

SUMMARY

On AOC provisions/principles - Contributors voiced a set of concerns on AoC principles which includes: 1) Section 8 b has not been made a Fundamental Bylaw; 2) Section 7 was omitted. Clarification is being sought on why section 7 is omitted from the list of “relevant ICANN commitments” that would be enshrined in the ICANN Bylaws: are the commitments covered elsewhere?

On AOC reviews: The following concerns were voiced: 1) Expanding scope of ATRT could place unreasonable burden on them; 2) Giving the ATRT review the power to abolish any of the reviews to which ICANN committed in the AoC is concerning. The fact that public comment would be allowed on such a recommendation provides a very weak safeguard; and the fact that the “subsequent Bylaws change would be subject to IRP challenge” offers little comfort, given the limited grounds on which that enhanced accountability mechanism can be invoked; 3) The proposed composition of Review Teams would represent a drastic reduction in representation from the status quo; 4) Review teams composition needs to be rethought to remedy for affected constituencies from the process. Composition system may dilute GNSO influence; 6) Number of reviews may be burdensome; 7) Scope of WHOIS review should allow for evolution; 8) On action on Review Team Recommendations, the bylaws provision should retain the AOC requirement that the Board act upon recommendations of the review teams within a time certain, not that it should simply “consider” doing so. The following suggestions were made: 1) Add a provision to document the level of support for the review team proposals. This double-scale disclosure of the level of support of a proposal, both in the RT and in the community, should be displayed to maximize the transparency, avoid capture and ensure that the community input is duly and fairly taken into account; 2) Adjust section on WHOIS RT to not limit wording; 3) Encourage an initial review no later than three years after the termination of the AoC, looking at progress in implementing reforms; 4) Document how community input was considered; 5) Coordinate with staff working on a review standardization effort is needed to develop documentation to address review administrative review considerations; 6) While the idea of being able to sunset and introduce new reviews is necessary, consideration of their future use should be included; 7) The community should consider how to identify future reviews and agree upon scope. Clarification is deemed needed on the following: 1) Selection/composition of Review Teams; 2) Recommendations put forth by the CCWG should not affect any AoC reviews currently in process, and that any such reviews slated to begin in the next calendar year not be halted or otherwise affected by the CCWG-Accountability process ; 3) Clarify whether community stakeholder groups and constituencies appoint.

AoC	Support areas	Neutral areas	Issue areas
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ALAC (At-Large Advisory Committee)	General support for most of the proposal	N/A	Although the ATRT is a possible place to perform diversity reviews, some past ATRT members believe that this would place an unreasonable burden on the ATRT, removing focus from its original purpose and that the ATRT members might not be the best group to perform such reviews. Paragraphs 580-587: The ALAC strongly believes that this section must be adjusted to allow the "WHOIS" RT to address the appropriate issues for the then-current Directory Services and not be limited to the wording written into the 2009 AoC. Moreover, if the terms of reference of this review need to be further adjusted in the future, it makes no sense to assign this task to the ATRT, which will have little expertise in this area. Rather, it should be assigned to the WHOIS RT. As recommended for the WHOIS Review, all AoC Review Teams should be responsible for recommending revision to their respective Bylaws. The responsibility should rest with those who best understand the specific issues. The ATRT could have overriding rights to do so as well, but this should not be solely an ATRT responsibility.
Avri Doria (endorsed by Joy Liddicoat & Timothy McGinnis)	Diversity is a critical component of Accountability and should be in scope for an Accountability review. Increasing diversity is necessary for making skilled decisions from the global perspective of the broader community ICANN seeks to serve. Arguments being given that this may be too much work for the ATRT, do not bear on the responsibilities of the ATRT, but rather on its efficiency. Additionally, the ease with which the task can be completed depends greatly on the work done by ICANN and all of its organizations to ensure diversity.	N/A	N/A
BC (Business Constituency)	The BC strongly supports the CCWG proposal to bring the Affirmation of Commitments into ICANN's bylaws. We support adopting the Affirmation WHOIS review text with the addition of "Directory Services". The BC believes that Article XVIII should be designated a Fundamental Bylaw, so that it would require supermajority community voting approval for any change. CCWG's proposal relies 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. 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.	The BC could support the Board's proposed text, except for the last sentence regarding intervals between reviews. The BC supports the CCWG proposal to start the 5-year window "from the date the previous Review was convened". This text was chosen to ensure that a review would be initiated at least every 5 years. The Board's formulation could result in 6 or seven years between reviews, since the date of Board "action" could be as much as 2 years after a review was convened.	

<p>ccTLD New Zealand (Internet NZ)</p>	<p>InternetNZ supports the AOC being terminated as part of the stewardship transition, along with the incorporation of the relevant carryover concepts as set out in this section. InternetNZ supports the changed reviews as proposed, noting that ICANN will propose further changes to the WHOIS/Directory Services review. While this is not a WS1 matter (as the review can be fixed through other means) we do not oppose a pragmatic change as part of this process.</p>	<p>N/A</p>	<p>N/A</p>
<p>ccTLD United Kingdom (Nominet)</p>	<p>General support for most of the proposal. The incorporation of the AoC reviews in the bylaws commit to putting the performance of ICANN and its accountability processes centre stage. However, ICANN is subject to numerous review processes and this can lead to review-fatigue: as such we support the idea of reducing the normal frequency of reviews from three to five yearly (paragraph 553). Given the significant changes proposed in the CCWG-Accountability's recommendations, we would encourage an initial review no later than three years after the termination of the AoC, looking at progress in implementing reforms.</p>		

<p>COA (Coalition for Online Accountability)</p>	<p>COA strongly supports the concept of incorporating into the ICANN Bylaws key provisions of the AoC. ATRT - COA agrees it may be appropriate to include in this review's recommendations changes in the scope or timing of other periodic reviews, or to propose new reviews. COA is pleased to see that CCWG calls for carrying over from AOC to bylaws the Whois /directory services policy review. COA applauds the concept of enabling "community stakeholder groups [to] appoint their own representatives to review teams.</p>	<p>Recent public statements by ICANN's board chair expressing hostility toward ICANN's current AOC obligation to carry out a second Whois review underscore the need for caution in empowering subgroups such as the new ATR review team to recommend terminating this review.</p>	<p>Section 8(b) of the AOC - This commitment is critical to ICANN's accountability and to the continued applicability of U.S. law to its major agreements and contracts. Previous comments from the IPC (and others) called for the substance of section 8(b) of the AOC to be included as a Fundamental Bylaw of ICANN, which can only be changed with the support of a supermajority of the community. This has not been done. The explanation provided for failing to do so (see p. 36) is not persuasive. The Proposal does not explain how a corporation with a Single Member can be reconciled with the statement in the Articles of Incorporation that changes to the Articles "must be ratified by a two-thirds majority of the members voting" (see paragraph 246). This is not the same thing as saying that "the Community Mechanism as Sole Member must approve with 2/3 vote any change to ICANN's Articles of Incorporation" (see paragraph 254). Furthermore, if the commitment to maintain status as a U.S. non-profit corporation is relegated to the status of a normal (as opposed to Fundamental) bylaw, then it can be changed by the ICANN Board, even if a majority of the community (as constituted in the Community Mechanism as Sole Member) disagrees. COA urges that the substance of section 8(b) be embodied in a Fundamental Bylaw. Section 7 is omitted from the list of "relevant ICANN commitments" that would be enshrined in the ICANN Bylaws (p. 72, para. 504). Why? While some of these commitments might be covered by other existing or proposed bylaws provisions, the Proposal fails to identify any of these or provide any other reason for the omission. On ATRT -COA is concerned about giving this review the power to abolish any of the reviews to which ICANN committed in the OC. The fact that public comment would be allowed on such a recommendation (see paragraph 550, p. 77) provides a very weak safeguard; and the fact that the "subsequent Bylaws change would be subject to IRP challenge" (id.) offers little comfort, given the limited grounds on which that enhanced accountability mechanism can be invoked. The fact that public comment would be allowed on such a recommendation (see paragraph 550, p. 77) provides a very weak safeguard; and the fact that the "subsequent Bylaws change would be subject to IRP challenge" (id.) offers little comfort, given the limited grounds on which that enhanced accountability mechanism can be invoked.the Proposal concentrates the power to appoint members of review teams in "the group of chairs of the participating SOs and ACs," not in the stakeholder groups or constituencies themselves. (We are also at a loss to understand how the GNSO – the Supporting Organization in which COA primarily participates, through the IPC – would be represented in this "group," since the GNSO has no chair and never has had one. It has only a chair of its Council, a body whose mandate is limited to management of the policy development process, not the conduct of reviews.) Second, CCWG proposes to cap at 3 the maximum number of members on the review team from any single Supporting Organization. At least in the case of the GNSO, this would represent a drastic reduction in representation from the status quo, and would virtually guarantee that the total exclusion to date of IPC representatives from all the AOC Review Teams would continue. This problem must be fixed, not perpetuated. Third, it appears that GNSO</p>
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			<p>members, no matter how chosen, would be far outnumbered by members from other parts of the organization, even on review teams whose subject matter exclusively or primarily impacts the gTLD environment (e.g., the Whois/Directory Services Policy review, as well as the Competition, Consumer Trust, and Consumer Choice review, which focuses primarily on gTLD expansion). Taken together, these changes threaten to degrade whatever value these reviews have had for COA participants under the current AOC regime. The Proposal's entire approach to the constitution of review teams needs to be rethought, in order to remedy the exclusion of IPC and other affected constituencies from the process, not to exacerbate it, as the current Proposal would do. On action on Review Team Recommendations - The bylaws provision should retain the AOC requirement that the Board act upon recommendations of the review teams within a time certain (currently, 6 months), not that it should simply "consider" doing so (see p. 76, para. 534). Impact on Current or Pending Reviews - While we do not think it was CCWG's intention to propose applying any of the new rules regarding these mandatory reviews (especially those on team composition) to the AOC reviews (Whois and CCT) scheduled to be launched during the current fiscal year, this should be spelled out in the Proposal before it advances further.</p>
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CyberInvasion Ltd	<p>General support for most of the proposal. We are very supportive of the incorporation of the AoC into ICANNs bylaws. We support the additional clarifications and recommendations based on the work of both ATRT and ATRT2 which have been rolled-up into the incorporation of the AoCs. We specifically support the addition in paragraph 519 giving review teams the explicit ability to solicit and select independent experts to assist the review teams with their work. We feel that the requirement to create a confidential disclosure framework to enable the confidential disclosure to review teams is a critical aspect of enabling a strong review structure to exist within ICANN going forward. As a critical dependency we support the CCWGs proposal for the establishment of the IANA Function Review including the Special IANA Function Review variant as required by the CWG.</p>	N/A	N/A
Google	<p>General support for most of the proposal, incorporating the Affirmation of Commitments into ICANN's bylaws in particular.</p>	N/A	N/A
Government of Spain	<p>Spain welcomes the addition stating that "The draft report of the Review Team should describe the degree of consensus reached by the Review Team." That is a good exercise of transparency, since this provision will oblige the Review Team to describe the level of support of the RT membership for the different proposals received. Nonetheless, for the sake of transparency, the review teams should describe how they have considered community inputs explaining why they embraced the ones that made their way to the final report and why they rejected the other ones.</p>	N/A	<p>We are still missing a provision that lets the community know the level of support of the community itself to the proposals. This double-scale disclosure of the level of support of a proposal, both in the RT and in the community, should be displayed to maximize the transparency, avoid capture and ensure that the community input is duly and fairly taken into account.</p>
i2Coalition (Internet Infrastructure Coalition)	<p>Agree with decision to incorporate AoC into Bylaws.</p>	N/A	N/A

<p>ICANN Board</p>	<p>We agree that the Affirmation of Commitments (AoC) should be included in the revised Bylaws. The AoC requires ICANN to continue to work for the maintenance of a single, interoperable Internet. This responsibility may well require actions that are not immediately recognized as fulfilling our primary responsibilities, but nevertheless need to be taken, to participate in different fora and spaces to build support for the single, interoperable Internet. A few implementation paths diverge, including recognizing that there should be coordination among the community and the staff that are currently working on a review standardization effort to develop documentation to address review administrative review considerations, including: Review team size and composition, budget, access to experts, access to ICANN documentation, expectations on process for adoption and implementation of reviews, optimization and standardization of review team processes. The outcomes of this standardization work would also include agreement upon how it could be changed, so that there is always assurance of community input. While the idea of being able to sunset and introduce new reviews is necessary, part of any of the AoC reviews should include consideration of their future use. The community should consider how to identify future reviews and agree upon scope. On the Competition, Consumer Choice & Consumer Trust review, the bar of future rounds of introduction of new gTLDs until prior recommendations are implemented poses a risk of a barrier to entry, and the Board is not supportive of that change. There is agreement upon changing the review cycle to every 5 years, though the cycle initiation should be discussed with as part of the community/staff conversation The Board also agrees with proposing new text to capture current status of directory services work in ongoing review. The Board also supports the new IANA functions review, to be incorporated as part of the AoC related reviews into the Bylaws.</p>	<p>The Board reserves the right to consult with the community on specific issues that may arise in the Bylaws drafting process on the AoC importation into the Bylaws.</p>	<p>On the Competition, Consumer Choice & Consumer Trust review, the bar of future rounds of introduction of new gTLDs until prior recommendations are implemented poses a risk of a barrier to entry, and the Board is not supportive of that change.</p>
<p>Intel</p>	<p>Intel supports the Mission and Core Values and the incorporation of key elements of the Affirmation of Commitments into the revised Mission Statement, Commitments and Core Values.</p>	<p>N/A</p>	<p>N/A</p>

Internet Association	N/A	N/A	We worry that the ICANN community is assuming a burdensome level of reviews that may make it difficult for the community to complete substantive work in the face of recurring procedural work. We therefore request that the CCWG carefully consider and seek to properly balance any future recurring obligations of the ICANN community.
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<p>IPC (Intellectual Property Constituency)</p>	<p>IPC strongly supports the concept of incorporating into the ICANN Bylaws key provisions of the 2009 Affirmation of Commitments including the incorporation of the various AoC-mandated reviews. The IPC supports the continued inclusion of WHOIS/Directory Services review criteria as currently reflected in the AoC.</p>	<p>N/A</p>	<p>This commitment in section 8b is critical to ICANN's accountability and to the continued applicability of U.S. law to its major agreements and contracts. Previous comments from the IPC (and others) called for the substance of section 8(b) of the AOC to be included as a Fundamental Bylaw of ICANN, which can only be changed with the support of a supermajority of the community. This has not been done. The explanation provided for failing to do so (see p. 36) is not persuasive. The fundamental problem is that if the commitment to maintain status as a U.S. non-profit corporation is relegated to the status of a normal (as opposed to Fundamental) bylaw, then it can be changed by the ICANN Board, even if a majority of the community (as constituted in the Community Mechanism as Sole Member) disagrees. IPC urges that the substance of Section 8(b) be embodied in a Fundamental Bylaw so that only a supermajority of the Board and the community can change it. Section 7 is omitted from the list of "relevant ICANN commitments" that would be enshrined in the ICANN Bylaws (p. 72, para. 504). This needs to be explained (e.g., if the commitments are already covered elsewhere) or corrected. The IPC remains concerned about the composition of these AoC review teams. According to the Second Draft Report, "community stakeholder groups should appoint their own representatives to the review teams." The IPC is concerned that appointment of AoC review team representatives at the stakeholder group level (as opposed to the constituency level) may undermine the full diversity of community participation in these critical review processes, and marginalize these stakeholders, particularly from non-contracted parties. Therefore, the IPC strongly recommends that the CCWG report clarify that community stakeholder groups and constituencies appoint their own representatives to AoC review teams. Further, the IPC notes that the proposed Bylaw text regarding these periodic reviews proposes that each SO and AC participating in the review may suggest up to 7 prospective members for the review team, but that the SO and AC chairs will select a group of up to 21 Review Team members to include up to 3 members from each participating SO and AC. This would suggest that the GNSO would be able to propose one representative for each of its 7 stakeholder groups and constituencies, but that the ultimate composition of the review team would be limited to 3 members of the GNSO, and therefore would not contain a representative of each stakeholder group and constituency. Again, the IPC is concerned that this proposal for constituting the AoC review teams may marginalize community voices, particularly among non-contracted parties, in these vital accountability processes, and could result in capture by certain portions of the community, particularly contracted parties, over these processes. IPC reiterates concerns expressed in its public comments on the CCWG's First Draft Report that this mechanism may tend to dilute GNSO influence in the context of the AoC reviews, even though the GNSO would likely be disproportionately affected by the outcomes of many of the reviews. The IPC also hopes to clarify that any recommendations put forth by the CCWG should not affect any AoC reviews currently in process, and that any such reviews slated to begin in the next calendar year not be halted or otherwise</p>
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NCSG (Non-Commercial Stakeholder Group)	N/A	N/A	NCSG also has serious concerns about the wholesale importation of the Affirmation of Commitments' language to "adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns and rights protection."Some of those concerns (e.g., consumer protection, sovereignty) could easily take ICANN outside of its narrow mission or be interpreted by the actors involved in an expansive way to advance special interests.. Given ICANN's status as a global coordinator and policy maker for the DNS, we are unsure what kind of commitments "sovereignty concerns" would create.
Public Knowledge	We strongly support efforts to clarify the Mission and to incorporate the Affirmation of Commitments into existing accountability measures.	N/A	N/A
RySG (Registries Stakeholder Group)	Supports proposal. With respect to bringing the Affirmation of Commitments language regarding WHOIS into the bylaws (paragraphs 580 – 587), the RySG supports this effort but suggests that it allow for the WHOIS concept to evolve while taking into account the reasons for the WHOIS policy in the first place and current thinking on access and data protections.	N/A	N/A
USCIB (US Council on International Business)	USCIB therefore strongly supports the inclusion of the Accountability and Transparency Review (ATRT), the Security, Stability, & Resiliency of the DNS Review, the Competition, Consumer Trust, & 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 stewardship of the IANA functions is transitioned.	N/A	N/A

