

Staff Report of Public Comment Proceeding

Deferral of Country Code Names Supporting Organization Review

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Public Comment Proceeding

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Section I: General Overview and Next Steps

General Overview

Due to the continued pressure on the workload of the ICANN Community, the Board's Organizational Effectiveness Committee (OEC) offered the ccNSO a 12-month delay to the start of its review. The ICANN Community was invited to participate in the public comment process for its input on the proposed delay.

Next Steps

Following the close of the public comment period, the proposal for delaying the start of the ccNSO Organizational Review for 12 months, including any feedback obtained during the public comment period, will be presented to the ICANN Board for its consideration.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the proceeding.

Organizations and Groups:

Name	Submitted by	Initials
ALAC	Member of ICANN Org	ALAC
ISPCP	Member of ICANN Org	ISPCP
NCSG	Rafik Dammak	NCSG

Individuals:

Name	Affiliation (if provided)	Initials
Wafa Dahmani		WD

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN received four (4) comments from the community on the proposed 12-month delay of the start of the ccNSO Organizational Review, with one commenter expressing opposition.

Addendum to Staff Report

The NCSG missed the submission deadline and thus their contribution was not included in the public comment proceeding. To reflect the full breadth of community feedback, the original NCSG contribution is included below and their comments have been included in the analysis.

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

Comments in favor and non-opposition of the proposal for delay included explanation of this stance, including that deferral will result in increased effectiveness of the review (WD), that deferral will be beneficial to the use of volunteer resources and will result in a better outcome of the review when it is performed (ALAC), that a deferral is an appropriate exercise of discretion provided in the Bylaws with respect to timing (ALAC), and that the proposed delay is not opposed, taking account of the workload facing ICANN at this particular time (ISPCP).

Commenting in opposition to the delay, the NCSG calls for the Board to reject the proposal for delay and to proceed with the Review, as scheduled, later in 2017, on these grounds:

- Reviews are an essential component of ICANN's accountability regime.
- Bylaws, §4.4: "These periodic reviews shall be conducted no less frequently than every five years..." that use of the word "shall" indicates that this is a requirement.
- Noting that sub-clause of §4.4 is a subordinate sub-clause, and that the "Board is to cause the Reviews to occur whenever it deems feasible within the mandatory five-year period."
- Keeping to the Bylaws-mandated schedule is important for maintaining public confidence in the integrity of ICANN and its commitment to being a truly accountable organization.
- It is unacceptable to suggest that the Bylaws allow the Board to postpone Reviews beyond the mandated five-year period.
- Interpreting the Bylaws as to allow indefinite postponement of Reviews sets a dangerous precedent and is not permitted.

- Prior precedent regarding delays does not constitute a waiver of Bylaws §4.4.
- Further delay will cause this Review to be almost 2.5 years behind schedule.
- A 2.5-year delay undermines confidence in post-transition adherence to Bylaws.

In its comment, the NCSG acknowledged and expressed sympathy regarding community workload, but questioned if Reviews result in overly taxing community resources, having observed sufficient volunteer participation in 2017 reviews thur far.

The NCSG reiterated the importance of community and public confidence, and the need for ICANN to rigorously adhere to its new commitment to accountability.

Additional comments, not directly addressing the proposal for a 12-month ccNSO Review delay, were also made:

- A review without an assessment of the implementation status of the recommendations that arose from the previous one will make these reviews useless. (WD)
- We understand this request for deferral being the second after the previous ccNSO review. As a consequence it adds up to two years of delay compared with the usual five-year cycle. (ISPCP)
- ...determination through offering the concerned community the option of deferral – as done by the board letter from 14 March 2017 to the ccNSO and other SO/ACs – seems like an anticipation of the result. (ISPCP)
- Consequences [of delays] could be that
 - Other SO/ACs are not encouraged to continue their own efforts to cope with the planning requirements
 - The entire structure of review planning...gets out of control (ISPCP)
- ...a review similar to those under section 4.4 of the bylaws should be conducted looking to more than just SO/AC chunks, maybe looking to the entire picture.
 ...the need to take a holistic review of the [ICANN] organisation overall is long overdue. Conducting repeated reviews of specific parts of the ICANN structure will only continue to mask many of the issues that urgently need to be addressed, so that ICANN can face future challenges in the best manner, rather than with an overall structure that is rooted in the past. (ISPCP)

**Statement of the Non-Commercial Stakeholder Group on the
Deferral of Country Code Names Supporting Organization Review**

The Non-Commercial Stakeholder Group (NCSG) welcomes the opportunity to comment on the Deferral of Country Code Names Supporting Organization (ccNSO) Review.

The NCSG opposes deferral of the mandatory ccNSO Review. We believe that these Reviews are an essential component of ICANN's accountability regime and that keeping to the Bylaws-mandated schedule is important in order to maintain public confidence in the integrity of ICANN and its commitment to being a truly accountable organization.

The ICANN Bylaws are clear. Per §4.4:

"These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group ."

Sadly, this Review is already late. The most recent review of the ccNSO was submitted to the ICANN Board on 4 March 2011. If this proposal is accepted, the further delay will cause this Review to be almost 2.5 years behind schedule. That would be unacceptable. This is the first AC/SO Review to be initiated under the new Bylaws. ICANN needs to adhere to the new Bylaws faithfully, particularly those concerning accountability, if they are to have the desired effect.

We reject any suggestion that the Bylaws allow the Board to postpone Reviews beyond the mandated five-year period. Indeed, to read this provision of these Bylaws as to allow the Board to indefinitely postpone Reviews in that way would set a dangerous precedent. It also is not permitted.

The feasibility sub-clause of §4.4 is exactly that: a subordinate subclause. The Board is to cause the Reviews to occur whenever it deems feasible **within** the mandatory five-year period. Note the word 'shall' - this is an absolute requirement. This subclause does not allow the Board to postpone reviews, as proposed, beyond the mandatory five-year period. That it has done so in the past is no reason to countenance such conduct now. After all, one of the reasons ICANN has had to undergo such extensive renovation is that the community felt it had not been committed to true accountability. Postponing the first SO/AC Review by 2.5 years does not engender confidence that anything has really changed.

We are sympathetic to the Board's concern about community workload. We do note that much of the work in organizational reviews is conducted by third parties retained by ICANN specifically for that purpose. That portion of the work should not overly tax community resources. In addition, we note that substantive Reviews begun since the transition have not suffered from a lack of volunteers.

It is essential that the newly independent ICANN maintain the confidence of the community and the public by rigorously adhering to its new commitment to accountability. Postponing the start of the first organizational review to be conducted post-transition, a review that is already late to begin, is not a way to do this. We encourage the Board to reject this proposal to delay this accountability Review and to proceed with the Review, as scheduled, later this year.