

NRO comments submitted to ICANN regarding Policy Proposal Review Procedure

DOCUMENT ID: NRO25

17 June 2005

The Number Resource Organisation submitted to ICANN the following comments to the Proposed Review Procedure for ASO Policy Proposals.

Proposed review procedure steps

1. The ASO Address Council sends the proposed policy to the ICANN Board Secretary who formally shall acknowledge receipt of the proposal within one business day. In case the proposal is formally incomplete, the Board Secretary may refer it back to the ASO Address Council for completion, otherwise the 60-day window for Board response to the ASO Address Council starts and the review procedure outlined hereafter commences.

****Comment****

This refers to an undefined state for a policy proposal, ie, that a policy proposal could be "formally incomplete". It presupposes that there is some sort of characteristics for a "formally complete" proposal which is not specified here. Policy proposals are vetted through all of the RIR policy fora and are not editable by the ASO AC. Policy proposals submitted through the ASO AC to the ICANN Board are considered by their nature to be complete. If there items missing from the MoU with regard to this then ICANN should open a dialogue with the NRO about those items

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2. The Board, acting through the President, assigns the activities foreseen in the MoU, Attachment A, article 8, (stating that "The ICANN Board may review the policy proposal and may ask questions and otherwise consult with the ASO Address Council and/or the RIRs acting collectively through the NRO. The ICANN Board may also consult with other parties as the Board considers appropriate.") to ICANN staff.

****Comment****

On the surface this appears to remove the ICANN Board from the policy process and directly involves the ICANN staff in the policy process.

However if the intent of the assignment is for staff to execute the consultation process for the board then this is acceptable.

It should be clear that as a result of this assignment that staff is not a part of the policy process, but is a facilitator of it.

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3. If deemed appropriate by ICANN staff so assigned in line with 2 above, external consultancy assistance may be called upon to assist in the review process.

****Comment****

External consultancy assistance implies the incorporation of a non-ICANN body into the policy process.

Engaging external consultancy assistance is not the same as performing consultation and therefore cannot be a part of the process.

This does not preclude ICANN from engaging assistance for an overtaxed or unknowledgeable staff but it does not remove the responsibility for the consultation action from the staff.

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4. The proposal shall be posted for public comments within 5 business days, with comments due within 21 days from posting. All ICANN Supporting Organizations and Advisory Committees shall be immediately notified of the posting and their comments invited as appropriate.

****Comment****

The start date for the 5 business day clock is not defined.
The term immediately is ambiguous at best.

We suggest changing it to "within one (1) business day" with the same start point as the 5 business day clock.

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5. During all the steps 1-4 above, ICANN staff so assigned, may ask the ASO Address Council for clarifications of the proposal, as appropriate. Such questions for clarifications shall be reasonable, concise and bundled. The ASO Address Council shall respond to such questions within 10 business days.

****Comment****

Given that the ICANN staff attends all RIR and ASO AC meetings, this seems to be a rather superfluous step as any questions of clarification that the staff has at this time should have surely been raised and answered in the months leading up to the submittal of the proposal to the ICANN board.

However, this would seem to be a normal part of the review process and probably doesn't have to be included in this document.

These questions are appropriate as long as they are of an objective nature and not regarding merit or argumentative.

This questioning process can not be a source of delay in the review process.

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6. ICANN staff analyzes comments received following step 2, as well as prior comments put forward during the ASO PDP, and compiles within 10 business days from the end of the comment period a Staff Recommendation which is forwarded to the Board for consideration. The Staff Recommendation shall contain reasoned opinions on all material issues and motivations for proposed decisions.

****Comment****

The analysis or evaluation of the comments made prior to the proposal being submitted to the ICANN board for action is not appropriate. These comments were addressed during the various RIR policy fora.

If the author of those comments wishes to have them addressed again, then the ICANN public comment period is the appropriate venue for those parties to raise these issues again.

It would then be appropriate for the ICANN staff as part of their analysis of the comments from the ICANN comment period to examine not analyze previous comments to determine what else had been said previously regarding the matter.

In the end the staff recommendation should not be an argument of the merits of the policy but rather an exposition of the arguments made so that the board can make an informed decision regarding the policy.

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7. The Board takes its decision on the proposal and informs the ASO Address Council thereof, in line with the MoU provisions in Attachment A, articles 9-11. Relevant MoU provisions in Attachment A, articles 10-15, apply, should the Board request changes to the proposal or reject it.

****Comment****

See comments after paragraph 8.

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8. As part of the decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy. Should the Board fail to take action as defined by the MoU provisions in Attachment A, article 10, within the 60-day window, the policy is deemed to be accepted by the Board and it becomes global policy.

****Comment****

Paragraphs 7 and 8 are confusing and in some regard appear to be contradictory not only to each other but also to the ASO MoU. These paragraphs must be redrafted.

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9. Throughout the Review Procedure, from policy proposal to the outcome of the review, ICANN will maintain on the Website, a status web page detailing the progress. This web page shall describe the initial proposal for a policy, all discussions and comments submitted in the process, all reports and recommendations produced on the matter and the outcome of the review.

****Comment****

In light of the above comments it is unclear what reports would be generated as part of this process other than the fiduciary and legal impact analyses performed by the ICANN staff. However in the interests of openness and transparency it is most appropriate, if not required, for the ICANN staff to post any pertinent reports it either receives or generates with regard to policy that is under review.

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