

The ASO Address Council's Response to ICANN's "Proposed Review Procedure for ASO Policy Proposals"

The ASO Address Council thanks ICANN for developing the procedural steps that will be followed for review of policy proposals submitted by the AC. This review procedure represents the final efforts in the ratification of community-developed global policies, and it provides for a very necessary level of transparency for the IP community and others.

The Address Council would like to offer our comments to the proposed review procedure posted on 6 April 2005. This document was drafted by AC Member Louis Lee in conjunction with AC Member Sebastian Bellagamba, and discussed by the Address Council prior to submission to ICANN on 4 May 2005.

The very first suggestion for refinement is for the title itself. The term "ASO Policy" implies that the ASO Address Council developed the policy being reviewed. While we surmise that this shorthand may have been used to limit the length of the title, it is sadly misleading. We strongly suggest that "ASO Policy Proposals" be replaced with "Global Internet Number Resource Policy Proposals" as similarly describe in the ASO MoU¹. Further references to these proposals may be abbreviated as "Global Policy Proposals".

Proposed review procedure steps 2 & 3:

2. The Board, acting through the President, assigns the activities foreseen in the MoU, Annex A, article 8, (notably to review the proposal, to decide on the need for external assistance and to request clarifications from the ASO Council) to ICANN staff.

3. If deemed appropriate by ICANN staff so assigned in line with 2 above, external consultancy assistance may be called upon to assist in the review process.

The Address Council sees these steps as a restatement of the referenced section of the ASO MoU. While the ICANN Board should feel free to delegate and seek outside consultation whenever necessary, the AC feels that it is unnecessary to state it as steps in the review procedure. If the Board disagrees, then we suggest that the referenced section of the MoU be simply repeated here.

Proposed review procedure step 4:

*The proposal shall be **posted for public comments in a timely fashion**, with comments due within 21 days from posting. All ICANN Supporting Organizations and Advisory Committees shall be immediately notified of the posting and **their comments invited as appropriate**.*

The Address Council is opposed to the posting of the policy proposal for purposes of gauging consensus. The reason is that the policy being proposed has already undergone intense debate and scrutiny in the regional public fora. Many public comments had earlier been put forth, and consensus had already been reached globally before the policy proposal reaches this point in the policy development process. We question the desire for yet another public comment period at this level, which we believe to be wholly unnecessary.

However, the requirement for the posting of the policy proposal remains for the purpose of tracking the progress of the review. We would suggest that a time period in which the posting will occur be explicitly stated in place of “a timely fashion” to avoid confusion and frustration resulting from differing expectations of what constitutes timely. We do not believe that it would be out of line to expect the posting to be made within 5 business days of acceptance of the proposed policy by the Board Secretary.

Proposed review procedure step 5:

*During all the steps 1-4 above, **ICANN staff so assigned**, may ask the ASO Council for clarifications of the proposal, as appropriate. Such questions for clarifications shall be reasonable, concise and bundled. The ASO Council shall respond to such questions in **a timely fashion**.*

If the AC’s earlier suggestion for steps 2 & 3 are accepted, then the reference to the ICANN staff may be replaced with the ICANN Board. (It is completely reasonable to expect that the ICANN Board may choose to act through its staff to request clarification.)

And likewise, the ICANN Board should be able to expect a response from the ASO Address Council within 10 business days rather than the ambiguous “timely fashion” timeframe.

Proposed review procedure step 7:

*The Board takes its **final decision** on the proposal and informs the ASO thereof, in line with the MoU provisions in Annex A, articles 9-11.*

As noted in a solicited public comment², the “final decision” as stated in this proposed review procedure is not exactly as final as the term implies. Consideration should be given to the ASO MoU, which highlights this point in Steps 11 to 15 of *Attachment A: Global Policy Development Process* in the case that the Board’s decision is to reject the proposal. Should the Board decide to reject the proposal, under certain conditions, “*the ASO Address Council may forward a new proposed policy (either reaffirming the previous proposal or a modified proposal) to the ICANN Board. Alternatively, the NRO Executive Council may indicate that the policy proposal shall be reconsidered by the RIRs, and the proposed policy reverts to Step 1.*” Hence, the Board’s decision in Step 7 does not automatically result in the abandonment of the proposal.

Even if the “final decision” is with respect to only the steps within this Review Procedure, it causes enough confusion to justify its rewording. (The comment for Step 9 elaborates on this matter.)

Proposed review procedure step 8:

As part of the final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy.

It has already been pointed out in another solicited public comment³ that there are no provisions for automatic advancement or acceptance of the proposal should the Board fail to make a decision within the 60-day window defined in Step 1. This matter has already proven to be significant enough for inclusion as Step 10 in *Attachment A: Global Policy Development Process* of the ASO MoU. Its importance warrants a time-out provision to be stated in this Review Procedure.

The AC suggests that the next step (or a second paragraph in the same step) be stated as such:

Should the Board fail to take action on the proposed policy as defined by the MoU provisions in Annex A, article 10 within the 60-day window, the policy is deemed to be accepted by the ICANN Board, and the ICANN staff shall take all necessary steps to implement the policy.

Proposed review procedure step 9:

*Throughout the Review Procedure, from policy proposal to a **final decision** by the Board, ICANN will maintain on the Website, a status web page detailing the progress. This web page shall describe the initial proposal for a policy, all discussions and comments submitted in the process, all reports and recommendations produced on the matter and the **final decision**.*

Step 9 assumes that a "final decision" will be reached by the Board every time. To account for cases where there is not such a decision, the phrase "conclusion of review", "outcome of review", or alternate verbiage that equally conveys the results of the process would be an appropriate replacement for "final decision".

In closing, the Address Council again thanks ICANN for drafting this proposed review process and requesting comments from the community. We recognize that this first draft signifies the Board's first attempt to fulfill ICANN's agreement in Section 5 of the ASO MoU. It is the AC's sincerest hope that the Board will fully consider all comments made thus far and incorporate the suggestions as reasonably necessary.

¹ This is in reference to section 5 of the ASO MoU:
<http://aso.icann.org/docs/aso-mou2004.html#5>

² The public comment was made by ARIN Advisory Council Member Bill Darte on 7 Apr 2005:
<http://forum.icann.org/lists/new-aso-procedures/msg00001.html>

³ The public comment was made by ARIN Board Member Bill Manning on 15 Apr 2005:
<http://forum.icann.org/lists/new-aso-procedures/msg00002.html>