

**RySG Comments to ICANN’s Draft Proposal**  
**for**  
**Affirmation Reviews, Requirements and Implementation Processes**

The RySG welcomes the opportunity to comment on ICANN’s draft proposal for Affirmation Reviews, Requirements and Implementation Processes. The RySG looks forward to working with ICANN staff, ICANN’s Board and all members of the community in taking this first, important step in moving ICANN concretely toward its objective of acting as the global technical coordinator for the Domain Name System (DNS) whose decisions are taken in an accountable and transparent manner and in the public interest.

The comments that follow represent a consensus position of the RySG as further detailed at the end of the document.

**General Comments**

The Affirmation of Commitments (AoC) is a “constitutional” document for ICANN. While it is, in substance, a bilateral agreement between ICANN and the United States Department of Commerce, it also enshrines ICANN’s direct commitments to the community and identifies specific undertakings for ICANN to develop and improve community confidence in ICANN as the technical coordinating body for the DNS. The AoC specifically identifies actions designed to improve ICANN’s decision making, policy development processes and operational practices as well as its relationship with the ICANN community.

The review of ICANN’s accountability, transparency, and decision making processes under the Affirmation of Commitments is critically important to ICANN’s future. In the past two years, through repeated public comment periods and in public meetings, ICANN stakeholders have discussed at length the ways in which ICANN’s formal mechanisms – the Ombudsman, Reconsideration, and Independent Review - fail to deliver meaningful accountability. *Two years ago* the ICANN Board called on the Board Governance Committee to schedule a review of existing dispute resolution mechanisms to identify ways to provide “even higher levels of accountability.” *A full year ago* the President’s Strategy Committee completed nearly three years of work on “improving institutional confidence” by recommending that the Board seek advice from a committee of independent experts on the restructuring of the review mechanisms

to provide a set of mechanisms that will provide for improved accountability in relation to individual rights.

Given this backdrop of clearly articulated and often repeated calls for improved accountability mechanisms, and ICANN's repeated commitments regarding improving those mechanisms, we believe it is important that ICANN's progress on these efforts be one of the criteria upon which ICANN should be measured.

The draft terms of reference for the review on accountability and transparency completely fail to identify overhaul of the existing accountability mechanisms as a criteria upon which ICANN's performance is to be assessed. Rather, the draft proposes to evaluate the performance of the Board, and in that context, to "consider" an appeal mechanism for Board decisions.

While the RySG welcomes ICANN's review of Board performance, the Board's interactions with the GAC, community "acceptance" of Board actions, and the effectiveness of the PDP process, we strongly recommend that the draft terms of reference be amended to include a thorough review of existing accountability mechanisms as well.

## **1) Review Requirements**

### **1.2 Performance Indicators**

The RySG believes that the proper identification of metrics and qualitative measures is the single most important exercise in establishing review mechanisms that will deliver the necessary and valuable outputs to enable the community and ICANN to determine if ICANN is achieving its stated objectives in the AoC. ICANN recommends that evaluators identify those "quantitative and qualitative factors or variables that help to measure achievement" and refers to the American Evaluation Association for a definition of "evaluation" to guide the evaluation of the four areas to be reviewed. While this definition and the suggested approach to "indicators" are useful, the RySG believes that the Review Teams, with community input, should determine the proper performance indicators. Moreover, the RySG believes that the indicators should be as objective as possible to avoid subjective interpretation.

In identifying the proper indicators, careful consideration must be given to the specific roles ICANN plays that are to be evaluated: 1) coordinator of a "bottom up" policy making process; 2)

private sector contractor managing contracts with private-sector and public-sector parties; 3) actor with unique, but limited responsibility for the stability and security of the DNS; 4) not-for-profit private sector organization. Any reference to definitions of “evaluation” or existing metrics or indicators must be considered in light of the enumerated ICANN roles. While ICANN in some ways is a unique organization with the combination of a private sector organization and public interest responsibilities, none of the four roles identified above are without precedent and there should be ample resources and points of reference to establish the proper indicators to measure ICANN’s performance.

#### **1.4 Review Conduct**

The RySG agrees that the “Participatory” and “Empowerment” Evaluations (if those are the models used) should allow Review Teams to be empowered to “ensure the integrity of the process and to guarantee that the public’s interest in an accountable and transparent review mechanism is adequately respected and enshrined in carrying out the evaluation exercise.” This section of the Draft Proposal is not clear on the substantive role of the external evaluator. The RySG believes that the role of the external evaluator, as noted in section 2, should be as a facilitator for the Review Teams who provides data concerning evaluation methodologies and processes.

#### **Review Methodology**

The proposed Review Methodology appears sound in terms of identified tasks and the sequencing of tasks. The RySG agrees that the Review Teams are the leading actors of the review process and should be independent from the ICANN staff and ICANN Board.

At all times, independence of the Review Teams must be respected and verifiable. Involvement of the respective actors in each task seems appropriate.

#### **Review Teams and Review Team Selection**

In the AoC, ICANN commits to having “representatives of the relevant ICANN Advisory Committees and Supporting Organizations” without specifying the numeric and proportional representation across the respective ACs and SOs. Moreover, the AoC says that ICANN should ensure that its decisions are in the public interest and “not just the interests of a particular set of

stakeholders.” Since the review mechanisms must have the confidence and support of the community, representation on the review teams will be a fundamental question. Without commenting on the representation of other ACs and SOs, the RySG notes that representation of registries in the four review teams is constrained in ICANN’s proposal. Registry representation would occur through the GNSO and ICANN has proposed that the GNSO be afforded one representative in the Accountability and Transparency Team, the Competition, Consumer Trust and Consumer Choice Team and the WHOIS Team. The GNSO is afforded less than one full representative in the Security, Stability and Resiliency Team. While the RySG is sympathetic to the notion that review teams must be a manageable size, such underrepresentation of registries – one of the contracting party houses in ICANN – is not acceptable.

RySG also questions the basis and criteria upon which ICANN has determined how the mission or focus of respective ACs and SOs “are relevant to the subject of each review.” While the AoC does use the word “relevant,” the issues addressed by the four Review Teams have far reaching implications for the community. Where participation of a given AC or SO was constrained for any of the four Review Teams, ICANN must explain the rationale and criteria for having reached such a conclusion.

While ICANN provides some basis for keeping review team size small in section 3.1.2., the discussion nevertheless allows that teams up to 10 can function with certain desired efficiencies. ICANN has room to provide broader representation for groups in the community, such as registries, who play a central role in the operation of the DNS. A sense of under representation for key constituencies in the review process would not bode well for ICANN in its first post-JPA confidence building exercise.

### **Independent Experts**

The Draft Proposal suggests only that “these experts be identified, if needed, by the Selectors, at the time of the establishment of the Review Teams, or immediately afterwards” with no mention of the role of the Review Team in the identification, vetting and selection of the Independent Experts. Given the importance of the “independence” of experts who participate in the respective review teams, the RySG maintains that the Review Teams should have a specific and determinative role in the identification, vetting and selection of independent experts.

## GNSO gTLD Registry Stakeholder Group Statement of Support with regard to These Comments

A supermajority of 10 RySG members supported this statement:

- Total # of eligible RySG Members<sup>1</sup>: 15
- Total # of RySG Members: 14
- Total # of Active RySG Members<sup>2</sup>: 14
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 14
- Names of Members that participated in this process:
  1. Afilias (.info)
  2. DotAsia Organisation (.asia)
  3. Dot Cooperation LLC (.coop)
  4. Employ Media (.jobs)
  5. Fundació puntCAT (.cat)
  6. mTLD Top Level Domain (.mobi)
  7. Museum Domain Management Association – MuseDoma (.museum)
  8. NeuStar (.biz)
  9. Public Interest Registry - PIR (.org)
  10. RegistryPro (.pro)
  11. Société Internationale de Télécommunication Aéronautiques – SITA (.aero)
  12. Telnic, Limited (.tel)
  13. Tralliance Registry Management Company (TRMC), (.travel)
  14. VeriSign (.com, .net & .name)

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<sup>1</sup> All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RySG Articles of Operations can be found at [http://www.gtldregistries.org/about\\_us/articles](http://www.gtldregistries.org/about_us/articles) .

<sup>2</sup> Per the RySG Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

- Names & email addresses for points of contact:
  - a. Chair: David Maher, [dmaher@pir.org](mailto:dmaher@pir.org)
  - b. Alternate Chair: Jeff Neuman, [Jeff.Neuman@Neustar.us](mailto:Jeff.Neuman@Neustar.us)
  - c. Secretariat: Cherie Stubbs, [Cherstubbs@aol.com](mailto:Cherstubbs@aol.com)

Regarding the issue noted above, the level of support in the RySG for the Constituency statement is summarized below.

- 1.1. **Level of Support of Active Members:**
- 1.2. # of Members in Favor: 10
- 1.3. # of Members Opposed: 0
- 1.4. # of Members that Abstained: 0
- 1.5. # of Members that did not vote: 4
- 2. **Minority Position(s):** N/A