

Discussion Draft
 14-22 July 2015

Proposed Revisions (<u>appear in Redline</u>)	Notes, Explanation, Questions
Mission, Commitments, and Core Values	
<p>The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:</p>	
<p>Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are Domain names (forming a system referred to as "DNS"); Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and Protocol port and parameter numbers.</p>	
<p>Coordinates the operation and evolution of the DNS root name server system.</p>	
<p>Coordinates policy development reasonably and appropriately related to these technical functions.</p>	
<p>In this role, with respect to domain names, ICANN's Mission is to coordinate the development and implementation of policy policies:</p> <p><u>- for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS ; and</u></p> <p><u>- that are</u> developed through a bottom-up, consensus-based multistakeholder process <u>and that is</u> designed to ensure the stable and secure operation of the Internet's unique names systems, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS.</p>	

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<p>In this role, with respect to IP addresses and AS numbers, ICANN's Mission is described in the ASO MoU between ICANN and RIRs.</p>	
<p>In this role, with respect to protocol port and parameter numbers, ICANN's Mission is to [to be provided by the IETF].</p>	<p><u>Need to consult with IAB/IETF.</u></p>
<p>In this role, with respect to the DNS root server system, ICANN's Mission is to [to be provided by root server operators].</p>	<p>RRSAC to provide language</p>
<p>ICANN shall not undertake any other Mission not specifically authorized in these Bylaws and shall have no power to act other than in accordance with, and as reasonably necessary, appropriate to achieve its Mission. ICANN shall not undertake any other Mission not specifically authorized in these Bylaws. Without in any way limiting the foregoing absolute prohibition, it is expressly noted that ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide.</p>	<p>WP2 discussed the suggestion put forth by the BC (Comment 109) and others comment to add language regarding contract issues: <i>"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."</i> See also Comment 112/USCIB; 119/USCC.</p> <p>WP2 also discussed the concern raised by the IPC and others that the second sentence would constrain ICANN's ability to enter into or enforce contractual provisions against prohibited or abusive uses of domain names.</p> <p>The group felt that the addition suggested by the Business Constituency was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. The prohibition on regulation does not prohibit ICANN from accepting – and enforcing as a contractual matter - the arrangements and limitations offered by new gTLD applicants. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, rights protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission.</p>

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<p>Commitments and Core Values</p>	
<p>In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.</p>	
<p>These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. <u>The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</u> The specific way in which they <u>Core Values</u> apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Fundamental Commitments and Core Values simultaneously is not possible.</p> <p>In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest <u>goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.</u></p> <p>To the extent a Commitment must be reconciled with other Commitments and/or one or more Core Values in any particular situation, such reconciliation must be</p>	<p>NOTE: These changes, and the deletions below, are designed to address many comments that said that the balancing language for Commitments was too US-centric and could lead to inaction. The CCWG carefully reviewed the Commitments and determined that a balancing test should not be required with respect to the Commitments, which are fundamental.</p>
<p>Justified by an important, specific, and articulated public interest goal that is within ICANN's Mission and consistent with a balanced application of ICANN's other Commitments and Core Values (a "Substantial and Compelling Reason in the Public Interest");</p> <p>(i) Likely to promote that interest, taking into account competing public and private interests that are likely to be affected by the balancing;</p> <p>(ii) Narrowly tailored using the least restrictive means reasonably available; and</p> <p>(iii) No broader than reasonably necessary to address the specified Substantial and Compelling Reason in the Public Interest.</p>	<p>(iv)</p>

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<p>Commitments.</p>	<p>OPEN ISSUE - HUMAN RIGHTS</p> <p>Several commenters suggested an affirmative statement that, in carrying out its Mission, ICANN should not act contrary to globally accepted human rights standards.</p> <p>A subset of WP2 (Group 1) participants feel strongly that ICANN's bylaws must include an affirmative commitment to understand the human rights impact of ICANN's actions and inaction.</p> <p>Another subset of WP2 (Group 2) believes: (i) that the inclusion of international law, in Commitment 1 below, imposes a general obligation to respect human rights;* and (ii) that further thought is necessary to draft specific language, and fully understand the consequences of adding such language. Group 2 proposes to establish a specific WS2 obligation to address this issue.</p> <p>Group 1 participants point out, in response, that ICANN has repeatedly put off any meaningful action on this matter.</p> <p><i>*An Expert Report filed in the ICM case filed by international law expert Professor Goldsmith, of Harvard University, observes that: "the canonical reference to the sources of international law is Article 38 of the Statute of the International Court of Justice, which lists international conventions, customary international law, and "the general principles of law recognized by civilized nations", the reference to "principles of international law" in ICANN's Articles must refer to customary international law and to the general principles of law." (Expert Report, p. 12.)</i></p> <p>Article 38 of the International Court of Justice reads (in relevant part) as follows: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:</p> <p>a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.</p>
<p>1. In performing its Mission, ICANN must operate <u>in a manner consistent with its Bylaws</u> for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law, <u>international conventions</u>, and applicable <u>local law and international conventions</u> and through open and transparent processes that enable competition and open entry in Internet-related markets, <u>and that reflect the Commitments and Core</u></p>	

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<p>Values the Fundamental Rights set forth below. Specifically, ICANN's action must:</p>		<p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p>
<p>2. Preserve and enhance the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p>
<p>3. 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;</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Italic, Font color: Auto</p>
<p>4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p> <p>Formatted: Font: Avenir Book</p>
<p>5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, and academia that (i) seeks input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p>
<p>6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p>
<p>7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book, Not Bold, Not Italic, Font color: Auto</p>
<p>Core Values:</p>		<p>Formatted: Font: Avenir Book</p>
<p>1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>		<p>Formatted: Font: Avenir Book, Not Italic, Font color: Auto</p>
<p>2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that decisions are made in the global public interest identified through the bottom-up, multistakeholder</p>		<p>Formatted: Font: Avenir Book</p> <p>Formatted</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted: Font: Avenir Book</p> <p>Formatted</p>

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policy development process is used to ascertain the global public interest and that those processes and are accountable, and transparent, and respect the bottom-up multistakeholder process;	
3. To the extent feasible and appropriate, D elegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;	
(v) Where feasible and appropriate, D epending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market that enhances consumer trust and choice.	

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<p>5. "Ensuring that any expansion of 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."</p>	<p>This is being moved to the AOC review section</p>
<p>5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.</p>	
<p>6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.</p>	
<p>7. While remaining rooted in the [private sector], including business stakeholders, civil society, the technical community, and academia, recognizing that governments and public authorities are responsible for public policy within their respective jurisdictions, and duly taking into account the public policy advice of governments and public authorities [on matters that are within ICANN's Mission and consistent with its Bylaws] in accordance with the [that is consistent with these Bylaws] and to the extent consistent with these Fundamental Commitments and Core Values.</p>	<p>WP2 proposes to delete the crossed out language below and to amend the chapeaux (general section) of Article XI of the ICANN Bylaws, applicable to all Advisory Groups as follows:</p> <p><i>The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board. ICANN shall have no authority to act or refrain from acting in response to advice from an Advisory Committee where such advice would require ICANN to exceed its Mission or violate these Bylaws, or where the Advisory Committee has not explained the specific reason(s) for its advice. provided a rationale for its advice.</i></p>
<p>89. Striving to achieve a reasonable balance between the interests of different stakeholders.</p>	

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