



Comments of Intellectual Property Constituency

July 2, 2015

The Intellectual Property Constituency of the GNSO (IPC) appreciates this opportunity to comment on the staff proposal “Proposed Schedule and Process/Operational Improvements for AoC and Organizational Review.” See <https://www.icann.org/public-comments/proposed-aoc-org-reviews-process-2015-05-15-en>.

We strongly agree that the current schedule to carry out 7 reviews during the upcoming fiscal year – the “unplanned confluence of reviews” – is totally unrealistic. The bandwidth of ICANN volunteers is already sorely overtaxed with the overlay of the IANA transition and ICANN accountability exercises on top of the reviews called for either by the By-Laws or by the Affirmation of Commitments which ICANN entered into with the US government 6 years ago, to say nothing of all the other work streams underway within ICANN.

However, we are skeptical that the staff’s proposed solution – to run 3 AoC reviews concurrently in FY 2016 while deferring the 4 other organizational reviews until FY 2017 – will do much to alleviate the problem. From IPC’s perspective, the AoC reviews are almost certain to demand far more investment of time, resources and bandwidth than any or all of the proposed organizational reviews. While this perspective is influenced by the fact that IPC does not participate directly in ALAC, SSAC or RSSAC, the fact remains that the 3 AoC reviews have far more cross-community implications than most of the organizational reviews, so our concerns may be reflected elsewhere in the community.

Accordingly, we propose that ICANN, through appropriate channels, seek agreement from its AoC partner to postpone at least one, and preferably two, of the AoC reviews by 6-9 months from the schedule presented. If deemed necessary, this change could be counterbalanced by accelerating some or all of the organizational reviews into FY 2016.

While arguments could be made for a short deferral of the start of each of the planned AoC reviews, we believe the arguments are especially compelling with regard to the Competition, Consumer Choice and Consumer Trust (CCT) review of the new gTLD program. ICANN has embarked on an ambitious data gathering program to support this review, and under the proposed schedule at least some and perhaps much of that data will not realistically be available to the CCT review team until well after that review gets underway. As IPC has repeatedly stated in several fora, including a series of meetings with ICANN Board members, we are determined to have direct representation on this review team (no IPC representative has ever been selected to serve on any AoC review team to date), so we are committed to ensuring that the team has available to it the full range of data needed to evaluate the current new gTLD round and to make specific recommendations for the conduct of any future round. IPC maintains the position that no future round should be launched until after the Affirmation of Commitments



review of the 2012 new gTLD round (whenever such review commences) has been completed and the results of that review have been fully considered, including in a Policy Development Process.

With regard to the Whois AoC review, we note that more than a dozen separate work streams are underway on various aspects of registration data services (including the current Whois), and that the impending implementation of the RDAP protocol may bring with it other disruptions to the status quo. It seems prudent therefore to consider some delay in launching the Whois 2 AoC review, so that these work streams (and the RDAP roll-out) may mature (and perhaps even conclude in some cases) rather than all running in parallel with an AoC review that will demand considerable attention from IPC and other ICANN entities.

Finally, we note that the staff proposes that proposals for structural change be excluded from the scope of all organizational reviews going forward, and be dealt with only after the respective review is finalized. IPC has no opinion on whether this approach might be viable for some of the organizational reviews that are upcoming. We strongly believe, however, that the top-down decision to impose this sequencing on the current GNSO review was a costly and ill-considered mistake that has undermined confidence in ICANN's organizational review process and led to the procurement of an expensive GNSO review report that will be of limited utility. We urge that this conclusion with regard to "focus[ing] each organizational review on operational effectiveness," to the exclusion of structural change issues, be reconsidered.

Respectfully submitted,

GNSO Intellectual Property Constituency

By Steve Metalitz, Vice President