

Comment on the Draft Bylaw

- *To:* comments-draft-new-bylaws-21apr16 <comments-draft-new-bylaws-21apr16@xxxxxxxx>
- *Subject:* Comment on the Draft Bylaw
- *From:* "Lincoln Liu" <18601946277@xxxxxxxx>
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I consider the establishment of the Empowered Community is the greatest achievement of this Draft Bylaw, while for anything yet to be improved, the issue of jurisdiction still stands in the first line.

1. The establishment of the Empowered Community

May be many people, even the Board Members believe that the establishment of EC serves the only purpose of weakening Borad's authority. However, in my opinion, the establishment of the EC is more like a measure of power balance than a plot of undermining.

As to a regular corporation, just for argument's sake, the highest authority is not the Board, but the Shareholders Meeting, and the Board is naturally responsible for implementing the will of the Shareholders Meeting. Indeed, it sounds a little strange if we compare the EC to the Shareholders Meeting of ICANN, but we could do that in a proper way for better understanding.

When we look back, there has never been a legitimate entity that could bear the will of the whole Community, and this is an obviously existing blank of the ICANN governance system. I believe the EC Administration could exactly be the mouthpiece and ensure that the Board will cater to the needs of the whole Community.

Honestly speaking, the newborn EC is not "The Sword of Damocles", and of course, no Board Member was, is, and will be the Tyrant Dionysius. I firmly believe that the EC will not be a potential risk that could make the Board feel like treading as if on thin ice, but a great milestone and a historical certainty in the way of the ICANN development.

2. The issue of Jurisdiction

One of the most obvious amendments is the extension of the scope of ICANN applicable law, which makes ICANN subject to the CCC, other than the CNPBCL, a single part of the CCC. It is understandable as the ICANN governance system has changed, and original clauses of law could not meet the requirements of defining, describing, and explaining new things.

Here is one thing needs to be clear, the top priority at present is to realize the IANA transition, not to dispute over the issue of jurisdiction. It is a temporary expedient to adopt the old rules as the issue of jurisdiction is a time-consuming and complicated one. Any action that could delay or fail the IANA Transition shall be deemed as a miserable setback.

Nevertheless, the US Presidential Candidate Ted Cruz had been putting pressure on ICANN since early this year and questioning China's role in IANA transition. I have to say the Cruz's expression is a perfect incarnation of the McCarthy's "Reds Under the Beds" and a groundless slander on a country like China that has been dedicating itself to global Internet development.

As an old Chinese saying goes: One falling leaf is indicative of the coming of autumn. So, it is fairly to believe that some US politicians perceive the IANA function as a bargaining chip in the Presidential Election. This would not only make the IANA transition a treacherous path just like their own ascension, but also reveal a truth that the adoption of old rules is only a temporary expedient, not a long-term one.

Last but not the least, the CCWG should focus on the issue of jurisdiction and treat it as a core work in the Workstream 2, and seek a measure to release the ICANN and PTI from the totally legal control of the CCC and US Federal Law. After all, refer back to a metaphor that I mentioned above, the absolutely unilateral jurisdiction is the actual Sword that hangs over everyone's head.

Lincoln Liu