

Recommendations of the Cross Community Working Group on Accountability:
ICANN's Mission, Commitments, and Core Values

Problem Statement

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 act only within the scope of its limited mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured and held accountable.

The relevant language in the current Bylaws was adopted in 2003. Based on community input and our discussions since January, the Cross Community Working Group on Accountability (CCWG-ACCT) concluded that these provisions should be strengthened and enhanced to provide greater assurances that ICANN will remain accountable to its stakeholders and the global Internet community. In particular, the CCWG-ACCT found that:

- ICANN's Mission statement needs clarification with respect to the scope of ICANN's policy authority;
- The language in the Bylaws describing how ICANN should apply its Core Values is weak and permits ICANN decision makers to exercise excessive discretion;
- The current Bylaws do not reflect key elements of the Affirmation of Commitments; and
- The Board should have only a limited ability to change these key accountability provisions of ICANN's Bylaws.

Summary of Recommended Changes

The Cross Community Working Group is seeking input on a number of recommended changes to the ICANN Bylaws to address the deficiencies described above. We have deliberately attempted to minimize language changes, and in the annotated language (attached), we have (i) included the existing language; (ii) provided a redline showing proposed changes; and (iii) identified the source or justification for the proposed changes. Below we provide a summary of the proposed changes.

1. ICANN Mission Statement. CCWG-ACCT recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

- Clarify that ICANN's mission is limited to coordinating and implementing policies that are designed to ensure the stable and secure operation of the DNS and are reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS. The specific language is consistent with the current statement of ICANN's mission, but spells it out in greater detail than the current Bylaws. The recommended language has been included in registry and registrar agreements from the start, and is

now reflected in Specification 1 to both agreements. For information, we have provided a summary of Specification 1 in the Notes, and a full copy of the Specification as well.

- Clarify that ICANN's mission does not include the regulation of services that use the DNS or the content these services carry or provide. Services or content regulation is the role of a sovereign, and is inconsistent with ICANN's limited technical mission.
 - Clarify that ICANN's powers are "enumerated" – meaning that anything not articulated in the Bylaws are outside the scope of ICANN's authority.
2. *Core Values.* CCWG-ACCT recommends the following changes to ICANN's "Core Values" (Bylaws, Article I, Section 2 and Article II, Section 3):
- Divide the Core Values into "Fundamental Commitments" and "Core Values."
 - Incorporate into the Bylaws ICANN's obligation to operate for the benefit of the Internet community as a whole, carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition. These commitments are now contained in ICANN's Articles of Incorporation.
 - Designate certain core values as "Fundamental Commitments." These values are so fundamental to ICANN's operation that they should rarely need to be balanced against each other. Those Fundamental Commitments include ICANN's obligations to:
 - Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
 - Limit its activities to those within ICANN's mission and require or significantly benefit from global coordination;
 - Employ open, transparent, bottom-up, multistakeholder processes; and
 - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
 - Slightly modify the remaining Core Values to:
 - Reflect various provisions in the Affirmation of Commitments, e.g., efficiency, operational excellence, and fiscal responsibility;
 - Clarify that any decision to defer to input from public authorities must be consistent with ICANN's Fundamental Commitments and Core Values. We believe that this is inherent in the current Bylaws, but felt that it was

appropriate to call it out clearly for purposes of accountability. This does not interfere with the ability of the GAC to provide input or advice on any topic; rather, it clarifies that ICANN must always act in compliance with its Bylaws obligations.

- Add an obligation to avoid capture.

3. *Balancing or Reconciliation Test*

- Modify the “balancing” language in the Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:
 - In any situation in which one Commitment must be reconciled with another Commitment or with a Core Value, the proposed language requires ICANN to ensure that its interpretation is (i) justified by an important, specific, and articulated public interest goal within its Mission; (ii) likely to promote that public interest goal; (iii) narrowly tailored to achieve that goal; and (iv) no broader than necessary to do so; and
 - In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an *important* public interest in a way that is substantially related to that interest.

4. *Durable or Enduring Bylaws Provisions.* The CCWG-ACCT recommends that the revised Mission Statement, Fundamental Commitments, and Core Values be adopted as “durable” or “enduring” elements of the ICANN Bylaws. Any modification to these Bylaws provisions would be subject to heightened standards including, for example, community ratification or subject to community veto.

Discussion

To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG, and the answers inform all of our recommendations. Our work on Independent Review attempts to answer the first question. The Bylaws changes recommended here are designed to answer the second. Most important, ICANN has a limited mission, and it must be accountable for actions that exceed the scope of its mission. In undertaking its mission, ICANN is also obligated to adhere to an agreed-upon standard of behavior, articulated through its Fundamental Commitments and Core Values. Taken together, the proposed Mission, Fundamental Commitments, and Core Values statement articulate the standard against which ICANN’s behavior can be measured and to which it can be held accountable. Because these Bylaws provisions are fundamental to ICANN’s accountability, we propose that they be adopted as “durable” or “enduring” Bylaws that can only be changed with the demonstrated support of the community subject to procedural and substantive safeguards.