

Intellectual Property Constituency - Comments on Working Text from Westlake Group (dated Jan. 2015)

The IPC understands that this 'Working Text' document is very preliminary, as it is still missing many sections and substantive recommendations. As such, the IPC only points out some of the clear factual inaccuracies related to the IPC. We will welcome further opportunity to comment substantively on a complete Draft Report once it is prepared.

We further note that just one IPC member appears to have been interviewed in preparation of the report. Perhaps that contributed to some of the factual inaccuracies. And perhaps the Draft Report would be better informed upon interviewing several more of our members. As a matter of fundamental transparency and fairness, it seems more parity should have been achieved in the interview selection process. We are happy to facilitate further interviews for Westlake if desired.

Here are the significant factual errors pertaining to IPC, preliminarily identified by IPC's review of the Working Text:

Page 79: "Unlike other stakeholder groups, the CSG does not have an executive committee...." This is factually incorrect. There is a CSG Executive Committee.

Page 80: The CSG "does little more than serve as a point of aggregation for voting and feedback to Council." This is one thing that the CSG does NOT do (except in exceptional cases). There is no "aggregation" of "voting and feedback" -- each constituency acts, votes and speaks independently, and does not aggregate votes or aggregate feedback as a general matter. From time to time, the constituencies will take the exceptional step and speak with a combined voice, but this is the exception, not the rule.

Page 81: "The Intellectual Property Constituency does not appear to be successful in attracting new members." This appears to be an uninformed overstatement. What are the metrics for defining 'success'? How is IPC compared to other constituencies?

Page 88: "The following SGs/Cs do not make membership information publicly available ... IPC." This is incorrect; see <http://www.ipconstituency.org/current-membership/>.

Page 89: "The IPC raises funds by getting members to sponsor specific things such as attendance at related conferences and governance groups." This is incorrect. The IPC raises funds solely through membership dues, which provide foundational and critical financial support to the IPC.

Page 90: "Some respondents suggested that lawyers acting for clients may even have an incentive to protract processes for their own gain." This sort of statement is not helpful. This all but states -- with no factual basis whatsoever -- that lawyers involved in ICANN (in IPC or otherwise) are unethical and bilking their clients.

Page 103: "A few concerns were raised that the NCPH is dominated by the IPC, which was considered to be well resourced, and not transparent about its members' interests or their sponsors (as discussed in more detail in Section 6)." This is untrue. The report should explain how IPC is said to "dominate" the NCPH; so such suggestion could be proved ridiculous. The myth that IPC is "well resourced" is another falsehood. We have many members who cannot afford to get to meetings or otherwise meaningfully participate because of the unpaid time commitment. We have others who participate but have to fight for the support within their organizations. As for the transparency issue, IPC membership is posted, and IPC members are bound to follow all other ICANN guidelines with respect to disclosure of interests.