CCWG Accountability

Template

Work Item: **WP1-5B-2: Prevent ICANN Imposing Obligations – Golden Bylaw**
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Description	Name of Mechanism	**Prevent ICANN Imposing Obligations (through introduction of a Golden Bylaw)**
	Description	This would be a new restriction to prevent ICANN from expanding its mandate through the unilateral addition of new obligations or requirements on registries, registrars and registrants.
	Category (check & balance, review, redress)	**Check and balance**: This restriction will ensure that ICANN cannot use its position to unilaterally impose new requirements on its contracted counter-parties, including domain name registrants. It ensures that ICANN must rely on established processes to develop and implement new or amended policies that are necessary for the secure and stable operation of the DNS. It ensures the multi-stakeholder community is responsible for developing consensus policies within predictable and transparent bottom-up processes, and ensures that role cannot be circumvented by ICANN.
	Is the mechanism triggered or non triggered ?	**Non-Triggered** Through the introduction of a new Golden Bylaw, this would be a new, non-triggered mechanism that prevents ICANN from creating new and unilateral obligations on registries, registrars and registrants outside of accepted consensus processes.
	Possible outcomes (approval, re-do, amendment of decision, etc.)	A new Golden Bylaw would give the community powers to constrain an ICANN staff and/or Board that attempted to expand its mandate beyond accepted borders through the addition of new requirements on contracted parties and registrants. Breach of the Golden Bylaw by ICANN would constitute grounds for reconsideration and redress. Disputes could go to an independent arbitration panel that could issue binding decisions.
Standing	Conditions of standing (ie « last resort », type of decision being challenged, …)	The Contracted Parties (Registries, Registrars and Registrants) would have the power to trigger this mechanism if needed. As a non-triggered mechanism, a clear and concise Bylaw clause would ideally act as a deterrent to ICANN unilaterally imposing new obligations on contracted parties.

Decision-Making	Who decides when the Golden Bylaw is breached and what procedures are to be used?	The Golden Bylaw would need to clearly establish: • thresholds for breach • notice procedures • opportunities for cure • penalties for breaches not cured
Accessibility	Who relies on this mechanism?	Contracted Parties and registrants are the parties who rely directly on a bylaw amendment that would prevent ICANN unilaterally creating new obligations or requirements outside established community processes. However, the entire multi-stakeholder community benefits from an ICANN that operates predictably, within its mandate, and follows bottom-up, consensus-based policy making processes. The entire community benefits from knowing new requirements or obligations result only from accepted community processes.

Other considerations if this mechanism was implemented:

- A key question: "Through what mechanism or process are registrants able to cite breach of the golden bylaw?"