

Proposed Revisions (<u>appear in Redline</u>)	Notes, Explanation, Questions
Mission, Commitments, and Core Values	No change
<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>WP2 discussed Comment 111/IAB ALT Language: "The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is <u>to support</u>, at the overall level, core Internet registries, and in particular to ensure the stable and secure operation of those registries." We concluded, on balance, that it is best to retain the legacy language.</p> <p>WP2 discussed Comment 111/IAB to substitute "core registries" for "systems of unique identifiers." WP2 did not feel that it possessed sufficient information to support the change.</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>Comment 111/IAB (also Comment 104/DP-DK)</p>
<p>Coordinates the operation and evolution of the DNS root name server system.</p>	<p>Comment 111/IAB and Comment 104/DP-DK</p>
<p>Coordinates policy development reasonably and appropriately related to these technical functions.</p>	<p>Comment 111/IAB and Comment 104/DP-DK</p>
<p>In this role, with respect to domain names, ICANN's Mission is <u>to coordinate</u> the development and implementation of policy <u>policies</u>:</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</u> that is designed to ensure the stable and secure operation of the Internet's unique names systems; <u>and for which uniform or coordinated resolution</u></p>	<p>NOTE for further discussion: There was some discussion of changing "coordinate" to "support" or "facilitate" in this context. Some argued that we should apply the IAB suggestion uniformly (either accept or reject "support" across the range. Others argued that the suggestion to replace "coordinate" with "support" or "facilitate" should be evaluated in each context.</p> <p>130/ALAC proposes adding "and to foster trust in the DNS."</p> <p>131/LAB simplify language</p>

<p>is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS.</p>	
<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>Comment 111/IAB DELETE. Need to consult with IAB/IETF given decision</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 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>Comment 104 (DP-DK/New America);</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; 115 IPC; 117/MPAA; 119/USCC; 134/DotMusic.</p> <p>The group felt that on balance this addition 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>

	<p>To the extent that that the standard provisions of ICANN’s registry and registrar agreements are freely negotiated (i.e., not contracts of adhesion), those too would not run afoul of the prohibition on the regulation of services that use the Internet’s unique identifiers, or the content that they carry or provide.</p>
<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>These changes are designed to address the many concerns raised about balancing: 96/IA; 106/BC; 119 USCC; 125/GG; 127/CENTR (“complimentary” not “competing” core values); 128/i2Coalition;</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>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>—</p> <p>Likely to promote that interest, taking into account competing public and private interests</p>	

<p>that are likely to be affected by the balancing; — Narrowly tailored using the least restrictive means reasonably available; and — No broader than reasonably necessary to address the specified Substantial and Compelling Reason in the Public Interest.</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. in a way that is substantially related to that interest.</u></p>	<p>123/NCSG suggests new language re mission 131/LAB suggests deleting language in [] 124/MM suggests clarification re mission</p>
<p>Commitments.</p>	<p>100/WC2 proposes to add accountability to democratic standards (including expression) 130/ALAC proposes adding "and to foster trust in the DNS"</p>
<p>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 Values the Fundamental Rights set forth below.</u> Specifically, ICANN's action must:</p>	<p>Change made to address comment 106/Govt-ES (local law); Comment 108/CCG suggests including indicative list of applicable treaties Comment 131/LAB would change to "international and domestic law" (note, not acceptable to Govt-ES)</p>
<p>Preserve and enhance the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;</p>	
<p>Maintain the capacity and ability to coordinate the <u>internet</u> DNS at the overall level and to work for the maintenance of a single, interoperable Internet;</p>	<p>131/LAB</p>
<p>Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are</p>	

<p>within ICANN’s Mission and require or significantly benefit from global coordination;</p>	
<p>Employ <u>an</u> open, transparent and bottom-up, private sector led multistakeholder policy development processes 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>Largely supportive comments; one suggests clarifying that “private sector” is expansive (i.e., not just business but civil society, users, etc.); others wish to clarify that this language is consistent with government participation.</p> <p>Govt-ES would remove</p> <p>101/DCA-T (clarify that experts should not have conflict of interest). On balance, WP2 thought that this concept is inherent in the value.</p>
<p>Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p>	
<p>Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN’s effectiveness.</p>	
<p>Core Values:</p>	
<p>In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>	
<p>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 policy development process <u>is used to ascertain the global public interest and that those processes</u> and are accountable, and transparent, and respect the bottom-up</p>	<p>113/Linx (delete “global public interest)</p> <p>123/NCSG (revised language)</p>

<p>multistakeholder process;</p>	
<p>To the extent feasible and appropriate, Delegating 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;</p>	<p>110/UK suggests deleting this language, or at least having a rigorous debate and community support for any deviation from this requirement.</p> <p>112/USCIB suggests deleting "and appropriate" WP2 agreed that these phrases were not helpful, particularly in light of the explicit balancing test created above ("In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal identified through the bottom-up, multistakeholder process that is within ICANN's Mission.")</p>
<p>Where feasible and appropriate, Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market that enhances consumer trust and choice.</p>	<p>110/UK suggests deleting "where feasible and appropriate," or at least having a rigorous debate and community support for any deviation from this requirement.</p> <p>124/MM suggests deletion of new language "that enhances consumer trust and choice"</p> <p>Note: WP2 concluded that the deleted phrase "enhances consumer trust and choice" is better captured by the language added below regarding expansion of the domain name space.</p>
<p>"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>Comments 109/BC; Comment 112/USCIB; 117/MPAA</p>

<p>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>Operate with efficiency and excellence, <u>in</u> a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.</p>	
<p>While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy <u>[within their jurisdiction]</u> and duly taking into account the public policy advice of governments and public authorities in accordance with the Bylaws and to the extent consistent with <u>the Mission, and</u> these Fundamental Commitments and Core Values.</p>	<p>Concern re “consistent with the Mission” language: 106/Govt-ES; 116 Govt-BR. NOTE: This document does not reflect compiled governmental input provided through the GAC, which was received just prior to the call in which this document was discussed. We note for further discussion the input from those GAC contributors expressing concern that this language somehow diminishes the authority/role of the GAC.</p> <p>98/JS1 (is this in tension with ICANN’s obligation to comply with applicable law where it operates</p> <p>124/MM: proposed substituting the GAC for the “governments and other public authorities.” WP2 declined to make this change, noting that ICANN does receive input from governments and public authorities other than the GAC (e.g., the European Commission’s Article 29 Working Party re: registrar data protection requirements).</p>
<p>[Not advance] [Refrain from advancing] the interests of one or more interest groups at the expense of others <u>Striving to achieve a reasonable balance between the interests of different stakeholders.</u></p>	