

2 March 2023

RE: Response to Complaint Regarding Length of Public Comment Proceeding

George Kirikos  
Leap.com  
Via electronic mail

Dear George Kirikos,

You submitted a [complaint](#) regarding the April 2021 Public Comment proceeding for the [GNSO Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process Phase 1 Final Recommendations for ICANN Board Consideration](#) (“RPMs Public Comment proceeding”). Your complaint stated that the length of RPMs Public Comment proceeding was too short, as well as a concern that ICANN’s administration of the Public Comment proceeding was not aligned with the ICANN Bylaws. Since then you have provided additional examples supporting your concerns. This letter is in response to your collective submissions (“Complaint”), as agreed. A full list of your submissions, related to this Complaint, is attached as Appendix A.

In short, after fully researching and analyzing your Complaint, I found that there was a mistake made with how ICANN initially calculated the time requirement for this Public Comment proceeding. The mistake, identified by you, was caused by a misunderstanding that was corrected prior to the proceeding closing. I did not find any indication that ICANN’s Public Comment process is in contravention with the ICANN Bylaws relating to the Public Comment found in [ICANN Bylaws, Article 3 Transparency](#), Section 3.6.(A). I provide more detail below including background, findings, and conclusion.

## **Background**

To start, it is not the role or directive of the Complaints Office to interpret the ICANN Bylaws. Instead, the role of the Complaints Office is to research, analyze, and make recommendations based on its findings. During the [complaints process](#), I confer with ICANN staff colleagues with expertise in the area(s) that are or may be relative to the subject matter of the complaint. My findings and recommendations are based on the results of that research and analysis, coupled with my own expertise.

The initial complaint you submitted contended that the RPMs Public Comment proceeding, which was initially set to be open from 7-30 April 2021 or 23 days, did not provide sufficient time to respond. You also requested the time period be extended. Following your request, the length of the proceeding was extended until 21 May 2021, providing 44 days total for stakeholders to participate.

In addition to your issue with the length of the RPMs proceeding, you further stated that ICANN’s administration of this Public Comment proceeding was out of alignment with the

ICANN Bylaws with respect to Public Comment. To support this contention, you forwarded web links to additional Public Comment proceedings (see Appendix A) you believed supported your contention, and agreed to have these additional submissions included in one response.

The [ICANN Bylaws, Article 3 Transparency, Section 3.6](#).(A) specifically addresses the subject matter of your complaint. This section of the ICANN Bylaws contains the “Notice and Comment” provisions by which ICANN must abide. To paraphrase the above-referenced section, full text provided as Appendix B to this letter, ICANN must:

- provide public notice of policies that are being considered at least 21 days prior to any action being taken by the Board, and
- provide a reasonable opportunity for people to comment on proposed policies, and to see and be able to reply to the comments of others, prior to any Board action “(such comment period to be aligned with ICANN's public comment practices)”.

To align with the ICANN Bylaws, ICANN maintains guidelines and templates to facilitate the Public Comment process consistently and fairly. All proceeding dates and times are based on Coordinated Universal Time (UTC), and open proceedings close at 23:59 UTC. Proceedings are open for a minimum of 40 days with exceptions as documented in the ICANN Bylaws or ICANN community operational procedures, or as approved by two ICANN executives.

This has been the [standard practice since early 2015](#) when ICANN implemented “adjusted time allotments” and eliminated reply cycles according to Recommendation 7.1 from the [Final Recommendations Report of the Second Accountability and Transparency Review \(“ATRT2”\)](#). The ATRT2 eliminated reply cycles (which were implemented in furtherance of Recommendation 16 from the [Final Recommendations Report of the First Accountability and Transparency Review \(“ATRT1”\)](#)), as the ATRT2 noted that the “[intended benefit](#)” of reply cycles did not appear. I have provided more detailed background in Appendix C explaining the evolution of Public Comment as it relates to the ICANN Bylaws.

## **Findings**

The initial 23-day submission period for RPMs was a mistake made by ICANN. There was a misunderstanding of the exception requirements and the proceeding was mistakenly granted an exception to the 40-day minimum. Once the error was identified (as a result of your complaint submission) the mistake was corrected and the proceeding was extended and remained open for a total of 44 days.

In the summer of 2021, ICANN [launched](#) a new Public Comment feature. Concurrently and to try and address miscalculations in the future, ICANN adopted new templates and revised guidance for Public Comment, which clarified expectations for the administration of proceedings.

With respect to your overarching concern that ICANN is not following its Bylaws mandate regarding Public Comment proceedings, as noted earlier, my research did not find any indication of this being the case. While there was an error in the calculation of the submission period you brought to our attention, it was a misunderstanding and it was corrected to meet the required 40-day minimum established within existing processes. Additionally, ICANN updated its Public Comment practices, specifically to clarify expectations for the administration of proceedings and to reduce the likelihood of this error accidentally repeating itself.

ICANN has been making substantive improvements to the Public Comment process for over seven years. Many changes and updates have been made in that time, including elimination of the confusing reply period, improved turnaround times, and an error correction mechanism for Public Comment summary reports. These changes have significantly improved the process, the experience, and the output of Public Comment for all.

### **Conclusion**

ICANN is an institution that we all need to protect. ICANN takes its role very seriously and has structured its activities, priorities, and behaviors to support ICANN's important mission. Errors and misunderstandings happen from time to time. When mistakes happen, ICANN evaluates the circumstances and makes improvements and/or adjustments where needed. In evaluating the circumstances of your complaint, ICANN though striving to "get it right" every time, made a mistake when the length of the RPM's Public Comment proceeding was miscalculated.

ICANN appreciates you taking the time to bring this to our attention, and for your diligence in protecting the ICANN institution. ICANN takes responsibility for the mistake that occurred when the initial length of the RPM's Public Comment proceeding was calculated. By bringing forward concerns, mistakes, etc. in a constructive way, it helps ICANN to identify and act on opportunities for improvement. Thank you for bringing this mistake to our attention.

Kind regards,

*Krista Papac*

Krista Papac  
Complaints Officer  
ICANN

Appendix A - Provided Examples of Proceedings Where Contending There is a Process Problem

This table contains links to the three Public Comment proceedings you have provided as examples that support the concerns you articulated in your initial submission.

Public Comment Forum Dates	Public Comment Forum	Stated Concern	Submitted to Complaints Office	Outcome
<p>Open: 07-04-2021</p> <p>Initial Close Date: 30-04-2021</p> <p>Extended On: 26-04-2021</p> <p>Closed: 21-05-2021</p>	<p><a href="#">GNSO Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process Phase 1 Final Recommendations for ICANN Board Consideration</a></p>	<p>Initial comment period opened for 23 days; the 23-day public comment period was too short and out of alignment with ICANN's Bylaws; the length of the comment period was extended by 21 days</p>	<p>26-04-2021</p>	<p>The 23-day initial comment period was the result of a miscalculation; ICANN acknowledged and corrected the error by changing the comment period length to a total of 44 days</p>
<p>Open: 14-09-2021</p> <p>Closed: 24-10-2021</p>	<p><a href="#">Initial Report from the EPDP on Specific Curative Rights Protections for IGOs</a></p>	<p>Initial comment period was for 40 days; a 51 day extensions was requested; the requested extension was denied by the WG Chair</p>	<p>14-10-2021</p>	<p>Comment period was not extended providing a total of 40 days for public comment</p>
<p>Open: 21-06-2022</p> <p>Initial Close Date: 02-08-2022</p> <p>Extended On: 01-08-2022</p> <p>Closed: 16-08-2022</p>	<p><a href="#">Initial Report on the Transfer Policy Review - Phase 1(a)</a></p>	<p>Initial comment period was for 42 days; a 44-day extension was requested; the 14-day extension was insufficient</p>	<p>01-08-2022</p>	<p>Comment period extended for 14 days providing a total of 56-days for public comment</p>

## Appendix B - Relevant ICANN Bylaws Language

### Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

(i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;

(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and

(iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee ("GAC" or "Governmental Advisory Committee") and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

## Appendix C - Evolution of the Current Public Comment Process

To provide more background on the evolution of the public comment process, including how the Bylaws language changed, began with the recommendations from the first Accountability and Transparency Team (“ATRT1”) as provided in its [31 December 2010 Final Report](#) (“ATRT1 Recommendations”). The ATRT1 had concerns about the timeliness and effectiveness of the public comment process and recommended improvements including that two distinct comment periods be provided going forward; a comment cycle and a reply cycle. Following community input, a 21-day Comment cycle followed by a 21-day Reply cycle was implemented.

In 2013, when the second Accountability and Transparency Team (“ATRT2”) conducted its periodic review of ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision making reflect the public interest and are accountable to the Internet community, ATRT2 found that the 21-day Public Comment period, coupled with the 21-day Public Reply Period, had qualified success as the two distinct comment periods were not being utilized as intended and did not appear to be offering intended benefits. The ATRT2, in its 31 December 2013 [Accountability and Transparency Review Team 2 \(ATRT2\) Final Report and Recommendations](#), recommended the ICANN Board explore ways to improve Public Comment including through adjusted time allotments.

In 2014, following the ATRT2’s recommendations, ICANN org and the ICANN community began implementation on a series of improvements to Public Comment. Included in the many improvements was a change to a single public comment forum, doing away with the two distinct comment periods (“Public Comment” and “Public Reply”) and requiring that all public comment forums be open for a minimum of 40 days.