Questions and Clarifications for Bylaws Coordination Group
April 2, 2016

MISSION:

1. The latest draft text for Article 1, Section 1.1.a.i describes ICANN's naming mission as follows: "Coordinates the allocation and assignment of names in the Domain Name System …" This text differs from the conceptual language proposed in Annex 05 – Recommendation #5, which read as follows: "Coordinates the allocation and assignment of names **in the root zone** of the Domain Name System …." The words "the root zone of" do not appear in the current ICANN Bylaws, which states that ICANN "Coordinates the allocation and assignment of […] Domain names" (without any qualifier or limitation to "the root zone"). It is not true that ICANN coordinates assignment ONLY in the root zone, as such term is currently understood. ICANN's gTLD registry and registrar agreements and policies deal substantially and primarily with issues relating to assignment of names at the second (and in some cases lower) levels of the DNS. If in the root zone is currently intended to include the second level that should be clarified in the use of the term. For example, the UDRP, the Inter-Registrar Transfer Policy, and the Expired Registration Recovery Policy are all ICANN policies relating to second-level gTLD registrations <https://www.icann.org/resources/pages/registrars/consensus-policies-en>. Do we need to define the term "root zone" to include the second level or remove the words?

CCWG Response:
AGREED to remove the words.

2. The latest draft text for Article 1, Section 1.1.d.ii provides that existing gTLD registry agreements and registrar accreditation agreements (and unsigned/future agreements on the same current forms) may not be challenged on the basis that they exceed the scope of ICANN's mission. This concept is based on the "Note to drafters" at paragraph 48 (#3) of Annex 05. The conceptual language in the Annex however proposed to restrict this protection for current agreements to last only "…until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement." This concept of allowing for challenges to agreements once they have been renewed does not appear in the current proposed draft Bylaws, based on the rationale that ICANN's current and legacy registry and registrar agreements all include clauses mandating renewal by ICANN under specified circumstances. ICANN is requesting the Bylaws Coordination Group to confirm that existing gTLD registry and registrar agreements should not be subject to challenge as outside of mission just because they have expired and have been renewed pursuant to the renewal provisions of those agreements. ICANN is also requesting the Bylaws Coordination Group to confirm that "new" form gTLD registry and registrar agreements should receive the same grandfathering treatment but only for the terms and conditions of the "new" agreements that are contained in the existing form agreements.

CCWG Response:

- Existing gTLD registry and registrar agreements should not be subject to challenge as outside of mission just because they have expired and have been renewed pursuant to the renewal provisions of those agreements.
- "New" form gTLD registry and registrar agreements should receive the same grandfathering treatment but only for the terms and conditions of the "new" agreements that are contained in the existing form agreements.

This approach appears to be the closest to the CCWG recommendation while avoiding the legal risk unveiled during the drafting phase.

RECONSIDERATION:

3. On Reconsideration requests, the CCWG proposal provides that "[r]ecordings and transcripts should be posted of the substantive Board discussions at the option of the requestor" (Annex 8, Paragraphs 23, also Paragraphs 3 and 5). Concerns have been raised that requiring both a recording and a transcript of Board discussion may add substantial administrative burden and expense without commensurate benefits; further concerns have been raised about waiving attorney-client privilege, or breaching laws or contractual obligations. If the Bylaws Coordination Group wishes to address these concerns, the following provision may be considered:

"If the party seeking reconsideration so requests, the Board shall post either a recording or a transcript of the substantive Board discussion from the meeting at which the Board considers the Board Governance Committee's recommendation. The Board shall decide as between a recording and a transcript. The Board may only redact from the posted record that portion of the record that: (a) reflects privileged advice from legal counsel; (b) includes ICANN trade secrets; or (c) for which if disclosed would breach a binding contractual obligation or legal requirement to which ICANN is subject; or (d) if disclosed would present a material risk of negative impact to the security, stability or resiliency of the DNS."

CCWG Response:

The CCWG would prefer to keep up its recommendation to post both, and look for any "agreed language" existing in the Bylaws to enable their redaction when strictly required (we note that the proposed redaction items are also introduced in section 18.4 - IFR Required inputs) . The CCWG discussion has highlighted that the recording - which can be produced and published with little effort - is the most accurate representation of the discussion, while transcripts are of questionable quality at times.

The fact that redaction may be subject to challenge could be added as a reminder.

REVIEWS:

4. There has been further effort in identifying items that can be explained in Operating Standards, while maintaining high-level principles, to try to optimize the Bylaws while preserving key items in the Bylaws. Are these changes acceptable?

CCWG Response:

It is acceptable to state that Operating Standards will be "developed with the global Internet community for the conduct of reviews under this Section 4.6." And draft bylaws Section 4.6 a (i) requires that "The Operating Standards must be aligned with the following guidelines:" and then lists guidance that was approved by the CCWG for composition of Review Teams.

Operating Standards are also cited in Section 4.6 a (iii) regarding decision-making practices of review teams. However, there is no requirement to align with this guideline in the CCWG final report:

> In the event a consensus cannot be found among the members, a majority vote of the members may be taken. In this case, both a majority recommendation and a minority response should be provided in the final report of the Review Team. (para 58, Annex 9)

Operating Standards are also cited in Section 4.6 a (iv) relating to review teams considering independent expert advice. This is acceptable, noting that the CCWG proposal stated, "the review team may choose to accept or reject all or part of this advice". (para 60, Annex 9)

5. On the SSR Review, we note that the CCWG-Accountability removed reference to some of the introductory language for the review. With some of that introductory text removed, the explicit reference to a security "plan" doesn't make sense, so ICANN proposes a to security "efforts" so that we didn't need to make major modifications to address inserting new definitions of terms. In addition, ICANN proposes a more specific language to add clarity to the contingency planning review scope. Are these changes acceptable?

CCWG Response:

In Annex 9 of the Final CCWG report we included all of AoC Review except for the first sentence, which describes a SSR plan:

> ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS.

We did not include that line since it refers to an existing plan, as opposed to a commitment to update/generate an SSR plan regularly.

Perhaps it would be best to add the AoC text referring to a plan for SSR. Let's consult with ICANN management about how to describe this plan in the bylaws. Add the plan description to the Bylaws so that subsequent references to "plan" make sense

Ask ICANN management how they describe their SSR plan and how often it is updated. Add the plan description to the Bylaws so that subsequent references to "plan" make sense

BOARD:

6. There remains the ability for the Board to remove directors without cause, but only after a ¾ vote of the Board and consent of the EC. However, the proposal is silent on how the Board could obtain the consent of the EC. One possibility, to be agreed upon and then drafted appropriately, is: (1) Board approves the director's removal; (2) the EC has the opportunity to oppose the removal, using the escalation process and thresholds for the standard bylaws rejection process in Annex D; (3) if the EC does not oppose, the EC must send a certification of such lack of opposition (i.e., consent to the director removal), to the Secretary.

CCWG Response:
The inclusion of the EC consent is required as a legal constraint due to the nature of the Designator model. To keep as close as possible to the conclusions of the CCWG Accountability Report, which did not amend the ability for the ICANN Board to remove one of its members, we recommend that the EC consent should be drafted in the Bylaws only as a matter of formality to endorse the Board decision, without any escalation or consultation process.

7. The CCWG proposal was silent on how the Interim Board is to consult with the community to make major decisions. We have included a suggestion that the Interim Board shall "(a) consult with the chairs of the Supporting Organizations and Advisory Committees before making major decisions (as if such action were a Rejection Action [as defined in Annex D]) and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section [_] of Annex D)" prior to taking the action. Are these the right processes?

CCWG Response:
Agreed with Option a)

CSC:

8. Clarify whether "direct customers" and "primary customers" are the same thing or what the differences are, in the context of the CSC's mission: "The mission of the CSC is to ensure

continued satisfactory performance of the IANA naming function for the direct customers of the naming services. The primary customers of the naming services are top-level domain registry operators, but also include root server operators and other non-root zone functions." [*See Paragraphs 130 and 310 of the CWG Proposal*.]

9. Confirm that the appointment of a liaison to the CSC by the GNSO is intended to come from the Registrars Stakeholder Group or the Non-Contracted Parties House.

10. Confirm that we can add a Bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the CSC within a month and, if so, whether the ccNSO and GNSO (which are required to approve each annual slate of CSC members) are required to approve the filling of vacancies.

11. Clarify which organization selects the representatives from the ccNSO and the Registries Stakeholder Group who will review the CSC Charter – is it the ccNSO and the Registries Stakeholder Group? [*Paragraph 357 of the CWG Proposal provides that the "Charter will initially be reviewed by a committee of representatives from the ccNSO and the RySG one year after the first meeting of the CSC."*]

12. Given that there will not be regularly scheduled reviews of the CSC Charter (beyond the first review), should the Board be one of the entities that can call for a review of the CSC Charter? [*Paragraph 358 of the CWG Proposal provides that "the Charter will be reviewed at the request of the CSC, ccNSO or GNSO and may also be reviewed in connection with the IANA Function Review."*]

IFR:

13. Clarify whether the gTLD and ccTLD registry operators are the same as the "consumers of the IANA naming functions" whose needs must be considered by the IFRT (Paragraph 276 of the CWG Proposal).

14. Is it appropriate for language to be added to try to align some of the review process to the AoC reviews? A proposed inclusion is: "Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization."

15. Confirm that we can add a Bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the IFRT within a month.

Special IFR:

16. The CWG response chart provided on March 10, 2016 stated the following in response to a question around the method of consultation between SOs and ACs when determining whether or not to initiate a Special IFR: “CWG-Stewardship has chosen to reference the mechanisms developed by the CCWG-Accountability, and these can be cross-referenced as part of implementation.” The CCWG Final Proposal contemplates a community forum mechanism, as well as optional conference calls; clarify which consultation mechanism CWG expects SOs/ACs to follow and whether such mechanism is to be referred to in the Bylaws or left to implementation outside of the Bylaws.

17. Confirm that the following insertion is acceptable, that would require each recommendation of the IFRT to be “directly related and limited to remediating the PTI Performance Issue.” The CWG Proposal provides that there is no prescribed outcome for an IFR (Paragraph 126).]

SCWG:

18. On a decision to create an SCWG, confirm that the EC functions as a reconsideration of the Board decision (meaning that if the Board rejects the creation of the SCWG, the EC can reject that decision and escalate).

19. Given that the Board liaison is a role that is becoming instituted in Cross-Community Working Group practices, is it appropriate for the Board be able to appoint a liaison to a SCWG. This is not contemplated in the CWG Proposal.

20. Clarify whether every member of the SCWG should have experience managing an RFP process, or whether a minimum number of SCWG members (e.g,. four) with experience managing or participating in an RFP process would suffice. [*Paragraph 396 of the CWG Proposal provides that “To the extent possible, it is recommended that individuals with experience managing an RFP process be appointed to the SCWG.”*]

21. Confirm that we can add a Bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the SCWG within a month.

22. Consider whether an absolute majority of SCWG members should be required in cases where consensus cannot be reached, which would ensure at least 50+1% are in favor of the recommendation.

BYLAWS AMENDMENTS:

23. Counsel are still completing a compilation of proposed Fundamental Bylaws sections and will update the text accordingly.

BUDGET

24. Proposed language has been inserted as a first attempt to address the recent determination by the CWG to ask for a continued IANA functions funding commitment in the Bylaws. The provision reads: **"**To maintain ongoing operational excellence and financial stability of the IANA functions (so long as they are performed by ICANN or pursuant to contract with ICANN), ICANN shall be required to plan for and allocate funds sufficient for the future expenses and contingencies reasonably related to the performance of those functions.". The placement may change (currently in Section 21.4(f)).

CCWG Response:
CWG question

ANNEX D:

25. CCWG Counsel and ICANN are not yet in alignment on the language to describe how a Petition in the EC process can be identified as based on GAC advice. Initially, "solely" was added to tie the Petition Notice to the GAC Consensus Board Resolution. For example, the ICANN Budget is an amalgamation of many different inputs. If a particular expenditure is tangentially related to GAC advice, then the GAC should not be removed from voting on that petition. CCWG Counsel has accepted this approach for purposes of this draft, with the small addition of "or almost solely", and with the clarification that the EC could undertake two rejection petitions at the same time, one narrowly tailored to a GAC Consensus Board Resolution, and thus subject to the GAC carve out rule, and one that does not involve a GAC Consensus Board Resolution. It will be helpful to see if the CCWG thinks this approach captures the carve out rule, as CCWG understands it. ICANN's concern rests with the issue that "almost solely" is not a generally understood standard against which to assess action, and does not provide guidance to the community, ICANN or future IRP panels.

CCWG Response: The relevant sections of the Supplemental Report about the GAC carve out are :

- Annex 1 - paragraph 8 and 44
    - Board confirmation: When the Board takes action that is based on GAC consensus advice, the Board will need to state in its resolution that its decision was based on GAC consensus advice.
    - o GAC carve-out identified in petition to use Community Power: When a Board action that is based on GAC consensus advice is challenged, the petitioning SO or AC will need to indicate in the initial petition that the matter meets the requirements for the GAC carve-out and clearly identify the applicable Board action and GAC consensus advice at issue. The decision thresholds (as revised when the GAC carve-out is invoked in accordance in Annex 2) required for the escalation and enforcement processes will need to be met for the Community Power that is being exercised.

Recognizing that different views exist within the CCWG about how a petition in the EC process can be identified as based on GAC Advice (solely based, entirely or almost

entirely based, distinctively based…) and taking into account that (a) the Board decides whether to label a decision as based on GAC consenses advice; (b) the complaining party decides how to frame their complaint to meet the standard in the Bylaws and (c) any improper characterization could be subjected to an IRP, the CCWG recommends NOT to add any additional details on that process in the Bylaws.

26. In rejection actions, transparency could be increased if there was a requirement for other Decisional Participants supporting a petition to give notice. The following language has been proposed: "Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Chairs Council, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition." Though this is not in the CCWG Proposal, does the CCWG support this being incorporated into the Bylaws?

CCWG Response:
Agreed.

27. PDP-Related Bylaws amendments. Given that there is a possibility that a Fundamental Bylaws change could result from a PDP, can the CCWG confirm that that in those instances, (a) the Fundamental Bylaws change process should apply, and not the Standard Bylaws change process contemplated in the Proposal, and/or (b) that the SO/AC that undertook the PDP relating to the Bylaws change is required to support such a Bylaws change?

CCWG Response:
The CCWG agrees that the Fundamental Bylaws change process shall apply and that the SO/AC that undertook the PDP relating to the Bylaws change is required to support the Bylaws change for it to be accepted.

28. For Approval Actions, would it be appropriate for the Board to be able to request an additional community forum (likely for the purpose of helping to explain an action that the Board initiated, such as Fundamental Bylaws change or an asset sale)? This is not contemplated in the CCWG Proposal.

CCWG Response:
The CCWG agrees that it should be possible for the Board to request that a session of the community forum is held to discuss the matter. This should be optional and not mandatory for the Board to do. We would like to stress that the notion of additional community forum is understood as another session of the community forum, not a new, parallel body.

29. On NomCom Board member removals, should the GAC Carve-out only apply if the Board member is subject to the removal process because of a vote in support of a GAC Consensus Resolution?

CCWG Response:
No cause is needed for the removal of any Board member, regardless whether it is a NomCom Board member or not. Only an explanation needs to be offered. Therefore, no decision by the Board member is challenged with the removal procedure. As a consequence, the GAC carve-out should not apply to NomCom Board member removals.

30. Paragraph 56 of Annex 2 provides that the threshold to convene a Community Forum in relation to removing an SO/AC director is a "[m]ajority within nominating SO/AC" whereas Paragraph 68 of Annex 4 allows the approval to be "in accordance with the [SO/AC's] own mechanisms. Please provide guidance on these inconsistencies.

CCWG Response:
The CCWG has always made clear that it does not wish to alter the methods based on which the SO/ACs make their decisions. Therefore, the language "in accordance with the SO/AC's own mechanisms" is preferred.

31. In the SO/AC director removal process, the CCWG Proposal has exclusions on who could manage/moderate a community forum. Consider whether this exclusion (i.e., person who initiated a petition) as well as exclusion of the Decisional Participant's designated liaisons, should be incorporated into the processes for managing/moderating Community Forums relating to other types of decisions by the EC (e.g., Board recall petitions), to ensure that the Community Forum is managed in a neutral manner. If so, Community Forums relating to what kinds of EC Decisions should include such an exclusion?

CCWG Response:
This exclusion might be difficult to manage in the case of decisions that affect ICANN's general direction. It was specifically mentioned in the SO/AC director removal process because of the potential personal conflicts that might be associated with such a process. In that spirit, our recommendation is to extend this exclusion to all any Board director removal process, but leave it to the wisdom and good sense of the community to prevent any conflict of interest in the organization of the community forum in other cases.

32. During the SO/AC director removal process, should there be a requirement to hold a dialogue between the relevant director, the SO/AC and the Chair of the Board prior to the SO/AC accepting the removal petition? The CCWG Proposal contemplated such a dialogue in the context of NomCom director removal (Paragraph 57 of Annex 4) but did not specifically mention it in the context of SO/AC director removal.

CCWG Response:

The process should be as similar as possible for any Director's removal, and this informal discussion at the start of the process can only be helpful in resolving concerns or in showing that the removal process needs to proceed. Thus, the CCWG supports including this requirement.

33. It is unclear from the CCWG Proposal how issues based on GAC Consensus Resolutions or PDP matters are to be handled in the mediation and community IRP process and how the relevant carveouts are to apply. Should anything be added to the Bylaws to address this?

CCWG Response:
The carveout should be applicable for decisions whether or not mediation or a community IRP should be initiated. Once the procedure is initiated, there is no need for exclusion of the GAC. Their voice shall be heard in both processes.

34. Should the use of the EC's right to initiate a reconsideration request be limited to the EC's decision rights/powers, similar to the community IRP?

CCWG Response:
Since the EC shall be granted a limited and finite catalogue of powers, the answer is "yes".

Additional questions from the CCWG, added after the legal teams circulated their draft on 2-Apr-2016.

1. Selection of IRP panel

The report states : [...]

3. The community would nominate a slate of proposed panel members.
4. Final selection is subject to ICANN Board confirmation.

The Draft Bylaws include:
ICANN shall, in consultation with the global Internet community, initiate a process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP. The community shall be directly involved in the selection of the Standing Panel and the designation of the Chair of the Standing Panel.

This does not seem to fully capture the importance of a community driven selection process, as well as the role of the Board, which is to confirm (or veto) Panelists. Our recommendation is to provide additional safeguards about this process in the Bylaws to ensure that the intent of the Report is carried out.

2. IRP rules of procedure

The Report states:
Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created
by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the
Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld.

Bylaws:
Members of the global Internet community shall develop processes for the IRP that are governed by clearly understood and pre-published rules applicable to all parties (“Rules of Procedure”).

The community driven nature of the establishment of the rules of procedure should be reinforced in the Bylaws

3. GAC Carve out - Annex D Section 3.3

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("Board Recall Petition"). Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board and a statement, where applicable, that the Board Recall Petition is based solely [or almost solely] on ICANN's implementation of a GAC Consensus Board Resolution, citing (i) the specific GAC Consensus Board Resolution, (ii) the acts of the Board that implemented such specific GAC Consensus Board Resolution, and (iii) the IRP Panel award concluding that the Board's implementation of such GAC Consensus Advice did not comply with the Articles of Incorporation or Bylaws ("Board Recall GAC Consensus Statement"). The process set forth in this Section 3.3 of this Annex D is referred to herein as the " Board Recall Process."

Comments:
1. The manner in which the above txt is drafted may give the impression that "Board Recall Process " IS solely designed on ICANN's implementation of a GAC Consensus Board Resolution, which would not be compliant with paragraph 77-83 of Annex 4 (Recommendation 4) of the supplemental CCWG Report.

We would request confirmation that this not the case and would welcome, if possible, any improvement in language that would alleviate this possible misinterpretation.

4. HR FoI - Section 27.3

Section 27.3 is part of article 27 Transition Article and now reads:
Section 1.1. human rights
(a) Within the scope of its Mission and Core Values, ICANN commits to respect internationally recognized human rights as required by applicable law. This commitment does not create and shall not be interpreted to create any additional obligations for ICANN and shall not obligate ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN.
(b) Section 27.3(a) shall have no force or effect unless and until a framework of interpretation for human rights ("FOI-HR") is approved by (i) the CCWG-Accountability as a consensus recommendation in Work Stream 2, (ii) each of the CCWG-Accountability's chartering organizations and (iii) the Board (in the case of the Board, using the same process and criteria used by the Board to consider the Work Stream 1 Recommendations). Upon approval of the FOI-HR as contemplated in this Section, the text included within Section 27.3(a) shall be inserted into Section 1.2(b) as a Core Value
(c) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2 or the independent review process provided in Section 4.3 with respect to this Section 27.3 for any actions by ICANN or the Board occurring prior to the date that the conditions set forth in Section 27.3(b) are satisfied

Section 27.3 as a whole should be put in section 1.2 (a) as it is a commitment by ICANN and it is not really meant to be a transitional bylaw but instead a firm commitment pending full applicability to the development of the FOI as part of WS2.

5. AoC Review of new gTLDs - Section 4.6

Jeff Neuman observed that CCWG Final Report is not fully reflected in the draft bylaws text at Section 4.6 d - Competition, Consumer Trust and Consumer Choice Review (CCT). Per the Affirmation of Commitments, a CCT review team is already in process. There are also several other reviews of the latest round of new gTLDs already in progress. CCWG anticipated that the "new" bylaws reviews might conflict with the AoC reviews already underway, and added this to our final proposal:

> New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules. (para 6 of Annex 9)

Jeff also asks about draft bylaws text regarding when a CCT review would be required, if ICANN were to open an ongoing process for new gTLD applications -- instead of discrete batched rounds.

CCWG anticipated that new gTLDs might be a rolling application instead of discrete rounds of applications. In Annex 9 para 118 we said:

The Board shall cause a review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year.

The draft bylaws text at Section 4.6 d (ii) did not retain the word "batched" and should probably include that concept to clarify if and when the 1-year trigger applies.

After any discrete New gTLD Round has been in operation for one year,the Board shall initiate a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("CCT Review").

If ICANN moves to rolling applications for new gTLDs, then a review is required no less frequently than every 5 years (para 127).

For that reason, Bylaws Section 4.6 d (iii) should avoid using the phrase "the New gTLD Round" and retain the CCWG proposal text "expansion of gTLDs", as follows:

(iii) The review team for the CCT Review ("CCT Review Team") will examine (A) the extent to which the expansion of gTLDs New gTLD Round has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round's application and evaluation process and safeguards put in place to mitigate issues arising from the expansion New gTLD Round.

41) MEDIATION INITIATION PROCESS: section 4.1

This section was introduced during the Bylaw drafting stage at the request of the Coordination group. Lawyers identified that the process to engage in a Mediation, if the Board fails to comply with an EC decision, was not described in the report.

The current section 4.1 describes a new escalation process, following all typical steps (petition, community forum, etc.) before initiating the Mediation. This is option (a)
An alternate possibility would be to mandate the EC Council to initiate mediation automatically, in order to streamline the process. This is option (b)

6. AoC Review Team Draft Reports - Section 4.6

Draft bylaws Section 4.6 a (vii) B states that "Each draft report of the review team shall be posted on the Website for public review and comment."

In the CCWG final proposal, we stated "The draft report of the review will be published for public comment." (para 76, Annex 9). That was in keeping with AoC review team practice.

We realize that a review team may decide to publish several iterations of its draft reports for public comment. But we do not want to imply that each every internal draft report must be posted for public comment.

We recommend this change to draft bylaws Section 4.6 a (vii) B:
(B) The review team may post its draft reports to the Website for public review and comment. …

We note that final reports of the review team must be posted for public comment:
(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration.

7. Confirm approval of the concept of the EC Council

During drafting, the concept of the EC Council was introduced. This construct was needed to allow the Bylaws to be clearly drafted (and then followed!). Our group supports the introduction of that concept.

8. Apart from the grandfathering, there was an explicit provision that PICs could be part of future agreements entered and enforced by ICANN (annex 5, para 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.)

Section 1.1 d) iv) of the draft Bylaws states:

"(iv) ICANN shall have the ability to negotiate, enter into and enforce agreements with any party in service of its Mission."

Can the lawyers confirm that it is meeting the requirement or detail the reason why PICs are not mentioned explicitly?

CCWG Response:
"This provision meets the specification, in that it permits ICANN to include terms and conditions in contracts in service of its Mission. Public Interest Specifications (PICs) are, simply put, contractual terms. Nothing precludes the inclusion of Public Interest Commitments – by that name or any other name - in Registrar Accreditation Agreements and/or Registry Agreements so long as the are consistent with the Mission.