

# Annex 05 – Recommendation #5: Changing Aspects of ICANN’s Mission, Commitments and Core Values

---

## 1. Summary

- 1 The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.
  - Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

### 2 **Mission Statement**

- 3 The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement”, (Bylaws, Article I, Section 1):
  - Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
  - Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
  - Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
    - Note: This does not mean ICANN’s powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community.

### 4 **Core Values**

- 5 The CCWG-Accountability recommends the following changes to ICANN’s “Core Values” (Bylaws, Article I, Section 2 and Article II, Section 3):
  - Divide ICANN’s existing Core Values provisions into “Commitments” and “Core Values”.
    - Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws.
    - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.
  - Designate certain Core Values as “Commitments.” ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.

Commitments will 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 that require, or significantly benefit from, global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.
  - 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, such as efficiency, operational excellence, and fiscal responsibility.
    - Add an obligation to avoid capture.
    - Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 (“Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment”) to drop the phrase “where feasible and appropriate,” the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).

## 6 **Balancing or Reconciliation Test**

- 7 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values 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 Core Values simultaneously is not possible. 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 within ICANN's Mission that is identified through the bottom-up, multistakeholder process.*

## 8 **Fundamental Bylaws Provisions**

- 9 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws (See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).

## 2. CCWG-Accountability Recommendations

10 Modify ICANN's Fundamental Bylaws to implement the following:

### 11 **Mission**

12 The Mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's scope 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; and
  - 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.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. 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 scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

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

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

15 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.

16 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
2. 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. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry

Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN's Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging 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.

4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

## 17 **Section 2. Commitments & Core Values**

- 18 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.

### 19 **Commitments**

- 20 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:

1. Preserve and enhance its neutral and judgment free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek 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;
5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;
6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

### 21 **Core Values**

- 22 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:
1. 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.
  2. 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 the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
  3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
  4. 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.
    - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
  5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
  6. Striving to achieve a reasonable balance between the interests of different stakeholders.
- 23 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.
- 24 The specific way in which Core Values 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 Core Values simultaneously is not possible.
- 25 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 within ICANN's Mission that is identified through the bottom-up, multistakeholder process.
- 26 Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.

## 3. Detailed Explanation of Recommendations

### 27 **Background**

- 28 To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG-Accountability, and the answers inform all of our recommendations. The Bylaws changes recommended here are designed to answer these questions. 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 policy supported by community consensus and an agreed-upon standard of behavior, articulated through its Commitments and Core Values. Taken together, the proposed Mission, Commitments, and Core Values 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 Fundamental Bylaws that can only be changed with the approval of the Empowered Community subject to procedural and substantive safeguards.

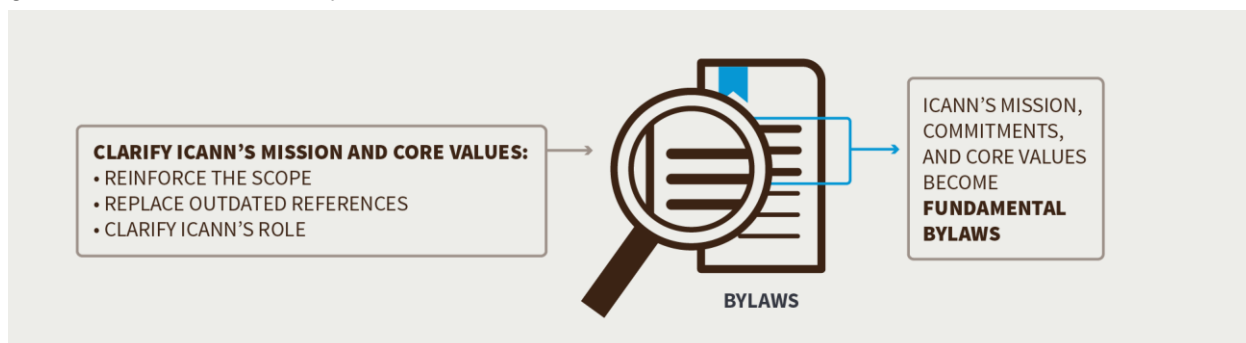
## 29 **Mission and Core Values**

30 ICANN's current Bylaws contain:

- a Mission statement
- a statement of Core Values; and
- a provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment.

31 These three sections are at the heart of ICANN's accountability because 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 through existing and enhanced mechanisms such as the Request for Reconsideration process and the Independent Review Process.<sup>1</sup>

32 Based on community input and CCWG-Accountability discussions, it was concluded that these ICANN Bylaws provisions, which were originally adopted in 2003, should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community.



33 In particular, the CCWG-Accountability found that:

- ICANN's Mission statement needed clarification with respect to the scope of ICANN's policy authority.
- The language in the Bylaws describing how ICANN should apply its Core Values was weak and could permit ICANN decision-makers to exercise excessive discretion.

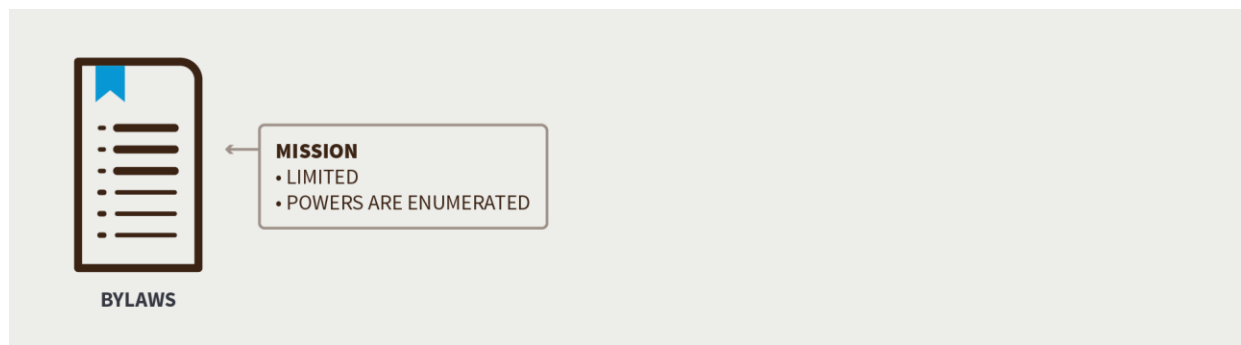
---

<sup>1</sup> The current relevant language on this in the ICANN Bylaws was adopted in 2003.

- The current Bylaws did not reflect key elements of the Affirmation of Commitments.
- The Board should have only a limited ability to change these key accountability provisions of ICANN's Bylaws.

34 The CCWG-Accountability recommendations to change aspects of ICANN's Mission, Commitments and Core Values are to address the deficiencies described above. The CCWG-Accountability discussed how to balance the needs of limiting ICANN's Mission and the necessary ability of the organization to adjust to a changing environment.

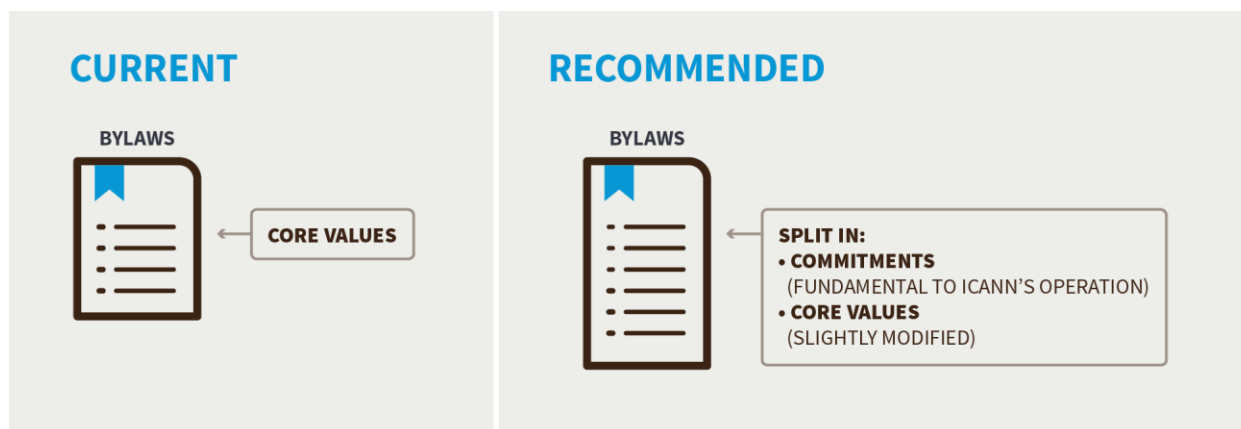
## 35 **Mission Statement**



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

- Clarify that ICANN's Mission with respect to naming is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability;
- Clarify ICANN's Mission with respect to numbering, protocol ports and parameters, and the DNS root name server system;
- Clarify that ICANN's Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide; and
- Clarify that ICANN's powers are "enumerated". Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN's authority.
  - Note: This does not mean ICANN's powers can never evolve, however it ensures that any changes will be deliberate and supported by the community.

## 37 **Core Values**



38 The CCWG-Accountability recommends the following changes to ICANN’s Core Values (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN’s existing Core Values provisions into Commitments and Core Values.
  - Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws.
  - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.
- Designate certain Core Values as Commitments. ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.

Commitments will 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 that 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, such as efficiency, operational excellence, and fiscal responsibility.
  - Add an obligation to avoid capture.

### 39 **Balancing or Reconciliation Test**

40 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:



*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values 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 Core Values simultaneously is not possible. 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 within ICANN's Mission that is identified through the bottom-up, multistakeholder process.*

#### 41 **Fundamental Bylaws Provisions**

42 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. (See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).

#### 43 **Proposed Mission, Commitments and Core Values** **Mission**

44 The Mission of the Internet Corporation for Assigned Names and Numbers (ICANN) is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (DNS). In this role, ICANN's scope is to coordinate the development and implementation of policies:
  - a. For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - b. 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.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol (IP) and Autonomous System (AS) numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. 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 scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

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

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

47 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (PICs), with contracted parties in service of its Mission.

- 48 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:
1. The prohibition on the regulation of “content” is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
  2. 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. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
  3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging 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.
  4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

49 **Section 2. Commitments & Core Values**

50 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.

51 **Commitments**

1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:
2. Preserve and enhance its neutral and judgment free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination;

5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek 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;
6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;
7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

52 **Core Values**

53 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. 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.
2. 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 the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. 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.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
6. Striving to achieve a reasonable balance between the interests of different stakeholders.

54 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

55 The specific way in which Core Values 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 Core Values simultaneously is not possible.

- 56 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 within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

## 4. Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"

### 57 Comparison of Mission Statement in Current Bylaws, 3<sup>rd</sup> Draft Proposal and Final Proposal

58 <b>Current Bylaws</b>	59 <b>3<sup>rd</sup> Draft Proposal</b> (Text in <b>RED</b> shows changes from Current Bylaws)	60 <b>Final Proposal</b> (Text in <b>RED</b> shows changes from 3 <sup>rd</sup> Draft Proposal)
61 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:	62 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to <del>coordinate, at the overall level, the global Internet's systems of unique identifiers and in particular to</del> ensure the stable and secure operation of the Internet's unique identifier systems <del>as described below. In particular, Specifically,</del> ICANN:	63 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:
64 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:	65 <del>1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:</del> <i>NOTE: This language has been modified and distributed over the specific functions. See below.</i>	
66 a. [Coordinates the allocation and assignment of] Domain names (forming a system referred to as "DNS");	67 1. Coordinates the allocation and assignment of <del>names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission is to coordinate the</del>	70 1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission scope is to coordinate the

	<p>development and implementation of policies:</p> <p>68 For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability; and</p> <p>69 That are developed through a bottom-up, consensus-based multi-stakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.</p>	<p>development and implementation of policies:</p> <p>71 For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and</p> <p>72 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.</p>
73 2. Coordinates the operation and evolution of the DNS root name server system.	74 2. Coordinates the operation and evolution of the DNS root name server system. In this role, ICANN's Mission is to [to be provided by root server operators].	75 2. Facilitates coordination of the operation and evolution of the DNS root name server system. In this role, ICANN's Mission is to [to be provided by RSSAC].
76 b. [Coordinates the allocation and assignment of] Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and	77 3. 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 RIRs.	78 3. 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 RIRs. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.

<p>79 c. [Coordinates the allocation and assignment of] Protocol port and parameter numbers.</p>	<p>80 4. 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, such as the Internet Engineering Task Force.</p>	<p>81 4. 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 scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.</p>
<p>82 3. Coordinates policy development reasonably and appropriately related to these technical functions.</p>	<p>83 <del>3. Coordinates policy development reasonably and appropriately related to these technical functions.</del> <i>Note: The chapeau has been deleted and the remainder of the language has been distributed as shown above.</i></p>	
	<p>84 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>85 ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content that such services carry or provide.</p> <p>86 ICANN shall have the ability to negotiate, enter</p>	<p>87 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>88 ICANN shall not impose regulations on services <del>(i.e., any software process that accepts connections from the Internet)</del> that use the Internet's unique identifiers, or the content that such services carry or provide.</p> <p>89 ICANN shall have the ability to negotiate, enter</p>

	into and enforce agreements with contracted parties in service of its Mission.	into and enforce agreements, including Public Interest Commitments (“PICs”), with contracted parties in service of its Mission.
--	--	---

90 **COMMITMENTS & CORE VALUES: ANNOTATED COMPARISON OF CURRENT BYLAWS, 3RD DRAFT PROPOSAL, AND FINAL PROPOSAL**

91 <b>Current Bylaws</b>	92 <b>3<sup>rd</sup> Draft Proposal</b> 93 (Text in <b>RED</b> indicates changes from Current Bylaws)	94 <b>Final Proposal</b> 95 (Text in <b>RED</b> indicates changes from 3rd Draft Proposal)
96 <b>Section 2. CORE VALUES</b>  97 In performing its mission, the following core values should guide the decisions and actions of ICANN:	98 <b>Section 2. COMMITMENTS &amp; CORE VALUES</b>  99 In carrying out its Mission, <del>the following core values should guide the decisions and actions of</del> ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.	100 <b>Section 2. COMMITMENTS &amp; CORE VALUES</b>  101 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.
	102 <b>COMMITMENTS</b> 103 1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:	104 <b>COMMITMENTS</b> 105 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:
106 1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.	107 2. Preserve and enhance <del>the neutral and judgment free operation of the DNS</del> , and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;	108 1. Preserve and enhance its neutral and judgment free <del>operation administration</del> of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
	109 3. Maintain the capacity and ability to coordinate the DNS	110 2. Maintain the capacity and ability to coordinate the DNS



	at the overall level and to work for the maintenance of a single, interoperable Internet;	at the overall level and to work for the maintenance of a single, interoperable Internet;
111 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.	112 4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;	113 3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
114 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.	115 5. Employ open, transparent and <b>bottom-up, multistakeholder</b> policy development processes, <b>led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek 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;</b>	116 4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek 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;
117 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness. 118 (From ARTICLE II, Section 3. NON-DISCRIMINATORY TREATMENT) 119 ICANN shall not apply its standards, policies, procedures, or practices	120 6. Make decisions by applying documented policies consistently, neutrally, <b>objectively, and fairly with integrity and fairness, without singling out any particular party for discriminatory treatment;</b>	121 5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;

	inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.		
122	10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.	123	7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.
		125	CORE VALUES
		127	1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:
129	3. 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.	130	2. 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 <b>and the roles of both ICANN's internal bodies and external expert bodies;</b>
132	4. 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.	133	3. 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 <b>to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</b>
		124	6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.
		126	CORE VALUES
		128	In performing its Mission, the following core values should also guide the decisions and actions of ICANN:
		131	1. 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.
		134	2. 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 the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.

135 5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.	136 4. Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;	137 3. <b>Where feasible and appropriate</b> , depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
138 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	139 5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest <b>as identified through the bottom-up, multistakeholder policy development process;</b>	140 4. 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.
141 9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.	142 6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and <b>acting-with</b> at a speed that is responsive to the needs of the <b>global Internet community while, as part of the decision-making process, obtaining informed input from those entities most affected.</b>	143 5. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
144 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.	145 7. While remaining rooted in the private sector, <b>including business stakeholders, civil society, the technical community, academia, and end users</b> , recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.	146 6. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
	147 8. Striving to achieve a reasonable balance between the interests of different stakeholders.	148 7. Striving to achieve a reasonable balance between the interests of different stakeholders.

<p>149 These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</p>	<p><del>These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</del></p>	<p>155 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p>
<p>150 Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.</p>	<p>152 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p> <p>153 <del>Because they are not narrowly prescriptive</del> The specific way in which Core Values apply, individually and collectively, to each new situation <del>will necessarily may</del> depend on many factors that cannot be fully anticipated or enumerated. <del>and because they are statements of principle rather than practice,</del> Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p>	<p>156 The specific way in which Core Values 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 Core Values simultaneously is not possible.</p>
<p>151 Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and</p>	<p>154 <del>Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.</del> In any situation where one Core Value must be reconciled with another, potentially competing</p>	<p>157 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 within ICANN's Mission that is identified through the bottom-up, multistakeholder process.</p>

<p>defensible balance among competing values.</p>	<p>Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.</p>	
---	--	--

## 5. Stress Tests Related to this Recommendation

- ST17: respond to formal advice from ACs (i.e., SSAC)
- ST23 (enforcement / contracts)

## 6. How does this meet the CWG-Stewardship Requirements?

158 N/A

## 7. How does this address NTIA Criteria?

159 **Support and enhance the multistakeholder model.**

- Ensuring the multistakeholder model accountability mechanisms cannot be modified without the Empowered Community's approval.

160 **Maintain the security, stability, and resiliency of the Internet DNS.**

- Establishing "Fundamental Bylaws" that provide additional protections to ICANN Bylaws that are critical to the organization's stability and operational continuity.

161 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A

162 **Maintain the openness of the Internet.**

- N/A

163 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A

## 8. Additional Material

**Comparison of Registrar Accreditation Agreement (2013) Specification 4 vs. Registry Agreement (New gTLDs) Specification 1** (the text in **RED** shows changes between the two agreements)

<b>Registrar Accreditation Agreement (2013) Specification 4</b>	<b>Registry Agreement (New gTLDs) Specification 1</b>
<p>Consensus Policies.</p> <p>1.1. "Consensus Policies" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including registrars. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security</p>	<p>Consensus Policies.</p> <p>1.1. "<i>Consensus Policies</i>" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security</p>

<p>and/or stability of the Internet, Registrar Services, Registry Services, or the Domain Name System ("DNS");</p> <p>1.2.2. functional and performance specifications for the provision of Registrar [and Registry] Services;</p> <p>2.3. registrar policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;</p> <p>1.2.4. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or</p> <p>1.2.5. restrictions on cross-ownership of registry operators and registrars or Resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or Reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:</p> <p>1.3.1. principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p>	<p>and/or stability of the Internet or Domain Name System ("DNS");</p> <p>1.2.2 functional and performance specifications for the provision of Registry Services;</p> <p>1.2.3 Security and Stability of the registry database for the TLD;</p> <p>1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;</p> <p>1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or</p> <p>1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:</p> <p>1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p>
--	---

<p>1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3. reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);</p> <p>1.3.4. maintenance of and access to accurate and up-to-date information concerning <b>Registered Names and name servers</b>;</p> <p>1.3.5. procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility <b>among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation</b>; and</p> <p><b>1.3.6. the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.</b></p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1. prescribe or limit the price of Registrar Services;</p> <p>1.4.2. modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p>	<p>1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and</p> <p>1.3.4 maintenance of and access to accurate and up-to-date information concerning <b>domain name registrations</b>; and</p> <p>1.3.5 procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for <b>servicing registered domain names in a TLD affected by such a suspension or termination.</b></p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1 prescribe or limit the price of Registry Services;</p> <p><b>1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;</b></p>
---	--



<p>1.4.3. modify the provisions in the Registrar Accreditation Agreement regarding terms or conditions for the renewal, termination or amendment of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN; or</p> <p>1.4.4. modify ICANN's obligations to not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and to not single out Registrar for disparate treatment unless justified by substantial and reasonable cause, and exercise its responsibilities in an open and transparent manner.</p>	<p>1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p> <p>1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or</p> <p>1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.</p>
---	--