

Fundamental Bylaws			
Additional Question: The CCWG-Accountability welcomes feedback on whether there is a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to propose new Fundamental Bylaws or changes to existing ones. In particular, the CCWG-Accountability welcomes feedback on whether the Mission should be subject to even higher thresholds of Board or community assent.			
Question 3: Do you agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability?			
Question 4: Do you agree with the list of requirements for this recommendation, including the list of which Bylaws should become Fundamental Bylaws? If not, please detail how you would recommend amending these requirements.			
#	Contributor	Comment	CCWG Response/Action
1 3 6	<a href="#">RH</a>	Only the membership should have the power to change the Bylaws.	<p><b>Agreement – New Idea</b></p> <p><b>Summary / Impression:</b> Mr. Hill supports concept generally but believes only membership should have the power to amend the Bylaws.</p> <p><b>Actions suggested:</b> Consider membership as the sole entity to have power to change Bylaws.</p> <p><b>CCWG response:</b> Under the 2<sup>nd</sup> Proposed Draft, Fundamental Bylaws may be changed only with the agreement of the community. The community may reject other changes proposed by the Board.</p>
1 3 7	<a href="#">Jan Scholte (JS) comment 1</a>	<p>- Motivate more explicitly the creation of Fundamental Bylaws. Currently para 113 simply asserts that 'CCWG-Accountability believes', without specifying the grounds for this belief. Since the creation of Fundamental Bylaws adds considerable complication to the proposal, perhaps greater justification of the step is wanted? Indeed, why would Fundamental Bylaws inherently enhance accountability, as implied at para 122? Could situations not arise where a particular Fundamental Bylaw worked against accountability and, owing to its 'fundamental' character, would be harder to correct?</p> <p>- The proposal repeatedly refers to ICANN's 'limited technical mission' and the need to avoid 'mission creep'. Where in practice would the line be drawn between 'technical mission' and wider activity? Could one person's legitimate mandate be another's mission creep? What lies behind this concern? Would it be helpful to be more specific in this regard: e.g. that ICANN should not embark on unduly restrictive regulation of the domain name industry; or that ICANN should not interfere in the operations of ccTLDs?</p>	<p><b>Concerns</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Mr. Scholte suggests that the need for "Fundamental Bylaws" and the assumption that they would contribute to accountability requires greater justification.</li> <li>- Ms. Scholte questions the community's expressed concerns about "mission creep" and suggests greater specificity with respect to this concern.</li> </ul> <p><b>Actions suggested:</b> Motivate the creation of Fundamental Bylaws. Clarify where the line is between ICANN's limited mission and wider activity.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. The 2<sup>nd</sup> Draft Proposal reflects the inclusion</p>

			of Fundamental Bylaws and clarifies that ICANN may not act outside of its Mission.
1 3 8	<a href="#">auDA</a>	<p>- auDA supports the concept of utilising "fundamental bylaws" as another mechanism for facilitating accountability. the concept of fundamental bylaws that restrict the ICANN Board's ability to change these tenets is similar to the "golden bylaws" concept auDA proposed as part of our initial response to the consultations of the CWG on IANA transition.<sup>14</sup> Although the foci of the CWG and CCWG differ, auDA supports the concept of using such mechanisms as the primary tool for delivering accountability.</p> <p>- auDA supports the list of items that the CCWG proposes could be afforded coverage by fundamental bylaws</p> <p>- auDA notes the CCWG's observation that the language for underlying Bylaw provisions has not yet been reviewed by Legal Counsel and ". . . is only conceptual in nature at this stage. . ." and, accordingly, welcomes the opportunity to provide additional / revised commentary once such advice has been provided and analysed.</p>	<p><b>Agreement – Concerns</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- auDA supports the concept of Fundamental Bylaws and the proposed list to be made fundamental.</li> <li>- auDA notes need for legal review of proposed language.</li> </ul> <p><b>Actions suggested:</b> Have legal counsel review the language for underlying Bylaw provisions.</p> <p><b>CCWG response:</b> The CCWG appreciates this input and notes that any final bylaws language will be reviewed by legal counsel and adopted in accordance with the requirements for notice and comment.</p>
1 3 9	<a href="#">DBA</a>	In particular, we would like to emphasize the following: Creating a set of Fundamental Bylaws.	<p><b>Agreement</b></p> <p><b>Actions suggested:</b> None</p> <p><b>CCWG response:</b> The CCWG thanks you for your comments. The 2<sup>nd</sup> Draft Proposal reflects the inclusion of Fundamental Bylaws.</p>

<p>1 4 o</p>	<p><a href="#">CRG</a></p>	<p>- To question 1a) ICANN values and fundamental Bylaw proposals call for more general values than the present narrow technical scope under the USG stewardship. For example: <i>ICANN is accountable to all its members, users and open and free Internet. ICANN is accountable for the IANA, functions as well as a stable, resilient, open and efficient DNS Market.....</i> Then ICANN should be measured against those higher/more general standards. But the proposed amendments mix present technical objectives with more general (future) standards. It will be a hard discussion if we start with an amended text, but guess that's the reason we have so many lawyers involved.</p> <p>- Based on my personal experience in ATRT2, I consider the AoC to be the best basis for the actual constitutional core values, from which the new By Laws have to be drafted. For example, if the community commits to a "market" model in the fundamental Bylaws as per above, the discussion of "private sector led" or not led, becomes less relevant and maybe it can be preempted. The proposal has to respect some strict hierarchy of values first, technical conditions second, etc. so as not to get bogged down in details further down the road in the best UN fashion.</p> <p>- Q3. It should be part of WS to establish at the level of Management, the internal clarity of operative roles and the level of internal separation of powers between them. This cannot be left to the discretion of any new CEO anymore. The question is so important in terms of internal accountability, that it should be embedded in the Fundamental By Laws pre-transition (WS1) so has to have it protected under the highest threshold possible.</p> <p>- Q4. WS1 should develop a minimum requirement of internal checks and balances and transparent arms length relationships should be established at least for the major organisational areas of (a) policy development, (b) compliance and (c) operational functions, including but not limited to IANA.</p>	<p><b>New Idea</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Mr. Gutierrez proposes to add an additional fundamental bylaw that specifies the operative roles of ICANN staff and Board and the level of internal separation of powers among them.</li> <li>- Internal checks and balances should be placed to separate policy development, compliance, and operational functions of organization.</li> </ul> <p><b>Actions suggested:</b> Consider adding an additional fundamental bylaw on roles of staff and board and separation of powers. Consider internal checks and balances.</p> <p><b>CCWG response:</b> The CCWG appreciates this input and notes that the 2<sup>nd</sup> Draft Proposal incorporates the AoC commitments into ICANN's Bylaws. The review and redress provisions are designed to ensure that ICANN can be held for all violations of its Bylaws and Articles of Incorporation.</p>
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<p>1 4 1</p>	<p><a href="#">DCA-T</a></p>	<p>- Q3. Indeed the ICANN's Bylaws should be harder to change than others. These would be deemed Fundamental Bylaws; these identified sections of the bylaws should be well designated and marked.</p> <p>- Q4. The proposed increase of the voting threshold to 3/4 of votes in favour of the change (higher than the usual threshold of 2/3) Is acceptable, however the members of the board in question must also demonstrate their understanding of the proposals through proper study so that it is not just passed by vote without due considerations. The board members should be careful not to be just approvers of proposals; they must do so under justifiable and necessary means.</p>	<p><b>Agreement – New Idea</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Generally supports concept of Fundamental Bylaws, including specified list.</li> <li>- In addition to voting threshold, Board members must demonstrate their understanding of proposed changes before approving.</li> </ul> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws may only be changed with the approval of the community.</p>
<p>1 4 2</p>	<p><a href="#">NM</a></p>	<p>We provide for changes in the by-laws, but it may be that we would be better off making clear that core principles are not subject to change. The ultimate goal of the organization is to act in the interest of the public as a whole, without special treatment of any business, private entity, individual, or government. The inherent founding principle that this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle that cannot be changed, no matter how many people go for it.</p>	<p><b>Agreement – New Idea</b></p> <p><b>Summary / Impression:</b> Perhaps better to prohibit change to core principles and Mission altogether.</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws may only be changed with the approval of the community.</p>
<p>1 4 3</p>	<p><a href="#">AFRALO</a></p>	<p>Q3. The creation of fundamental bylaws that require the consent of the community to be changed is a good approach and would enhance the accountability of ICANN board to the community.</p> <p>Q4. AFRALO members believe that the fundamental bylaws should include the fundamental standing issues such as the mission and the core values of the organization, excluding any functional or operational issue.</p>	<p><b>Agreement – New Idea</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports basic concept of Fundamental Bylaws.</li> <li>- Should include Mission, Core Values, and other "fundamental standing issues".</li> </ul> <p><b>Actions suggested:</b> Fundamental Bylaws should include Mission, Core Values, and other "fundamental standing issues"</p> <p><b>CCWG response:</b> The CCWG appreciates this</p>

			input. Under the 2 <sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values - may only be changed with the approval of the community.
1 4 4	<a href="#">Afnic</a>	<p>Q3. Afnic supports the idea of fundamental bylaws, in the sense it's a way to balance the powers of the Board through the empowerment of the Community (see below). This set of fundamental bylaws is interesting only if the empowered community is put in place.</p> <p>Q4. Afnic agrees with the list of fundamental bylaws proposed and, in order to achieve the IANA stewardship transition, insist on the importance of including in the fundamental bylaws the provisions for reviews that are part of CWG-Stewardship work as well as the creation of the CSC.</p>	<p><b>Agreement – New Idea</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Good idea but only meaningful if empowered community is in place.</li> <li>- Include CWG Stewardship reviews and creation of CSC as Fundamental Bylaw</li> </ul> <p><b>Actions suggested:</b> Include the provisions for reviews that are part of CWG.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community.</p>
1 4 5	<a href="#">Govt-IN</a>	<p>It is appreciated that the current proposal suggests that fundamental bylaws should stay intact unless change is called for by the community. It is important for ICANN to have a well defined mission, commitments and core values that should be reflected in its organisational DNA, objectives and prioritisation approach.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Important to have a well-defined mission, commitments and core value that should be reflected in DNS</li> </ul> <p><b>Actions suggested:</b> None</p> <p><b>CCWG response:</b> The CCWG appreciates this input and agrees on the importance of articulating a well-defined Mission for ICANN.</p>
1 4 6	<a href="#">DP-DK</a>	<p>We strongly endorse the use of Fundamental Bylaws as a means of assuring the broader Internet community that ICANN will continue to live up to the commitments it is making as part of the transition for the foreseeable future, and that these fundamental constraints on the abuse of its power will not themselves be subject to easy manipulation.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b> Endorses Fundamental Bylaws as a means of assuring that ICANN will continue to live up to commitments and that fundamental constraints on abuse will not be subject to easy manipulation</p> <p><b>Actions suggested:</b></p>

			<p>None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1 4 7	<a href="#">IA</a>	<p>- IA agrees that classifying some Bylaws as "Fundamental Bylaws" will enhance ICANN's accountability by restricting its ability to change certain Bylaws with only a two-thirds majority.</p> <p>- The CCWG may want to examine whether there is a way to ensure that the need for binding Independent Review panels is enshrined in a Fundamental Bylaw without binding the community to the precise formulation recommended by the CCWG. Although the process set forth by the CCWG seems reasonable, it may be the case that it needs to be modified at the margins once parties have had some experience with it.</p> <p>- IC believes that it is a requirement for the ICANN principal office or headquarters to be located in Los Angeles should be included as a Fundamental Bylaw.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach</li> <li>- May need flexibility to modify details of IRP with experience.</li> <li>- HQ in Los Angeles should be Fundamental Bylaw.</li> </ul> <p><b>Actions suggested:</b> Consider binding IRP and HQ in California as Fundamental Bylaws</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw.</p>
1 4 8	<a href="#">eco</a>	<p>- Making some bylaws more robust than others, i.e. the idea of creating Fundamental Bylaws, is a good one. The described process seems to strike an appropriate balance between making it harder to change these bylaws and at the same time allowing for changes whenever substantial parts of the community deem this to be required. Some flexibility needs to be retained for an organization working in a rapidly changing environment.</p> <p>- Fundamental Bylaws, changes to which require approval, are an appropriate measure to enhance ICANN's accountability.</p> <p>- The list of items qualifying for Fundamental Bylaws should be kept as short as possible and only encompass those clauses that are needed to protect the accountability architecture as such. Based on the suggestions made in the draft report, the list of items appears to be appropriate.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach</li> <li>- Keep list short as possible</li> <li>- May need flexibility to modify details in light of experience and changing environment.</li> </ul> <p><b>Actions suggested:</b> Keep list of items as short as possible.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>

<p>1 4 9</p>	<p><a href="#">Govt-ES</a></p>	<p>- The organization needs a stable and predictable legal and jurisdictional environment and these requirements could certainly be included in the Bylaws as a way to ensure compliance with the accountability measures designed. But prescribing a particular jurisdiction now would preclude other jurisdictions that could perfectly fit and comply with these requirements (in and out the USA) from hosting the organization in the long run.</p> <p>- On the other hand, jurisdiction is already a task of Work Stream 2 (page 90) of the CCWG, and enshrining ICANN's current jurisdiction as a fundamental bylaw would pre-empt the future work of WS2 in this regard. It is essential that when that process begins, the global public interest is taken into account and all relevant stakeholders have their say, including governments.</p>	<p><b>Agreement – Concerns</b></p> <p><b>Summary / Impression:</b> Supports general approach. Jurisdiction should not be prescribed in Bylaws at this time</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw.</p>
<p>1 5 0</p>	<p><a href="#">RySG</a></p>	<p>- Executive Summary refers to "reviews required by the CWG-Stewardship." We support the recommendation that these reviews be incorporated into the Fundamental Bylaws and recommend that the procedures for implementing the outcomes of such reviews that are determined by the CWG-IANA are also included within that fundamental bylaw 10</p> <p>- Yes. Establishing an approval threshold of 75% would serve to ensure a substantial percentage of the affected community agrees with proposed changes.</p> <p>- RySG agrees with the list of proposed Fundamental Bylaws, with one recommended addition. We believe that ICANN's current bylaw (Article XVIII, Section 1) establishing ICANN's principle office location, which is consistent with the Affirmation of Commitments Section 8b establishing ICANN's headquarters location, should be made a Fundamental Bylaw. Reason: All of the accountability mechanisms and reforms currently proposed by the CCWG assume ICANN's continued operation under California not-for-profit corporate law. If that assumption were to change, all of the current accountability reform efforts would need to be re-assessed and started anew.</p> <p>- The RySG also strongly supports the recommendation that the CWG-Stewardship's proposed IANA Function Review, including CWG-identified requirements for implementing the outcomes of the IFR, should be added to the ICANN Bylaws, as a Fundamental Bylaw.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach, voting threshold, proposed list.</li> <li>- Supports adding HQ requirement as Fundamental Bylaw.</li> <li>- CWG IANA Function Review and CWG-identified requirements should be Fundamental Bylaws.</li> </ul> <p><b>Actions suggested:</b> CWG IANA Function Review and identified requirements as Fundamental Bylaws.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw.</p>

<p>1 5 1</p> <p><a href="#">JH</a></p>	<p>According to the current proposal, I agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability. Because if we say something is wrong, we should have right criteria, which should be the Fundamental Bylaws. Although ICANN has Bylaws now, there are still many problems. This proposal should point out these problems and give specific amendments. For example, many problems have already been raised by the communities: the transparency of Nomcom, the representativeness of the ICANN Board of Directors (It is questionable whether board members selected from each community represent the community or just themselves), the ICANN Board membership and voting rights issues, which law should ICANN follow. It is critical to have Bylaws under the ground of community consensus, because it is the criteria to judge whether ICANN does sth wrong or right decision. If the criteria is problematic, it is impossible to discuss about the latter issues.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Agrees Fundamental Bylaws would enhance accountability.</li> <li>- Critical to have Bylaws under ground of community consensus to judge criteria.</li> </ul> <p><b>Actions suggested:</b> Proposal should point out problems and give specific amendments.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community.</p>
<p>1 5 2</p> <p><a href="#">BC</a></p>	<ul style="list-style-type: none"> <li>- BC supports the concept of designating certain Bylaws as Fundamental Bylaws that would require majority approval by community Members. Also, the BC supports the CCWG's proposal that 75% of community Members must vote in favor of any proposed change to Fundamental Bylaws.</li> <li>- However, we suggest that the CCWG explore a way to ensure that the need for binding Independent Review is enshrined in a Fundamental Bylaw without fixing every aspect of Independent Review Panel procedure in the Fundamental Bylaw itself. The specific IRP procedures proposed are new, and the community and Board may wish to modify them based on gained experience without having to meet the very high bar established by enshrining these specific details in a Fundamental Bylaw. We need to ensure the process remains sufficiently flexible to address the needs of the community as the Internet continues to evolve.</li> <li>- Additional Fundamental Bylaws: Article XVIII Section 1, the location of ICANN's principal office</li> <li>- BC believes that Article 18 should be a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed</li> </ul>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach</li> <li>- May need flexibility to modify details of IRP with experience.</li> <li>- HQ in Los Angeles should be Fundamental Bylaw.</li> <li>- Article 18 should be Fundamental Bylaw</li> </ul> <p><b>Actions suggested:</b> Add article 18 and HQ in Los Angeles as Fundamental Bylaws.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, the IRP, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw</p>



		without broad community approval. Moreover, the BC hopes to rely 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.	
1 5 3	<a href="#">.UK</a>	We support the general concept of fundamental bylaws. 3.2.3.3: While we recognise the need to have a high bar to changing a fundamental bylaw, this can also be an impediment to necessary change. We wonder whether some thought should be given to exceptional mechanisms that can define and assess necessary changes (addition of new, abrogation or amendment of existing) in exceptional circumstances, something akin to a constitutional conference.	<b>Agreement</b> <b>Summary / Impression:</b> Supports general approach but suggests consideration of exceptional mechanisms – e.g., “constitutional conference”  <b>Actions suggested:</b> Consider exceptional mechanisms that can define and assess necessary changes.  <b>CCWG response:</b> The CCWG appreciates this input. The 2 <sup>nd</sup> Draft Proposal does provide for amendment of Fundamental Bylaws, but only with the consent of the community. The proposed Community Forum may provide a vehicle for the discussion of needed changes.
1 5 4	<a href="#">USCIB</a>	Q3. Yes. Critical elements that require a high standard to change, are important both from a stability standpoint, and also to address legitimate concerns for the integrity of the transition. Q4. paragraph 337, “ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.” Paragraph 337 says this language will be added to the bylaws core values section, which USCIB supports. However, the entirety of this section does not appear in the proposed bylaw core value changes proposed by the CCWG and we request that the entirety of this language be added.	<b>Agreement – Concerns</b> <b>Summary / Impression:</b> Supports general approach but requests inclusion of entire AoC provision regarding TLD expansion in Core Values. <b>Actions suggested:</b> Include entire AoC provision regarding TLD expansion in Core Values.  <b>CCWG response:</b> All elements of the AoC have been incorporated into the 2 <sup>nd</sup> Draft Proposal. The specific language identified by the USCIB is now contained in the Review Section of the Bylaws.
1 5 5	<a href="#">LINX</a>	- LINX support the introduction of Fundamental Bylaws. - LINX agree with the CCWG’s selection of bylaws for “Fundamental” status and do not identify any omissions. - LINX caution against excessive use of “Fundamental” status: ascribing	<b>Agreement</b> <b>Summary / Impression:</b> - Generally support, but avoid excessive use of “Fundamental” status. - Very high level should be established to

		<p>bylaws 'Fundamental' status recklessly would force the community to use what is intended to be an exceptional mechanism more routinely. This would weaken the protection for those bylaws that do deserve entrenchment. We therefore advise approaching with caution any recommendations to give additional bylaws fundamental status.</p> <ul style="list-style-type: none"> <li>- LINX believe the threshold suggested by CCWG for changing Fundamental Bylaws is appropriate.</li> <li>- LINK are willing to be persuaded that a mechanism should be created for the Community to add or amend Fundamental Bylaws, but this should be subject to a very high threshold within each community. Merely requiring the unanimous support of all SOACs should not be sufficient (or perhaps even necessary): if there is only a bare majority within GNSO this should not be sufficient.</li> </ul>	<ul style="list-style-type: none"> <li>- amend or add to Fundamental Bylaws</li> <li>- Voting threshold ok</li> </ul> <p><b>Actions suggested:</b> Add very high threshold within each community to add/amend Fundamental Bylaw</p> <p><b>CCWG response:</b> The CCWG appreciates this input, which is reflected in the 2<sup>nd</sup> Draft Proposal.</p>
1 5 6	<a href="#">JPNIC</a>	<p>Yes. By distinguishing Fundamental Bylaws from the other Bylaws, with explicit community approval required for its changes, it ensures changes to key components of the Bylaws will only take place with clear community support, and avoids the Board passing Fundamental Bylaw changes without getting noticed by the community. We also recognize the need for Fundamental Bylaws is identified by CWG-Stewardship.</p> <p>Yes, we agree all of them to be included in the Fundamental Bylaws. Including the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b> General support – including need for CWG Stewardship requirements such as IANA Function Review and Customer Standing Committee</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1 5 7	<a href="#">CWG-St</a>	<ul style="list-style-type: none"> <li>- Work on the CWG Separation Process (previously Separation Review) has been further developed within the CWG and we expect that this will be more fully described in the forthcoming proposal from the CWG-Stewardship. We are not yet in a position to provide full details ahead of the closure of the this public comment period on June 3<sup>rd</sup>, but do expect to work with you in future to effectively communicate any additional requirement, including the possible use of a fundamental bylaw to deal with this.</li> <li>- The CCWG Accountability initial proposals describe the scope of the "fundamental bylaws" in section 3.2.4. It is proposed that the "Reviews that are part of the CWG-Stewardship's work – the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee" would be considered Fundamental</li> </ul>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b> General support – including need for CWG Stewardship requirements such as IANA Function Review and Customer Standing Committee</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be</p>

		Bylaws. As such, any change of such Bylaws would require prior approval by the community.	changed with the approval of the community.
1 5 8	<a href="#">IPC</a>	<p>- The IPC does not believe that there is a need for additional means to propose or amend Fundamental Bylaws, other than those proposed by the CCWG. The IPC is not necessarily opposed to increasing the supermajority thresholds proposed by the CCWG, but any change must be carefully analyzed to avoid a single stakeholder veto situation. Furthermore, there should be a degree of deference to existing supermajority thresholds of general applicability.</p> <p>- "Fundamental Bylaws" should be those bylaws that are <i>fundamental</i> to the mission and core values of ICANN. These bylaws should be harder to change because of their fundamental nature, not merely because they are designated as such.</p> <p>Thus, the introduction of bylaws that are harder to change does not, by itself, enhance ICANN's accountability. Rather, it is the substance of these bylaws that must be reviewed to determine whether they will affect ICANN's accountability. That said, if these bylaws are fundamental in nature, they should be more protected from changes by the Board.</p> <p>- The IPC is generally supportive of the bylaws which have been proposed to be "fundamental." However, as noted below, the IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw: <i>ICANN affirms its commitments to: 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.</i></p>	<p><b>Agreement – Agreement – New Idea</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- IPC believes that this status should apply only to Bylaws that are fundamental to the mission and core values of ICANN.</li> <li>- Supports proposed list but add AoC paragraph 8b re HQ in US</li> </ul> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> All elements of the AoC have been incorporated into the 2<sup>nd</sup> Draft Proposal. The specific language identified by the IPC is now contained in the Review Section of the Bylaws.</p>
1 5 9	<a href="#">Govt-BR</a>	CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw".	<p><b>Agreement – Concerns – Divergence</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- The Government of Brazil that Article 18 should not receive status of Fundamental Bylaw.</li> </ul> <p><b>Actions suggested:</b> Article 18 as Fundamental Bylaw.</p> <p><b>CCWG response:</b> The CCWG appreciates this input and notes that the current Bylaws/Articles continue to specify that ICANN is a California non-profit</p>

			corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw.
160	<a href="#">MPAA</a>	<p>- MPAA fully supports the concept of making certain bylaws Fundamental Bylaws that enjoy special protection and can only be changed based on prior approval by the Community. The five items proposed to have the status of Fundamental Bylaws (p. 5) will ensure a stable, autonomous and self-governing ICANN that is not easily altered or swayed by the Board or any external forces.</p> <p>- MPAA suggests that the existing ICANN bylaw requiring the principal office of ICANN be in the State of California, USA, also be designated as a Fundamental Bylaw. See additional comment on this topic in the Nexus section below.</p> <p>- Regarding transparency in the proposed IRP process, the MPAA believes it will be important for the community to be aware of the filing of IRPs in an open and timely manner. This will allow parties “materially affected” by the IRP process and eventually decisions to fully participate.</p> <p>- The US Courts provide a de facto check on ICANN’s adherence to its bylaws and the rule of law. Litigation represents a last resort to be used only in the event of a catastrophic failure of the multi-stakeholder process, but the mere existence of that option has a stabilizing effect. As such, and as mentioned above, MPAA suggests that current ICANN bylaw Article 18, Section 1 be made a Fundamental Bylaw. requiring 75% community voting approval for any change, would go a long way to ensure a stable and accountable ICANN post transition.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach</li> <li>- May need flexibility to modify details of IRP with experience.</li> <li>- HQ in Los Angeles should be Fundamental Bylaw.</li> <li>- Article 18 should be Fundamental Bylaw requiring 75% community approval for change.</li> </ul> <p><b>Actions suggested:</b> Article 18 and HQ in Los Angeles as Fundamental Bylaws.</p> <p><b>CCWG response:</b> The CCWG appreciates this input and note that the current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw</p>
161	<a href="#">CDT</a>	<p>- CDT agrees that the addition of fundamental bylaws enhances ICANN accountability and supports a role for the community with regard to approving new bylaws or changes to existing bylaws. The latter is a critical element in ensuring that ICANN does not stray from its mission, commitments and core values.</p> <p>- CDT supports the proposed list of current bylaws that would become fundamental bylaws. We also support the inclusion of the IANA Function Review (the periodicity of the review, as well as the Special Review) and the Customer Standing Committee (CSC) as a minimum set of IANA related mechanisms that should be brought into the fundamental bylaws.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach and list</li> <li>- Include IANA Function Review and CSC as Fundamental Bylaws</li> </ul> <p><b>Actions suggested:</b> Add CSC and IFR as Fundamental Bylaws</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1	<a href="#">CIRA</a>	I believe the introduction of specific ‘fundamental bylaws’, while	<b>Agreement</b>

6 2		limiting the Board of Directors' ability to modify these bylaws may be effective as a check against mandate creep on the part of the organization.	<p><b>Summary / Impression:</b> Supports general approach as effective check against mandate creep.</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1 6 3	<a href="#">SR</a>	I believe the thresholds proposed are sufficient at this time.	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b> Supports general approach and thresholds</p> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1 6 4	<a href="#">USCC</a>	<p>- Yes, the threshold ensuring that 75% of the impacted community approves of the proposed changes will enhance accountability.</p> <p>- Yes it is useful to elevate certain bylaws, in particular those preventing mission creep would ensure accountability and allow ICANN to focus on its core duties.</p> <p>- However, given this higher voting threshold, the CCWG should consider how to strike a balance between providing an appropriate level of detail and creating the flexibility to add improvements to new processes created by the plan.</p> <p>- Suggests the inclusion of a new bylaw aimed at the prevention of government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. This would be achieved through additional transparency, requiring that ICANN or any individual acting on ICANN's behalf make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursement in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach and thresholds</li> <li>- Consider need for flexibility to add improvements to new processes</li> <li>- Consider adding new Fundamental Bylaw aimed at safeguard against government capture, e.g., disclosure of relationship to governments, etc.</li> </ul> <p><b>Actions suggested:</b> Consider safeguard against Government capture as a Fundamental Bylaw</p> <p><b>CCWG response:</b> The 2<sup>nd</sup> Draft Report retains the concept of private sector leadership in the Commitments and Core Values. Fundamental Bylaws may be changed, but only with the consent of the community. The 2<sup>nd</sup> Draft Proposal provides a number of safeguards against capture by any single part of the community, including governments and public authorities.</p>
1 6 5	<a href="#">INTA</a>	Q3. agrees that there should be certain bylaws considered "fundamental," in that they embody core principles and goals and,	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach and</li> </ul>

		<p>hence, are more difficult to amend or abrogate.</p> <p>However, establishing “fundamental” bylaws does not necessarily provide a remedy if the Community perceives that ICANN is not following a fundamental bylaw, or any other bylaw for that matter. We strongly support a mechanism in which an aggrieved party or group can seek redress if it has credible evidence that ICANN is not adhering to a fundamental bylaw.</p> <p>Q4. agrees, in general, with the bylaws which have been proposed to be “fundamental.” However, after review, we suggest the addition of AoC ¶ 8b as a mechanism(s) for establishing the IRP (§4.1), and Community powers (§§5.3–5.6) should be included as a “fundamental” bylaw</p>	<p>thresholds</p> <ul style="list-style-type: none"> <li>- Necessary but not sufficient – requires dispute resolution mechanism</li> <li>- Add Aoc paragraph 8b and Community Powers as Fundamental Bylaws.</li> </ul> <p><b>Actions suggested:</b> Add Aoc paragraph 8b and Community Powers as Fundamental Bylaws.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community.</p>
1 6 6	<a href="#">.NZ</a>	<ul style="list-style-type: none"> <li>- Yes. In the context of a membership model, making some parts of the bylaws harder to change – and the authorisation of such changes being more broadly done than simply by the Board – would be a meaningful enhancement to ICANN’s accountability in the post-contract environment.</li> <li>- Yes – the requirements set out are reasonable, and the proposed list of Fundamental Bylaws is appropriate. The membership model on which this new accountability system rests should also be Fundamental, whether it is set out in the Bylaws or the Articles.</li> </ul>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach and thresholds</li> <li>- Add membership model as Fundamental provision in Bylaws or Articles</li> </ul> <p><b>Actions suggested:</b> Add membership model as Fundamental provision</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the membership model - may only be changed with the approval of the community.</p>
1 6 7	<a href="#">HR2251</a>	<p>Requirements: ICANN has adopted, if necessary through amendment to its bylaws, all additional measures recommended by the multistakeholder community through the IANA Stewardship Transition Coordination Group, the Cross Community Working Group on Enhancing ICANN Accountability, and the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b> Requirement for ICANN to adopt if necessary through amendment to Bylaws measures recommended by community through ICG, CWG, CCWG</p> <p><b>Actions suggested:</b> None</p> <p><b>CCWG response:</b> The CCWG has considered this input.</p>
1 6	<a href="#">NCSG</a>	<ul style="list-style-type: none"> <li>- Supports the empowerment of the ICANN community through the introduction of fundamental bylaws. - supports the importance of</li> </ul>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p>

8		<p>preserving the ICANN's narrow mandate and believes that a higher threshold for initiating a new or changing an existing fundamental bylaw and a role for the community to approve such bylaw changes are essential components in that regard.</p> <p>- Support the list of suggested fundamental bylaws as well as the addition of reviews that are a part of the CWG Stewardship's work.</p>	<ul style="list-style-type: none"> <li>- Supports general approach, list and thresholds</li> <li>- Include IANA Function Review and CSC as Fundamental Bylaws</li> </ul> <p><b>Actions suggested:</b> Include IANA Function Review and CSC as Fundamental Bylaws</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the CWG-Stewardship dependencies - may only be changed with the approval of the community.</p>
1 6 9	GG	<p>While we support designating some bylaws as fundamental, fundamental bylaws should not be overly detailed. Fundamental bylaws should be flexible enough to adapt to evolving experience. We agree with the CCWG-Accountability's proposal to designate certain bylaws as fundamental and the requirement to require support from the community, as well as a ¾ vote of the ICANN Board, in order to change any fundamental bylaws. However, given 6 this higher voting threshold, the CCWG-Accountability should consider whether some fundamental bylaws might be unnecessarily detailed. For example, we agree that the fundamental bylaws should include a requirement for a binding, accessible Independent Review Process (IRP) mechanism that reaches both substantive and procedural complaints. However, because the ICANN community to date has no experience with this new IRP process, the procedures will likely evolve in light of experience. At this time, the detailed procedures governing how the IRP operates should not be fixed in the language of the fundamental bylaws.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach.</li> <li>- Include IRP as Fundamental Bylaw, but retain flexibility to reflect experience (i.e., do not create operational rules as Fundamental Bylaws)</li> <li>- Consider whether others are too detailed, create too much inflexibility</li> </ul> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. Under the 2<sup>nd</sup> Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. At the same time, implementation of the IRP, including the detailed rules under which it will operate, will require significant work, supported by expert advice, which will be undertaken in Work Stream 2 and which are not themselves proposed as a Fundamental Bylaw.</p>
1 7 0	CENTR	<p>We believe that the introduction of so-called "Fundamental Bylaws" that should be "harder" to change than other provisions, would moderately improve ICANN's accountability. The entire ICANN</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach and thresholds</li> </ul>

		<p>"rulebook" should apply to all ICANN Board members and/or staff without distinguishing among core values that would then become "frozen".</p>	<ul style="list-style-type: none"> <li>- Necessary but not sufficient – entire "rulebook" should apply to all</li> </ul> <p><b>Actions suggested:</b> Consider "rulebook".</p> <p><b>CCWG response:</b> The CCWG appreciates this input and notes that the 2<sup>nd</sup> Draft Proposal contemplates and IRP with authority to consider alleged violations of any provision of ICANN's Bylaws.</p>
1 7 1	<a href="#">NIRA</a>	<ul style="list-style-type: none"> <li>- NIRA supports that the proposal be subjected to higher assent by the community.</li> <li>- NIRA agrees with the introduction of Fundamental Bylaws and requirements of the recommendation. It expects that Fundamental Bylaws would be scarcely used, and where they are use, the wishes and powers of the community would be allowed to prevail over that of the Board including recalling the Board.</li> </ul>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach, list and thresholds</li> </ul> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input.</p>
1 7 2	<a href="#">RIR</a>	<p>There is general support the introduction of Fundamental Bylaws. Regarding the list of Bylaws that should become Fundamental Bylaws, most of them indeed contain fundamental principles. However, the RIR community does not believe that the requirement for ICANN to remain in the United States of America is fundamental, but rather is an administrative issue.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach, list and thresholds</li> <li>- HQ/incorporation are administrative matters, not Fundamental Bylaws</li> </ul> <p><b>Actions suggested:</b> None.</p> <p><b>CCWG response:</b> The CCWG appreciates this input. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw.</p>
1 7 3	<a href="#">Siva</a>	<p>Fundamental Bylaws would minimise the likelihood of misdirections in ICANN governance. On the need for such changes as part of Work Stream 1, it is not necessary to rush these changes as a part of the pre-transition proposals. The proposals for fundamental bylaw changes require deeper deliberations, more thoroughly done as part of Work Stream 2, which ICANN could irrevocably commit to facilitate and sufficiently empower.</p>	<p><b>Agreement</b></p> <p><b>Summary / Impression:</b></p> <ul style="list-style-type: none"> <li>- Supports general approach</li> <li>- Requires deeper calibration and should be part of Work Stream 2</li> </ul> <p><b>Actions suggested:</b> Reconsider in WS2.</p>



			<b>CCWG response:</b> The CCWG appreciates this input.
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