

To: Bylaws Coordination Group
Date: 25 May 2016

Re: Bylaws Finalization

For the Bylaws Coordination Group, we wanted to call a few items to your attention.

1. Grandfathering

Based on the comments received, ICANN has removed the IANA Functions-related contracts from the grandfathering provision. A majority of the commenters focused their concern on the unfinalized nature of the agreements and that the CCWG had not requested those for inclusion.

This is a separate issue from the existing ICANN Five-Year Strategic Plan, which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan, and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan are not included in the grandfathering provision.

2. Gender diversity

The Government of Italy recommended including gender diversity as one of the facets of diversity within the Core Values and Commitments. Because this was not included as a recommendation in the CCWG-Accountability Proposal, and additional work is scheduled for WS2 on diversity, we did not make any changes. Does the Bylaws Coordination Group see this issue differently?

3. The GAC Changes from INTA

INTA Recommended the following changes to the GAC-related Bylaws:

12.2(a)(x) ... “*may only be rejected by a vote of no less than 60% of the Board.*”

12.2(a)(xi) “*If GAC Consensus Advice is rejected by the Board pursuant to _____*”

Section 12.2(a)(x) and If no ~~such~~ mutually acceptable solution can be found, the Board will state in its final decision..."

We think that these changes are well stated and make the provision clearer, while not substantively modifying the meaning. We recommended that these changes be made. Given the level of community attention to the specific language recommended for the GAC-related Bylaws, is the Bylaws Coordination Group supportive of this clarifying text?

4. The RySG recommendations on ATRT3

The RYSG notes that the Ombudsman could be included as part of 4.6.(b)(ii)(f) for ATRT reviews.

The definition of the ATRT review only focuses on review of the IRP, so query whether we should also include in that section **“assessing and improving the Reconsideration Process, the Office of the Ombudsman and the Independent Review Process”** for completeness.

The language that is currently proposed for inclusion in the Bylaws could be interpreted to allow for the Ombudsman and Reconsideration to be included as a subject of a future ATRT review, therefore we did not make any further changes. However, we wanted to flag this issue for the Bylaws Coordination Group in case there was a sense that having these additional accountability mechanisms explicitly mentioned would be beneficial.

5. The Whois/RDS timing

Multiple commenters noted issues around the timing of the WHOIS/RDS review, with one of the main issues being that given when the Bylaws are anticipated to go into effect, ICANN would be in violation of the obligation to start the review as called for in the Bylaws. While comments were received suggesting a delay in the review, there has not been a clear community consensus that the review should be delayed, and as a result, ICANN is already committed to start the review by 31 October 2016. To support this work, a small modification to the Bylaws has been drafted to allow for the review to kick off in that timeframe without causing a Bylaws violation. Is the Bylaws Coordination Group supportive of this modification?