

This comment is made by Avri Doria, in her personal capacity, and discusses 5 points:

- Human rights clause in the by-laws
- Equal footing among the participants in the Single Member Community Model
- Support proposal to expand scope of ATRT to include a review of diversity at ICANN
- Inclusion of Approval of SCWG recommendation as a SM Community power.
- Redress of SMCM decisions

I. Human Rights

The current CCWG proposal contains a placeholder for a new bylaws on ICANN's commitment to Human Rights. Several possibilities has been suggested and a Working Party has established to find wording that can be accepted as consensus wording.

One concern is that there are those that argue that a bylaw is not needed because the Articles of incorporation already include a commitment to carry out activities in accordance with principles of international law.

From [Articles of Incorporation](#)

4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.¹

My concern is found in the words: 'relevant principles,' 'applicable international conventions and local laws,' and 'to the extent appropriate and consistent with these Articles and its bylaws.' These words allow for many interpretations of the scope of ICANN's commitment to the principles of international law and international conventions.

Human rights as written in the UDHR and its derivative conventions only binds states as having a duty to international law. It is up to the states to write laws that bind their citizens and corporations to such standards. While the NTIA is in oversight of ICANN, it provides a backstop for those human rights, at least in some respects. The degree of importance of this backstop is seen in the NTIA transition requirements, which include a requirement to protect the open Internet, including the freedom of expression and the free flow of information - both of which are

¹ <https://www.icann.org/resources/pages/governance/articles-en> Article 4

defined human rights. Since neither US law nor California law commits a corporation to such human rights, it could be argued after the transition that there are neither relevant principles nor applicable international conventions for ICANN as a private corporation. It is only by putting a commitment in the bylaws that ICANN would assert its responsibility for adherence to and respect for the international principles and covenants of human rights.

Proposed by-law wording

Within its mission and in its processes and operations, ICANN will respect and protect fundamental human rights as defined in international law and applicable international conventions and local law. ICANN will also establish processes to clarify and document the rights impact of proposed policies and new operations. ICANN appeals mechanisms may be used for human rights issues relevant to ICANN mission and core values, among which are freedom of expression, free flow of information and privacy on the Internet.

II. Equal Footing

While I would have preferred a fully equal footing model for votes in the Single Member Community Member based on the assumption that issues about budget, directors and bylaws are general community issues, I accept the compromise reached in the reference model defined in the second draft. It is important to acknowledge that these community powers are not just the province of those in ICANN who recommend policy but are equally relevant to those in ICANN who give advice. As currently defined, the Board can choose to reject recommendations as easily as it can refuse advice, there is no reason to accord one type of ICANN subgroup, that is AC or SO, a greater voice on issues of general relevance to ICANN and the broader Internet community. Given that SOs have a narrow scope of interest, while the ACs have a broader responsibility to the wider Internet community and the Internet itself, it is important that the ACs be fully empowered as part of broader ICANN community empowerment.

The reference SMCM allocations would not be a change in power balance of among the ICANN community. Precedence for wider diversity requirements can be found in the degree of diversity found in Accountability and Transparency Review Teams (ATRT). As groups responsible for reviewing the whole of ICANN, no specific advantage was given to Supporting Organizations over Advisory Committees. Nor should it be.

I think that the membership allocation as defined in the reference implementation can work. I think that any apportionment model that attempts to mimic Board proportions for (s)elected Board Members excludes part of our diverse community and their diverse perspectives. I believe that such a narrow definition of community when discussing community powers would be harmful to the bottom up inclusive model that ICANN tries to achieve. I believe that when we start to judge that one stakeholder type, SO or AC, as less important and relevant to the stakeholder diversity and balance at ICANN, we attack a central tenet of our multistakeholder

model and thus weaken the model. Creation of the SMCM must not be implemented in a way that weakens the fundamental multistakeholder nature of ICANN.

III. Expand ATRT scope to include review of ICANN diversity

The proposal includes:

Expand ATRT reviews into Accountability, Transparency and Diversity Reviews. The review team would be tasked to assess and make recommendations regarding diversity across all ICANN bodies.²

Diversity is a critical component of Accountability and should be in scope for an Accountability review. Increasing diversity is necessary for making skilled decisions from the global perspective of the broader community ICANN seeks to serve. Arguments being given that this may be too much work for the ATRT, do not bear on the responsibilities of the ATRT, but rather on its efficiency. Additionally, the ease with which the task can be completed depends greatly on the work done by ICANN and all of its organizations to ensure diversity.

IV. Separation Cross Community Working Group (SCWG)

There is one CWG - Transition consideration that has been mostly overlooked until recently.³

The CSG Separation Cross Community Working Group (SCWG) is defined in some detail in ANNEX L (page 108 of the ICG proposal). Its requirements include:

- The inclusion of a SCWG fundamental bylaw, which is already included in the CCWG proposal on page 35 under heading 4.4 “Which of the Current Bylaws Would Become Fundamental Bylaws?”:

240 Accordingly, the following would be made Fundamental Bylaws in the first instance:

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6. The IANA Function Review and the Separation Process required by the CWG-Stewardship’s proposal;

- The Community power to approve a decision made by the SCWG to contract a new IANA functions operator. On Page 110 of the ICG proposal.

² page 65 of Draft-2

³ The issue was brought up in a CCWG meeting of 25 August and there has been some discussion since.. This comment is intended as a placeholder so the issue won’t be overlooked again.

The selection of a new operator to perform the IANA Naming Functions or other separation process will be subject to approval by the ICANN Board, and a community mechanism derived from the CCWG-Accountability process.[83]

[83] This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

This is also brought out directly in (Also on Page 110):

- Approval by a community mechanism derived from the CCWG-Accountability process to approve the final selection of the SCWG (if this tenet of the CCWG-Accountability proposal is not implemented a new approval mechanism will have to be put in place.
 - Per the above separation process the selection of the entity that would perform the IANA naming functions following a separation process will require community approval through the established mechanism derived from the CCWG-Accountability process.

Since we have developed the SMCM proposal, we have an obvious solution. We have not yet included this among the community powers of the SMCM and probably need to do so.

V. Redress of SMCM decisions

One of the comments that has been made in discussions is that there is no redress mechanism that is applicable to the SMCM. The question boils down to: what if the SMCM makes a decision that is incompatible with ICANN's mission or core values?

I recommend that the role of the IRP, in paragraph 268, be expanded to include "hearing and resolving claims that concern SMCM decisions."

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These comments have also been endorsed by:

- Joy Liddicoat
- Timothy McGinnis