



13 May, 2019

Subject: SSAC2019-03: SSAC Input to Issues For Consideration Regarding Establishment of a Standing Panel for the Independent Review Process (IRP)

To: John Jeffrey, ICANN General Counsel and Secretary; Liz Le, ICANN Associated General Counsel

cc: irp-standing-panel@icann.org

Dear John and Liz,

In response to your request to the Supporting Organization and Advisory Committee (SO/AC) leaders, the SSAC provides the following input on the open questions¹ regarding the process to establish a standing panel for ICANN's Independent Review Process (IRP).

The response is organized by topics and questions posed in the issues document.

Qualifications for Standing Panelists for IRP

Prior to issuing a call for potential panelists, are there specific qualifications that should be included? If so, what are they? Should it be a mandatory requirement to serve on the panel, or is it a "nice to have"?

SSAC Comment: While noting that an IRP Panel, upon request, will have access to independent skilled technical experts, the SSAC recommends that a basic level of understanding of security and stability issues should be included as a desirable criterion. It would be ideal if one or two panelists could be chosen who meet this criterion.

Are there any items that you believe should disqualify a candidate from serving on the IRP Standing Panel?

¹ See Issues for Consideration Regarding Establishment of Standing Panel for the Independent Review Process, https://community.icann.org/download/attachments/95095469/Issues%20for%20Consideration%20by%20SO_ACS%20Related%20to%20Establishment%20of%20IRP%20Panel%20Process.pdf

SSAC Comment: While not a qualification as such, the independence of all panelists is of primary importance and should be a mandatory selection criterion. The selection process must ensure that the selected set of IRP panelists don't exhibit a pre-existing bias in favor of the ICANN organization. To achieve required accountability, very strict conflict of interest disclosures must be enforced, and updated regularly.

Should the Supporting Organizations (SOs) and Advisory Committees (ACs) have a formal opportunity to recommend qualifications prior to the release of a call for statements of interest from applicants?

SSAC Comment: This current consultation should be a sufficient process for SO/ACs to identify and recommend qualifications or selection criteria to be included in a call for statements of interest.

Identifying a Slate of Well-Qualified Panelists

Do you agree that the community should rely on expertise to help vet and recommend a final slate for the standing panel? Do you prefer any of the suggested solutions? Do you have other recommendations?

SSAC Comment: The SSAC supports relying on external independent expertise to assist in the recruitment and vetting of candidates and recommending a final slate of panelists (first suggestion). Should this option prove too costly, the appointment of one or two respected and independent jurists to perform this process would be acceptable (second suggestion). The SSAC does not support creation of a community based Nominating Committee (third suggestion).

Direct Community Selection - Do you agree that using experts to propose a slate is preferable to SOs and ACs trying to reach agreement on a slate? If you'd prefer to see SOs and ACs perform this slating work directly, what process do you see them following, and how long do you think it would take to reach consensus on a proposed slate?

SSAC Comment: The SSAC does not support direct community selection.

Interviewing Candidates - Should representatives of SOs and ACs have a role in interviewing candidates? If yes, how do you see that working? Should they help identify interview questions? Should a group of people participate in the actual interviews? If experts are appointed to perform the vetting and slating roles, would the community support having these experts run the interview process?

SSAC Comment: The SSAC supports interviews being conducted by independent experts and does not support the involvement of representatives of SO/ACs.

Board Approval of Panel Slate - Further Questions

After there is a slate of well-qualified applicants, the Board must confirm the panel. The Bylaws say that the confirmation should not be “unreasonably withheld.” If the Board has questions that might impact its confirmation, to whom should those questions be addressed? If experts are used to develop the slate, should the experts, the SOs and ACs, or some combination thereof be part of that conversation?

SSAC Comment: There is no single answer as the consultation required to answer any question will depend on the actual question. The SSAC considers it reasonable for the Board to determine the appropriate group to consult, whether they be the experts developing the slate, or the community.

Future Selections

Do you prefer that the process being designed today be reviewed for effectiveness after the first slating is completed, prior to making it standard operating procedure for future selection rounds?

SSAC Comment: Review of the process would certainly be advisable, but it should assess not only the effectiveness of the selection process (recruitment, vetting and slating), but also the effectiveness of the appointed panelists in performing their function. The process cannot be considered effective unless it appoints panelists who have actually demonstrated that they are capable of doing the job. This requires that sufficient time has elapsed after the appointment of a panel prior to assessing its performance.

After establishment and initial performance(s) of the standing panel, the selection criteria, selection process and the standing panel performance should be identified as a mandatory review item within the Accountability and Transparency Review. Currently, under Section 4.6(b)(ii) of the ICANN Bylaws the Independent Review Process is an optional review item.

Best regards,

Rod Rasmussen
Chair, ICANN Security and Stability Advisory Committee