

### **Incorporating the Affirmation of Commitments into the ICANN Bylaws**

*Question 13: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

*Question 14: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

This brief summary (draft 2) analyses the 45 comments in response to questions on the Mechanism to Empower the Community. It offers some high level observations from the Rapporteur; looks at the key issues and the community's view on these as evidenced in the comments; sets out some broader or more general themes that came through in the comments; and summarises the tags applied to the comments.

29 comments suggested **agreement**; 9 comments noted **concerns**.

There was 1 **confusion** rated comment and 1 **divergent** rated comment.

There was **broad agreement** that the incorporation of AOC principles and reviews into the bylaws would enhance ICANN accountability.

The **main issue/s or concerns**:

- Inclusion of location of incorporation in the fundamental bylaws (as part of the review text). As argued there is neither a consensus on this nor is it fundamental to the global community.
- What happens to the AOC following incorporation into the bylaws
- Composition of the various groups. How is full diversity of the community handled?

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Manner in which reviews can be sunset. While there seem to be general acceptance of reviews being sunset, there is concern with ATRT being responsible for doing so.
- Manner in which reviews are done; i.e. decision procedures, transparency and their responsiveness to comment
- Is every 5 years frequent enough for all reviews, especially for the first few cycles after the transition.
- Concerns about requirement for full transparency for review teams, yet a continued need for some issues to remain confidential with regard to full open disclosure.
- Degree to which ATRT is responsible for reviewing ICANN accountability in response to other reviews.
- Whether to require ICANN to implement review team recommendations, or rely upon community powers to challenge a board decision not to implement a recommendation (CCWG proposal)

**Proposed CCWG response/approach to resolution**

- Create an explicit proposal for how the AOC might be mutually cancelled as part of the transition.
- Add detail about the composition of the various review groups
- If all of the information does not need to be included in the ByLaws, create side document taking elements of the ICANN implementation of the AOC review as draft operating procedures for [these] reviews. Completing that document can be a WS2 task
- Continue discussion on whether it is appropriate to designate Bylaws Article XVIII (location of incorporation) as a Fundamental bylaw.

#	Contributor	Comment	CCWG Response/Action
420	<a href="#">RH</a>	Question 13: Disagrees. ICANN should not be incorporated in the USA	<p><b>"Agreement" "Concerns"</b></p> <p><b>Summary / CCWG Response:</b>            RH acknowledges that jurisdiction is distinct from where ICANN is organized and located. " ICANN will be subject to the laws of the countries in which it operates". No disagreement there.</p> <p>RH says ICANN would "primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere" Legal advice provided to the CCWG indicates that CA law allows membership to exercise (and enforce) full powers, so there is no disagreement here. Though full powers in RH's definition goes beyond the set of powers enumerated in the proposal.</p> <p>RH says, " ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely</p>

			<p>to interfere, for example Switzerland.”</p> <p>On this point, ICANN’s Articles of Incorporation and Bylaws Article XVIII require California incorporation and location. The CCWG is not proposing a change in ICANN’s state of incorporation.</p> <p>As to the question of whether Bylaws Article XVIII should be a Fundamental Bylaw, RH would likely say, No. However, RH seems to imply that all bylaws should be fundamental, with this comment: “the membership, and only the membership, should have the power to change the bylaws.”</p> <p>Note that RH suggests that individuals should be the Members, not the ACs and SOs themselves. There was no support for this in the CCWG or other public comments.</p> <p><b>Actions suggested:</b> Make sure jurisdiction and state of incorporation are serious topics for WS2.</p>
4 2 1	DBA	Question 14: important that governments are given appropriate weight in the proposed multi-stakeholder reviews, including the ATRT Reviews.	<p>“Agreement”</p> <p><b>Summary / Impression:</b> DBA supports import of AoC Reviews into ICANN bylaws. DBA notes that “it is important that governments are given appropriate weight in the proposed multi- stakeholder reviews, including the ATRT Reviews”</p> <p><b>CCWG Response:</b> In CCWG’s 2<sup>nd</sup> draft, the precise makeup of the AoC review teams is specified in para 514, and includes governments along with all AC/SOs.</p>

4 2 2	<a href="#">WC comment 1</a>	The inclusion of the Affirmation of Commitments into the ICANN Bylaws strengthens community review of ICANN's activities.	<p><b>"Agreement"</b></p> <p><b>Summary / Impression:</b> It strengthens community review of ICANN activities</p>
4 2 3	<a href="#">CRG</a>	Not if transferred as they are today. Based on my limited experience in ATRT2 I think the structure of the 4 reviews is outdated, cumbersome, and too slow for an ICANN directly accountable to the community. In itself there is a potential conflict of interest there in the community reviewing and organisation led by the community. This is a very serious task for WS2 to define how reviews have to be changed so they enhance accountability under the new stewardship!	<p><b>"Divergence"</b></p> <p><b>Summary / Impression:</b> CRG might mistakenly believe that CCWG proposed importing the AoC reviews "as they are today". In fact, CCWG proposed many changes to the existing AoC reviews. As to whether the AoC reviews are "too slow", the CCWG did not propose more frequent reviews. Instead, we assume that enhanced IRP and other enforceable community powers will provide quick remedies to decisions or inactions by ICANN.</p> <p><b>Actions suggested:</b> No action needed.</p> <p><b>CCWG Response:</b> CCWG does not see the suggested conflict of interest, since the community is distinct from the ICANN board and management that handles implementation and operations. Folding these reviews into the bylaws now is important, since either ICANN or NTIA could terminate the AoC at any time. Para 551 suggests that ATRT should complete its review within one year of convening its first meeting.</p>
4 2 4	<a href="#">Afnic</a>	Incorporating the AoC into the ICANN Bylaws is a coherent step toward the termination of the unique US oversight role for ICANN. Therefore, Afnic supports this proposal, along with the revised version of the Bylaws proposed at 3.1 and including the IANA function review.	<p><b>"Agreement"</b></p> <p><b>Summary / Impression:</b> In support of proposal</p>

			<b>Actions suggested:</b> No action needed
4 2 5	<a href="#">IA</a>	<p>- IA agrees this is a necessary step in the transition, and must be completed prior to the transition.</p> <p>- The various review mechanisms provided by the AOC have historically been helpful tools for addressing concerns with ICANN's accountability.</p> <p>- IA strongly supports the proposed Bylaw changes regarding the new gTLD program, particularly the requirement that recommendations from the previous review be implemented before rounds of new gTLDs can be opened.</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> In support of proposal</p>
4 2 6	<a href="#">Govt-ES</a>	<p>- Key elements of the AoC addressing ICANN's commitments to the Community are proposed to be reflected in ICANN's Bylaws and Articles of Incorporation (page 20). [Note: request paragraph number]</p> <p>We ask for a detailed timescale, requirements and processes that would lead to the termination of the AoC, including steps to be taken by the USG and ICANN. Full privatization of ICANN requires all contractual links with the USG to be finished.</p> <p>- While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, we do not believe this should be incorporated into a core or fundamental value of ICANN (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community.</p> <p>- Regarding periodic reviews, provisions are insufficient to ensure that the community input is duly and fairly taken into account. Some language regarding the decision making procedures that the review team should follow and how their deliberations are reflected in their final recommendation report.</p> <p>- Recommendations issued by the review team should explicitly indicate whether they were reached at by consensus, qualified majority or simple majority in the team. For the sake of transparency, the review teams should describe how they have considered</p>	<p>"Agreement" with suggestions and "Concerns"</p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>• Wants to terminate the AoC after transition.</li> <li>• Article 18 should not be a Fundamental Bylaw.</li> <li>• Several ideas about transparency and process for the periodic reviews imported from the AoC.</li> </ul> <p><b>Actions suggested:</b> Consider proposed process improvements.</p> <p><b>CCWG Response:</b> On terminating the AoC: The CCWG 2<sup>nd</sup> draft proposal (para 507) now reads, "After these aspects of the AoC are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the AoC."</p> <p>Regarding the periodic reviews imported from the AoC: CCWG 2<sup>nd</sup> draft proposes details for how review teams reach decisions (para 517). Para 529 requires publication by Review teams of the degree of consensus for their conclusions. Para 533 requires review team to</p>

		<p>community inputs explaining why they embraced the ones that made their way to the final report and why they rejected the other ones. In addition, a table displaying the suggestions received and their authors ranked by their level of support among community members contributing to the comment periods should be publicly available, as a reflection of the community's preferences.</p>	<p>consider public comments on draft reports.</p>
<p>4 2 7</p>	<p><a href="#">RySG</a></p>	<ul style="list-style-type: none"> <li>- Q13 - agrees to incorporating key principles and elements of the Affirmation of Commitments (AoC) into the ICANN Bylaws</li> <li>- It further enshrines key accountability and transparency review commitments and helps to eliminate a remaining vestige of the United States government's unique role with regard to ensuring ICANN's accountability. Transitioning key components of the AoC would, in effect, transition that oversight from the USG to the global multi-stakeholder community.</li> <li>- RySG supports the list of requirements for this recommendation</li> <li>- RySG note that there are some conflicting revisions proposed in Sections 3 and Section 6. Generally, we support the more active language used Section 3. We trust that the CCWG-Accountability will reconcile these discrepancies in its final proposal. In the final proposal, we recommend that a single and complete redline of the ICANN Bylaws be included reflecting both the proposed changes to the Mission and Core Values as well as the incorporation of the Affirmation of Commitments into the Bylaws.</li> <li>- RySG has one point of concern with respect to the following text: <i>ICANN will ensure that as it expands the top-level domain space, will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</i> We agree that the above issues are important topics, but wish to underscore that these topics must be addressed through the multi-stakeholder model and not unilaterally by ICANN as an organization. We urge that this be clarified in the final proposal.</li> </ul>	<p>"Agreement" "Concerns"</p> <p><b>Summary / CCWG Response:</b></p> <ol style="list-style-type: none"> <li>1. Regarding conflicting terms, the CCWG 2<sup>nd</sup> draft places commitments to perform AoC Reviews in the Reviews section of bylaws, and not as part of Core Values.</li> <li>2. RySG prefers a bottom-up multistakeholder process to interpret new gTLD review criteria. CCWG proposed Core Values require a bottom-up multi-stakeholder process, which applies to recommendations coming from AoC review teams as well.</li> <li>3. RySG supports ATRT having role to amend or sunset periodic reviews, and believes the WHOIS review is a good candidate for sunset. CCWG notes that the first ATRT could recommend changes or sunset of the WHOIS review.</li> </ol>

	<p>Q14. agrees to incorporating the Affirmation of Commitments (AoC) reviews into the ICANN Bylaws</p> <ul style="list-style-type: none"> <li>- RySG believes the Accountability and Transparency Reviews must be incorporated.</li> <li>- RySG other reviews, such as the Whois review, could be sunset. The RySG believes that the community should have the power to designate participants on future reviews (unlike today, where the Chairs of the ICANN Board and GAC have that unique power.)</li> </ul>	
<p>4 2 8</p> <p><a href="#">JH</a></p>	<ul style="list-style-type: none"> <li>- It 's not reasonable to fully incorporation all the principles of AOC into Bylaws. It's a possible option to abolish AOC and put some appropriate principles of AOC into ICANN Bylaws. Because on the one hand, some principle in AOC could regulate ICANN, such as "Require the ICANN Board to <u>consider</u> approval and begin implementation of review tam recommendations, including from previous reviews." But the word "Consider" is too weak. Language should be changed in this principle and ICANN Board "must" implement in time. On the other hand, AOC also some terms are questionable by communities, such as ICANN commit to always headquartered in LA, California, USA. Those questionable terms should not be incorporated into Bylaws before communities consensus.</li> <li>- Put some appropriate principles of AOC into ICANN Bylaws would enhance ICANN's accountability. Actually, this is to solve the problem of effectively implementation of ICANN Board. Without strict regulations in Bylaws, even if the IRP determined that ICANN is wrong and there are specific penalties or solutions, It is still possible for ICANN board to delay the process of implementation or do nothing. So the "appropriate" principles should be the principles that could regulate ICANN board to some extent. Additionally, ICANN should be accountable for all the stakeholders, not only for US government. According to the AOC contract relation between US government and ICANN, ICANN is only accountable for US government. Well, after</li> </ul>	<p><b>"Concerns"</b></p> <p><b>Summary /CCWG Response:</b>  JH indicates ICANN should be required to implement review team recommendations. The CCWG concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as implementability or cost (para 508). If the community disagreed with the Board's decision, it could invoke the Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP.  Moreover, CCWG Legal Counsel say that ICANN Bylaws could not require the board to implement review team recommendations.</p> <p>It is likely that JH would not want Bylaws Article XVIII to be a fundamental bylaw.  JH supports having enforceable IRP decisions. CCWG agrees.</p> <p>JH does not want ICANN to be accountable to US Government via a bilateral agreement such as the AoC. The CCWG 2<sup>nd</sup> draft proposal (para 507) reads, "After these aspects of the AoC are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the AoC."</p>

		abolishing AOC and partly incorporation some appropriate principles into Bylaws, ICANN will be more accountable for multi-stakeholders. Moreover, some principles from AOC are not enough to make ICANN accountable for community. There should be more regulations in Bylaws. Currently, regulation to be binding upon ICANN Board is too vague, should be more clear and powerful. For example, if removal of a director is determined, then ICANN does not implementation, automatic removal after 10 days; if a policy made by ICANN Board is determined to be rejected by ICANN communities, the policy will be automatically stopped to implementation.	
4 2 9	<a href="#">BC</a>	<ul style="list-style-type: none"> <li>- BC supports having key commitments from the Affirmation incorporated in ICANN Bylaws according to CCWG proposal (p.55).</li> <li>- BC believes that <i>Affirmation of Commitments</i> paragraph 8b should also become a Fundamental Bylaw" "ICANN affirms its commitments to: 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"</li> <li>- BC believes that Article XVIII should be designated a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval.</li> <li>- Moreover, hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law.</li> </ul>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> BC believes Article XVIII should be a Fundamental Bylaw.</p> <p><b>CCWG Response:</b> CCWG 2<sup>nd</sup> Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.</p>
4 3 0	<a href="#">.UK</a>	We welcome the approach of embodying the Affirmation of Commitments into ICANN's DNA and of building on the AoC reviews. This process has been criticised in the past as another layer of review ("ICANN reviewing itself to death") and has also excited little interest	<p>"Agreement" with suggestion</p> <p><b>Summary / Impression:</b> UK believes that periodic reviews imported from AoC are slow and consume valuable volunteer time. UK recommends increasing the</p>



		<p>in the community. Yet as part of enabling the community, the mechanism provides a way of ensuring concerns are being heard and addressed. We believe that this process is fundamental as a way of building trust in ICANN and it could usefully be included earlier in the report: it is based on improving the organisation, rather than sanctioning it.</p> <p>However, the processes are slow, greedy on volunteers' time and cumbersome (a year to review and even longer to implement: given the frequency of the reviews, one can be started before all the recommendations from the previous review have been fully considered).</p> <p>Hence we welcome the proposals to increase the time cycle of the review process and of focussing reviews on areas of greatest concern.</p> <p>The requirement for an annual report on the state of improvements to accountability and transparency is a good idea: we think it should be a clear part of the CEO's report.</p>	<p>cycle time of periodic reviews.</p> <p><b>CCWG Response:</b> AoC requires reviews every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years.</p> <p>CCWG recommends that ATRT "should complete its review within one year of convening its first meeting" (para 551).</p> <p>In para 512, CCWG proposes "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>
<p>4 3 1</p>	<p><a href="#">USCIB</a></p>	<p>The AoC currently calls for several reviews that have served as effective tools for reviewing and strengthening ICANN's accountability. USCIB therefore strongly supports the inclusion of the Accountability and Transparency Review (ATRTR), the Security, Stability, &amp; Resiliency of the DNS Review, the Competition, Consumer Trust, &amp; Consumer Choice Review, and the WHOIS Policy Review into Article IV of the ICANN Bylaws so that ICANN will be legally bound to continue them on a regular and permanent basis. In sum, we regard incorporation of the AoC into the ICANN Bylaws as a fundamental requirement of the transition. This will provide the Internet user community with greater confidence that the safety, security, and resiliency of the DNS will continue uninterrupted as NTIA's</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- USCIB believes Article XVIII should be a Fundamental Bylaw.</li> <li>- Regarding periodic review of new gTLD expansion, USCIB supports CCWG proposal to require implementation of prior review recommendations.</li> </ul> <p><b>CCWG Response:</b> CCWG 2<sup>nd</sup> Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.</p>

		<p>stewardship of the IANA functions is transitioned.</p> <p>- para 345: We support the bylaw changes on the new gTLD program generally and specifically: "Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented."</p>	
4 3 2	<a href="#">LINX</a>	<p>We support the CCWG's proposed changes to the Core Values. We have no other comments regarding the incorporation of items from the Affirmation of Commitments.</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> In support of proposal</p>
4 3 3	<a href="#">JPNIC</a>	<p>Binding the AoC related to Accountability into the Bylaws would ensure that ICANN will be committed to them. However, instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, we suggest to reference relevant sections of the AoC in the Bylaws and bind referred sections by the Bylaws. This would avoid a situation in the future where the Bylaws or AoC was changed but the other document remains unchanged.</p>	<p>"Agreement" "Concerns"</p> <p><b>Summary / Impression:</b> JPNIC might mistakenly believe that CCWG proposes "binding" the AoC into the bylaws. In fact, CCWG proposed many changes to the existing AoC reviews as part of bringing them into the bylaws.</p> <p><b>CCWG Response:</b> The CCWG is proposing several enhancements to the AOC reviews. Incorporating AOC by reference would lose these improvements. Because the AOC is a bilateral agreement between the USG and ICANN, it is not appropriate for it to be referred to in the bylaws after the transition. That is why the CCWG has taken the approach of including the commitments direct into the bylaws, proposing that the AOC be terminated at a later point.</p>
4 3 4	<a href="#">CWG-St</a>	<p>We understand that the CCWG Accountability proposes to incorporate the review system defined in the Affirmation of Commitments into ICANN's Bylaws, including the ability to start new reviews (section 6.2, page 60). Moreover, that based on the CWG-Stewardship proposal, the CCWG introduced a recommendation to create a new review, based on the requirements we had provided to you.</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> In support of proposal</p>

<p>4 3 5</p>	<p><a href="#">IPC</a></p>	<ul style="list-style-type: none"> <li>- The IPC supports having key commitments from the Affirmation incorporated in ICANN bylaws according to CCWG proposal (p.55). IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw.</li> <li>- The IPC supports the notion of enshrining the key reviews in the ICANN bylaws to enhance ICANN accountability. The IPC also supports the CCWG proposal to empower the Accountability and Transparency Review Team (ATRT) to create new reviews and reschedule reviews as community priorities demand. However, empowering the ATRT to completely eliminate any of the reviews now provided for in the AoC raises concerns. Rather than the expedited six-month review Board review process applicable to ATRT recommendations generally, the elimination of any current AOC-mandated review should be undertaken only through amendment of the relevant new Bylaws through the amendment process ordinarily provided.</li> <li>- Paragraph 305 should be modified to provide that Review Teams include representatives of all "constituencies" as well as the other entities listed.</li> <li>- The reference in paragraph 338 to a Board-initiated review of "any batched round of new gTLDs" is somewhat confusing as to whether it refers to the review required by the AoC (as proposed to be incorporated in the bylaws) or something else. Furthermore, experience with the current new gTLD round (and the pending reviews) suggests that one year after the first new gTLD in the round becomes operational may not be long enough if other new gTLDs are still being rolled out at that time. It's also possible that there will not be further "batched rounds" of new gTLDs. We support having bylaws requirements for periodic community-wide reviews of whether ICANN's new gTLD activities are promoting competition, consumer trust and consumer choice, and the proposal in paragraph 347 that such reviews occur at least once every five years.</li> <li>- Paragraph 351 is a sentence fragment referencing the OECD</li> </ul>	<p>"Agreement" with suggestions "Concerns"</p> <p><b>Summary / CCWG Response:</b>  IPC believes that Bylaws Article XVIII should be a Fundamental Bylaw. CCWG 2<sup>nd</sup> Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.</p> <p>IPC has concerns about allowing the ATRT to recommend sunset of other AoC reviews. CCWG notes that such a recommendation would be created by community members and would be subject to public comment. If the board approved a recommendation to sunset a review, this decision could be challenged by Reconsideration and IRP.</p> <p>And, as IPC points out, sunsetting a review that is in the bylaws is itself a bylaws revision that is subject to veto by supermajority of Members.</p> <p>IPC believes that each GNSO Constituency be represented in periodic review teams. Para 514 describes review team composition, to include 3 members from the GNSO.</p> <p>IPC suggests CCWG consider adding various subdivision of the various AC/SO such as SGs, RALOs "and constituencies" in the next version of the proposal. This idea was not supported by other public comments, and would require normalized voting in the review team since not every AC/SO contains as many chartered constituencies as the GNSO.</p>
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		<p>Guidelines as playing some role in future Whois Policy reviews. It is not clear what role is contemplated. The reference to “legal constraints” is also ambiguous since the OECD Guidelines do not have the force of law.</p>	<p>IPC asks for clarification on “batched round of new gTLDs” in para 338. The original AoC review of new gTLDs was required 1 year after new gTLDs had been operation. The CCWG preserved that requirement -- if ICANN has any more batched rounds of gTLD expansion. If, however, ICANN moved to continuous gTLD applications, this 1-year trigger would not apply, and ICANN would be required to perform this review no less frequently than every 5 years.</p> <p>IPC indicates ambiguities with respect to OECD guidelines, which do not have the force of law. CCWG re-worded para 583 to: “This Review will consider the OECD guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.”</p>
<p>4 3 6</p>	<p><a href="#">Govt-BR</a></p>	<p>- The AoC was created in the context of the US Government's oversight of ICANN. Once that relation is ended, due consideration should be given as to whether commitments established in the past should remain valid within the new oversight structure. In other words, the incorporation of the provisions contained in the AoC should reflect the agreement of the global multistakeholder community, including governments, and not be automatically transcribed from the AoC.</p> <p>- In this regard, Brazil considers inappropriate that Section 8(b) of the AoC be incorporated to the bylaws without further reflection, as ICANN should not be constrained to be legally established in a specific country if, in the future, its stakeholders decide that it would be more convenient for the corporation to change its main office to another location.</p>	<p>“Agreement” “Confusion” “Concerns”</p> <p><b>Summary / CCWG Response:</b></p> <p>Brazil might mistakenly believe that CCWG proposed importing the AoC commitments and reviews verbatim. In fact, CCWG proposed changes to the existing AoC reviews. CCWG 2<sup>nd</sup> Draft reflects public comment on these proposed changes received from the global multistakeholder community, including governments.</p> <p>Brazil might mistakenly believe that AoC 8b is driving requirement to locate ICANN in Los Angeles. As noted in CCWG report (page 36), ICANN’s current Articles and Bylaws require the California incorporation and location. The</p>

		<p>- CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw".</p>	<p>CCWG is not proposing changes to those requirements.</p> <p>Brazil suggests elimination of Bylaws Article XVIII. Presumably, Brazil would suggest amending ICANN articles of Incorporation as well, since that also describes a CA corporation. Brazil does not support having bylaws article XVIII become a Fundamental bylaw. CCWG 2<sup>nd</sup> Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.</p>
4 3 7	<a href="#">CDT</a>	<p>- Supports the inclusion of key Affirmation of Commitments (AoC) principles and reviews. The AoC is an important document that has significantly improved ICANN's accountability and transparency. Importantly, the AoC also outlines criteria and characteristics of the organization's relationship with its community including, among others, the importance of the multistakeholder, bottom-up policy development model. The proposal does a thorough job of bringing these key elements into the bylaws.</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> Supports inclusion. AoC is important.</p>
4 3 8	<a href="#">USCC</a>	<p>- Incorporating keys aspects of the AoC into the bylaws is critical to enhancing ICANN's accountability. Even though ICANN has said is has no plans to terminate the AoC, incorporating key provision into the bylaws makes this and the unique bilateral relationship with the USG a non-issue going forward.</p> <p>- Making the reviews permanent would enhance ICANN's accountability.</p>	<p>"Agreement"</p> <p><b>Summary / Impression:</b> Supports inclusion. It is critical to accountability. Make the reviews permanent.</p>
4 3 9	<a href="#">INTA</a>	<p>- It is important to preserve the critical role of the AoC in reviewing and enforcing accountability principles by incorporating its principles within ICANN's Bylaws.</p> <p>- Generally agrees with the list of requirements for this</p>	<p>"Agreement" "Concerns" with suggestions</p> <p><b>Summary / Impression:</b> INTA believes bylaws should require periodic</p>

	<p>recommendation as they appear to incorporate and enhance all of the commitments made by ICANN when it signed the AoC.</p> <ul style="list-style-type: none"><li>- agrees that it is very important to give force to the incorporation of the AoC within the Bylaws by amending them as proposed. This will ensure periodic reviews relevant to assuring accountability and transparency; preserving security, stability, and resiliency; promoting competition, consumer trust, and consumer choice; and reviewing effectiveness of the WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.</li><li>- further agrees that all reviews should be conducted by volunteer community review teams comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board; and that the review group should be as diverse as possible.</li><li>- concurs that review teams should be empowered to solicit and select independent experts to render advice, and should have access to ICANN internal documents.</li><li>- have some significant concerns regarding the recommendation that the separate periodic reviews should be carried out at least every five years, whereas the current AoC requires them to be performed every three years (or two years after the receipt of the initial one-year review required for new gTLD rounds). Given the uncertainty of the post-transition situation, we believe that the requirements for reviews to be held every three years should be maintained for at least two full cycles after the transition takes place, with a review mandated after the first six years to decide if less frequent reviews (but no less frequent than every five years) would be adequate to ensure continued adherence to AoC principles.</li><li>- in regard to any possible future rounds of the new gTLD program, we believe that reviews of its promotion of competition and consumer trust and choice should take place at least every three years -- even if the Board should adopt an open-ended version of the program that</li></ul>	<p>reviews more frequently than every 5 years. Specifically, INTA recommends a 3-year cycle and another 3-year cycle after transition, with 5-years cycles thereafter. The AoC requires reviews every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate the review frequency preferred by INTA, if that was broadly supported by the community.</p> <p>INTA recommends that the new gTLD reviews occur no less frequently than every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate the review frequency preferred by INTA, if that was broadly supported by the community.</p>
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		does not have discrete rounds with set application deadlines.	
4 4 0	<a href="#">.NZ</a>	- supports the incorporation of the AOC principles and reviews in the bylaws as an enhancement to ICANN’s accountability. We are in support of the requirements set out.	“Agreement” <b>Summary / Impression:</b> Supports inclusion and requirements.
4 4 1	<a href="#">NCSG</a>	Yes, we agree and find this an essential component of the proposal.	“Agreement” <b>Summary / Impression:</b> Supports inclusion. It is important.
4 4 2	<a href="#">GG</a>	GG supports incorporating the Affirmation of Commitments into ICANN’s bylaws.	“Agreement” <b>Summary / Impression:</b> Supports inclusion.
4 4 3	<a href="#">Board</a>	<p>- With regards to the inclusion of the Affirmation of Commitments reviews into the bylaws: Are there sufficient mechanisms in place to assure diversity of the review teams (geographic, gender, etc.)? What are the mechanisms to adjust the review processes as needed by the community? What are the mechanisms for ensuring costing and subsequent prioritization of recommendations, and determination if recommendations are feasible? What limitations on review team access to documents will be identified to address issues such as restricting access to employee records, trade secrets provided to ICANN by others, and assuring that competitors do not gain access to others’ sensitive documentation that ICANN has within its files?</p> <p>- We recommend that language that is incorporated into the Bylaws on WHOIS be updated to reflect the potential for future modification and overhaul of the registration directory system, and not hardcode the legacy “WHOIS” requirements into the Bylaws.</p>	<p>“Agreement” “Concerns”</p> <p><b>Summary / Actions / CCWG Response:</b> Board suggests mechanisms to assure diversity of review teams. In Para 514, CCWG proposes that each SO and AC suggest up to 7 prospective members for a Review Team. The group of chairs of the participating SOs and ACs will select a group of up to 21 Review Team members, balanced for diversity and skills, to include up to 3 members from each participating SO and AC . In addition, the ICANN Board may designate one director as a member of the Review Team.</p> <p>Board asks about mechanisms to prioritize recommendations. In para 531, CCWG proposes “The Review Team should attempt to assign priorities to its recommendations.”</p> <p>Board asks about costs and feasibility of recommendations. In para 508, CCWG “concluded that some review team</p>

			<p>recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost.”</p> <p>Board is concerned about disclosure of sensitive or confidential information provided to review teams under proposal to give review teams “access to ICANN internal documents”. In response, CCWG added an extensive policy for disclosure of confidential information to review teams (page 75).</p> <p>Board recommends bylaws language reflecting potential for change to WHOIS. CCWG used the expression “WHOIS/Directory Services”. CCWG retained the requirements for the AoC WHOIS review, which continues to generate concern from Board chair Steve Crocker. In the 2<sup>nd</sup> round of public comments, CCWG will consider any suggested changes proposed by the Board.</p>
4 4 4	<a href="#">CENTR</a>	<p>- We agree that the incorporation of the Affirmation of Commitment principles into the ICANN Bylaws might enhance certain accountability aspects. At the same time, we believe that adding a new Bylaws section for Periodic Review of ICANN Execution of Key Commitments will certainly serve to better assess ICANN’s high-level performances.</p> <p>- Concerning the proposed IANA Function Review – IFR – we are supportive of a review to take place no more than two years after the transition is completed, but we believe that subsequent reviews should occur more regularly and not every five years.</p>	<p>“Agreement” and suggestion.</p> <p><b>Summary / Actions Suggested/CCWG Response:</b> CENTR believes subsequent IFR cycle should be more frequent than every 5 years (para 360). For AoC periodic reviews, the CCWG used the phrase “no less frequently than every five years” which allows for more frequent reviews. And in para 593, CCWG indicates that Special IFR may be initiated at any time.</p>
4 4 5	<a href="#">NIRA</a>	NIRA agrees.	<p>“Agreement”</p> <p><b>Summary / Impression:</b> Supports inclusion.</p>



<p>4 4 6</p>	<p>ALAC</p>	<p>Accountability and Transparency (A&amp;T) Review - Paragraphs 310-317: The wording of this section should be altered to indicate that the a-e list is not prescriptive. Each review team should be given the authority to decide exactly what A&amp;T issues it will address. Based on the experiences of the ATRT1 and ATRT2, the current formulation implies:</p> <ul style="list-style-type: none"> <li>• A narrow focus of A&amp;T as understood by particular individuals in 2009. The very existence of this CCWG illustrates the "straitjacket" that the A&amp;T review teams were controlled by forcing concentration on issues that may have been of lesser importance and restricting what they could look at in addition to or instead of the prescribed list.</li> <li>• The requirement to review in depth the previous work and to explore new areas creates an ever increasing workload that will make it very difficult for an ATRT to effectively tackle real issues that are relevant at the time of its formation.</li> </ul>	<p>"Agreement" with suggestion. "Concerns" <b>Summary / Actions /CCWG Response:</b>  ALAC notes that imported items from AoC ATRT review are over 6 years old and more flexibility is needed for future ATRT reviews. In response, CCWG modified para 539 to read "issues that may merit attention include".  ALAC is concerned about workload in requiring ATRT to assess the extent to which prior ATRT recommendations were implemented. CCWG notes that requirement was imported from the AoC. In CCWG 2<sup>nd</sup> draft, each of the 4 Review teams is responsible to "assess the extent to which prior Review recommendations have been implemented."</p>
<p>4 4 7</p>	<p>LAB</p>	<p>Regarding the various periodic reviews, these are stipulated to occur "no less frequently than every five years" (see, e.g., paragraph 322 regarding accountability and transparency reviews), yet no explanation is given as to why a five-year cycle is chosen as opposed to, say, a three-year cycle as per the AOC. Perhaps an explanation is in order.</p>	<p>"Agreement" and request an explanation. <b>Summary /Actions /CCWG Response:</b> LAB asks for rationale for period reviews "no less frequently than every five years". The CCWG suggested longer review cycles based on experience with AoC reviews over last 6 years. That experience indicates that ATRT, WHOIS, and SSR reviews are triggered before the prior review has completed implementation. Moreover, the CCWG noted that AoC reviews involve intense volunteer work for up to a year, and are aware that volunteer fatigue is a significant problem today. CCWG notes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate more frequent</p>

			reviews, if that was broadly supported by the community.
4 4 8	<a href="#">RIR</a>	There are no objections to the incorporation of the Affirmation of Commitments into the ICANN Bylaws, nor to the requirements of this recommendation.	"Agreement" <b>Summary / Impression:</b> Supports inclusion and requirements.
4 4 9	<a href="#">DotMusic</a>	DotMusic supports having key commitments from the Affirmation of Commitments incorporated in the ICANN Bylaws according to CCWG proposal.	"Agreement" <b>Summary / Impression:</b> Supports inclusion.
4 5 0	<a href="#">Siva</a>	The incorporation into ICANN's Bylaws of the Affirmation of Commitments principles and reviews would enhance ICANN's accountability.	"Agreement" <b>Summary / Impression:</b> Supports inclusion. It would enhance accountability.