Headings-list new Members Rules version 06

27 May 2021

There appears to be a consensus that the major difference between the Rules for Membership and Operational Procedures is that the Rules include those topics which should be under the control by the members (hence can only be changed by the members), within the boundaries of the Bylaws. For example, the 2004 Rules can be only be changed by the members, hence they control the Rules. Note the downside: adding a topic to the Rules is just as hard.

If agreed, the first step is to identify which topics need to be included in the Rules, i.e subject to a members-change mechanism only.
The table below is a first attempt, based on the discussions to date to identify these topics.

The headings of the table below refer to the following:
- Item#. The number refers to the section below the table as well
- Topic. Heading to be used to refer to the topic
- Brief description. This includes a brief description of the topic.
- Scope / remit. This column is intended to capture whether a topic focuses on the Rules, Operational Procedure, or both
- Detail to be addressed. In this column some issues and questions are listed for consideration by the sub-group and/or broader community
- Comment / Examples. Where possible examples are included in this column to illustrate the topic and / or issue

Further, also included is a mapping of the items listed in table 1 against the various sections of the 2004 Rules

Table 1 - Topics to be included in the membership Rules

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
0	Introduction to the Rules, Relation Bylaws, Members rules and Operational Procedures	Introductory section, explaining how the Bylaws, members Rules and Operational Procedures relate to each other, and the purpose of the Membership Rules and Operational Procedures (why does the ccNSO need Membership Rules and Operational Procedures?).	Not part of the Rules or Operational Procedures, descriptive section	To include: Introduction of relevant institutional documents (Bylaws, Members Rules and Operational Procedures), the difference between documents (specifically between the Members Rules and Operational Procedures) and how these documents relate to each other. Include description of powers of the ccNSO?	Section 0 is proposed as a section to introduce newcomers to the relevant constitutional documents of the ccNSO and delineate the relation between the documents: Bylaws, Members Rules and Operational Procedures. It is also intended to provide explanatory notes on topics included in the Rules themselves and why they are included in the Rules: others to the governance of the ccNSO and the relevant documents. This section therefore would be explanatory, but not include an operative rule.
1	Principles	The Principles that underpin the relation between Members and Council and provide the basis for interpretation of the Members Rules	Applicable to Members rules and Operational Procedures	The purpose of the overarching principles is to set the boundaries and parameters within which the members rules and Operational	There appears to be broad community agreement to include the principles. The purpose of these principles is to document and clarify

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
		and Operational Procedures		Procedures have been developed, should be interpreted and implemented. They consider the experiences to date on how the ccNSO is governed and subsequent discussions. They have been developed to structure, guide and set conditions for the Rules and Procedures, and future interpretation.	how the ccNSO (Council and members) view the ccNSO.
2	Change mechanism - Rules		Only applies to Rules	Detail and update the change mechanism for the Rules. Reflect -voting threshold for members decisions, - quorum if any, - administrative requirements - date changes become effective	
3	Change Mechanism -	This procedure is not documented, but has been developed over	Applies to Guidelines/	Include the Change mechanism for operational procedures	During various governance sessions it became apparent that various

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
	Operational Procedures	time by the GRC in seeking approval of Guidelines it has developed.	Operational Procedures	in the Rules? This would make amending this change mechanism subject to the members of the ccNSO. Comment: At a minimum include basic mechanism.	community members perceive that Council at will and without any influence of the members may introduce and change Guidelines / Operational Procedures
4	Members only decision, other than provided in the Bylaws	Decisions by the ccNSO members only, not included in the Bylaws.	The Bylaws provide the Council with exclusive, final decision making in certain areas.	Which decisions should be made subject to sole powers of the Members?	The ICANN Bylaws provides an example in ANNEX B (Members vote on a PDP). One could argue that decision to remove a ccNSO appointed Board member (Annex D) is up to membership as they have elected the person. Change of Members Rules and what is included in them. - Decision of member on self-selection of Region. - Request vote on Council decision

Deleted: 4 … [1]

Deleted: 6

Formatted: List Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
					- Vote to veto Council decision. Going forward: should final decision on Board recall and Director Removal be made subject to member decision only? Final decision Budget Rejection Action?
5	Council only decisions, (other than in the Bylaws)	Include a list of decisions Council may take without being subject to members vote.	Rules: Should the scope of the Council only decisions be defined?	In principle there are 3 mechanisms to delineate these decisions from decisions that are potentially subject to a members veto vote: 1. List all decisions that are subject to Council only decision 2. List all decisions that are not subject to	Currently all decisions of the ccNSO Council are subject to a veto decision, unless the decision is exclusive reserved for the Council though the Bylaws: Example of the latter are: - Nomination of Board members; - Vote on PDP recommendation; - Receive membership Applications

5

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
				Council only decisions 3. Describe a mechanism to assign decisions-making to the Council. What is preferred option?	This decisions ranges from appointment of new members to a WG to approval of recommendations of the CCWGs or WGs (not PDP WGs). In addition, some steps in the Rejection Action and Approval Action Procedures as documented in the relevant Guidelines include Council decisions which are NOT subject to members veto process.
6	Council Decisions, subject to veto	Under the 2004 Rules all Council decisions are subject to the veto mechanism	All Council decisions, with exception of those decisions expressly listed in the Bylaws.	Veto mechanism itself is discussed under item 5. Some questions: Who may request a veto? What is stay period of Council decisions (when do they become effective if no request for veto vote)?	The range of decisions this rule applies to currently is very wide. It ranges from decisions from decisions as DP (Director Removal and Rejection Action), over approval of Guidelines (operational Procedures) and WG charters to appointment of members.

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
				Should all Council decisions be subject to a veto? (except decisions explicitly assigned to the Council)	
7	Requirement for veto	The 2004 Rules provides a mechanism for members to veto a decision	Applies to all Council decisions, with exception of those decision explicitly assigned to the Council through the Bylaws	Who should be able to ask for a veto vote What is reasonable threshold if any for asking for a veto vote? How long may community ask for veto vote? How long may veto vote take? How should members veto be organized?	Currently 18 members may ask for a veto vote. This request should be submitted to the Council within 7 days after publication of the decision. Would 10 members (an arbitrary number) from 10 Territories and at least 2 ICANN Geographic regions, be a reasonable alternative to ask for a vote? Currently the window to ask for a vote is 7 days after the decision is published.
8	Members vote / Decision-making	The 2004 Rules provide an extensive mechanism for voting by the members.	Could apply to decisions listed in the Rules and/or Guidelines.	How should members voting mechanism look like? Should it be similar to the current mechanism? Mechanisms are:	If the current thresholds remain in place, the electronic vote takes at least 19 days.

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
				Electronic vote: At least 5 days notification and to remain open 14 days. Vote during in person meeting: Notification at least 14 days (email) Resolution needs to be properly moved and seconded	
9	Quorum rule for voting	Current rules include requirement that has at least 50 % of the ccNSO members need to vote to have a valid vote.	Applies to members decisions, including a change of the Rules.	What is reasonable threshold for a quorum?	The current threshold is considered prohibitive for making a decision (requires 87 members to vote)
10	Review of the Rules	Introduce a review mechanism at regular interval and under special circumstances.	Applicable to the Rules	Should the Rules include a provision to regularly review and update them? If so, what is a reasonable timeframe? 5 years- 7 years- 10 years? Also if,	Currently there is no provision in the Rules to review and evaluate the rules on a regular basis. Since 2004 the ccNSO has evolved in various directions, as has the environment in which the

Item #	Topic	Brief Description	Scope / remit	Detail to be addressed	Comment/Examples
				requested by a limited number of members or the Council? What are special circumstances?	ccNSO operates. For example it was never envisioned in 2004 that IDNccTLD would one day become member of the ccNSO, nor that the ccNSO would be one of the Decisional Particpants in ICANN.

Comment: Change the order of items, put # 4 (Council decisions subject to veto) & 5 (requirements for veto) after # 7 (or after #9) (COMPLETED)

Comment Item 3: Change Mechanism - Operational Procedures: Another option is to state in Rules: "ccNSO council approves change mechanism for Operational Procedures". Supported two other members
Response: By including the mandatory consultation of the membership as part of the change mechanism, the ccNSO members ensure that they always have to be consulted on Guideline / operational Changes, before the Council can take a decision. By not including the full mechanism, what's not included can be changed or introduced without the full say of the members.

Comment on Item 7 (new): Each Member has a right to elect 3 council members. My understanding is that this is representative system. Considering the spirit of the representative system, right of the veto would be limited to substantive matter to the member's right.I support #1(listing all the decisions that are subject to) with guarantee to add relevant decision(s)h through members vote.
Response: Item 7 is about a method to indentify. That could be made by the Council (and not related to the Councils powers under the Bylaws). Council elections are a power of the members.

Comment item 9: I support introducing voting status. My understanding of "voting status" is as follows. Two criteria exists, 1) active member and 2)inactive member. Inactive member is for example, those who has NOT joined recent ccNSO members meeting or voting for one/two/three(needs to decide) consecutive times. Once inactive member attends the ccNSO members meeting or casts a vote, status changes to "active". Counts of the Quorum is done only with active members at that moment. I mean, number needs to consider for 50% is not 172.

I remember a discussion in one of the breakout room exercises regarding lowering the threshold a lot, because it was now allowing things not to move forward by doing nothing. And if there was something that should be stopped, equal effort should be invested (or something like that). Even saying an arbitrary number like 25 members, for example. Food for thought.

Comment Item 10" Sounds logical… It has taken over 16 years to update them by special circumstances (change of ICANN environment & bylaws, growth in membership, technology development). Maybe a good number is every 8 years ;) ? if no special circumstances appear before that.

"new" rules will NOT have a section on Meetings and Committees - is that what we suggest? (just fort clarity)

Membership: Bylaws define who and how can became a ccNSO member, but I see no document explaining how membership is terminated. Should it be explicitly described somewhere? In which document?

Additional Comments on Membership:
>My understanding is that previously, if change of ccTLD manager occurred, membership of outgoing ccTLD manager was automatically terminated at the time change of IANA DB happened. Then, if incoming ccTLD managers wants to join ccNSO, they needed to send application as a new member.

That is absolutely correct!
The Bylaws say that: Section 10.2. "The ccNSO shall consist of (a) ccTLD managers that have agreed in writing to be members of the ccNSO…" and Section 10.4 (a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

I.e., if the entity is not a ccTLD manager, then it 1) cannot become a ccNSO member and 2) does not qualify as a member when it does not manage the ccTLD anymore. Furthermore, the entity has to agree in writing to be a member, because membership is "assigned" to ccTLD managers, not ccTLDs. It all follows from the Bylaws. It is, indeed, possible to write it down once more (although I am not sure it is necessary) but would the Rules be the right place for that?

10

Additional Comment: If the ccNSO should write a rule in the inverse to the bylaw. By that, using 10.2 as an example, saying "shall consist," the rule would say "will not." If the bylaw applies to members of the ccNSO, the use of "shall" is correct. As a rule, written in terms of a non-member, then the use of "will not" becomes appropriate. There is no substantive change in the restatement. However, it might make things easier when dealing with different norms of our membership. For example, some legal jurisdictions publish what you are allowed to do; others publish what you're not allowed to do. We serve people from both scenarios, and it may be an effective means of cross-communication.

In sections 0 –10 which refer to the item # in Table 1, the current mechanisms are referenced or additional questions per item are raised.

0. Relation Bylaws, Members rules and Operational Procedures.
Relevant Bylaws are: Article 6, Article 10, Annex B, C and D. Note Bylaw takes precedence

According to the ICANN Bylaws section 10.4(k): "The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website."

The GRC strongly suggested that the Membership Rules include an introductory section, explaining how the Bylaws, members Rules and Operational Procedures relate to each other, and the purpose of the Membership Rules and Operational Procedures (why does the ccNSO need Membership Rules and Operational Procedures?).

1. Principles.
Original principles (no need to update, only to adjust principle re one vote per member as soon as Bylaws are adjusted to include IDNccTLDs).
Question: Why "as soon as"? Can it be adjusted now (in the new version of Rules)?

Reason is that inclusion of IDNccTLD will have impact on administrative organization of the ccNSO. The ccNSO will need to create a register of Representatives per ccTLD Manager, which in some cases will include a person that will be known as the Emissary (person who will be appointed by ccTLDs from the same country etc.).

In addition the principle of one vote per ccTLD Manager remain main principle, unless the Bylaw make a specific exception (for example Members vote on PDP and Council Elections) to avoid capture.

1. The ccNSO is a bottom-up organization where the members give guidance to the Council, as stated in the Bylaws
2. The ccNSO is open and transparent to members and non-members
3. The ccNSO will operate transparently and in public, wherever possible and on a non-discriminatory basis
4. There should be minimum periods of notice for meetings and votes
5. There should be a minimumam turnout or quorum for a vote to be valid, with a regional representation
6. <mark>The ccNSO operates on the principle of one member, one vote, unless specifically provided otherwise.</mark>
7. The ccNSO should be able to make decisions at face to face, virtual and hybrid   meetings and by electronic ballot.
8. The ccNSO wishes to allow non members to participate in discussions on issue before the ccNSO.

2. Change mechanisms Rules.

Change mechanism Rules. Change mechanism Guidelines/Operational Procedures

Change mechanism Rules (Rules 2004)
- These rules will become valid if approved with a vote of greater than 66% at a general meeting, or by electronic vote.
- Any proposed changes to the rules must be circulated to all members at least twenty-one days before any vote on the proposed changes.
- A change will become valid only if approved with a vote of greater than 66% at a general meeting, or by electronic vote.
- Resolutions to change these rules, or to instruct the ccNSO Council shall only pass if greater than 66% of those voting vote in favour.

Question: Does this section need to be amended?

3. Change mechanism Guidelines
1. To become effective, the updated Guideline MUST be adopted by the ccNSO Council and published on the ccNSO website.

Deleted:

Commented [MOU1]: Number of days in Annex B for voting period

The GRC has developed following practice to develop new and change existing Guidelines:

- GRC to draft/update Guideline
- Seek Council feed-back and comments, and update Guideline if necessary
- Seek Members feed-back and comments, and update Guideline if necessary
- Seek Council Adoption of new Guideline/ updated version Guideline
- Publication of Guideline on Website and Council Decision
- Guideline becomes effective 7 days after Publication (implied is that if request for a vote, the Guideline does not become effective)

This procedure is currently used in practice. **Question:** Should this procedure be used as procedure to update the Operational Procedures and included in the Membership Rules?

4. **Council Decisions subject to Veto vote by the ccNSO Membership**
   Mechanism for members to veto Council decision (2004 Rules)

   1. The Council is required to publish to the appropriate ccNSO lists, all of its decisions and resolutions within five days of making them.
   2. The Council decisions will not become operational until seven days have lapsed since publication
   3. If during that seven day period, 10% or more of the members notify the Council Chair of their objection to the decision, it shall automatically trigger a membership vote to ratify or veto the decision.

   All Council decision are subject to Members by the current Rules, unless the Bylaw assign decision power explicitly to the Council.

   Question: How should we update rules to allow ccNSO to meaningfully participate in Empowered Community decisions – should we tailor these timelines to take that into account (see also #7 below)? Example: the final Board recall decision period is 21 days according to Annex D of the Bylaws. Including both at the Council decision and veto mechanism, effective may have an adverse effect given that 10 % of the members may ask for a veto vote, but this vote cannot be organized during the required 21 days decision period, which will result in an abstention by the ccNSO.

5. **Requirements for Veto.** If a ccNSO Council decision is subject to veto by the ccNSO Membership, Members should be aware of the decision that is forthcoming (awareness). Publication of decision + alert is therefore necessary. Further, for reasons of predictability,

after a decision is taken a maximum number of days to call for veto vote. Minimal number of members need to call for a veto. Veto vote according to regular voting mechanism (on-line voting). One or two-rounds of voting?

6. **Members only decision, other than provided in the Bylaws**
   No provisions, to date with exception of change of Rules of the ccNSO. Going forward one could foresee that some of the decisions by the ccNSO as Decisional Participant are taken by the membership only, for example the removal of a ccNSO appointed Director.

7. **Council Only Decisions**
   Not provided in the Rules, but provided in some of the Guidelines, by nature of timelines in Bylaws: examples whether or not to continue a Rejection Action, Approval Action, Director Removal or Board recall Community Forum. According to Annex D this is limited to a 14 day window.

8. **Member vote/decision-making.**

The ccNSO Guideline on members meetings includes a section on temperature of the room to make a distinction with members voting. The 2004 Rules provide the following provisions on voting

Electronic:

1. An electronic vote of the members can be initiated by any of the following:

   o The ccNSO Council
   o The Chair of the ccNSO Council
   o 10% of the members

2. A vote shall commence five days after the notification of the proposed resolutions, and the vote shall stay open for a period of 14 days.

3. In the event that at least 50% of the ccNSO members vote, the vote shall be valid.

In the event that fewer than 50% of the ccNSO members vote, the vote shall be invalid and a second vote will automatically commence 14 days after the invalid nature of the first vote is notified to the members. The results of the second vote will be valid irrespective of whether 50% of the ccNSO members vote.

In person (section 3, 2004 Rules):

1. The quorum shall be 50% of the total membership of the ccNSO, and further at least two members per ICANN Region.
2. If any meeting does not meet the quorum requirements, any resolutions shall not be valid unless ratified by an electronic vote of the ccNSO membership.

9. **Quorum, if any, with respect to member decision-making.**
(included in 2004 rules)

1. A quorum requirement only applies to physical (face to face or tele/videoconference meetings of the ccNSO).
2. The quorum shall be 50% of the total membership of the ccNSO, and further at least two members per ICANN Region.

3. If any meeting does not meet the quorum requirements, any resolutions shall not be valid unless ratified by an electronic vote of the ccNSO membership.

Comment/ Question: If a quorum is considered necessary, some have suggested to lower the threshold to 25% (currently 45 members) or 33% (60 members) of the membership. Rationale: a limited number of members voting is necessary to legitimize a decision, however this number may not be prohibitive to take a decision, like for instance vetoing a Council decision or changing the rules.

10 . Review of the Rules.

Introduce a review mechanism at regular interval and under special circumstances.

Table 2: Mapping Headings – Rules 2004

Item #	Heading new Member Rules	Description	Section 2004 Rules	Comment
0	**Relation Bylaws, Members rules and Operational Procedures**	Explanation on how they relate. Article 6, Article 10, Annex B, C and D. Bylaws take precedence	Not included	Introduction. Note: not part of the body of the rules as changes to rules do not affect Bylaws nor Operating Principles.
1	**Principles.**	Original principles (no need to	Not included	Principles developed prior to and guiding develop of 2004.

		update, only to adjust principle re one vote per member		
2	**Change mechanisms Rules**	Manner in which Rules and Guidelines are changed	Section 4.3, Section 8	Currently only Rules change mechanism document role of members. Need to clarify role of members with respect to changes of Guidelines (need to be consulted). All Guidelines do document change mechanism. However, the guidelines do not explicate role of members. Make both change mechanisms subject to members vote?
3	**Change mechanism Operation Procedures**			
4	**Council decisions subject to veto**			
5	**Requirements for Veto**	Mechanism for members to veto Council decision	Section 6	See principles for need/accountability measure. Part of accountability escalation process. Veto decision-> Remove Council?
6	**Members only decisions other than provided in the Bylaws**	How members take a decision.	Section 5, section 4.2	Further detailed in Members meeting Guideline, Section 4. In this section difference between vote and temperature of the room and its impact
7	**Council only Decisions**			

8	**Members vote**			
9	**Quorum, if any, with respect to member decision-making**	Requirement of 50 % of members that need to participate in email vote/in person vote	Section 3, section 5.3	Minimal number of members.
10	**Regular Review of the Rules**	Introduce a review mechanism at regular interval and under special circumstances.	NA	Is reasonable as part of continuous organizational Improvement? (and WS2 recomemdations?)