

[this text would replace Section 6.6 in the WP1 document:
WP1 document draft:]

The Affirmation of Commitments (AoC) is a 2009 bilateral agreement between the US government and ICANN¹. After the IANA agreement is terminated, the AoC will become the next target for elimination since it would be the last remaining aspect of a unique United States oversight role for ICANN.

Elimination of the AoC would be simple matter for a post-transition ICANN, since the AoC can be terminated by either party with just 120 days notice. The CCWG Stress Test Work Party addressed this contingency since it was cited in prior public comments². The CCWG evaluated the contingency of ICANN unilaterally withdrawing from the AoC against existing and proposed accountability measures, including:

1. Preserving ICANN commitments from the AoC, including sections 3,4,7, and 8 as well as commitments cited in the section 9 reviews.
2. Bringing the four AoC review processes into ICANN's bylaws.

Other parts of the AoC are either preamble text or commitments of the US Government, so these have not been proposed as additions to the ICANN bylaws.

Each of the above measures are addressed below.

6.6.1 Preserving ICANN Commitments from the AOC

ICANN Commitments in the AoC	As expressed in ICANN bylaws
<p>3. This document affirms key commitments by DOC and ICANN, including commitments to:</p> <p>(a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent;</p> <p>(b) preserve the security, stability and resiliency of the DNS;</p> <p>(c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and</p> <p>(d) facilitate international participation in DNS technical coordination.</p>	<p>in revised Core Values:</p> <p>The following edits to the mission have been included by the combined legal firms, but are in the province of WP2:</p> <p>Proposed core value 6 (with additional text)</p> <p>Ensure that decisions made related to the global technical coordination of the DNS are made in the global public interest and are accountable, transparent <u>and bottom-up in their formulation</u></p> <p>Proposed core value 5 (with additional text):</p>

¹ Affirmation of Commitments, Sep-2009, at <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

² See <https://community.icann.org/display/acctcrosscomm/ST-WP+--+Stress+Tests+Work+Party>

	<p>Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment <u>that enhances consumer trust and choice</u></p>
<p>4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.</p>	<p>in revised Core Values:</p> <p>The following edits to the mission have been included by the combined legal firms, but are in the province of WP2:</p> <p>Proposed new Section 9 in bylaws Article III Transparency (with additional text/changes)</p> <p>ICANN will perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial or non-commercial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.</p>
<p>7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.</p>	<p>in revised Core Values:</p> <p>The following edits to the mission have been included by the combined legal firms, but are in the province of WP2:</p> <p>Proposed insertion of new section 8 in Article III Transparency (this is AoC para 7 in its entirety including additional text):</p> <p>ICANN commits to adhere to transparent and accountable budgeting processes, <u>providing [reasonable/adequate] advance notice to facilitate stakeholder engagement in policy decision-making</u>, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans.</p> <p>In addition, ICANN commits to provide a thorough and reasoned explanation of</p>

	<p>decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.</p>
<p>8. ICANN affirms its commitments to:</p> <p>(a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet;</p> <p>(b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and</p> <p>(c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.</p>	<p>in revised Core Values:</p> <p>The following edits to the mission have been included by the combined legal firms, but are in the province of WP2:</p> <p>Question the need for either A or B</p> <p>In Feb-2015, the ICANN CEO told a US Senate Committee, “the jurisdiction of ICANN shall remain in the United States of America, and we stand by this”. This established an expectation, so the absence of 8b would be noted when Congress reviews the transition proposal.</p> <p>Would B need to be put in a fundamental bylaw?</p> <p>Proposed inserting (c) in full as a new core value in the bylaws (including additional text):</p> <p>Operating as a multi-stakeholder, <i>bottom-up</i> private sector led organization with input from the public, for whose benefit ICANN shall in all events act</p>
<p>9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below :</p>	<p>See Section 6.6.2 of this document for bylaws text to preserve commitments to perform these ongoing reviews.</p>

In Bylaws Article IV, add a new section for **Periodic Review of ICANN Execution of Key Commitments**, to include one subsection for each of the 4 Affirmation Reviews.

Possible Bylaw that provides an chapeau for the other period reviews proposed	
All of the reviews listed in this section would be governed by the following:	New
<p>ICANN will produce an annual report on the state of improvements to Accountability and Transparency.</p> <p>ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the review teams defined in this section.</p>	This is new. It is a recommendation based on one in ATRT2 and becomes more important as reviews are spread further apart.
All reviews will be conducted by a volunteer community review team comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board.	
Review teams may also solicit and select independent experts to render advice as requested by the review team, and the review team may choose to accept or reject all or part of this advice.	
To facilitate transparency and openness in ICANN's deliberations and operations, the review teams shall have access to ICANN internal documents, and the draft output of the review will be published for public comment. The review team will consider such public comment and amend the review as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.	
The final output of all reviews will be published for public comment. The Board shall consider approval and begin implementation within six	

months of receipt of the recommendations.	
---	--

Proposed bylaws text for this Affirmation of Commitments review	Notes
<p>1. Accountability & Transparency Review. The Board shall cause a 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 will reflect the public interest and be accountable to all stakeholders.</p> <p>In this review, particular attention will be paid to:</p> <p>(a) assessing and improving ICANN Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;</p> <p>(b) assessing the role and effectiveness of GAC interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;</p> <p>(c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);</p> <p>(d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and</p> <p>(e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.; and</p> <p>(f) assessing the extent to which the Board and staff have implemented the recommendations arising from the reviews required by this section.</p> <p>The review team may recommend termination of other periodic reviews required by this section, and may recommend additional periodic reviews.</p> <p>This periodic review shall be conducted no less frequently than every five years, measured from the date the Board received the final report of the prior review team.</p>	<p>This commitment is reflected in Bylaws Core Values</p> <p>Rephrased to avoid implying a review of GAC's effectiveness</p> <p>Moved from AoC text into this list</p> <p>AoC required every 3 years.</p>

Proposed bylaws text for this Affirmation of Commitments review	Notes
<p>2. Preserving security, stability, and resiliency. The Board shall cause a periodic review of ICANN’s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS.</p> <p>In this review, particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes.</p> <p>Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission.</p> <p>This periodic review shall be conducted no less frequently than every five years, measured from the date the Board received the final report of the prior review team.</p>	<p>This commitment is reflected in Bylaws Core Values</p> <p>Change: AoC required every 3 years.</p>

Proposed bylaws text for this Affirmation of Commitments review	Notes
<p>3. Promoting competition, consumer trust, and consumer choice. ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</p> <p>The Board shall cause a review of ICANN’s execution of this commitment after any batched round of new gTLDs have been in operation for one year.</p>	<p>This commitment could be added to Bylaws Core Values</p> <p>Re-phrased to cover future new gTLD rounds.</p>

<p>This review will examine the extent to which the expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as effectiveness of:</p> <p>(a) the gTLD application and evaluation process; and</p> <p>(b) safeguards put in place to mitigate issues involved in the expansion.</p> <p>Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented.</p> <p>These periodic reviews shall be conducted no less frequently than every four years, measured from the date the Board received the final report of the relevant review team.</p>	<p>New</p> <p>AoC also required a review 2 years after the 1 year review</p>
--	--

Proposed bylaws text for this Affirmation of Commitments review	Notes
<p>4. Reviewing effectiveness of WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.</p> <p>ICANN commits to enforcing its existing policy relating to WHOIS/Directory Services, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. Such existing policy also includes the requirements that legal constraints regarding privacy, as defined by OECD in 1980 as amended in 2013.</p> <p>The Board shall cause a periodic review to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust.</p>	<p>http://www.oecd.org/sti/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofpersonaldata.htm</p> <p>http://www.oecd.org/internet/ieconomy/privacy-guidelines.htm</p> <p>AoC also required every 3 years.</p>

This periodic review shall be conducted no less frequently than every three years, measured from the date the Board received the final report of the prior review team.	
---	--

Possible Place Holder for CWG - tbd

Periodic review of the IANA Function	new
tbd	