REPORT-Phase II of Public Comments Process Enhancements

Report of Public Comments

COMMENT PERIOD

Open Date:	31 August 2011
Close Date:	30 September 2011
Close Time:	23:59 UTC

EXTENSION

Extension (Yes or Blank):	Yes
New Close Date:	15 October 2011
New Close Time:	23:59 UTC

GENERAL INFORMATION & LINKS

Publication Date:	20 October 2011
Prepared By:	Ken Bour, Consultant
Staff Contact:	Filiz Yilmaz, Sr. Director-Participation & Engagement
Staff Email:	policy-staff@icann.org
Announcement & Comments:	http://www.icann.org/en/announcements/announcement-31aug11-en.htm

SECTION I: GENERAL OVERVIEW & NEXT STEPS

Section III below summarizes the feedback from this Public Comment forum and covers the four broad enhancements identified in Staff's original report along with a fifth area that includes additional suggestions and recommendations about the Public Comments process.

Section IV references a new experimental document ("Public Comment Issues Tracking Checklist") developed by Staff to document and track the various issues, concerns, ideas, suggestions, and recommendations submitted in the Public Comment forum. With each issue, a status is provided as well as a disposition and rationale for actions to be taken. Staff would appreciate receiving feedback as to the utility of this checklist and whether it helps address the lack of accountability and transparency in the Public Comments process noted in this particular forum (see Section III, Additional Recommendations, Staff Reporting).

This Public Comment solicitation was the first one to experiment with an initial Comment period (31 August 2011 - 30 September 2011) followed by a separate Reply cycle (1 October 2011 - 15 October 2011). One submission, from CADNA, was received during the Reply period and a second one, from KM, was submitted two days after the close; however, Staff was able to utilize the feedback in preparing this report.

In terms of next steps, Staff will take under advisement the suggestions and recommendations made by the community and will continue to update the Issues Tracking Checklist as suggestions are evaluated and decisions made.

Staff is continuing to make progress on a new prototype Public Comment Forum that is being implemented within ICANN's Confluence Wiki platform. Staff plans to open this solution for a limited community test during November 2011 and intends to utilize the Wiki Forum as a way to test the overall concept as well as numerous features designed to enhance the Public Comments process. Invitation, participation, and other details will be announced shortly. If you are interested in volunteering, please send an email to participate@icann.org.

SECTION II: CONTRIBUTORS

At the time this report was prepared, the following community submissions had been posted to the Forum. The contributors, both organizations/groups and individuals, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organization & Groups:

No.	Name	Submitted By	Initials
1	The Coalition Against Domain Name Abuse	Posie Wilkinson	CADNA
2	Registries Stakeholder Group	David W. Maher	RySG
3	Intellectual Property Constituency	Steve Metalitz	IPC
4	At-Large Advisory Committee	Matt Ashtiani	ALAC

Individuals:

No.	Name	Affiliation (if provided)	Initials
1	Kieren McCarthy		KM
2	Alina Syunkova	ICANN Board Support Coord	AS
3	MIkey O'Connor		MO
4	Eric Brunner-Williams		EBW

SECTION III: SUMMARY OF COMMENTS

This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff 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 (Announcement & Comments).

In the report accompanying this solicitation, which also covered input from the Public Comments Focus Group, Staff identified and expanded upon four broad enhancement areas along with specific questions at the end of each one. In this section, Staff will summarize the feedback on each of the four major enhancements plus a fifth area which addresses additional input not specifically requested.

Enhancement 1-Stratification: Categorize topics to assist the community understand the subject matter and inform a participation decision.

1. Do you agree that the use of categories (or tags) would assist you in making a determination to participate in a particular Public Comment solicitation?
2. If yes, would Staff's proposed categories serve that purpose?
3. Would you propose additional or replacement categories such as those offered by the Focus Group?

Summary

Most respondents agree that the use of categories would assist them in determining whether to participate in a particular Public Comment solicitation. EBW offers a lone dissenting view, "While I see that a taxa *(sic)* might assist some lacking context with issues and comments, I don't see how it can significantly assist those with that context, so I'm not in favor of the proposed 'stratification.'"

Of the remaining participants expressing support for stratification, RySG thinks the Staff proposed groupings are a "good start;" however, CADNA views them as "inaccessible for those community members not already intimately acquainted with ICANN policy and procedures." IPC adds, "In general, affinities exist for issues, not process or organizational ownership. Therefore it makes sense to establish a list of categories based on topics of interest." KM pursues an idea also considered by the Focus Group, "I would strongly suggest that ICANN consider the use of GENERIC TAGS... Tags would enable you to flag a given comment period as being relevant in one or more areas (and) help with a broader understanding and identification of what a particular comment period is about." KM proposes a set of 12 tags and, in a separate submission during the Reply Cycle, merges the list with IPC suggestions to create an expanded set of 17 broad categories.

IPC echoes support for an idea that emerged from the Focus Group, "a system of notifications that allows interested parties to 'subscribe' to one or more categories of interest so they would be notified when a consultation in a particular category is launched and perhaps about to be closed." IPC adds that, "a notification system is a natural byproduct of stratification that might serve the objective of broadening the population of potential contributors. Currently, interested parties must periodically check the ICANN website to see if there are new consultations of interest which is only likely with individuals and organizations directly involved in ICANN on a regular basis."

Enhancement 2-Prioritization: Assist community members in determining the importance or urgency of a solicitation by providing key information.

1. Do you concur with the assessment that a separate field for "priority" is not advisable?
2. If not, can you think of any other ways that "priority" could be usefully introduced?

Summary

Viewpoints are mixed concerning whether or not a system of prioritization would be beneficial and how it should be implemented. RySG agrees with Staff's assessment, "priorities are highly subjective and will vary greatly across different organizations." RySG believes that, with a more useful stratification approach, "individuals and organizations would be able to better prioritize request for comments on their own." EBW worries that prioritization could be "misleading to those who lack issue understanding who may use some anonymous tagging authority as a substitute for issue understanding."

Although none of the respondents endorses a simplified "High, Medium, Low" importance indicator, the majority of participants think that some form of prioritization would be helpful and offer several different ideas for possible implementation. KM supports "allow(ing) community members to add their own rankings. Use stars rather than words. That way the community decides its own level of importance." CADNA agrees with KM, "Adopting a star-based, user-rated system...would be helpful to the public by directing them to those comment periods rated highly relevant by the majority of community members." IPC suggests three alternative approaches that were also identified and discussed by the Focus Group: (1) identifying the "phase" that a topic is in (e.g., Issue Identification); (2) creating a policy development GANTT chart which would indicate the critical path of a larger process; and (3) providing a Staff "best guess" as to which community groups (or audiences) would be interested in a Public Comment topic.

While not providing its own approach to prioritization, ALAC notes, "We are sympathetic to Staff's concern on the risks for inducing 'tunnel thinking' that a Staff-led prioritization of policy issues might initiate. However, we believe sufficient safeguards...can be exercised to minimize this risk. We urge that this issue be revisited and strongly recommend further consultations with the community in this area."

Enhancement 3-Comment/Reply Cycles: Structure the community's input process into an initial period for submitting new comments followed by a separate reply period during which community respondents would be able to address and rebut arguments raised in opposing parties' previous comments.

1. Do you see value in having a separate Reply Cycle during which contributors can comment on previous submissions?
2. Do the periods of 30 days and 15 days seem reasonable for this engagement or would you recommend different timeframes?

Summary

Most of the participants favor distinct Comment/Reply Cycles although IPC expresses concern that there is "a significant risk that adding a reply cycle will mainly serve to delay ICANN's decision-making process, while increasing the quality of debate or contributions only modestly."

KM approves of the concept; however, urges ICANN not to implement it in a static fashion, "The ATRT suggested a reply cycle because it was the simplest method of introducing a concept - that comment periods need to be more interactive." KM continues, "The most important aspect with this Reply Cycle idea...is to allow people to go back-and-forth a little bit; not to force people to respond in the correct way at the correct time, or to create a one-size-fits-all solution." *(Note: see also threaded discussions covered under Enhancement 4 below).*

CADNA supports this enhancement, "We applaud ICANN for embracing the opportunity both to increase dialogue and to increase the quality of that dialogue."

Although the Comment/Reply Cycle enhancement is generally favored, several participants find challenges with the period durations. ALAC notes, "given the publication logistics challenges...and the steep learning curve that some matters present for the diverse global At-Large community, we believe that the adoption of a fixed duration for this cycle is inimical to the global public interest."

In its submission during the experimental Reply Cycle for this solicitation, CADNA emphasizes the importance of variable periods, "CADNA concurs with the numerous comments calling for...a flexible Reply Cycle. In our previous comments, we suggested a 30 day minimum length for the Reply Cycle. While we still believe that the proposed 15 day Reply Cycle should be lengthened to a 30 day minimum, we believe it would be even more beneficial to stakeholders to implement a flexible Reply Cycle. As issues vary in their importance and relevance to stakeholders...a 30 day Reply Cycle may be more than adequate time to analyze all submitted comments and submit a thoughtful reply. At other times, the sheer volume of comments submitted will require more than 30 days to prepare replies."

IPC offers an additional reason for extending the periods, "There is a very real difference between comments from individuals, who know what they think and are in a position to express it immediately after reading the document, and comments from entities (such as GNSO constituencies, trade associations, coalitions, governments, or even individual global companies) that must go through a consultation, review and approval process before they are submitted. For those comments in the latter category, the proposed deadlines (especially a 15-day reply comment deadline) are too short."

Enhancement 4-Technical Forum Improvements: Implement a modern forum software interface that will allow instant interaction and threaded discussions between commenters if the participants would like to post their opinions in this manner.

1. Do you support the goals and objectives of a robust threaded discussion forum for ICANN Public Comments? (Please provide rationale).
2. Do you concur with the idea of a one-time pre-registration for posting privileges if it can be minimally invasive and easy to perform?

Summary

Most respondents express support for the enhancement that would introduce threaded discussions into the Public Comments process; however, IPC offers a dissenting opinion, "While there is a certain allure to a more interactive format for comments, it is unlikely to provide cogent results for the ICANN staff and Board to use in policy implementation. Most of the wiki style interaction will be dominated by individuals rather than businesses and organizations that require internal review so there would likely be a lack of balance in a wiki driven comment process. It would also be a challenge for staff to decipher how a particular discussion resolved in a set of threaded comments."

Among the supportive voices, MO says, "I like the idea of a dialog around comments rather than just tossing missives over the transom." EBW agrees, "Some issues are inter-related, and the siloing of comments is less useful than integrated comments."

CADNA views this improvement as an evolution, "because multi-threaded discussion forums are now standard on most news websites, this enhancement is an inclusive and user-friendly option." CADNA advocates, "that switching the ICANN Public Comment process to a multi-threaded discussion forum would increase participation, enrich the debate, and serve to foster an engaged community of contributors."

RySG concurs with the majority, but wants to see one addition to the participation requirements, "we support the goals of a threaded discussion because it allows near real time dialog on issues, but we believe that the forum needs to be managed to make it a comfortable place for open and constructive discussion to happen. It might be helpful if participants identify whether they are participating as an individual or representing an organization."

KM urges ICANN not to be conservative or timid in approaching a wholesale change in the forum architecture, "It is very easy to weigh a list of possible problems too heavily against all the future benefits that will accrue...and it is all too easy to overlook significant shortcomings in the existing system just because people have grown used to it." MO punctuates this view, "It's OK to be a little incremental about this, and iterate quickly toward things that improve the situation."

The concept of requiring pre-registration and how it affects anonymity encountered mixed support. EBW thinks that, "Deletion of junk is an alternative to 'minimally invasive' barriers to automata." IPC notes that, "Registration is a complex topic that was probably not sufficiently addressed by staff or focus group but there are certainly advantages to some system of registration, including notifications. Transparency concerns would suggest that pre-registration is a good idea so as to minimize frivolous comments and raise the level of the debate." In a submission during the Reply Cycle, KM notes, "I would suggest that people have to register but that they will able to click on a box and choose to post anonymously."

Additional Recommendations

Translations
ALAC comments that it has been "on record and was first out the box in advocating multilingual access to all forms of information as well as the...processes pertinent to every ICANN policy development channel."

Decision-Timing
IPC notes that there have been occasions where a Board decision has taken place almost immediately after the close of the Public Comment period. IPC recommends, "One critical factor in the actual value of the public comment period is the time between the closing of the comment period and when action will be taken on the issue on which public comment was sought. For the public consultation to be more than a matter of form, some sort of minimum time needs to pass between the close of a public consultation and the decisions being made on that subject."

Staff Role in Public Comments
KM observes, "staff - who usually have the broadest knowledge of the issue that is out for public comment - have a very passive role. They post the document, then summarise comments at the end." KM believes that, "it will most likely be in everyone's interests if staff took on more of a facilitator role wrt public comments...elicit questions and provide answers while the comment period is going. ... This would be a huge - but positive! - shift in staff behaviour so it would need to be carefully and professionally introduced as it would inevitably be met with suspicion and defensiveness. But I have no doubt whatsoever that the rewards would be enormous." In a Reply comment submission, KM echoes, "I really think a big hole in this review is the role of staff. The staff are absolutely crucial to the proper functioning of a public comment period. You can have the best system in the world but without a standard (and improved) way of comment periods being managed, the system will always be flawed."

Staff Reporting
Three respondents, KM, IPC, and ALAC, comment that the Public Comment process lacks accountability concerning the community's specific input. While acknowledging that Staff invariably summarizes the forum feedback, IPC recommends, "The goal ought to be to...explain why, or why not, a particular recommendation is taken on board. While this is easier said than done, ICANN ought at least to adopt this as its stated practice and do its best to deliver. It is only through the recognition and explicit incorporation or omission of the ideas found in public comments that the process will have any credibility at all. With a stated goal to increase the participation and satisfaction with the public comment process, insuring that interested parties are heard in a very specific way is critical."

KM emphasizes, "I hope you will start making positive changes straight away by responding to this comment period response and/or explaining where and when the ideas were considered and accepted (or not accepted) and the reasons why either way. That would make me feel that my efforts had been worthwhile and it would encourage me to respond more in future. If you set up a system that does that for every poster before you know it, people may get some real value from commenting on ICANN's work."

ALAC also adds that it "has always expressed its disquiet on the...lack of a prescribed process to acknowledge receipt (of) official feedback (and) its utilization or intent to use."

(Note: please see Section IV in which the above recommendation has been actualized for this Public Comment solicitation).

SECTION IV: ANALYSIS OF COMMENTS

This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

A "Public Comment Issues Tracking Checklist" has been prepared for this solicitation which records and tracks the various issues, concerns, suggestions, recommendations, and ideas submitted by participants via the Forum. With each issue documented, Staff has indicated a status (e.g., Resolved, Under Review, Deferred) and a disposition including rationale. This document is accessible as a clickable link (Analysis of Public Comments) on the Public Comment Box at:

http://www.icann.org/en/public-comment/public-comment-enhancements-ii-31aug11-en.htm