

# Mission Statement

Issues Raised in Comments on:  
Draft Proposal on WS 1 Recommendations

# Overall Summary

- **Most** commenters supported proposed Mission Statement, including regulatory prohibition – but, several commenters expressed serious/strongly-held concerns
- Some commenters continue to urge inclusion of “competition, consumer trust and choice”
- GAC/ALAC – seeks legal opinion on (i) constraints on Board’s ability to act on GAC advice and (ii) continuing ability to impose and enforce PICs and other “negotiated” registry provisions
- ICANN Board – continued objection to regulatory prohibition as inconsistent with global public interest

# GAC Advice, PICs, Contract Provisions

- GAC: Changes to Mission [statement] “should not constrain the Board from accepting and implementing GAC advice.”
  - Denmark “concern that the Board may be prevented to follow GAC advice, should it be deemed outside ICANN’s mission.”
  - UK “the facility to require public interest commitments (PICs) .... Has become a widely-welcomed tool for enforcement of public interest concerns ... . and ... should be retained for future rounds ...”
- ALAC: Wants assurances that PICs and other “negotiated” provisions of the Registry Agreement and Registrar Accreditation Agreement remain valid (including for as-yet unsigned Registry Agreements) and may be renewed without change.”

# Regulatory Prohibition

- Current text prohibits imposition of “regulations on services that use the Internet’s unique identifiers, or the content that such services carry or provide.”
  - Subject to drafting notes re: consideration of use of names as natural language identifiers, exclusion of rules on issues within the “picket fence” from definition of regulation; and grandfathering.”
- Most commenters supported current formulation
- Board objected to inclusion of this language in Mission Statement on public interest grounds - suggests that permissible scope of RA/RAA could be addressed in another portion of the Bylaws

# Board Comments on Regulatory Prohibition

- Board feels that Mission Statement does not address ICANN’s “operational role”
  - Possible fix: proposed inclusion of “allocation and assignment of names” consistent with bottom-up policies (ICANN’s Mission/scope is to coordinate the development and implementation of domain name policies, [including the allocation and assignment of names in the root zone as a result of those policies.](#))
  - Does this raise CWG separation issues?
- While Board asserts ICANN “is not a regulator,” it feels that the regulatory prohibition is unclear and “not appropriate” for Mission Statement.
  - Proposes charging drafting team with finding another place in the Bylaws for this language

# Specific Board Recommendations: NAMES

## CCWG Proposal

In this role, ICANN's Mission is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS;
- That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

## Board Proposal

In this role, ICANN's ~~Mission scope is to~~ includes the coordination of the development and implementation of domain name policies (including the allocation and assignment of names in the root zone as a result of those policies.)

- ~~• For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability [of the DNS];~~
- ~~• That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.~~

# Specific Board Recommendations: NAMES (cont. 1)

ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.

~~ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.~~

ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties in service of its Mission.

Drafting Notes 1-4

The Board does not have a public interest objection to this language as part of ICANN's Mission Statement.

**The Board objects to inclusion of this in the Mission Statement on public interest grounds.**

The Board does not have a public interest objection to this language as part of ICANN's Mission Statement.

The Board does not have a public interest objection to these concepts.

# Misc. Concerns re Drafting Notes

## Proposed Text

The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called “*Picket Fence*”) are intended and understood to be within the scope of ICANN’s Mission.

## Comments

- Board does not believe this is appropriate to include in Mission Statement, but accepts scoping language elsewhere in Bylaws
- ALAC asserts that this implies that ICANN’s Mission is limited to the areas within the picket fence.

*Note: ICANN’s Mission with respect to names encompasses development and implementation of bottom-up, consensus-based, multistakeholder policies on issues for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS. ICANN’s Mission, as proposed, includes **contracting** in service of its Mission.*

# Misc. Concerns re Drafting Notes (Cont.)

For the avoidance of uncertainty, the language of existing registry agreements and registrar accreditation agreements should be grandfathered.

This means that the parties who entered into existing contracts intended (and intend) to be bound by those agreements. It means that neither a contracting party nor anyone else should be able to bring a case that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party's right to challenge the other party's interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN's Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN's Mission.

- Several commenters, while agreeing with this language, note that it should not immunize all interpretations or enforcement of the existing agreements, consistent with list exchanges.
- ALAC wants assurances that negotiated language and PICs may be included in unsigned new gTLD agreements and may be renewed without change.

# GAC Advice, PICs, Contract Provisions: Questions

- In what way does/should ICANN's Mission Statement constrain the Board's ability to comply with GAC Advice?
  - Proposition: The GAC may provide Advice on any matter it sees fit; ICANN must duly consider such Advice in accordance with the Bylaws, and if it decides to follow such Advice, must do so in a manner consistent with ICANN's Bylaws, including its Mission Statement.
- How does/should the Mission Statement limit the permissible scope of ICANN's agreements with contracted parties?
  - Proposition: ICANN's agreements with contracted parties may reflect:
    - (a) bottom-up, consensus-based, multistakeholder policies on issues for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
    - (b) other provisions in service of that Mission.

# GAC Advice, PICs, Contract Provisions: Questions

- Who should be able to challenge whether or not a contract provision is in “service of” that Mission, and under what circumstances?
- To what extent should contracted parties be free to propose or voluntarily accept (and obligated to comply with) contract provisions that exceed the scope of ICANN’s Mission, e.g., to serve a specific community, pro-actively address a public policy concern?
  - If “voluntary” commitments may exceed the scope of ICANN’s Mission, how do you ensure that such commitments are truly voluntary?
  - Proposition: Individually negotiated commitments will be deemed to be voluntary. Existing RA and RAA language (including standard PICs) are “grandfathered” (as defined in Notes). Going forward, a mechanism should be available to permit contracted parties to enter into agreements without waiving the right to challenge (collectively) a contract provision on the grounds that (a) it exceeds ICANN’s Mission and (b) was extracted by ICANN on an other than voluntary basis.

# Contracting and Regulatory Prohibition: Questions

- The ICANN Board asserts that the prohibition on regulation of services that use the Internet's unique identifiers, or the content that such services carry or provide is “not appropriate for inclusion of the Mission Statement.” The Board further suggests that the CCWG should direct the Bylaws drafting team to incorporate limitations on the reach of Registry and Registrar contracts in another part of the Bylaws.
  - Where? GNSO Section? General Provisions (Article XV)?
  - Include challenge mechanism to test voluntariness?
  - Impact of this change?

# Specific Board Recommendation: ROOT Server System

## CCWG Proposal

- In this role, ICANN's Mission is [to be provided by RSSAC by 10 January 2016]

## Board Proposal

- In this role, ICANN **retains an operational role as well as considers inputs from the communities dependent on the root server system**

# Specific Board Recommendations: NUMBERS

## CCWG Proposal

Coordinates the allocation and assignment at the top-most level of Internet Protocol (“IP”) and Autonomous System (“AS”) numbers. ICANN’s Mission is described in the ASO MoU between ICANN and the RIRs.

## Board Proposal

Coordinates the allocation and assignment at the top-most level of Internet Protocol (“IP”) and Autonomous System (“AS”) numbers **and ratifies, at the global level, policies developed that are reasonably and appropriately related to these IP and AS numbers.** ~~ICANN’s Mission is described in the ASO MoU between ICANN and the RIRs.~~

# Specific Board Recommendations: Ports & Parameters

## CCWG Proposal

Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's Mission is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

## Board Proposal

No change

## “Consumer Trust”

- ALAC, USCIB, others urge inclusion of Commitment/Core Value of “promoting competition, consumer trust, and consumer choice in the DNS marketplace.”
- Language appears in AoC preamble as a description of what the AoC does, and as a review commitment with respect to TLD expansion
- CCWG-ACCT Recommendation includes this language in Review provisions of Bylaws (See Appendix 9, ¶33)

## “Consumer Trust” Questions

- Should an AoC provision specific to TLD expansion be leveraged to impose generalized, independent, and affirmative competition and consumer trust protection obligations on ICANN?
- Does ICANN’s fundamental Mission to ensure “stable and secure operation” of the DNS, and its various Commitments (i.e., to use processes that enable competition, and to preserve stability, reliability, security, global interoperability, resilience, and openness) adequately address this concern?

# Annex 1

- Annotated Mission Statement Reflecting Board & Other Comments on 3<sup>rd</sup> Draft Proposal (3 column side-by-side)

# Annex 2

- Annotated Comparison of Current Bylaws (Commitments & Core Values) Reflecting Comments on 3<sup>rd</sup> Draft Proposal

# Annex 3

- Comparison of RAA Spec 4 and RA Spec 1 (“Picket Fence”)