. We have four concerns with this approach.

First, a broader review of the relevant literatures---e.g. on negotiation analysis, collective action, and international cooperation---would reveal that the relationship between group size and effectiveness is highly indeterminate. Indeed, whether collaborative decision-making processes succeed or fail depends on a variety of contextual and other factors that are wholly unrelated to group size. Second, larger groups successfully undertake consensus-based work in ICANN and related institutional settings all the time, and the review teams are likely to include people from the community that have participated in such efforts and understand what is required to achieve productive and well-supported outcomes.

Third, what really is self-evident is that the review teams will need to perform a great deal of work on demanding schedules. This is especially so with regard to the first review on accountability and transparency. Even with the envisaged staff support, the members of very small teams would likely be hard pressed to manage the workloads alongside all their other responsibilities. Designating alternates might reduce the risk of any members proving unable to fully participate or handle the tasks at hand, but relying on alternates could raise other process management issues.

Fourth, selecting just one member from each relevant of the AC/SOs (or less, in the case of Security, Stability and Resiliency team) seems especially problematic. In particular, it would greatly reduce the teams' ability to leverage the available expertise, fail to reflect the community's diverse interests and experiences with respect to the issues under assessment, and hence could reduce the degree of "buy in" on the final products. These concerns are particularly acute with respect to the GNSO, which comprises four broad stakeholder groups that have unique roles and perspectives and that could be mostly deeply impacted by the results of the AoC reviews (e.g. on such issues as competition and consumer trust and choice, WHOIS, and the policy development process). It might also be noted that GNSO registrants pay fees that fund well over 90% of ICANN's activities.

Accordingly, we suggest that the review teams be expanded to twelve to fifteen members, and that the GNSO be allocated two to three slots on each team, including the one for Security, Stability and Resiliency. We recognize that these revisions would have budgetary and operational implications, but we are convinced that they are necessary to fulfill the AoC mandate and to ensure high-quality and broadly supported outcomes.

Given the important roles they will play in the process and the importance of engaging specialized expertise from across the community, we also suggest that AC/SOs be able to suggest Independent Experts for consideration by the Selectors.

Finally, we would appreciate any clarification as to the evaluation criteria that will be used to select from the pool of nominees. This will better enable the GNSO to undertake its own assessment of candidates and to maximize nominees' degree of fit with the desired skill sets and expertise.

2. Communication and Coordination with the Community

We agree with the draft that Review team members are not to "represent" particularistic interests, and that they should be broadly neutral and focused on the collective good of the ICANN community as a whole. Participants must have the operational autonomy needed to function in this manner, and should not be unduly influenced by the immediate debates and sources of contention that arise across the ICANN ecosystem. But at the same time, it would be undesirable for the teams to work in hermetically sealed boxes cut off from the community, or to rely only on the public comment periods for input on the review processes. A mechanism should be established to allow an appropriate measure of two-way communication when needed.

The GNSO Council therefore proposes that review team members drawn from the AC/SOs be mandated to periodically update their nominating bodies on the main developments and issues of direct relevance to them. In parallel, these team members should be able to solicit inputs from their SO/ACs when this would be helpful, and be prepared to pass along unsolicited inputs that their nominating bodies agree would be particularly important to take under consideration. Obviously, any such communications would need to respect reasonable restrictions like the review teams' adherence to the Chatham House rule, and the SO/ACs should be expected to exercise prudence and to only make use of the opportunity when it is necessary to support the teams and/or convey major concerns.[1]

[1] The Chatham House Rule is: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed." http://www.chathamhouse.org.uk/about/chathamhouserule/

3. Support Teams

Even if the size of the review teams is expanded per the above, managing all the work envisaged over extended time periods will be very challenging. As such, it is reasonable to expect that there will be instances where some task-specific support may be needed, e.g. with data collection, that would impose a substantial burden on both team members and the staff. One way of addressing these challenges would be to constitute a support team for each review that can be turned to for targeted assistance. Such teams could be drawn from the pools of nominees that were not selected for review team membership. If those pools were not sufficiently robust or did not offer the specialized expertise needed, the SO/ACs could suggest additional names for consideration by the Selectors.

4. Operational Considerations

The GNSO Council wishes to comment on three elements of the draft concerning the working methods and conduct of the review teams.

First, we would like to emphasize the importance of employing quantitative performance indicators that are as objective and measurable as possible and are sensitive to ICANN's particular characteristics. In parallel, it is essential that the qualitative indicators and associated methodology effectively draw on the range of expert analysis and capture community members' actual experiences with the respective processes and issues. Designing and employing these indicators in a neutral, balanced and scientific manner will be a significant challenge, but it is also a prerequisite for evaluative fairness and good community receptions of the reports.

Second, while the review teams must conduct their own exercises and come to their own conclusions, it important to recall that ICANN has long undertaken a range of process assessments that could be drawn on, some of which are ongoing. In this connection, we note in particular that AOC 9.1.e) calls for an assessment of the policy development process. The GNSO is of course actively engaged in such an effort in the context of its current restructuring and respectfully suggests that the results of our assessment be given full consideration in this review.

Finally, we would much appreciate clarification as to how consensus in the decision making process will be defined.