**WCIT PROPOSALS AS OF AUGUST 16TH 2012**

*This analysis is mainly based on TD 64; the document now subject to public consultation by the ITU[[1]](#footnote-1).*

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| **REFERENCE IN TD 64 AND RELEVANT ARTICLE** | **PROPOSED TEXT** | **WHY RELEVANT TO ICANN** | **FURTHER COMMENTS AND PROPOSER** |
| CWG/4/12  Article 1.1.(c)  CYBERSECUIRTY | c) These Regulations recognize that Member States shall take the necessary measures to prevent interruptions of services and shall ensure that no harm is caused by their operating agencies to the operating agencies of other Member States which are operating in accordance with the provisions of these Regulations. | This would effectively oblige MS to be in a position to regulate all operating agencies. Depending on definitions this could include registries and registrars. | RUS  One of the issues here will be whether the scope of the ITR applies to all “operating agencies” or a much smaller sub-set (ie licensed operators) as proposed by US[[2]](#footnote-2). |
| CWG/4/24  Article 1.5  MUTUAL AGREEMENTS | 1.5 Within the framework of the present Regulations, the provision and operation of international telecommunication services in each relation is pursuant to mutual agreement between recognized operating agencies~~administrations~~. | Although not specifically affecting ICANN it introduces the concept that services (which could include provision of Internet) can only be provided if there are “agreements” between operators. | RUS |
| CWG/4/42  Article 1.9  EXISTING RIGHTS UNDER LEGISLATION | 1.9 Nothing in these regulations shall be interpreted as modifying the rights and obligations of Member States under any other treaties to which they are parties. | This is included here as it is very important it is retained. It essentially means that text in the ITRs contradicting national or international (eg EU law) has no affect. | This could be a key paragraph as could be used to exempt MS from the more drastic aspects of ITRs; in fact EU will almost certainly (in a Decision to be adopted soon) mandate that MS do not “sign” any agreement that contradicts EU law. |
| CWG/4/48  Article 2.1A  SCOPE OF ITR -  DEFINITION OF TELECOMMUNICATIONS / ICT | 2.1a *Telecommunication/ICT:* Any transmission, emission or reception, including processing, of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems. | This is the crucial definition that will determine whether “Internet Services” (which could include RIR/Registrar operations) are within scope of ITRs; | ARAB STATES; RUS; EGYPT  Suspect a lot of energy will go into this definition. Clearly best left unchanged but realistically will probably include some notion of Internet. |
| CWG/4/53  Article 2.2A  SCOPE OF ITR | 2.2A *International telecommunication service/ICTs:* The offering of a telecommunicationcapability including, but not limited to: offering of a telecommunication capability in roaming, international public telegram service, telex, traffic termination services (including Internet traffic termination), any kind of circuit provision services, other services integral to provision of international telecommunication services between telecommunication offices or stations of any nature that are in or belong to different countries. | Similar to above this definition also includes notion of “Internet traffic termination” and “services integral to provision of services….”; this possibly including naming and addressing provision; | RUS; IRAN, MEXICO  As above; suspect some of this will be agreed; so more important task is to make sure the “operative” clauses are acceptable. |
| CWG/4/78  Article 2.13  SPAM | 2.13 *Spam*: information transmitted over telecommunication networks [as text, sound, image, tangible data used in a man-machine interface bearing advertising nature or having no meaningful message,] simultaneously or during a short period of time, to a large number of particular addressees without prior consent of the addressee (recipient) to receive this information or information of this nature. | This is not harmful to ICANN in its own right but is significant as essentially introduces notion of content control (which is beyond current ITR); | RUS; EGYPT, ARAB STATES  This proposal splits CEPT (Europe-48) as some MS (including NL) think we should include this (as it is in EU Framework) the problem is that it can be read as legitimism of content control. |
| CWG/4/105  Article 2.28 | 2.28 *IP interconnection:* IP interconnection refers to technical and business solutions and rules to ensure the delivery of IP traffic through different networks. | A new definition from ETNO. Scope would cover IP services; so if used in Articles would significantly widen scope of ITRs. | ETNO  Although just a definition it does not take much imagination to see how dangerous this could be. |
| CWG/4/116  Article 3.2  ETNO PROPOSAL ON COMMERCIAL TRANSACTIONS | 3.2 [~~Administrations\*~~ Operating agencies shall endeavour to provide sufficient telecommunication facilities to meet the requirements of and demand for international telecommunication. For this purpose, and to ensure an adequate return on investment in high bandwidth infrastructures, operating agencies shall negotiate commercial agreements to achieve a sustainable system of fair compensation for telecommunications services and, where appropriate, respecting the principle of sending party network pays.] | This is one of the ETNO proposals; would have affect of obliging there to be commercial agreements (including payment) between different players in IP space; | RUS; ETNO, EGYPT |
| CWG/4/118/119/120/  Article 3.3  MONITOING AND ROUTING OF INTERNATIONAL TRAFFIC | 3.3 ~~Administrations\*~~Operating agencies shall determine by mutual agreement which international routes are to be used.  ~~Pending agreement and provided that there is no direct route existing between the terminal administrations concerned, the origin administration has the choice to determine the routing of its outgoing telecommunication traffic, taking into account the interests of the relevant transit and destination administrations.~~ [A Member State has the right to know how its traffic is routed. |A Member State shall have the right to know through where its traffic has been routed, and should have the right to impose any routing regulations in this regard, for purposes of security and countering fraud]. | There are a number of different texts here with different purposes.  The text here (119) – from a Russian proposal - is potentially far reaching. Essentially it allows a government to interfere in the commercial routing of traffic (including Internet data); allowing them to know what traffic is routed where; and to impose different routing where considered appropriate. | ARAB STATES; RUS; IRAN  This text, combined with the Cybersecurity proposals – see below – could effectively allow a MS to demand that another MS blocks international traffic. This could have far reaching effect. |

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| CWG/4/122  Article 3.4  EQUALITY OF CHARGING FOR NAMING AND ADRESSING | 3.4 Member States recognize the right of the public to correspond by means of the international service of public correspondence. The services, the charges and the safeguards shall be the same for all users in each category of correspondence without any priority or preference. ~~Subject to national law, any user, by having access to the international network established by an administration\*~~, ~~has the right to send traffic~~. A satisfactory quality of service should be maintained to the greatest extent practicable, corresponding to relevant ~~CCITT~~ITU-T Recommendations. | This new proposal would effectively constrain commercial pricing for the provision of IP services; thus potentially affecting the naming and addressing markets; | AFRICA; IRAN |
| CWG/4/131/132/134/136/137/138  Article 3.5  GIVING ITU RECOMMENDATIONLEGAL AFFECT | 3.5 Notwithstanding the provisions of Art.1, §1.4 and §1.6, and to enshrine the purpose set out in the Preamble; in Art. 1, §1.3; in Art.3, §3.3.; and taking into account Art.3, §3.1, Members shall require, subject to national law, that administrations, recognized operating agencies, and private operating agencies which operate in their territory and provide international telecommunications services offered to the public, apply the ITU-T Recommendations and national laws relating to naming, numbering, addressing and identification, including any Instructions forming part of, or derived from, said Recommendations. | This directly affects ICANN as would mean that any ITU Recommendation touching on naming or addressing (such as in context of IPV6) would have legal affect. | ARAB STATES, AFRICA  This will be hotly debated; the notion that a “Recommendation” negotiated as such (ie agreed by experts in a Study Group) can be turned into legislation through the ITR process. |
| CWG/4/140  Article 3.5a  NAMING AND ADDRESSING | 3.5 a) Member States shall ensure that international naming, numbering, addressing and identification resources specified in the ITU-T Recommendations are used only by the assignees and only for the purposes for which they were assigned; and that unassigned resources are not used.  3.5 b) Member states shall, if they so elect, be able to control all naming, numbering, addressing and identification resources used within their territories for international telecommunications/ICTs. | This new proposal is new and potentially far reaching for ICANN in that it could effectively give governments carte-blanche to interfere with naming and addressing and directly regulate registry and registrar operations. | RUS; ARAB STATES  This could be interpreted as effectively demanding total control of IP addresses (even beyond RPKI) |
| CWG/4/165  Article 4.2  SERVICES PROVIDED | 4.2 Member~~s~~ States shall ensure that administrations/operating agencies cooperate within the framework of these Regulations to provide by mutual agreement, a wide range of international telecommunication services ~~which should conform, to the greatest extent practicable, to the relevant CCITT Recommendations~~ of any type, including, but not limited to:  - services for carrying traffic (including services for carrying Internet traffic and data transmission);  - telecommunication roaming services;  - services for the provision of telecommunication channels;  - services in the public international telegraph service;  - services in the international telex service;  - telematic telecommunication services;  - multimedia telecommunication services;  - convergent telecommunication services;  - global telecommunication services. | Directly applicable to ICANN and could (depending on scope of definitions) be significant as could (for example) regulate what cc or gTLDs were supplied by registrars or registries; | RUS; ARAB STATES  Importance of this to ICANN will depend on how definitions are worded. During negotiation we will learn more on the intent. |
| CWG/4/173  Article 4.3(a)  RESTRICTIONS ON CONNECTION TO INTERNET | a) access to the international network by users using terminals which are permitted to be connected to the network and which do not cause harm to technical facilities and personnel; harm to technical facilities and personnel shall be construed to include spam, malware, etc. as defined in relevant ITU-T Recommendations (as the case may be), as well as malicious code transmitted by any telecommunication facility or technology, including Internet and Internet Protocol. Furthermore, the said provision shall be construed to prohibit connection of terminals that cause harm to technical facilities or personnel. | This potentially regulates what can be connected to the Internet; would allow standards to be imposed on what sort of device was connected thus potentially harming innovation and choice for consumers.  Based on this MS could 9for example) ban use of all mobile devices because of security concerns. | ARAB STATES |
| CWG/4/199  Article 4.7 | 4.7 Operating agencies shall cooperate in the development of international IP interconnections providing both, best effort delivery and end-to-end quality of service delivery. Best effort delivery should continue to form the basis of international IP traffic exchange. Nothing shall preclude commercial agreements with differentiated quality of service delivery to develop. | This is the ETNO proposal; which would effectively allow differentiation of service delivery.  \Would have effect of underpinning US and NL approach on the Open Internet. | ETNO |
| CWG/4/222  Article 5A.1  CYBERSECUIRTY REGULATION | 5A.1 Member-States have the responsibility and right to protect the network security of the information and communication infrastructure within their state, to promote the international cooperation to fight against network attacks and disruptions.  5A.2 Member-States have the responsibility to require and supervise that enterprises operating in their territory use ICTs in a rational way and endeavour to ensure the effective functioning of ICTs, in secure and trustworthy conditions.  5A.3 User information in information and communication network should be respected and protected. Member-states have the responsibility to require and supervise that enterprises operating in their territory protect the security of user information. | This is potentially significant for ICANN as introduces regulation on Cybersecuirty into the ITRs. It also obliges States to regulate those actors in the ICT space; this (depending on scope) including IP players (such as RIRs); | RUS |
| CWG/4/228  Article 5A.1  CYBERSECURITY REGULATION | 5A.1 Member States shall do their utmost to promote the confidence required for effective use and harmonious development of international telecommunications as well as security in the provision of international telecommunication services.  5A.2 Member States shall ensure the confidentiality of international telecommunications and of any related information that has become known to the operating agency in the course of providing international telecommunication services.  5A.3 Member States shall ensure the protection of personal data handled for the purposes of providing international telecommunication services.  5A.4 Member States shall ensure unrestricted public access to international telecommunication services and the unrestricted use of international telecommunications, except in cases where international telecommunication services are used for the purpose of interfering in the internal affairs or undermining the sovereignty, national security, territorial integrity and public safety of other States, or to divulge information of a sensitive nature.  5A.5 Member States shall prevent the propagation of spam.  5A.6 Member States shall combat network fraud.  5A.7 Member States shall ensure that numbering, naming, addressing and identification resources in international telecommunication networks are used in accordance with their intended purpose and stipulated allocation.  5A.8 Member States shall ensure that operating agencies duly identify the subscriber when providing international telecommunication services, and shall ensure the appropriate processing, transmission and protection of identification information in international telecommunication networks.  5A.9 Member States shall ensure that operating agencies take the appropriate measures to ensure reliable operation, confidence and security of international telecommunications. | This again would oblige new legislation on cyber security issues; It includes (at 5A7) the requirement on use of numbering and addressing resources that would affect ICANN constituency.  5A4 is also really significant as allows one MS to interfere with international traffic on basis that that traffic may have content contrary to their national security interests. | RUS  Have highlighted this as it potentially allow a MS to interfere with international traffic on basis that it may have content of a nature affecting that country. |
| CWG/4/251  Article 6.1.3  INTERNET CHARGING | ~~.~~ National authorities are free to impose taxes on all telecommunications traffic, whether incoming or outgoing. However, such taxes should be reasonable and the proceeds should be directed where possible at the development of the industry. Regarding double taxation, Member States are encouraged to cooperate within the framework of bilateral, juridical double taxation treaties under which taxation arrangements are pre-determined by the terms of the treaty so as to protect against the risk of double taxation and avoidance or evasion of tax liability. | Although aimed at telecommunication services it could well apply to Internet (given changes in definitions) thus legitimizing bit taxes and effectively a “closed” Internet. | ARAB STATES |
| CWG/4/280  Article 6.7 | 6.7 Member States shall ensure that each party in a negotiation or agreement related to or arising out of international connectivity matters, including those for the Internet, will have access to alternative dispute resolution mechanisms and will have standing to have recourse to the relevant regulatory or competition authorities of the other party's country. | This would oblige governments to legislate to enable all IP players (including registrars etc) to have access to ADR processes; no doubt there could well be significant costs imposed. | AFRICA |
| CWG/4/295  Article 6.12b  OPEN ACCESS | 6.12B Member States shall ensure that operating agencies providing international communications services, including mobile services, enable open equivalent access by devices used by subscribers contracted to other operating agencies, such that they are able to connect to applications and content service without charges beyond that normally applied to their own contracted subscribers. | This is significant, in that, contrary to approach taken in ETNO proposal, this would effectively require open access policies; as such is to be welcomed. | RUS |
| CWG/4/303  Article 6.16  EQUALITY OF CHARGING | 6.16 Member States shall take measures to ensure that fair compensation is received for carried traffic (e.g. interconnection or termination). Regulatory measures may be imposed to the extent that this cannot be achieved through market mechanisms and to the extent that such measures do not hinder competition | This is potentially significant if covers IP traffic as it legitimizes interference with commercial contracts. | This could be significant in that allows interference by a MS into commercial contracts. |
| CWG/4/315  Article 6.E  CHARGING FOR IP TRAFFIC | 6.A Member States shall ensure transparency with respect to retail and wholesale prices, costs, and quality of service.  6.B Member States should foster continued investment in high-bandwidth infrastructures.  6.C Member States shall [take measures to] ensure that prices are oriented on costs. Regulatory measures may be imposed to the extent that this cannot be achieved through market mechanisms.  6.D Member States shall take measures to ensure that an adequate return is provided on investments in network infrastructures. If this cannot be achieved through market mechanisms, then other mechanisms may be used.  6.E Member States shall [take measures to] ensure that fair compensation is received for carried traffic (e.g. interconnection or termination). Regulatory measures may be imposed to the extent that this cannot be achieved through market mechanisms.  6.F The right to create universal service funds or universal service obligations is reserved.  6.G Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances. | 6E in this proposal is similar to above legitimizing charging for IP traffic; thus potentially fragmenting market. | Again 6E effectively places governments in the chain of regulating commercial prices. |
| CWG/4/318  Article 6.2.2  IMPOSITION OF ADR PROCEDURES | 6.2.2 Member States shall ensure that each party in a negotiation or agreement related to or arising out of international connectivity matters, will have access to alternative dispute resolution mechanisms and will have standing to have recourse to the relevant regulatory or competition authorities of the other party's state, [this dispute resolution mechanism may also be by a body mutually agreeable to the parties of the dispute (a neutral body in one of the concerned countries or by a neutral international body, or as agreed by the concerned parties).] | This is the imposition of mandatory ADR processes again. | RUS |
| CWG/4/330  Article 9.1a  SPECIAL ARRANGEMENTS | 9.1 a) Pursuant to Article 42 of the Constitution, special arrangements may be entered into on telecommunication matters which do not concern Member~~s~~ States in general. Subject to national laws, Member~~s~~ States may allow administrations~~\*~~/ROAs or other organizations or persons to enter into such special mutual arrangements with Member~~s~~ States, administrations or other organizations or persons that are so allowed in another country for the establishment, operation, and use of special telecommunication networks, systems and services, in order to meet specialized international telecommunication needs within and/or between the territories of the Member~~s~~ States concerned, and including, as necessary, those financial, technical, or operating conditions to be observed. | This is an important clause to retain in the text (US and Europe had at one point suggesting deleting) as it potentially gives a breathing space for types of IP services (again depending on definitions) not explicitly covered in the ITRs. | ITU staff and others have argued that it is this clause that effectively allowed the Internet to develop. This is far-fetched but wording could be crucial during end game of negotiation. |
| CWG/4/351  Article 10.3  APPLICAITION OF ITR | 10.3 If a Member State makes reservations with regard to the application of one or more of the provisions of these Regulations, other Member~~s~~ States and their [[recognized] operating agencies] ~~administrations\*~~ ~~shall be free to disregard~~ are not obliged to abide by the said provision or provisions in their relations with the Member State which has made such reservations and its [[recognized] operating agencies] ~~administrations~~ | This again; though largely based on exiting text; is potentially important as it could lessen regulatory burden on IP players in a situation where there are substantial reservations on final ITR texts. For example would mean that all transactions a US company concluded (where say US had reservations) could be made outside ITRs if counterparties agreed. |  |
| CWG/4/450  RESOLUTION NO. A | RESOLUTION No. A  Special measures for landlocked developing countries (LLDCs) for access the international optical fibre network  (*have just included the operative clauses for sake of brevity)*  ,  **instructs** the Secretary-General and the Director of the Telecommunication Development Bureau  1 to ensure that studies of the situation of telecommunication/ICT services in the LLDCs should emphasize the importance of access to the international fiber optic network;  2 to propose to the ITU Council specific measures designed to ensure genuine progress and provide LLDCs with effective assistance in connection with *instructs* 1;  3 to provide the administrative and operational structure necessary to develop a strategic plan that contains practical guidelines and criteria to govern and promote regional, subregional, multilateral, and bilateral projects affording LLDCs greater access to the international fiber optic network,  requests the Secretary-General  to transmit the text of this resolution to the Secretary-General of the United Nations, with a view to bringing it to the attention of the United Nations High Representative for the Least Developed Countries (LDCs), Landlocked Developing Countries (LLDCs) and Small Island Developing States (SIDSs),  instructs the Council  to take appropriate measures to ensure that the Union continues to collaborate actively in the development of telecommunication/ICT services in LLDCs,  encourages landlocked developing countries  to continue to accord high priority to telecommunication/ICT activities and projects that promote integral socioeconomic development, adopting technical cooperation activities financed from bilateral or multilateral sources that will benefit the general public,  urges Member States  1 to cooperate with landlocked countries by promoting regional, subregional, multilateral, and bilateral projects for telecommunication infrastructure integration that afford LLDCs greater access to the international fiber optic network,  2 to include and/or maintain in South-South and triangular cooperation programs with donor participation, and in cooperation among subregional and regional organizations, actions complementing the Almaty Programme of Action to assist landlocked developing and transit countries in executing these telecommunication infrastructure integration projects,  invites Member States, Sector Members and Associates  to continue support the work of ITU-D in studies of the situation of telecommunication/ICT services in the least developed countries, LLDCs, small island developing states, and countries with economies in transition so identified by the United Nations and requiring special measures for telecommunication/ICT development. | This is a new proposal to give special attention and recognition to need of land-locked countries (typically in Africa) that by their geography have less access to fibre optic cable systems.  While noting in text itself to concern ICANN the principal of special measures for particular counties could be if extended to IP services (such as distribution of addresses).  Text seems to also legitimize state control of all IP services. | AFRICA |
| CWG /4/452  RESOLUTION NO. B | REsolution No. B  Application of the Provisions of the Constitution and Convention relating to the ITRs  The World Conference on International Telecommunications (Dubai, 2012),  considering  a) Resolution 163 (Guadalajara, 2010), Establishment of a Council working group on a stable ITU Constitution;  b) that, pursuant to decisions taken at the conference, certain provisions of the International Telecommunications Regulations are identical or related to certain provisions of the Constitution or Convention,  resolves to invite the plenipotentiary conference  to consider whether the following provisions of the Constitution and Convention should be suppressed from those instruments:  \* In the **CS**: [179 through 193, 1004, 1007, 1008 and 1011 through 1017];  \* In the **CV: [**496 through 506, 1003 and 1006]. | This Resolution seeks to maintain consistency (through 2014 PP Conference) between ITRs and Convention /Constitution.  Would have little concern as long as transposition is fair. | Not a specific ICANN issue but could be significant if the ITRs were effectively in contact with Constitution. |

1. See <http://www.itu.int/en/wcit-12/Pages/public2.aspx> [↑](#footnote-ref-1)
2. This issue (or scope of “operating agencies”) is a problem for EU; on wine had they would like a narrow category covered (less regulation) but under EU Framework there is no notion of “licensed” operators. [↑](#footnote-ref-2)