

Revised Mission, Commitments & Core Values

ICANN'S current Bylaws contain (a) a Mission statement; (b) a statement of Core Values; and (c) a provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment. These three sections are at the heart of ICANN's accountability: they obligate ICANN to action only within the scope of its limited Mission, and to conduct its activities in accordance with fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured, and it can be held accountable through existing and enhanced accountability mechanisms.

The Initial Draft Proposal recommended several changes to clarify and strengthen these Bylaws provisions and to incorporate key elements of the Affirmation of Commitments. In particular, the Initial Draft Report proposed language to clarify and constrain ICANN's Mission statement, and to specify that ICANN's Mission does not include the regulation of services that use the DNS or the content those services carry or provide. The Initial Draft Report also proposed to divide the current Core Values into "Commitments" and "Core Values" and to articulate a test for balancing Commitments and Core Values to the extent necessary.

In general, commenters were very supportive of the proposed revisions to ICANN's Bylaws. The comments did reflect concerns about several aspects of the Draft. Although we have provided a summary of all comments related to this section of the Initial Proposed Draft, annotated to reflect the CCWG's response to those questions, we identify some of the biggest concerns below, and explain how the CCWG addressed them.

1. Affirmative Obligation to comply with Fundamental Human Rights

A number of commenters called for the inclusion of an affirmative commitment obligating ICANN to comply with fundamental human rights in carrying out its Mission. They argued that such a commitment does not involve an expansion of ICANN's Mission – rather it merely requires ICANN to account for the way in which actions consistent with the Mission may affect fundamental human rights values.

The CCWG discussed this matter at length. A number of members and participants strongly supported the views described above. Others argued, equally forcefully, that ICANN's obligation to comply with international law (which appears in the Articles of Incorporation and which we propose to include in the revised Bylaws) addresses this concern and that any specific reference to fundamental human rights requires further deliberation to avoid any unintended consequences. Those who supported the inclusion of such a reference pointed out that this issue has been raised numerous times in the past, and ICANN has so far failed to act on it.

[The CCWG proposes to address this issue in Work Stream 2, through a specially constituted subgroup of the CCWG, supported by a resolution of the ICANN Board committing it to act on a CCWG recommendation supported by consensus.]

OR

[The CCWG proposes to address this issue by including a reference in the Bylaws to fundamental human rights and substantively addressing the issue in Work Stream 2, through a specially constituted subgroup of the CCWG, supported by a resolution of the ICANN Board committing it to act on a CCWG recommendation supported by consensus.]

2. Private Sector Leadership and Advice Contrary to the Bylaws

A number of government commenters strongly objected to the proposed change in existing Core Value 11 which states that ICANN, “While remaining rooted in the private sector,” should recognize “that governments and public authorities are responsible for public policy” and should duly taking into account governments' or public authorities' recommendations. After lengthy conversation, the CCWG proposes to address these concerns in two ways:

- First, to remove confusion about the meaning of “private sector” in the ICANN Bylaws, we propose to expressly state that the private sector includes business stakeholders, civil society, the technical community and academia.
- Second, we propose to remove the language that was read by some commenters to remove ICANN’s obligation to consult with the GAC on consensus Advice. Instead, we propose to amend Article XI of the Bylaws, to provide that the GAC will publish a rationale for its Advice, with references to relevant applicable national or international law. The proposed language also implements the recommendation of ATRT2 requiring ICANN to work with the GAC to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided.
- Third, we propose to clarify that the Independent Review Process applies to all violations of the ICANN Bylaws, including violations resulting from ICANN’s action or inaction based on input from advisory committees or supporting organizations.

3. Balancing and Reconciliation Test

A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN’s fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN’s activities. We retained the proposed balancing test for competing Core Values.

4. Freedom to Contract

Several commenters expressed concerns that by enumerating ICANN's powers specifically, ICANN would not be able to freely negotiate and enforce its contracts with, for example, registries and registrars. The CCWG considered this concern, but concluded that the prohibition on *regulation of services* that use the Internet's unique identifiers or the content that they carry or provide does not act as a restraint on ICANN's *contracting authority*.