

Registries Stakeholder Group Statement

Feedback on the **Operational Design Phase Concept Paper**

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Registries Stakeholder Group Input on the Operational Design Phase Concept Paper

The Registries Stakeholder Group (RySG) welcomes the opportunity to provide feedback to ICANN on its 1 October 2020 concept paper for an “Operational Design Phase” (ODP)¹. We recognize the stated intent of the ODP is to help inform the ICANN Board prior to consideration of GNSO Consensus Policy recommendations, while enabling transparency and community feedback and avoiding delays in the overall timeline. We believe these are all worthy goals.

At a high level, the RySG supports the ICANN Board’s desire to be fully informed on potential risks, options and costs related to the approval and implementation of GNSO Consensus Policy recommendations, particularly where those recommendations may have a significant impact on operational complexity, institutional structure, and budget.

However, in our review of the Concept Paper, the RySG has noted some concerns and possible risks associated with the proposed ODP implementation and have flagged those below as questions or comments. We look forward to further engagement with ICANN Org on next steps and updates to the ODP Concept Paper.

¹ Operational Design Phase Concept Paper, 1 October 2020 Discussion Draft,
<https://www.icann.org/en/system/files/files/gnsso-odp-01oct20-en.pdf> .

Section 1: Purpose

The RySG supports the purpose statement and most bullets identifying the key goals of a successful ODP. However, with bullet #4, we are concerned that an ODP that *“provide(s) a mechanism to test ideas and assumptions with the community before a decision is taken by the Board,”* could introduce an opportunity for a new round of attempted influence and lobbying of the ICANN Board on issues that were previously resolved during GNSO policy development. There is both potential benefit and risk associated with such an undertaking, so there must be safeguards and guardrails in place to prevent attempts to re-litigate settled issues, to substantially alter GNSO Consensus Policy recommendations, or to re-interpret the intent of such recommendations. Clear guidelines must be in place to prevent any such abuse of process.

Section 2: Principles

The RySG believes the principles outlined in the ODP Concept Paper are worthy and on point. However, we are concerned that these principles are potentially conflicting and will ultimately result in situations where not all can be met simultaneously.

- The RySG agrees that the results of an Operational Design Phase should maintain fidelity to the underlying policy recommendations. If any policy recommendations are substantively impacted by the analysis, these should be returned to the GNSO Council and/or relevant PDP WG for further consideration.

RySG COMMENT:

The RySG notes the importance of respecting the recommendations that the ODP may be analyzing and notes that the appropriate touchpoint for input may vary depending upon when the ODP is initiated. If the ODP is initiated during an open PDP then we suggest a contact within the PDP (e.g. the Chairs could be given access to the ODP). If the ODP is initiated after the GNSO has approved and delivered recommendations to the ICANN Board, a GNSO Council liaison to the ODP would be more appropriate.

RySG QUESTIONS:

- What is the process by which such a determination would be made, and what is the mechanism for such a referral?
- How would such a determination and referral not introduce additional delays?
- Should the GNSO receive a report or opportunity to review the ODP output prior to public comment for a very narrow review simply to ensure no policy recommendations are impacted?

- The RySG agrees the Operational Design Phase should not create delays in the overall timeline to Board consideration.

RySG COMMENT: In order to avoid introducing delays, the RySG believes any ODP-like work should begin as soon as possible and concurrent with the work of the GNSO PDP Working Group. ICANN Org should take advantage of any liaisons to PDP WG's to ensure it is fully informed, and concurrently informing the community work, on any possible concerns that might trigger an ODP.

- The RySG agrees that the work in the Operational Design Phase does not replace the implementation work of ICANN org with the Implementation Review Team (IRT), which occurs after the Board approves policy recommendations.

RSyG COMMENT: The RySG supports the existing Consensus Policy Implementation Framework (CPIF) that guides the GNSO and ICANN Org in consideration and implementation of GNSO Consensus Policies and are committed to following that existing policy. If an ODP augments the CPIF, that would be positive, but we need to ensure that guardrails are put in to prevent either the duplication of effort and potential for the delay of implementation due to any added formality or complexity of the ODP.

- The RySG agree that affected stakeholders should have the ability to provide input to the work of the Board, ICANN org, and the community in the Operational Design Phase.

RySG COMMENT: The RySG supports this premise, but we also believe affected stakeholders can already provide input to the GNSO, ICANN Org and ICANN Board through participation in GNSO PDP Working Groups and through the submission of public comments. We believe the ODP must not take the place of such contributions or be used to re-litigate issues resolved during the GNSO policy development work.

- The RySG notes the following language on Page 3:

“As noted above, the proposed phase encompasses both operational analysis by ICANN org and a mechanism for community stakeholders to consider, corroborate, and, if necessary, add to the information that is being shared with the Board.”

RySG COMMENT: This excerpt confirms that “community stakeholders” would have a substantial role in the ODP. It is not clear what additional information is contemplated to be shared with the Board given that PDP recommendations are already supposed to be grounded in data. Overall, the process as described does seem to raise “second bite at the apple” concerns.

Section 3: Operational Design Assessment

- The RySG notes the following language on Page 4:

This assessment is structured around a series of information requests established by the Board, which identifies questions and information it believes are necessary to understand the impact and organizational implications of a set of policy recommendations. Such requests could include the following:

Identification of other organizations or stakeholder groups affected and who should be consulted and/or alerted

RySG COMMENT: This appears to give the Board authority to selectively identify specific outside organizations and stakeholder groups for consultation on “information” relating to specific policy recommendations. Presumably, such information could justify returning the recommendations to Council for further consideration. This could introduce an incentive or encouragement to groups to not participate in GNSO policy development, believing they will have an opportunity to influence the ICANN Board, or add or alter recommendations, during an anticipated ODP. This should be avoided, and guardrails, such as narrow scope and charter for any ODP, should be put in place to address this potential risk.

Section 4: Community -- Design Feedback Group

- The RySG supports the premise that openness and transparency are very important to the ICANN bottom-up multi-stakeholder model. We note the following text and submit the following questions and comments:

A community-led Design Feedback Group (DFG) should consider and provide input on the operational design work conducted by ICANN org. The DFG would be a mechanism for the community to provide feedback on the ideas and assumptions in ICANN org’s assessment before these are transmitted to the Board. DFG representatives would be selected based on defined qualifications, and they would assume responsibility for proactively seeking and coordinating feedback from their respective community groups.

The group will be expected to agree at the outset to a charter, operating procedures, and work plan. The charter would include a statement of work to define the group’s scope and remit and ensure the group addresses the relevant questions posed to it. The operating procedures for the group should uphold the value of transparency, specify decision-making and agreement procedures, and provide for efficient administration. The work plan for the group would help track the activity to meet predetermined milestones using the allocated resources. While the specific work plans would vary, the charter and operating procedure should be consistent across different sets of policy recommendations. The group should not be a forum for revisiting existing policy decisions leading to the recommendations under consideration. Its role would be focused

on and limited to reviewing the technical, operational, fiscal, and organizational considerations in the Operational Design Assessment, which in turn guide Board consideration and next steps.

RySG COMMENT: First, to highlight that the ODP envisions inclusion of a bureaucratic DFG with a charter, operating procedures, and work plan, and led by community members. This appears equivalent in structure to the original PDP WG and makes it even more likely that the ODP will add a very substantial delay to the Board’s ultimate consideration of a WG’s recommendation. The RySG suggests that the work of the ODP be time bound to try and mitigate the risk of delay. Second, while the DFG is not supposed to reopen policy decisions made by the PDP WG, we are concerned that the language used by ICANN in the ODP stating that assumptions could be questioned, implies that such policy discussions can be reopened. s. We would like ICANN to make it clear that this language is intended to mean that ICANN’s implementation assumptions could be questioned, not the GNSO’s policy assumptions.

RySG QUESTIONS:

- Who selects the members of the DFG? (from the chart on pg. 8 it looks like SO/ACs).
- If the PDP was not structured as the EPDP does this introduce other parties into the consideration of consensus recommendations? Who is eligible to participate?
- The text notes that participants would “*DFG representatives would be selected based on defined qualifications*”. What does ICANN envision for the qualifications.?
- Is it a standing committee?
- If this is meant to add to transparency, why a closed group instead of public comment?
- How much time will this add to the ODP and therefore Board consideration?
- Has a template Charter for the ODP been contemplated to outline the scope of ODP?

Section 5: Timing Considerations

- The RySG notes the following text on Page 6:

Given that this phase is intended to be a substantive part of the policy and implementation lifecycle, timing considerations are a critical part of establishing its structure. At a minimum, for both the ICANN org and DFG work, this structure should include defined timeframes to complete their respective deliverables.

RySG COMMENT: Based upon the PDP experience, we all know that timelines are often optimistic and often need to be extended. Also, precisely what is the ICANN Org work outside the DFG structure (but preceding the Org-led IRT) that will be taking place, and when and how will it be integrated with the DFG’s output?

- The RySG notes the following text on Page 7:

An alternative option would be for the Board to initiate the Operational Design Phase earlier, so that it begins during the later stages of the PDP.... ICANN org should share progress of its preliminary design work and engage constructively with the PDP Working Group to ensure that the PDP Working Group can use any relevant information to generate additional precision to its recommendations.

RySG COMMENT: As noted in our earlier comments, the RySG supports early engagement of ICANN Org to help inform itself and in helping PDP Working Groups identify where there may be a need for an ODP, we acknowledge certain corresponding risks. We note that ICANN has participated in a number of PDPs (e.g. SubPro PDP and EPDP). Although we appreciate ICANN Org and the Board’s participation and efforts, we have observed that a number of ICANN Org inputs (e.g. recent SubPro submissions) were only received at Public Comment stage. Objectively, and given the participation of ICANN Org and the ICANN Board on such efforts, such inputs are likely to be of significantly more aid to the work of the PDP, when raised during the work of the PDP, prior to the publication of the final report. Considering the ODP’s proposed scope and function, it occurs that this is a valid example of potential ODP discussions and highlights the preference and necessity for the PDP to have such matters raised earlier in the process. On the other hand, we also note that it is often difficult enough to conclude a PDP WG focused solely on making policy recommendations. Therefore, careful thought needs to be given to balancing the need for helpful information during the PDP vs. ICANN Org overly influencing the final stages of the PDP.

Early input is always more practical and less disruptive to PDPs than input received when the PDP has entered its final stages of deliberation. ICANN Org or Board influence or pressure to reshape final PDP recommendations, via ODP input, should be avoided as these should remain firmly in the remit of the GNSO. In short, initiating the ODP while a PDP is underway may be helpful in certain circumstances, but not necessarily appropriate for all PDPs. .

RySG QUESTION: If the ODP and DFG inputs are to be incorporated into the public comment phase, how would this impact the public comment timing? Further, on page 3 it notes that the ODP would “provide an opportunity to course correct prior to Board consideration.” This appears to conflict with (or previous language is unclear) that this will be part of the Board’s consideration. The RySG is seeking clarification on these points.

Section 6: Roles and Responsibilities

- The RySG notes the chart related to the roles and responsibilities on Page 8:

The chart on this page identifies “Relevant Roles & Responsibilities” within the ODP. For the PDP WG, one role is “Provides information and clarifications to ICANN Org and Design Feedback Group where necessary”.

RySG COMMENT: This seems to contemplate the continued existence and a substantial role for a PDP WG even after it has delivered its final report and recommendations. How will this interaction between the WG and DFG be managed in an efficient manner, especially if an ODP appears to be raising issues that will necessitate a WG’s recommendations being returned to Council? Will WG members be allowed to, or prohibited from, serving on the corresponding DFG?

The chart also states that the role of the DFG is “Considers Operational Design Assessment” and “Identifies any inconsistencies with policy recommendations”.

RySG COMMENT: Contrary to the assertion that the DFG cannot relitigate policy recommendations, it appears to have carte blanche to create or limit an implementation design that is inconsistent with them and requires their return to Council for reconsideration. This statement should state: “Identifies any inconsistencies with policy recommendations solely with respect to ICANN Org’s design of the mechanism for implementation. How will this be prevented/mitigated?”

- The chart also states that the role of the ICANN President and CEO is “Appoints relevant individual to lead operational design phase”.

RySG COMMENT: It’s not clear to the RySG what a “relevant individual” is, but this makes clear that Org, through the CEO’s hand-picked chair, will be leading a new process that envisions substantial community participation. Whether this is good or bad will be situational. And is that individual to be Org staff, a selected community member, or a complete outsider?

Conclusion

The RySG appreciates the opportunity to engage with ICANN (Board, Org and Community) as we consider next steps around the Operational Design Phase Concept Paper. As noted above, we see potential benefit, risk and the need for additional guardrails to ensure an ODP delivers on its promise while avoiding the potential for re-litigating policy issues, circumvention of the PDP process and the introduction of further complexity and delays in already complex procedures. We are available to answer any questions about this response.