A. Introduction

The ccNSO Council welcomes the opportunity to provide feed-back and comments on the draft Operating Standards for Specific Reviews. The ccNSO Council uses this opportunity to re-iterate its belief that having Operating Standards in place will help to build the necessary trust in Specific Reviews, which is a fundamental prerequisite for the community at large to work together.

The comments below have been considered and endorsed by the ccNSO Council, though do not necessarily represent the consensus view of ccNSO members or other ccTLDs, some of whom may decide to submit their own comments.

This submission builds on the work of the ccNSO Guideline Review Committee, which has taken into account the draft as proposed, Annex 09 – Recommendation 09 of the CCWG Accountability Work Stream 1, and experience to date with the Specific Reviews currently underway.

In the first section below - General Comments & Observations - we present some general ideas to build on, and ensure trust in, the current and future Specific Reviews, and - more broadly - on how the review practices are evolving post Transition.

In the third section of the paper we make some general proposals and suggest amendments to the draft Operating Standards. In the final section we include an annotated version of the draft.

B. General Comments & Observations of Specific Review Processes to date

1. Stacking of Reviews: the implications for the community. First, we want to use this opportunity to express our concern about the overall timing of the reviews. The review process provides a vital accountability mechanism for the community. However, we must recognise that this does lead to a significant number of reviews. We would not want to undermine the process by running several reviews in parallel as this could impact the objective to improve the efficiency and effectiveness of reviews, and, ultimately, the value of the reviews themselves.

It is our view that the result of running a number of reviews (both specific and others) simultaneously will not necessarily achieve the goal of improving the effectiveness and efficiency of reviews, but will impose an undue burden on the community and strain the availability (and goodwill) of the volunteers.

To give an example: currently (January 2018) the ccNSO participates and is engaged in SSR2, ATRT3 and CSC charter review, and may in the near future participate in the RDS/WHOIS2 review. In the course of 2018: the review of ICANN's Budget and operational plan, the Internal organizational review of the ccNSO, the Effectiveness of the CSC, the first IANA Function Review (IFR) reviews will have to be added to the list. We foresee that in

2019 the ccNSO will still be engaged in the effectiveness of the CSC, IFR and Internal Organizational, ICANN's Operational and Budget planning and Strategic plan cycle and, given its current pace, with ATRT3. The calendar year 2020 may be the only foreseeable year without any specific or organizational review. However, post 2020, and based on our interpretation of the 1 October 2016 Bylaws, the full cycle of Specific and other reviews starts again in 2021: SSR3, RDS/WHOIS 3, the second effectiveness review of the CSC, and early 2022 - ATRT 3.

We strongly recommend that, in conjunction with this process of developing the Operating Standards, all stakeholders involved will be provided with an overview of all the reviews to be undertaken under the current Bylaws up to 2023 (5 -6 year cycle), so well into the second cycle of Specific reviews, and based on this overview start a discussion on the goal and purposes of these reviews, their frequency in light of sustainability, quality and ultimately the value of these efforts.

2. Operating Standards in place before moving forwards with Current reviews. Our second, overall concern is also directly related to phasing. The CCWG Accountability recommended,[1] and the community agreed that, to support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs. It is our understanding that from a CCWG perspective the Operating Standards would guide ATRT3, the RDS/WHOIS2 review and, to the extent possible, SSR2.

Further, the CCWG envisioned that the Operating Standards should address topics like: composition of Review Teams, Review Team working methods (meeting protocols, access to documents, role of observers, budgets, decision making methods, etc.), and methods of access to experts. In addition, these standards should be developed with the community and should require community input and review to be changed.

Finally, the standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel.

The ccNSO has expressed its concerns a number of times that the Operating Standard should be in place before starting a Specific Review[2], not to be legalistic, but to ensure:
1. the basic methodology to run reviews is in place before they start, and,
2. the expectations of all stakeholder with respect to the Reviews are aligned.

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[1] https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/5872637 5/Annex%2009%20-%20FINAL-Revised.pdf

[2] See for example: https://ccnso.icann.org/sites/default/files/file/field-file-attach/2017-05/sataki-to-crocker-02may17-en.pdf

Unfortunately, some of the risks associated with lack of guidance have materialized: One review was put on hold more than a year after its launch, another review still awaits appointment of members almost a year after the initial call for members. We do not want to suggest that none of the issues would have emerged if the Operating Standards had been in place, but the Operating Standards could have provided a basis to mitigate the risks.

We therefore strongly suggest that before starting any new specific review, the Operating Standards be developed further to provide a stable basis to conduct the reviews. We suggest that starting at ICANN61 a working party under the auspices of ICANN Org and the SO/AC chairs will further develop the draft Operating Standards and present version 02 in time for ICANN62.

C. Overall comments with respect to the Draft Operating Standards

1. Distinction between Bylaw requirements and best practice. At this stage of the discussion we would appreciate clarity and an indication of what should be included on the basis of the Bylaws ("must have"), what is added as perceived best practice, and what is added to assist and mitigate risks already identified based on experience with previous and current (Specific) Reviews. For example, it is our understanding that according to the Bylaws a Confidential Disclosure Framework must be included in the Operating Standards (Section 4.6 (a) (vi). A proposal as such is included. However, without going into the merits of the proposed Framework, – the way in which it is presented is not directly anchored in the Bylaws.

It is our understanding the Operating Standards have been proposed by the CCWG Accountability as a means to improve the efficiency and effectiveness of reviews on an ongoing-basis, and the community would update the Operational Standards to ensure that they continue to meet the needs of the community. We suggest that in the next version there be an order of precedence to what should be included in the Operating Standards focusing first on those 'must haves' directed by the Bylaws, then on what was recommended by the CCWG Accountability, and then on what should be in place based on the experience to date.

2. Structure of the document. The ccNSO Council understands and appreciates that the drafters intended to follow the flow of a Specific Review process. However, to improve the understanding of the document, we would appreciate if in the next version a workflow would be included. This would also help to understand the consistency and robustness of the proposed process and procedures. For example, in the draft it is proposed that Scope drafting team develops the scope for a specific review.

Secondly, the ccNSO would appreciate if it would be made more explicit which parts of the Operating Standards are generally applicable to all proposed process phases, and which only to specific parts. For example, we understand that the proposed guideline around Conflict of Interest would apply throughout the process, including to the proposed Drafting team. However, due to the structure of the document and by the use of internal references it is

not clear from the document itself what is applicable to which phase. We suggest to re-structure it in such a manner that in use it is clear which parts are generally applicable and which would be applicable to a specific phase only, for example a section with general rules or principles would already be helpful.

3. Scope of applicability of Operating Standards. It is the understanding of the ccNSO Council that the Operating Standards are applicable to all Specific Reviews. It is also the understanding that they could be applied to other types of reviews envisioned under the Bylaws, for example the IANA Function Review or IRP review. The ccNSO Council would appreciate a clarification whether its understanding is correct, and if so, recommends the inclusion of a mechanism on who will decide on their applicability and when and how such decisions will be made.

4. Mechanism to Change Operating Standards. It is the understanding of the ccNSO Council that the Operating Standards are intended to enable the community to review the practices and procedures on how it conducts specific reviews on an ongoing basis to ensure that they continue to meet the community's needs and to ensure the effectiveness and efficiency of the reviews. The proposed change mechanism is very heavy handed and could be significantly simplified, for example, by using the method of cross-community working groups to change charters. Related, it is not clear why certain parts of the Operating Standards are excluded from the proposed change mechanism, in particular the Confidential Disclosure Framework. It is the understanding of the ccNSO Council that this Framework should be developed as an integral part of the Operating Standards, and must be aligned with certain principles. These principles are not subject to change through the Operating Standards change mechanism, but we do not understand the reason why the Framework itself is excluded as suggested in note 31 of the draft.

5. Alternative approaches. In this draft of the Operating Standards only single methods are proposed to provide guidance for related topics. For example, for the nomination and selection of members of a specific review team the only method that is proposed is the one that has been developed and used for SSR2. However, as already noted at the Helsinki ICANN meeting (June 2016) , SSR2 should be considered an anomaly, as its call for volunteers and members selection mechanism were governed by both the Affirmation of Commitments mechanism and the 1 October 2016 Bylaws.

At the same time the draft includes an alternative for the nomination and selection of members of the proposed drafting team, and a third, hybrid alternative would be the selection and nomination method used for members and liaisons to the CSC. Another case would be the internal decision-making process of the review team. An alternative would be the method included in the charter of the CCWG Accountability. The ccNSO Council would appreciate if alternatives, including an impact analysis of the alternatives, or a rationale for the proposed method would be presented and discussed. This would be in line with the reasoning of the CCWG Accountability that the operational standards should be used by the community, ICANN staff, and the Board as guidance for conducting future reviews.

D. Specific comments

Annotation of the draft