

Proposals for incorporating additional elements of the AoC into the ICANN bylaws

Listed by AoC article with comments, questions and/or proposed actions:

3. This document affirms key commitments by DOC and ICANN, including commitments to:

(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;

Interestingly ICANN core values only refer to public interest in the context of promoting competition in domain name registration (core value 6) and not ICANN's broader actions.

Suggestion: Insert the above (a) (or similar language) as a new core value in the bylaws.

(b) preserve the security, stability and resiliency of the DNS;

Already accounted for in core value (1)

(c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and

The notion of competition is only addressed in core values (5) and (6) but do not address the important notions of consumer trust and choice in the broader DNS marketplace.

Suggestion: the following wording could be added to at the end of core value (5): competitive environment *that enhances consumer trust and choice*.

(d) facilitate international participation in DNS technical coordination.

Not specifically reflected in the core values or elsewhere in the bylaws but may already be addressed in spirit or intent.

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.

The above are DOC commitments.

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.

The above addresses a key global accountability issue that of performing “impact assessments” of its decision-making – are these requirements reflected in the bylaws anywhere? If not they should be.

AoC articles 5 and 6 are not relevant to WP1 as they are related to DOC commitments.

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.

If the above is not already accounted for in the bylaws it could be incorporated into section 1 of the bylaw Article on Transparency.

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.

Similarly, the above, if not already addressed/accounted for, could be brought into section 1 of the bylaw article on Accountability.

8. ICANN affirms its commitments to:

(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;

(A note on this – much of the phrasing in the AoC and the bylaws assumes that ICANN is the coordinator of the DNS (through the IANA contract). However were the contract for the IANA functions to be undertaken by another entity ICANN would, arguably, no longer have that role.)

(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

Interestingly the bylaws do not specify that ICANN shall remain a not for profit corporation – does this or some language variant thereof need to be made explicit in the mission or core values of the bylaws?

ICANN should remain headquartered in the United States. The issue of jurisdiction remains controversial – WP1 or the broader CCWG should probably discuss.

(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.

Suggestion: This phrasing and in particular the operating as a MS organization for the benefit of the public is not explicit in the core values or mission and should be integrated into one or the other sections of the bylaws.

ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

AoC 9 and **10** have already been addressed already by the group.