

Public Comment Period #2

Section 4: Fundamental By-Laws (Page 33)

"Power to approve changes to "Fundamental" Bylaws: The Community can determine a process for agreeing to any changes of the "Fundamental" Bylaws. The Community would have to give positive assent to any change, so the modification of Bylaws becomes a co- decision process between the Board and the Community." - CCWG Proposal #2 Executive Summary

Areas of Consensus

A total of 17 comments relating to fundamental bylaws were received by the CCWG that directly addressed fundamental bylaws. Strong support for the concept of enshrining fundamental bylaws into ICANN was received in the all of the comments. General support was received for having a high threshold requirement to change any fundamental bylaws.

The establishment of the bylaw relating to the SCWG as a fundamental bylaw received support from all commenters who referenced this bylaw.

Areas Needing Refinement

- Karsten Manufacturing Corporation & Ping Registry Provider, Inc., noted that any changes to ICANNs bylaws must not preclude it from being subject to US laws both state and federal. They further noted that the fundamental bylaws should contain a requirement to act in the public interest and not in the interests of the corporation or its stakeholders in the event of a conflict.
- The BC noted *"The CCWG's proposed Community Mechanism as Sole Member may not be the right body to launch a Separation Working Group, since the protocol community (IETF) may not be represented. We suggest that the ICG specify that a Separation Working Group, if ever needed, would include the IETF, regardless of whether that group was participating in the Community Mechanism"*
- A number of commenters requested a clearer and more easily understood definition of the process, including any consultation steps such as the community forum.
- ELIG noted that deadlocks caused between the board and the community on changing fundamental bylaws may require a stress test.

- The CWG Stewardship noted that the reference to “IANA Function Review” may need clarification to refer explicitly to the IANA Functions Review (IFR) and the Special IANA Functions Review (SIFR).
- The ICANN board suggested that a bylaw be added to require a public comment period to be observed prior to all bylaw changes. The board additionally notes that for all areas requiring further consideration by the CCWG such as the IRP the community should consider whether they require immediate enshrining as fundamental bylaws or once there are additional process improvements needed.

Areas of Divergence

- The ICANN board noted its disagreement with the process of changing fundamental bylaws, preferring not to utilize the Sole Member as proposed by the CCWG while supporting the general concept of requiring support from the community to change fundamental bylaws.
- 4 commenters remarked that Article XVII (Relating to the Offices of ICANN) should be enshrined as a fundamental bylaw. 4 commenters believed that Article XVII should not be enshrined as a fundamental bylaw.

Options for CCWG Consideration

- The CCWG may consider further clarifications in its communications of the process and methods by which fundamental bylaws would be changed or amended.
- The CCWG should consider making an explicit reference to the SIFR in the bylaw referring to the IFR process.
- The CCWG should consider the comments of the ICANN board while discussing the question of the SMCM and any other reference made that the CCWG may deliberate on.
- The ST-WP may consider a stress test related to a deadlock between the community and the board over changing of fundamental bylaws.
- Given that the CCWG made the decision not to further examine the SCWG it may not require further analysis to respond to the comments of the BC with regards to the launching body of the SCWG, further clarification should be sought from the BC to assess if the current status of work on the SCWG is sufficient.
- Given the current divergence on the issue of enshrining Article XVII as a fundamental bylaw the CCWG may need to revisit this discussion and provide further rationale for their decision.

- The ALAC noted the following clarification for the CCWG to consider, "*Paragraph 259: The definition of the Board threshold to approve changes to Fundamental Bylaws is unclear. Most Board votes are judged based on the number of Members voting or abstaining, but excluding those members not present. For the approval of Bylaw changes, the threshold is 2/3 of all members of the Board. Accordingly, the threshold for approving Fundamental Bylaws should explicitly be 75% of all members of the Board, since "available votes" could be construed as just those present at the time. This matches the description in Paragraph 236.*"